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## **Minority Self-Government in Hungary: Legislation and Practice**

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## **Introduction**

### **1.0 The main issue**

The Hungarian Act LXXVII on the rights of National and Ethnic Minorities, hereinafter called the Minorities Act<sup>1</sup>, has achieved a great deal since its adoption in 1993, in terms of the powers of ‘say’ and ‘control’ that it gives to national and ethnic minorities over their educational, linguistic and cultural affairs. The aim of the act is to further enhance the protection of minorities in Hungary, by providing them with the legal framework within which to achieve the goal of cultural autonomy<sup>2</sup>. In addition to this, it was the desire of the Hungarian Parliament that the Act would meet the legal requirements and recommendations of international documents concerning the rights of minorities.<sup>3</sup> Hungary deserves praise for its efforts both to recognise and accommodate the diversity of its population, through the enactment of the relevant human and minority rights norms. The local and national self-governments – established within the purview of the Act - are legitimately elected representative bodies, intended to be partners to regional governments at the local level, and at the national level, to co-operate with the legislature and the executive.<sup>4</sup>

The primary purpose of this paper is not, however, to illustrate the achievements of the Act so far, but instead, its aim is to show that despite the broad range of rights guaranteed by both the Constitution of the Republic of Hungary and the Minorities Act, discrepancies still exist between the law as it is written and how it actually works in practice. Concrete examples and cases will be given, where, notwithstanding the fact that the Act offers protection in relation to these rights through law, problems continue to

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<sup>1</sup> On July 7 1993, the National Assembly of the Republic of Hungary adopted the Act on the Rights of National and Ethnic Minorities. The Act is reproduced in its entirety in Annex I. Alternatively it can be found on: <http://www.meh.hu/nekh/Angol/93LXXVIIkistv.htm>.

<sup>2</sup> Preamble of Minorities Act: “In consideration of the fact that self-governments form the basis of democratic systems, the establishment of minority governments, their operation and the resulting cultural autonomy is regarded by the National Assembly is one of the fundamental preconditions of the special enforcement of the rights of minorities.”

<sup>3</sup> Janos Bathory, Head of the political Department, Government office for Hungarian Minorities Abroad. Chapter: “Local and National Minority Self-Government in Hungary” in European Commission for Democracy through Law (The Venice Commission) Science and Technique of Democracy, No. 16. “Local Self-Government, Territorial Integrity and Protection of Minorities.” Lausanne, 25-27 April 1996.

<sup>4</sup> Istvan Riba “Minority Self-Governments in Hungary”: The Hungarian Quarterly Volume 40, Autumn 1999. <http://www.hungary.com/hungq/>

persist when it comes to minorities exercising these rights, in practice. This paper will shed light on the fact that, with regard to the provisions set out in the Minorities Act, there are differences between the legislation and implementation of minority rights in Hungary today.

### **1.1 Research carried out in Budapest**

A study trip to Budapest, Hungary, formed an integral part of the research for this paper. There, I met with people working both in the field of minority protection in general, and with the implementation of the Minorities Act, in particular. During my stay, I had the opportunity both to verify and to further question what I had read in the official State reports. In addition to this, I was able to meet with representatives from minority non-governmental organisations (NGOs) and Government officials from the Office of National and Ethnic Minorities and the Office of the Ombudsman. More importantly, I was able to hold discussions with representatives of minority groups and ask them some key questions related to the main problems that exist, with regard to the implementation of the provisions, provided for in the Minorities Act. For these reasons, it can be said that my findings have their basis in a wide range of different sources.

### **1.2 Definition of the term ‘national and ethnic minority’**

The problem of defining what exactly is meant by the term ‘national and ethnic minority’ has been tackled and clarification has been sought, by a number of international organisations.<sup>5</sup> These efforts, however, have been without much success. It has been stated, “what is certain is that there is no generally accepted definition minority or national minority in international law.”<sup>6</sup> Therefore, for the purpose of this paper the definition of the term, outlined in the Minorities Act, will be used.<sup>7</sup>

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<sup>5</sup> For a discussion on the different types of definitions of what is meant by the term ‘minority’ see Patrick Thornberry: International Law and the Rights of Minorities, Oxford: Clarendon Press, 1994, chapter 1: Introductory reflections. See also Athanasia Spiliopoulou Akermark: Justifications of minority protection in International law, Kluwer Law International, 1997 (Chapter 5).

<sup>6</sup> Cumper and Wheatley, Minority Rights in the ‘New Europe’, Martinus Nijhoff Publishers, 1999, page 55.

<sup>7</sup> Other European States have similarly attempted, in legislation, to provide a direct definition of the term “minority”. However, no state has yet provided a definition of the term in their Constitution and like Hungary their attempts have been limited to legislation. For examples of States Practices in this area see: Collected texts of the European Commission for Democracy through Law (The Venice Commission), Science and technique of democracy, no 9: The protection of minorities, Council of Europe Press, 1994.

## Article 1

(1) “The present law shall apply to all persons of Hungarian citizenship living in the Republic of Hungary who consider themselves as belonging to a national or ethnic minority, and to the communities of these people.

(2) For the purposes of the present Act a national or ethnic minority is any ethnic group with a history of at least one century of living in the Republic of Hungary, which represents a numerical minority among the citizens of the state, the members of which are Hungarian citizens, and are distinguished from the rest of the citizens by their own language, culture and traditions, and at the same time demonstrate a sense of belonging together, which is aimed at the preservation of all these, and the expression and protection of the interests of their communities, which have been formed in the course of history.

## Article 2

The Act does not apply to refugees, immigrants, foreign citizens settled in Hungary, or to persons with no fixed abode.”

According to the above criteria, thirteen national and ethnic minorities living in Hungary have been defined in the Act.<sup>8</sup> The thirteen minorities are as follows: Armenians, Bulgarians, Croatians, Germans, Greeks, Poles, Roma, Romanians, Ruthenians, Serbs, Slovenians, Slovaks and Ukrainians.<sup>9</sup>

Hungary limits the scope of application of the Minorities Act, through the aforementioned Article. The State has attempted to circumscribe the notion of what constitutes a minority, to that which excludes all individuals not holding Hungarian citizenship. Therefore, according to Hungary’s definition of the term, non-citizens are not legally considered as being part of a minority. This is in contrast to the UN Human Rights Committee’s (HRC) interpretation of the term. For the purposes of implementing and understanding Article 27 of the International Convention on Civil and Political Rights (ICCPR), the HRC, in its General Comment on article 27<sup>10</sup> states, “the individuals

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<sup>8</sup> Article 61 para 2 stipulates that if a minority group is not one of the thirteen listed in the Act but wishes, however, to benefit from the rights provided for in it, they must prove that they meet the requirements specified in Article 1. Following this, they must submit a petition, to the speaker of the National Assembly that is supported by at least 1,000 electors who feel themselves as belonging to the minority in question. In the course of this procedure the provisions of Act XVII of 1989 on Referendums and Petitions shall apply.

<sup>9</sup> Chapter 6 Closing Provisions: Article 61 para 1 of the Minorities Act. For general information on each of the thirteen minorities in Hungary see Report of the Republic of Hungary: Implementation of the Council of Europe Framework Convention for the Protection of National Minorities, Budapest, January 1999.

<sup>10</sup> Human Rights Committee: General Comment 23 (fiftieth session, 1994) Article 27 of the International Covenant on Civil and Political Rights.

designed to be protected need not be citizens of the State party (...) a State party may not, therefore, restrict the rights stipulated under Article 27 to its citizens alone.” In other words, even if the Hungarian Government restricts the enjoyment of the rights provided for in the Minority Act, solely for its citizens, minorities who are not citizens of Hungary could still rely upon the protection that Article 27 affords them.

In addition to this, the Hungarian definition of the term also demands that the group have lived for at least 100 years, in Hungary. This again contradicts the HRC, as the Hungarian Government requires a specified degree of permanence, whereas the HRC states that migrant workers or even visitors in a State Party - that are part or feel themselves to be part of a certain minority - cannot be denied the rights guaranteed under Article 27. The Committee on the Elimination of Racial Discrimination (CERD) also criticises Hungary on this issue, for including, what it describes as a ‘restrictive provision’ with relation to the recognition of a national minority.<sup>11</sup>

### **1.3 Chapter outline**

Chapter one establishes the justifications for, and importance of, looking at the issue of the participation of national minorities in public life and the model of accommodation provided by the framework of self-government.

Chapter two gives the background to the Act. It then goes on to outline the four main aims of the Minorities Act: First, it can be seen as legal framework within which international standards, relating to minority protection, can be comprehensively implemented. Secondly, it can be seen as the enactment of Hungary’s decision to provide cultural autonomy for the thirteen minority groups living within its territory. In addition to this it can be argued that it puts the Government in a better bargaining position with regard to its commitment to further enhance the protection of ethnic Hungarians living in neighbouring countries. Finally, it can be seen as a mechanism through which, the

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<sup>11</sup> However, it should also be noted that within the states of the OSCE use is made of the term “National” Minorities, thus restricting minority protection provisions to the “citizens” of the respective states. See note 6.

Hungarian Government attempted to solve the problems and dire conditions faced by the Roma minority.

Chapter three contains the core argumentation and analysis of this paper. The right to political participation of national and ethnic minorities, the right to establish self-government and the right not to be discriminated against, will be analysed in the following way: Firstly, the national provisions, contained in the Constitution and/or the Minorities Act, relating to each of these rights, will be described. Next, these rights will be viewed in light of the relevant international standards. Any criticisms that the international organisations have with regard to Hungary's implementation of its commitments in this field will be outlined.

Following on from this, the complaints made to the Ombudsman, with regard to the exercising of these rights, in practice, will be dealt with. This complaint mechanism can be seen as the vehicle through which the minorities, either individually or as a group, can articulate their grievances and concerns with regard to their experiences in the implementation of their rights.

These findings will be corroborated by the opinions of NGO's working in the area of minority protection in general and dealing with Hungary specifically. In the general, the NGO reports reiterate and further substantiate, the findings of the Office of the Ombudsman, in this field.

Finally, as pointed out above, the aim of this paper is not to negate or take from the efforts that the Hungarian Government has already made in the field of minority protection. These efforts are acknowledged and praised. One can regard Hungary's Act on Minorities as a progressive attempt, even by international standards, to rise to the challenge of how to adequately solve the problem of the legal regulation of minority rights. However, difficulties that still exist in the implementation and enforcement of the relevant legislation will be pinpointed. It will therefore be clear, that even when a country makes the necessary legislative changes, to ensure the protection of minorities,

legislation is never enough. A more vigilant and sustained approach is required - one that involves more than the adoption of legislation, if equality is to be ensured, both in law and in practice. The links will be established between good governance and minority rights. Following on from this, a connection and a distinction will be made, between non-discrimination and the need for special measures in order to achieve equality in fact. Within this analysis, the model of self government can be seen as an example of 'good governance' in practice and indeed a 'special measure' that can be used in order to achieve equality in law and in fact. Chapter three, therefore, will not only highlight the areas where, despite the existence of relevant legislation, problems still persist in practice. It will also attempt to ascertain why these problems exist and how, if at all, they could possibly be remedied - either by legal or non-legal means.

## **Chapter One: Theoretical background to the issue**

### **2.0 Justifications for, and importance of, choosing the topic**

The role and utility of self-government as a mechanism, within the overall international system of protection of minority rights, can be best seen in relation to the concept of, and the right to, participation of minorities in public life. The Minority Act includes a certain level of guaranteed participation and can therefore be seen as going some way to answering the procedural question of how best to integrate minority concerns and interests, into overall policy and law.<sup>12</sup> The importance of the participation of minorities in public life, both directly and indirectly, has been highlighted and emphasised, by many international and regional organisations that promote, through legally binding treaties or political commitments, the protection of the rights of minorities.

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<sup>12</sup> "The Role and Importance of Integrating Diversity" Address by Max van der Stoel, OSCE HCNM, "Governance and Participation: Integrating Diversity", Lacarno, 18 October 1998. It can be found on <http://www.osce.org/inst/hcnm/speech/1998/18oct98.html>. This conference called for the further elaboration of the various concepts and mechanisms of good-governance with the effective participation of minorities, leading to integration of diversity within the state. To this end, the HCNM asked the Foundation on Inter-Ethnic Relations, in co-operation with the Raoul Wallenberg Institute of Human Rights and Humanitarian Law, to bring together a group of internationally recognised independent experts to elaborate recommendations and outline alternatives, in line with the relevant international standards. The Lund Recommendations (June 1999) on the Effective Participation of National Minorities in Public Life are the result of this initiative.

## **2.1 The effective participation of national minorities in public life**

The Organisation for Cooperation and Security in Europe (OSCE) through its High Commissioner on National Minorities (HCNM)<sup>13</sup> has been at the forefront of this effort to include national minorities “effectively”<sup>14</sup> in the decision-making process of the State, at both national and local levels. The HCNM argues that simple majority rule, used as a tool for democratic decision-making, with its principle of one vote per person, can risk injustice by its failure to accommodate minority special needs and interests.<sup>15</sup> For this reason, one can argue that minorities could, in fact, be placed at a disadvantage within the framework of majoritarian democracy. This is because as long as any given group remains numerically inferior to the dominant group, it will never be able to partake in central government, unless it forms a territorial majority in a specific geographical area. However, even if this were the case, the group would still be unlikely to be able to maintain adequate representation at all levels of political decision-making: municipal, regional and national. Therefore, the HCNM emphasises the need for good governance so that the required effort to respond to the special needs and interests of minorities is made.<sup>16</sup>

## **2.2 Good governance and the rights of minorities**

Asbjorn Eide, the current holder of the position of head of the UN Working Group on Minorities, also links the notion of good governance with minority rights in general, and with the effective political participation of minorities in public life, in particular.<sup>17</sup> He follows a similar line of argument to that of the HCNM. He points out that majority rule cannot always accommodate the interests of the whole population, when such a population is composed of more than one national identity. The endeavours taken with

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<sup>13</sup> The position of HCNM was established in Helsinki in July 1992. On January 1 1993, Mr. Max van der Stoel was appointed the first OSCE HCMN and he is the current holder of the position.

<sup>14</sup> The use of the term “effective” or “effectively” with relation to the participation of national minorities in public life or affairs, can be found in the following: Paragraph 35 of the CSCE, Copenhagen Document on the meeting of the Human Dimension 1990, The Lund Recommendations on the Effective Participation of National Minorities in Public Life, 1999, Article 15 of the 1995 Council of Europe Framework Convention for the Protection of National Minorities and finally, in, Article 2 paragraphs 1 and 2 of the 1992, UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.

<sup>15</sup> See note 12, page 4

<sup>16</sup> Ibid.

<sup>17</sup> See Eide “Good Governance and the Rights of Minorities” in, “Bridging Human Rights and Good Governance, edited by Hans-Otto Sano, to be published by Kluwer Law International in 2000.

regard to the implementation of the right of minorities to participate in public life, challenge the Western, traditional, understanding of democracy. An understanding of democracy is incomplete without the inclusion and implementation of minority rights. For this reason, if a country wishes to be described as ‘democratic’, it must be consistent with its mandate and represent its entire people, which include those not belonging to the perceived ‘majority’. In this way, the effective participation of minorities in public life is a necessary component of good governance. This understanding of good governance must include accountability by the government to all groups in society on the basis of non-discrimination and equal rights.<sup>18</sup>

### **2.3 Minorities and the concept of democracy**

The Western understanding of democracy and justice, at times are “based upon assumptions about the ethnic or cultural make-up of the country, assumptions that may be inapplicable in the context of multiethnic or multinational States.”<sup>19</sup> This is especially true for the countries of Central and Eastern Europe, where the process of democratic consolidation is still taking place. These countries are continuing to grapple with the fact that it is both a necessity, and an essential element of good-governance, to accommodate national entities other than the majority. It is imperative, therefore, that there is a move away from and beyond this Western concept of ‘majoritarian’ democracy - based upon the principle of ‘one person one vote’. New boundaries and new methods of distributing political power must be sought, within which minorities can participate more fully in decisions that affect them.<sup>20</sup> This requires embracing the principles of consociation democracy, and the concept of power-sharing that it promotes. An example of how power can be legitimately shared is through the framework of self-government and the resulting autonomy it provides for. Moreover, autonomy can be said to be at the core of

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<sup>18</sup> See: “Towards the Effective Participation of Minorities.” Flensburg, Germany, May 2 1999. A Conference organised by European Centre for Minority Issues (ECMI). This paper can be found: [http://www.ecmi.de/activities/tep\\_proposals.htm](http://www.ecmi.de/activities/tep_proposals.htm)

<sup>19</sup> See Will Kymlicka, “The Rights of Minority Cultures” Oxford University Press, 1995, page 3

<sup>20</sup> De Varennes in his paper “Towards Effective Political Participation and Representation of Minorities”, when referring to majoritarian system of democracies states, “minorities are simply and almost systematically outvoted in terms of their participation and representation in public life.” This paper was presented to the Working Group on Minorities 25-29 May 1998, <http://www.arts.uwaterloo.ca>.

the democratic project and one of the clearest manifestations of the principles it upholds.<sup>21</sup>

#### **2.4 Role of ‘subsidiarity’ in promoting the rights of minorities**

Consequently, special requirements are therefore necessary in order to facilitate the inclusion of minorities, within the State. The idea here is to bring the decision-making process closer to those most affected by its outcome. In other words, those most directly affected by a new law or government proposal should at least be consulted, if not directly involved, in the making of those decisions. This can be described as the concept of subsidiarity. Subsidiarity is the principle that decisions should be taken at the lowest level consistent with effective action within a political system. The European Union (EU) uses the term, in its attempts to involve all the citizens of Europe, as much as is viable, in the decisions that affect them most. The basic principle underpinning this concept is as follows: if a decision is rendered more effective by being taken closer to the people, then it should be. Only in the case that the proposed action would be carried out more effectively by the European Community, should they have competence – this makes for better governance in the long run.

Taking this concept one step further, it can be said that decentralisation and self-governance, taken as components of good-governance, whereby only a small number of areas that require uniformity, remain within the realm of the central government - national security, monetary policy, maintenance of inter-State frontiers, central administration, foreign policy - has the potential to be very successful, in providing minorities with greater control over their affairs. To put it more succinctly, what autonomy - seen as a mechanism of good governance – does, is to limit the realm of

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<sup>21</sup> For an overview of the principle of autonomy within democracy see: Held, “Democracy and the Global Order: From the Modern State to Cosmopolitan Governance, Polity Press, 1995. “Foundations of Democracy: the principle of autonomy and the global order.” Page 145 –153. Held describes the concept of cosmopolitan democracy and its relation with the principle of autonomy and the modern State. He argues that the basis of the power and significance of democracy is found in idea of self-determination, whereby self-determination is understood as the ability of citizens to chose the conditions under which they live. He puts forward a specific way of understanding democracy as the “autonomous determination of the conditions of collective association.” His interpretation of the principle of autonomy states that “ persons should enjoy equal rights and, accordingly, equal obligations in the specification of the political framework which generates and limits the opportunities available to them; that is, they should be free and equal in the determination of the conditions of their own lives, so long as they do not deploy this framework to negate the rights of others.”

governmental control, while simultaneously enhancing internal self-determination.<sup>22</sup> As the HCNM puts it, “we must seek to realize the right of self-determination through internal alternatives.”<sup>23</sup>

## 2.5 Models of accommodation

The efforts of the HCNM in this field can be seen in the coming to fruition of the Lund Recommendations on the Effective Participation of National Minorities in Public Life,<sup>24</sup> which, though not legally binding, still offer practical and constructive principles that have given further impetus to the debate on this issue and which offer concrete suggestions, as to how best accommodate minorities in the decision making processes of a State. The Minorities Act can be seen as an example of how a State attempts to accommodate the legitimate concerns of minorities, by allowing them to have both control, albeit limited, and say over their cultural, linguistic, educational and political affairs.

Due to the fact that minorities in Hungary are geographically dispersed entities, they have been provided not with territorial autonomy, but instead with cultural autonomy and the resources to establish self-governments. Held describes autonomy as “the ability to deliberate, judge, choose, and act upon different courses of action in private as well as public life, *bearing the democratic good in mind.*”<sup>25</sup> [emphasis added] The important phrase here is ‘*bearing the democratic good in mind*’. This clause can be understood in two ways. Firstly, it means that the integrity and sovereignty of the state is not affected by providing minorities with greater powers with regard to the choices that they make, in

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<sup>22</sup> Gudmundur Alfredsson establishes and describes the often-tenuous relationship between autonomy and self-determination in chapter 4: “Different forms of and claims to the right of self-determination, in “Self-determination – international perspectives” edited by Donald Clark and Robert Williamson, Macmillan Press Ltd. 1996. He argues, “demands for autonomy could be understood as claims to the exercise of the right of internal self-determination.” (page 72) However, one should note that he also makes the distinction between the demands for self-determination per se - as understood by common article one of the International Covenants - and the demands made by minorities for greater political, cultural and economic rights. He argues that we need to be specific about what rights and claims we are actually talking about; placing them all under the umbrella of ‘self-determination’ can be both counterproductive and self-defeating. For example, he points out that “the use of a self-determination label for a variety of political rights and aspirations of states, peoples and groups may raise unrealistic expectations and generate more conflicts than it resolves.” (Page 75) “Political rights should be called by their proper names.” (Page 76)

<sup>23</sup> See note 12, page 9.

<sup>24</sup> See note 12 for an explanation of how the Lund Recommendations were elaborated.

<sup>25</sup> See note 21, page 146.

either the public or the private sphere. Consequently, one can argue that the framework within which minorities can have control over matters which affect them, alone or predominantly, presents no threat to the territorial integrity of the state and therefore cannot be viewed or interpreted as a means to achieve eventual secession. It can be argued that what self-government actually achieves is in fact the opposite: in the case of Hungary, it can be seen a mechanism that facilitates social cohesiveness, by allowing minorities the freedom to express their differences, while still being part of the Hungarian population. In this way, they feel ‘equal’, as regards the rest of the population. As de Varennes puts it, “self-government viewed from this standpoint is a means of contributing to the territorial integrity of the state, rather than a Trojan horse aimed at its destruction.”<sup>26</sup> The most advantageous aspect of what can be described as ‘democratic accommodation’ is that it takes place in a peaceful environment and through the appropriate legal channels. Further integration of minorities into the realms of decision-making, allows the state to view the population as a composite, and as a result of this, individuals belonging to minority groups feel that they form a genuine component of the population, whereby their concerns and opinions play a real and coherent role in the decision-making procedures of the State. It can therefore be said that minorities in Hungary today, as a result of the guarantees in both the Constitution and the Minorities Act, form a constituent group in the power-sharing system.

Secondly, the phrase ‘bearing the democratic good in mind’ can be interpreted as meaning that the minority group can exercise their autonomy as long as by exercising their rights, they do not infringe upon the rights of others. As Held puts it “they [persons] should be free and equal in the determination of the conditions of their own lives, so long as they do not deploy this framework to negate the rights of others.”<sup>27</sup>

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<sup>26</sup> See note 3, page 218.

<sup>27</sup> See note 21, page 147.

## 2.6 Minority rights and conflict prevention

Ensuring adequate minority representation, at all levels of decision-making by the State, is an essential component of a peaceful and democratic society.<sup>28</sup> The position of HCNM has been established as “an instrument of conflict prevention at the earliest possible stage.”<sup>29</sup> In his speech titled “Governance and Participation: Integrating Diversity.”<sup>30</sup> The HCNM highlights the link between the participation of minorities in the governance of the State’s affairs and the prevention of conflict. He states that failure to respond to the needs and concerns of minorities will result in the minority community feeling isolated in relation to the State power, a situation, he argues, that they will not live with in the long term. The result of this isolation is that minorities will use more powerful and violent ways to voice their opinions, in many cases leading to conflict.

Relationships between the minority population and the State can be said to be one of the greatest challenges to European security, as is evident from the conflict borne out of the suppression of ethnicity in Former Yugoslavia and more recently in Kosovo.<sup>31</sup> Moreover, resolving these disputes can be seen as one of the most difficult tasks facing democracies today. The participation of national minorities in public life has been hailed as an effective method of conflict prevention in such aforementioned cases. The reasoning behind this assumption can be described as follows: where ethnic tensions do

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<sup>28</sup> “Human Rights, the Prevention of Conflict and the International Protection of Minorities: A contemporary Paradigm for Contemporary Challenges.” Address in the Memory of Dr. Neelan Tiruchelvam by Max van der Stoel, 19 October 1999, page 8. See also preamble to the FCNM: “Considering that the upheavals of European history have shown that the protection of national minorities is essential to stability, democratic security and peace in this continent;” preamble to the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities: “Considering that the promotion and protection of the rights belonging to national or ethnic, religious or linguistic minorities contribute to the political and social stability of States in which they live.”

<sup>29</sup> OSCE: Helsinki Decisions of July 1992.

<sup>30</sup> See note 12.

<sup>31</sup> In contrast to this argument the World Bank has recently issued a paper entitled “Economic causes of civil conflict and their implications for policy.” See: <http://www.worldbank.org/research/conflict/papers/civilconflict.htm>. They argue that it is not usually ethnic tensions that are the root cause of violent conflict. Instead they put forward the idea that such conflict, is in fact as a result of economic factors, e.g. dependence on primary commodity exports, low average incomes and slow growth. Their research suggests that civil wars are more often a result of rebel groups in competition with national governments for control of diamonds or other primary commodities, rather than as I argue above, by political ethnic or religious differences. Consequently they advocate that conflict prevention measures should seek

to alleviate these concerns, if success in this field is to be achieved. “These rather than objective grievances are the risk factors which conflict prevention must reduce if it is to be successful” (paragraph 2) Therefore, instead of seeing lack of economic progress as one of the results of conflict, borne out of ethnic tensions, they argue that it is the lack of economic that produces the conflict and one of the subsequent by-products of the conflict is racial or ethnic hatred. However, in support of their arguments it should be mentioned that the HCNM has stated that competition for resources can be a feature of an ethnic conflict although it is not normally its primary cause.

exist, a viable mechanism for addressing them - thus preventing potentially violent manifestations of minority concerns and needs - is to accommodate these needs by facilitating the participation of minorities in public life, where public life can be understood as pertaining to, in particular, the areas of education, culture and linguistic rights. It can be argued that these are the issues that have the most direct effect on the daily life of minorities.

The Minorities Act can be seen, therefore, as a mechanism that addresses what can be described as the ‘substance of tensions involving national minorities.’<sup>32</sup> The HCNM describes the linkages between international security and the international protection of minorities in his address in memory of Dr. Neelan Tiruchelvam<sup>33</sup>. He argues that respect for human rights, including minority rights, is the basis for peace and security. Through the proper implementation of minority rights, there is an increased chance of maintaining stability and security within, and between, States.

## **Chapter two: Background and aims of Act LXXVII of 1993 on the Rights of National and Ethnic Minorities**

### **3.0 Background information**

On July 7 1993, the National Assembly of the Republic of Hungary adopted the Act on the Rights of National and Ethnic Minorities by an overwhelming majority vote of 96%.<sup>34</sup> It is a unique Act and no other European country has a similar regulation of minority rights.<sup>35</sup> When the Act was passed and subsequently the first minority self-governments established they formed a new legal institution. Section one of this chapter provides information about the political situation and background to the adoption of the Act.

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<sup>32</sup> Introduction: the Lund Recommendations. <http://www.osce.org/hcnm/documents/lund.htm>.

<sup>33</sup> Neelan Tiruchelvam was assassinated in Colombo on July 29, 1999 for his efforts to bring about a peaceful solution to the conflict in Sri Lanka. He was dedicated to the constitutional protection of minority rights. For more information see: <http://www.brad.ac.uk/acad/ses/akcsa-nt.htm> or <http://www.hrw.org/press/1999/jul/lanka730.htm>.

<sup>34</sup> Report of the Republic of Hungary, Implementation of the Council of Europe Framework Convention for the Protection of National Minorities, Budapest, January 1999. It can be found: [www.ohrh.hu/hekh/en/index.htm](http://www.ohrh.hu/hekh/en/index.htm).

<sup>35</sup> “Minorities and their Right of Political Participation” edited by Frank Horn, published by the Northern Institute for Environmental and Minority Law, 1996, page 62 “observers from Western Europe are following the formation of the minority self-governments with great interest. It can be regarded as the first serious attempt in Europe to establish self-government and cultural autonomy for scattered minorities.”

Section two points out the official aims of the Act and the results that the legislators wanted the Act to achieve. It will also endeavour to present an analysis of other possible aims that the Hungarian government had when drafting the Act. Consequently, it will look at the role that Hungarian minorities abroad and the conclusion of bilateral treaties with its neighbours played in the fact that the political will to pass the Minorities Act was so strong.

On October 23 1989, the Republic of Hungary was proclaimed. During Communism most of the minority groups became assimilated into the majority due to the ‘single party’ mentality. However, one of the most noticeable changes that occurred in Hungarian society, as a result of the collapse of Communism, was that the national identity of minorities grew and became more pronounced.<sup>36</sup>

In 1990, the Office for National and Ethnic Minorities was established.<sup>37</sup> It is an autonomous organ of State administration with nationwide competence. It has been entrusted with a mandate “to carry out state tasks related to minorities in Hungary.”<sup>38</sup>

In 1993, the Minorities Act was passed and in 1994, simultaneous to the local government elections, the first elections of minority self-government were held. The direct election of minority self-government organisations succeeded in six hundred and fifty four out of a total of about one thousand five hundred communities with members of minorities forming part of the population. By April 1995, eleven minority groups had established national self-government organisations.<sup>39</sup> International observers were present at these elections and stated that the elections were fair.<sup>40</sup> Prior to this, the national association of each minority group was the sole vehicle, through which minorities could engage in public activity. Minority self-government organisations provide minority groups and individuals in Hungary, with a legal framework in which

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<sup>36</sup> See note 34.

<sup>37</sup> The Government established the Office for National and Ethnic Minorities: Government resolution no 34/1990 (VIII.30). <http://www.meh.hu/nekh/>

<sup>38</sup> See: The position of the office in the organisational structure of Hungarian Public Administration: <http://www.meh.hu/nekh/Angol/2.htm>.

<sup>39</sup> See note 35, page 64.

<sup>40</sup> See note 35, page 61.

self-government organisations form a part of the system of public administration. However, during the first four years of the operation of the law, 10% of the minority self-governments ceased to operate.<sup>41</sup> This is in part, due to the fact, that there are problems with the running of the system, in practice, as will be identified in chapter two.

In 1998, when the second elections took place, one thousand three hundred and sixty three local minority self-governments were formed including forty eight settlements, where the minority self-government could also fulfil the role of the local municipal government due to the fact that over 50% of the members of the body belong to the same national or ethnic minority. By February 1999, twelve out of the thirteen minority groups had established their national self-governments.

### **3.1 The four main aims of the act**

The aim of establishing minority self-governments was to extend the system of minority rights protection found in the Constitution of the Republic of Hungary.<sup>42</sup> (Hereinafter referred to as the Constitution). Therefore, when attempting to understand the origins of the Minorities Act, it is necessary to first look at the Constitution. The primary reason for this, is because the preamble of the Minorities Act specifically refers to it<sup>43</sup> and in addition to this, the Constitution can be said to encapsulate all that is set out in detail in the Minorities Act. One can also argue that Article 68 of the Constitution can be seen as providing the constitutional basis and background, against which, the Act was adopted. It is therefore reasonable to reproduce the relevant Article in its entirety.

#### Article 68 of the Constitution:

- (1) The national and ethnic minorities living in the Republic of Hungary participate in the sovereign power of the people: they represent a constituent part of the State.

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<sup>41</sup> Project on Ethnic Relations: Report: "Political Participation and the Roma in Hungary and Slovakia." March 1998. <http://www.websp.com/~ethnic/new/romaelect.html>.

<sup>42</sup> The Constitution, in addition to providing protection for minorities also guarantees all citizens of Hungary the protection of their human rights. Minorities are, naturally also included within the scope of such protections. See Chapter XII: Fundamental Rights and Duties (Articles 51-53) The Constitution of the Republic of Hungary (Act XX of 1949 as revised and restated by Act XXXI of 1989, as of December 1 1998) It can be downloaded from the internet: <http://www.mkab.hu/mkab06.htm>

<sup>43</sup> Preamble of the Minorities Act: "while observing the provisions of international law, the United Nations Charter, the Universal Declaration of Human Rights the International Covenant on Civil and Political Rights, the Paris Charter, the European Convention on Human Rights, and the principles laid down in the Constitution of the Republic of Hungary."

- (2) The Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs, foster their cultures, the use of their native languages, education in their native languages and the use of names in their native languages
- (3) The laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country.
- (4) National and ethnic minorities shall have the right to form national bodies for self-government.
- (5) A majority of two thirds of the votes of the Members of Parliament present is required to pass the law on the rights of national and ethnic minorities.<sup>44</sup>

The Constitution establishes that individuals belonging to minorities, living in Hungary are constituent components of the State.<sup>45</sup> In other words, the national and ethnic minorities living in Hungary “share the people’s power and are part of the State.”<sup>46</sup> Thus, they form an integral part of the population.<sup>47</sup> The Constitution guarantees minorities in Hungary the right to collective participation in public life<sup>48</sup>, the safeguarding of their culture<sup>49</sup> and the use of their mother tongue.<sup>50</sup> Therefore, what the Act actually does is to specify, and give practical implications to, the rights enshrined in article 68 of the Constitution.<sup>51</sup>

### **3.1.1 Aim one: Hungary’s international obligations**

Hungary’s desire to fulfil its international obligations with regard to the protection of the rights of minorities can be seen as one of the principle reasons of the drafting of such legislation. “The aim of this Act is to establish the institutional basis necessary to ensure that citizens can lead the life of members of national or ethnic minorities as laid down in the Final Act of the Helsinki Conference on Security in Europe in 1975.”<sup>52</sup> Hungary also

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<sup>44</sup> Specifically related to Minorities: Article 68 of The Constitution of the Republic of Hungary.

<sup>45</sup> Article 68 para 1 of the Constitution.

<sup>46</sup> See note 34, page 15.

<sup>47</sup> A permanent population is one of the necessary requirements in international law, for the establishment of a State. Article 1 of The 1993 Montevideo Convention on Rights and duties of states: “The State as a person of international law should processes the following qualifications:

a permanent population, a defined territory, government and the capacity to enter into relations with other States. See Peter Malanczuk, Akehurst’s modern introduction to international law, seventh revised edition, Routledge 1997, page 75.

<sup>48</sup> Article 68 para 2 of the Constitution.

<sup>49</sup> Ibid.

<sup>50</sup> Ibid.

<sup>51</sup> The Act outlines individual and collective rights for minorities in the sphere of local government, use of languages, education, mass media and culture.

<sup>52</sup> See preamble of the Minorities Act.

considers its policy with regard to the protection of the rights of minorities, to be part of its national interest and is keenly aware of the role that the protection of minorities plays, in the maintenance of international peace and security. The preamble to the Act emphasises this understanding of the crucial role the protection of minorities plays in conflict prevention, by stating, “the peaceful coexistence of national and ethnic minorities with the nation in majority is a component of international security.”

### **3.1.2 Aim two: The provision of cultural autonomy**

The other official reason given by the Hungarian Government for the establishment of minority self-government was to assure cultural autonomy<sup>53</sup>. Minority groups in Hungary were deeply concerned that the functioning of independent free associations was a necessary, but not sufficient framework for public activities. They wanted a legal framework that would provide for organisations with a broader mandate, functioning as an integral part of public administration. The tasks and the competencies of the self-government bodies, set up by the Act, have been determined with respect to the desire of minority groups for personal autonomy. The Office for National and Ethnic Minorities states, “the objective is that local minority self-government become fully responsible for minority educational and cultural institutions.”<sup>54</sup> Hungary’s minorities are geographically dispersed and were therefore, not pushing for the achievement of territorial autonomy.

### **3.1.3 Further protection of Hungarian minorities abroad<sup>55</sup>**

In East European countries, nationalism quickly re-emerged to fill the ideological void left following the collapse of Communism. Inter-ethnic tensions grew, both between and within, States. Hungarians were, and continue to be concerned by the plight of their fellow countrymen abroad.<sup>56</sup> To this end, Article 6 (3) of the Constitution states: “the

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<sup>53</sup> For an overview of role of Autonomy and the Rights of Minorities, see Ruth Lapidoth, Autonomy: Flexible Solutions to Ethnic Conflicts, United States Institute of Peace, 1997. (pages 10-16)

<sup>54</sup> The Office for National and Ethnic Minorities in Hungary: “The System of Minority Self-Government in Hungary”, editor Dr. Doncsev Toso, President of the Office for National and Ethnic Minorities, 1999.

<sup>55</sup> For information regarding this issue of Hungarians abroad see: website of the Government Office for Hungarian Minorities Abroad (it forms part of the Department of Foreign Affairs) <http://www.htmh.hu/rep-frame.htm>.

<sup>56</sup> For a synopsis of the cooperation that exists between the Hungarian Government and organisations representing Hungarians abroad see: Statement issued by the Conference of Hungary and Ethnic Hungarian Communities beyond the Borders, Budapest, February 20 1999: <http://www.hhrf.org/zaro-a.htm>. See also the chapter “Minority Protection in

Republic of Hungary shall sense its responsibility for the fate of Hungarians living outside its borders and shall promote the fostering of their links with Hungary”

The Office for Hungarian Minorities abroad, established in 1992, by Government Order no. 90/1992 (V.29),<sup>57</sup> gives practical resonance to this Constitutional commitment. It can be described as “a public administrative body with national authority which functions under the direction and supervision of the Foreign Minister.”<sup>58</sup> The Office holds the determined view that “the Hungarian State and Nation are not confined within the same borders.”<sup>59</sup>

The importance and practice of bilateral agreements on good neighbourly relations<sup>60</sup>, in the protection of minorities in Hungary, could be a topic for a paper in itself.<sup>61</sup> Therefore, their significance is mentioned, at this juncture, simply to reinforce the argument made above, i.e. that the large number of ethnic Hungarians living outside Hungary and concerns regarding their protection, can be seen as playing a large and important role in the drafting and eventual adoption in 1993, of the Act on Minorities. Therefore the proliferation of the bilateral treaties, that Hungary has negotiated and signed can be linked to, and is best seen, in the light of the issue of Hungarian minorities abroad.

Due to the fact that Hungary has such a high number of people living abroad it was expedient upon the Government to negotiate with neighbouring States in order to ensure

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Hungary – Hungarian Minorities Abroad, by Laszlo Valki, in “The Protection of Minorities and Human Rights,” edited by Y Dinsteiner and M Tabory, 1992 Kluwer Academic Publishers.

<sup>57</sup> See Section: “About the Office”: <http://www.htmh.hu/off-frame.htm>.

<sup>58</sup> Ibid.

<sup>59</sup> “Government Programme for a Civic Hungary on the Eve of the New Millennium” (page 1) <http://www.htmh.hu/off-frame.htm>.

<sup>60</sup> Hungary began the practice of negotiating bilateral agreements with its neighbours as early as April 1991 – Common Declaration between the Republic of Hungary and the Republic of Bulgaria on the basis of relations. The treaties on good neighbourliness and friendly co-operation between neighbouring countries in Central and Eastern Europe are framework treaties that provide for an increased degree of inter-state co-operation. These agreements were later incorporated within the framework of the EU initiative “Pact on Stability in Europe”. The aim of this pact is to encourage Central and Eastern Countries to conclude bilateral treaties on good neighbourliness, with one another and with the CIS. The prospect of accession to the EU is used as an incentive. The pact, a political enterprise with no legal force, was launched in 1993, by the then French Prime Minister, Balladur.

<sup>61</sup> For an overview of this issue see: Kinga Gál, “The role of Bilateral Treaties in the Protection of National Minorities in Central and Eastern Europe” a paper presented at the Fourth Session of the UN Working Group on Minorities in Geneva, 25-29 May 1998 (E/CN.4/Sub.2/AC.5/1998/CRP.2).

that all people of Hungarian origin – living outside Hungary - are afforded as much protection as is viable. Central to this aim was the conclusion bilateral agreements with such States.<sup>62</sup>

During the period that Hungary was drafting the law (1990-1993), to the present day, Hungary has concluded a total of 15 bilateral agreements with neighbouring countries.<sup>63</sup> Hungary shares borders with seven<sup>64</sup> countries and between 1991 and 1995 the State signed agreements with five of them.<sup>65</sup> Hungary made a concerted effort, during this time, to deal with the problems faced by ethnic Hungarians living in neighbouring countries. One of the measures taken to solve this problem was the inclusion of minority clauses, in the negotiating of bilateral agreements on good neighbourly relations.<sup>66</sup> The agreements therefore, make reference to the issue of minorities and their protection, both in Hungary and in the country with which it is entering into agreement with.<sup>67</sup> They guarantee the rights of minorities and in addition to this set out specific commitments for governments.<sup>68</sup> The issue of minorities has been a ‘sore point’ for some countries during the negotiation process of the Agreements.<sup>69</sup> As stated above, Hungary has relatively few national minorities on its territory in comparison with the number of people living abroad, who claim Hungary as their kin-State. Therefore, one can reasonably argue that it requires less commitment from the Hungarian State - both in terms of political will and equally in relation to financial considerations - to undertake to guarantee such a wide

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<sup>62</sup> The usefulness of bilateral agreements between states in the maintenance of international peace and stability and the preservation of the existence and identity of minority groups has been highlighted by Asbjorn Eide in his report to the sub-commission. See note 103 below.

<sup>63</sup> For a list of the 15 bilateral Agreements that Hungary has to date concluded see: “Protection of Minority Rights through Bilateral Treaties: the case of Central and Eastern Europe”, edited by Arie Bloed and Pieter van Dijk. 1999 Kluwer Law International. See also: <http://www.htmh.hu/bilat-frame.htm>, for the agreements with the most relevance for the protection of minorities in Hungary and also that of Hungarian minorities abroad.

<sup>64</sup> Hungary has borders with Austria, Slovakia, Ukraine, Rumania, Yugoslavia, Croatia and Slovenia

<sup>65</sup> Hungary signed agreements with Slovakia, Ukraine, Rumania, Croatia and Slovenia

<sup>66</sup> Kinga Gál, Bilateral Agreements in Central and Eastern Europe: A new inter-state Framework for Minority Protection, ECMI working paper # 4, May 1999. In it she states that:” The practice of bilateral agreements on good neighbourly relations was ‘reinvented’ by Germany after 1991 to guarantee the frontiers resulting from World War II and to protect the minorities of German origin in Central and Eastern Europe.” She maintains that a similar policy was pursued by Hungary with its neighbours to deal with the problems of the Hungarian minorities living there.

<sup>67</sup> For a list of the references to Minorities in Agreements: see note 63, 1999 p 339-393.

<sup>68</sup> See note 66. Gál outlines the basic provisions provided for: they include the right to establish organisations and the right to effective participation in the decision-making procedures.

<sup>69</sup> The examples of the Hungarian-Slovak and the Hungarian-Rumanian treaties

range of rights as are contained in the Minorities Act, then a State like Slovakia that has a much larger percentage of minorities within its territory.

To take this point to its conclusion, it can be suggested that the Minority Act puts Hungary in a very enviable bargaining position when it comes to negotiating the minority clauses contained in the bilateral agreements. Hungary, when pushing for greater protection for Hungarians abroad, be they in Rumania or Slovakia, could point to the provisions it provides to all thirteen minorities mentioned in the Act and legitimately ask for reciprocal treatment for Hungarian minorities with relation to these rights.<sup>70</sup> It can therefore be argued, with a relative degree of certainty, that offering cultural autonomy was not the only aim that the Hungarian legislators had in mind in 1993 - they also wished to protect and attempt to solve the problems faced by ethnic Hungarians living outside the territory.<sup>71</sup>

### **3.1.4 Aim four: The need to take action to alleviate the problems faced by the Roma minority**

It is also important, when looking at the situation of minority groups in Hungary, to make a distinction between the assimilated and non-assimilated minorities.<sup>72</sup> The Hungarian report on implementation of the Framework Convention on the Protection of National Minorities (FCNM) states, “the economic and social integration of the Hungarian minorities can be considered complete – with the exception of the Gypsy minority.”<sup>73</sup> A common trait of national and ethnic minorities in Hungary, is that in most cases they

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<sup>70</sup> The issue of reciprocity is now beginning to haunt the Hungarian government with regard to providing guaranteed seats in the national assembly. Both Slovakia and Rumania guarantee minorities seats and they would like Hungary to provide similar treatment to their minorities in Hungary. Also see note 63 - Alfredsson in his chapter, “Identifying possible disadvantages of bilateral agreements and advancing the ‘most-favoured-minority clause’, outlines the negative aspects of reciprocity.

<sup>71</sup> Opinions differ on this issue; alternatively it can be argued that the Hungarians living abroad are seeking a different model of accommodation than that which the Minorities Act provides. Therefore, the link between the efforts made by the Hungarian Government to remedy their problems and the drafting and adoption of the Act can be described as tenuous. To put it another way, it can be said that the two issues are separate and not comparable as cultural autonomy that the Act offers minorities is not what the Hungarians abroad are endeavouring to establish. In most cases they want more effective say and control than what the Act provides for. However, even taking this argument into account, it seems that the Act still goes some way to furthering the Governments chances of gaining better protection for its people settled abroad. Accepting that the two situations – that of minorities in Hungary and Hungarians abroad - cannot be compared, the link, as described above, can still be established between both issues.

<sup>72</sup> See note 18 - ECMI seminar: in the proposals, there is a separate heading: “Participation of the Roma” which outline the measures that states should take to ensure that discrimination against them is counteracted.

<sup>73</sup> See note 34, page 7.

consist of ethnic groups immigrating into Hungary centuries ago, and have co-existed with Hungarians ever since. The integration of minorities in Hungary therefore is complete, except with regard to the Roma. During Communism, as stated at the beginning of this chapter, most of the minorities became assimilated<sup>74</sup> and can be described as non-distinguishable as regards the majority. However, with the Minorities Act the Roma have been recognised as an ethnic and national minority and they have been given the chance to exercise the same rights as other officially listed minorities.

The pressure upon the legislators to do something constructive in an effort to alleviate the dire situation of the Roma in Hungary, at that time, can be seen as a contributing factor to the passing of the Act. Despite this fact, chapter three will illustrate clearly how the legislative guarantees of the Minority Act do not address the key social and economic problems that this group faces. Hungary succeeded in establishing a democratic State governed by the rule of law. However, the transition from a socialist economy to a privatised one created a number of social problems, which one could argue affect minorities, in particular the Roma, worst of all.

A principle objective of the Act on Minorities is to identify and create conditions under which the assimilation process of national and ethnic minorities can be halted and made reversible. Indeed, one of the aims of the Act is not to preserve the linguistic and national entity of the minorities but in fact to re-teach it. In other words, its aim is to reverse the process of assimilation that has already occurred.

However, the Roma pose a different challenge to the mechanism of accommodation of diversity. Assimilation has not occurred, but neither has any constructive integration of the Roma in to the political system of Hungary taken place<sup>75</sup> – hence they remain isolated and even in some cases segregated from the population at large. Thornberry states, “what integration seeks to achieve is a guarantee of the same rights, opportunities and

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<sup>74</sup> See note 5: Thornberry maintains:” Assimilation is described as being based on the idea of the superiority of the dominant culture, (aiming) to produce a homogeneous society by getting groups to discard their culture in favour of the dominant one. Chapter 1: Introductory reflections and scope of the present work. (page 4)

<sup>75</sup> See note 5: Thornberry states: “Integration is described as a process by which diverse elements are combined into a unity while retaining their basic identity.” (page 4)

responsibilities to all citizens, whatever their group membership.”<sup>76</sup> However, this has not been the experience of the Roma community.

However, despite the fact that the Act has not fulfilled all the aspirations of the Roma Community, The Project on Ethnic Relations (PER) points out that the Act, and all that it provides for, has at least enabled the Roma to mobilise politically and achieve a greater awareness of their rights.<sup>77</sup>

### **Chapter Three: Analysis of the Law *de jure and de facto***

#### **4.1 Limiting the scope of the analysis**

It is important to point out that by choosing to focus solely on the provisions that the Constitution and the Minorities Act provide for, in terms of minority protection, this paper purposely omits to analyse all other references pertaining to minority rights contained in other legislation in Hungary.<sup>78</sup> It is clear that minority concerns cut across policy lines and that numerous governmental departments deal with issues that directly affect minorities.<sup>79</sup> Indeed, the Act can be viewed as being part of a holistic approach taken by the Hungarian Government to protect the rights of minorities in the State. However, the parameters of this paper are limited, and therefore the focus will be mainly on the Constitution and the Minorities Act and the provisions they provide, while not denying that other guarantees and commitments have been made by Hungary, in this field.

#### **4.2 Approach taken to the analysis**

The Minorities Act consists of nine chapters, each dealing with the following topics: fundamental provisions, individual minority rights, collective rights of minorities, self-

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<sup>76</sup> Ibid.

<sup>77</sup> See note 41.

<sup>78</sup> See <http://www.meh.hu/nekh/Anglo/6.htm> for a list of (a) regulations related to minorities and (b) regulations in force forbidding discrimination.

<sup>79</sup> Departments include: The Public and Education and Minority Relations Division in the Ministry of Education, the National and Ethnic Affairs Division in the Ministry of National Cultural Heritage, the Division of Labour Market Programmes, the Institutional and Social Services Division in the Ministry of Social and Family Affairs and the Human and Minority Rights Division of the Ministry of Foreign Affairs.

governments of minorities, the local spokesman of minorities, cultural and educational autonomy of minorities, use of minority languages and the financial support of minorities.

The three provisions that will be focussed upon are: The right to political participation of individuals belonging to a minority, the right to establish self-government, and the right not to be discriminated against (the prohibition of discrimination). By looking at these rights, the links between autonomy, the right to political participation and self-governance of minorities established and dealt with in theoretical terms in chapter one will be given practical meaning and their implications and practice in reality will be analysed.

Firstly, the right itself will be outlined and its origins detailed with reference to the Constitution and the Minorities Act.

Secondly, the right will be viewed in light of relevant international standards, because to have a better understanding of the situation of minorities in Hungary, *de facto* and *de jure*, it is important to have a picture of the wider background against which the relevant rights rest. The Act, in the preamble, explicitly refers to the international standards from which it draws its inspiration. These standards are the legal norms upon which the act is based.<sup>80</sup> The focus will be on the following international organisations: the UN, the Council of Europe and the OSCE.

Hungary has ratified a number of international and regional legal instruments dealing with the rights of minorities in general, including the right to political participation and non-discrimination in particular. It has, also made several legally non-binding but political commitments, specifically with regard to the participation of national minorities in public life and the establishment of self-government. Despite the fact that these commitments are not of a purely ‘normative’ character, they still reflect the importance

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<sup>80</sup> Preamble of the Minorities Act: “while observing the provisions of international law, the United Nations Charter, the Universal Declaration of Human Rights the International Covenant on Civil and Political Rights, the Paris Charter, the European Convention on Human Rights, and the principles laid down in the Constitution of the Republic of Hungary.”

given to the promotion of the right to political participation of national minorities, by the main players in this field. The problem, in terms of the protection afforded to minorities, under the umbrella of ‘effective participation in public affairs’, is the lack of strictly legal guarantees of minority protection. Efforts in this field are often watered down or counterbalanced by other concerns of States.

This analysis will also include references to relevant State practice in this area and also pertinent interpretations, elaborated by the international organisations and NGOs, with relation to how these rights should be implemented effectively.

Any criticisms that the international organisations or NGOs have made, with regard to Hungary’s implementation of its commitments in this field, will also be outlined. In this way, it will begin to become clear what problems Hungary is experiencing with regard to the implementation of the Act in practice and what complaints the minority groups are making, via the international avenues.

In the third place, the focus will be on cases, where, these three rights have failed to be implemented or where minorities have experienced obstacles while attempting to exercise their rights. The main source of information used in this section is the annual reports of the Ombudsman. The opinions and findings of the Office of the Ombudsman will be outlined and considered. The lack of effective remedies and the limits on the ability of the minorities to redress these grievances, and thus enforce their rights, will be shown.

Chapter V of the Constitution outlines the responsibilities of the Parliamentary Ombudsman for the Rights of National and Ethnic Minorities, hereinafter the Ombudsman.<sup>81</sup> It bestows upon the Ombudsman the right to investigate himself, or alternatively initiate the investigation of, cases involving the violation of the rights of national or ethnic minorities. In addition to this, he can start *ex officio* procedures to check the enforcement of minority rights.<sup>82</sup> Another important feature is that anyone can

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<sup>81</sup> Chapter V Article 32/B of the Constitution.

<sup>82</sup> Annual Report of the Parliamentary Commissioner for National and Ethnic Minority Rights, 1998, page 69 (extract). Hereinafter, “Report 1998.”

begin proceedings through the Ombudsman in cases specified by law.<sup>83</sup> Consequently, Article 20 of the Minorities Act provides for the establishment of such an Office. The most noteworthy aspect of the setting up of such a position is the fact that the Act bestows upon the Ombudsman the authority to take action with regard to all rights that fall within the scope of the Act.<sup>84</sup>

Article 32/B of the Constitution demands that the Ombudsman presents the Parliament with an annual report on the Office's activities. As stated above, these reports are the most comprehensive sources of information with regard to how the Act is being implemented and complied with, in practice. They can be seen as the vehicle through which, individuals belonging to a minority and minority groups, can voice their concerns and grievances. More importantly, the Office of the Ombudsman provides a legal framework within which they can initiate proceedings in an attempt to enforce their rights that have been unjustly infringed upon. The Ombudsman has been effective in carrying out his mandate of the 409 cases filed in 1998; procedures had been started on all of them by the end of 1999.<sup>85</sup>

The Ombudsman receives complaints from a number of different sources; the Roma minority submits the majority of complaints.<sup>86</sup> As pointed out in chapter two, they are the minority that face greater disadvantages and discrimination as compared with the other twelve groups.

Finally, the work and undertakings of the ad hoc parliamentary committee, in terms of the possible solutions and the attempts that they are making to solve the gulf that exists, between law and practice, will be referred to. Their efforts can be linked to that of the Ombudsman. In 1997, the Office paid particular attention to the identification of deficiencies of the minority self-government system and they reached the conclusion that the Act on Minorities should be amended. In order to revise the minorities' legislation,

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<sup>83</sup> Article 32/B para 3 of the Constitution

<sup>84</sup> Article 20 para 3 of the Minorities Act: "The Ombudsman for National and Ethnic Minority Rights shall have the authority to act on issues that fall within the scope of this Act."

<sup>85</sup> Report 1998, page 72.

<sup>86</sup> Report 1997, page 5.

the Commission for Human and Minority Rights and Religious Issues of the National Assembly set up an ad hoc commission. Therefore, on the basis of the experiences of the first four years, an amendment to the Act on the Rights of Minorities is being prepared for Spring 2001.

### **4.3 The right to political participation of individuals belonging to a minority**

#### **4.3.1 National provisions**

This right is stipulated and finds its basis in the Constitution. The Constitution guarantees minorities the right to collective participation in public life. Article 62 para 2 states, “The Republic of Hungary shall provide for the protection of national and ethnic minorities and ensure their collective participation in public affairs.” It is pertinent to analyse this article, as the Act itself can be viewed and understood, as the mechanism, through which this constitutional right, can be implemented. Furthermore, the Constitution also guarantees “the laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country.”<sup>87</sup>

#### **4.3.2 International standards<sup>88</sup>**

Article 25 of the ICCPR establishes the right to political participation. It states, “every citizen shall have the right and the opportunity, without any of the distinctions mentioned in Article 2<sup>89</sup> and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives.” Hungary complies with this right in so far as all citizens have the right to stand for election and also to vote.

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<sup>87</sup> Article 68, para 3 of the Constitution.

<sup>88</sup> When looking at the right of political participation of national minorities or the synonymous right of the participation of national minorities in public affairs, the focus is on the international provisions that explicitly refer to minorities. Of course, persons belonging to a minority group may still avail of the general protection offered by international human rights norms with regard to this right. For examples see: Article 21 of the UN Universal Declaration of Human Rights; Article 25 (a) of the ICCPR; Article 7 of the Convention on the Elimination of Discrimination against Women; Article 3 protocol 1 of the ECHR, Article 23 of the American Convention on Human Rights; Article 13 of the African Charter on Human and Peoples’ Rights.

<sup>89</sup> Article 2 (a) of the ICCPR: “each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

The UN Declaration on Minorities proposes that States adopt appropriate legislative and other measures, in order to protect the cultural, religious, and linguistic identity of minorities within their territories.<sup>90</sup> The Minorities Act can be seen as the mechanism through which Hungary succeeds in fulfilling the obligations of this norm.

The Minorities Act, in providing for the establishment of both national and local self-government, can also be interpreted as reflecting the guarantees enshrined in Article 2 of the UN Declaration: Article 2 para 2: “persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.” Para 3 makes this right more specific by stating, “persons belonging to minorities have the *right to participate effectively in the decisions on the national and, where appropriate, regional level* concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation” [emphasis added].

One can argue, that this article offers greater clarification as to the interpretation of Article 25 of the ICCPR, specifically with relation to minorities.<sup>91</sup> Here, the difference between the terms the right to political participation and the right to “effective” political participation, can be seen. Article 25 of the ICCPR guarantees the right to political participation. However, this does not protect minorities from the likelihood that they will consistently be outvoted or under elected due to lack of numbers. Article 2 of the UN Declaration, on the other hand, recognises the difficulties that minorities face and stipulates that they have the right to actually participate in decisions that directly affect them, at both national and local levels. Hence, their right to participate is moved on from the status of simply being able to vote and stand for election, to being rendered “effective”, by the guarantee of a certain degree of both ‘say’ and ‘control’, over their affairs. The right of the effective participation of minorities in public life can be seen as a right in itself, as outlined above. But it can also be described and viewed as an

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<sup>90</sup>UN Declaration on Minorities: Article 1 (1): “States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity. (2) States shall adopt appropriate legislative and other measures to achieve those ends.”

<sup>91</sup> See note 20, page 4.

“umbrella right”, in that through it a broad range of minority rights can be better provided for and implemented.

#### **4.3.3 The effective participation of national minorities in public affairs**

As previously mentioned in chapter one, a number of international and regional organisations, use the terms “effective” or “effectively” with relation to the participation of national minorities in public life or affairs. References to these terms can be found in the following articles: Article 2 paragraphs 1 and 2 of the UN Declaration on the Rights of Minorities. Article 15 of the FCNM and paragraph 35 of the CSCE, Copenhagen Document on the meeting of the Human Dimension 1990, and in the Lund Recommendations on the Effective Participation of National Minorities in Public Life, June 1999.

The UN, the Council of Europe and the OSCE have – sometimes in cooperation with each other – attempted to interpret what this term means and the various ways in which States can give practical implications to it. Through seminars, conferences and in some cases - as illustrated by the Lund Recommendations – through detailed guidelines, these organisations have put forward numerous methods through which the effective participation of minorities in public life can be implemented. Hungary’s model of self-government can be seen in the light of these guidelines, as it is a concrete example of what the international organisations are advocating for.

The importance of the participation of minorities in public life was highlighted by the UN through a working paper presented by Dr. Fernand de Varennes, to 4<sup>th</sup> session of the Working Group on Minorities<sup>92</sup> in May 1998.<sup>93</sup> The paper focuses on the promotion and practical realisation of Articles 2.2 and 2.3 of the UN Declaration. In it, de Varennes outlines possible mechanisms for increasing effective participation and representation of

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<sup>92</sup> The Working Group on National Minorities is a subsidiary organ of the Sub-Commission on Human Rights from which it draws its five expert members – one from each geographical region of the world. Asbjorn Eide is the Chair-Rapporteur. It was established in 1995 pursuant to Economic and Social Council resolution 1995/31 of 25 July 1995. It meets twice a year in Geneva for five working days. Its main task is to review the progress made in the promotion, and practical realisation of, the 1992, Declaration on the Rights of Persons belonging to National or Ethnic or Religious Minorities. see: [http://www.unhchr.ch/french/html/menu2/10/c/minor/min\\_main.htm#wg](http://www.unhchr.ch/french/html/menu2/10/c/minor/min_main.htm#wg)

<sup>93</sup> See note 20.

minorities in the public sphere and the obstacles that minorities face in exercising their rights. One of the obstacles that he outlines can be said to exist in Hungary. He maintains that the under-representation of minorities in political and public life is one of the biggest problems that need to be addressed. This is especially true for Hungary where minorities are not concentrated in one geographical area. Therefore, the number of elected officials who are members of a minority group, in most cases, is lower than the actual percentage of the population, which a minority constitutes.

Following on from this, the Working Group on Minorities recommended that a seminar be held in order to develop concrete proposals on ways in which governments could give effect to Articles 2.2 and 2.3 of the UN Declaration, Article 15 of the FCNM and paragraph 35 of the Copenhagen Document. The European Centre for Minority Issues (ECMI)<sup>94</sup> was entrusted with the task of organising an international seminar under the title “Towards Effective Participation of Minorities.”<sup>95</sup> The seminar focussed on two major themes: firstly, it looked at the institutional mechanisms within States to enable the political participation of minorities. Secondly, it investigated the possible non-institutional conditions that provide a more conducive environment for minorities to participate effectively.<sup>96</sup>

In principle, Hungary’s efforts in this field can be viewed positively in relation to the recommendations made. Referring back to the issue of decentralisation and subsidiarity - as components of good-governance - as discussed in chapter one, one of the proposals made recommends that there be decentralisation of powers based upon the principle of subsidiarity. It is maintained that providing for self-government improves the chances for minorities to exercise authority over matters affecting them.

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<sup>94</sup> The ECMI is a non-partisan, bi-national institution founded in 1996 by the Governments of the Kingdom of Denmark, the Federal Republic of Germany and the German State of Schleswig-Holstein. Internet address: [www.ecmi.de](http://www.ecmi.de).

<sup>95</sup> See note 18.

<sup>96</sup> In addition to this, as detailed in chapter one, this seminar highlighted that the integration of all groups within the state is an essential component of a peaceful, democratic and plural society.

With regard to representation in legislative, administrative and advisory bodies, Hungary has provided, at the local level, guaranteed representation, veto and consultative rights and reduced voting thresholds. However, at the national level, despite the existence of national minority councils - which encompass advisory and consultative powers - the fact that there are no guaranteed minority parliamentary seats, means that in practice the opportunities available to minority groups to have a measure of control, over the issues that directly affect them, is limited.

A further proposal recommends that forms of participation for non-citizens should be developed in order to facilitate some, albeit limited, form of participation for them. However, Hungary has not made such provisions, and as remarked upon in the introduction, the Act delimits the scope of its provisions solely to individuals belonging to minorities holding Hungarian citizenship.

As regards non-institutional conditions for the effectiveness of measures aiming at improving the participation of minorities, recommendations have been made with regards to the linguistic and educational rights of minorities and their participation in the media. The Minorities Act provides for protection with regard to each of the above.<sup>97</sup>

At this juncture, it is also interesting to refer to the proposals made by Eide to the UN Sub Commission on Human Rights, regarding possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities.<sup>98</sup> He puts forward proposals relating to the effective political participation of minorities, including the establishment of advisory and decision-making bodies in which minorities are represented, in particular with regard to education, culture and religion. The paper also points out the need for self-administration on a non-territorial basis of matters such as the development of the minority's language.<sup>99</sup> In addition, it proposes the establishment of

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<sup>97</sup> Chapter 7 of the Minorities Act deals specifically with Language use, Chapter 6 deals with the cultural and educational self-governance of minorities, Article 18 provides guarantees with relation to minorities and the media.

<sup>98</sup> Eide, "Protection of Minorities: "Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of the Problems Involving Minorities." E/CN.4/Sub.2/1993/34/Add.4.

<sup>99</sup> Paragraph 17 (c).

decentralised or local forms of government.<sup>100</sup> Finally, it encourages the implementation of special measures to ensure minority representations in the legislature, even when their numerical strength is too small to have representation under normal conditions.<sup>101</sup> Again here we can see that although Hungary's efforts fare well against these guidelines, what is still lacking is the guarantee of parliamentary representation.<sup>102</sup>

Article 15 of the FCNM, similar to Article 2.2 and 2.3 of the UN Declaration guarantees "the Parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life *and in public affairs*, in particular those affecting them"<sup>103</sup> [emphasis added]. The provisions provided for in the Constitution and the Minorities Act, with relation to the political participation of minorities, can be seen in the light of the FCNM<sup>104</sup>, as they provide - through legislation - for the participation of minorities in decisions relating to their cultural, linguistic and educational affairs.

The first report regarding the implementation of the FCNM was submitted by Hungary in January 1999. The Office of National Minorities drafted the report on the implementation of the FCNM, on the basis of rich materials and contributions of all ministries, government organs and minority groups. It stands as a reliable source when seeking to establish how well Hungary is observing its international commitments. In it, Hungary outlines its efforts to implement and ensure compliance with Article 15.<sup>105</sup> The Government states that in order to implement the provisions of this article, minorities have the right to establish local and national self-governments. It goes on to describe the powers that are vested in these institutions and the role they play in the decision-making process.<sup>106</sup>

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<sup>100</sup> Paragraph 17 (d).

<sup>101</sup> Paragraph 17(e).

<sup>102</sup> This point is dealt with in this paper in the section: "the right to establish minority self-government."

<sup>103</sup> Article 15 of the FCNM.

<sup>104</sup> The FCNM can be viewed as the legal embodiment of the standards set out in the OSCE Copenhagen Concluding Document and the UN Declaration on Minorities.

<sup>105</sup> This report can be found: <http://www.meh.hu/nekh/Angol/4-1.htm>

<sup>106</sup> Please see section below: "minority self-government" for an explanation of these powers.

However, to this date, no official opinion from the Committee of Ministers<sup>107</sup> and the Advisory Committee regarding Hungary's implementation of this Convention has been forthcoming.<sup>108</sup> Despite this fact, a "shadow" report written by the Roma Civil Rights' Foundation<sup>109</sup> will be dealt with and discussed below.

A seminar "The Participation of National Minorities in Decision-Making Processes,"<sup>110</sup> was held in the framework of the Joint Programme between the Council of Europe and the European Commission, of the EU. The aim of the seminar was to explore existing practice and experience, in various European countries, in respect of the different ways in which national minorities participate in decision-making processes. Article 15 of the FCNM, formed the legal foundation of the Seminar. Both organisations stated that the participation of minorities in decision-making processes is "at once a core issue in the field of protection of national minorities, as well as a multi-faceted one."<sup>111</sup>

When looking at the OSCE standard setting activities, in the field of minority protection, it can be argued that OSCE commitments, despite their not being justiciable – being, solely, political by nature, provide for a broader range rights than the FCNM, in terms of the participation of national minorities in public life.

Hungary has made considerable progress in the implementation of these standards especially, as according to Estebanez, "only rarely have the OSCEs human dimension

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<sup>107</sup> The Committee of Ministers has a limited role with regard to the monitoring of the FCNM. The FC adopts a reporting mechanism by way of implementation of the FCNM however there is no individual complaints mechanism and the European Court on Human Rights has no jurisdiction whatsoever. The Committee of Ministers is assisted in this work by an advisory committee of recognised experts in the field of minority protection. For more information see: Stefan Troebst, "The Council of Europe's Framework Convention for the Protection of National Minorities Revisited." ECMI working paper #2, December 1998.

<sup>108</sup> According to the website of the Council of Europe, the first set of opinions of the Advisory Committee will be given to the Committee of Ministers during the year 2000, however, these findings will not be made public until the Committee of Ministers have drafted its final opinions. See: <http://www.dhdirhr.coe.fr/>.

<sup>109</sup> The Roma Civil Rights Foundation is a NGO organisation, which was established at the request of the Council of Europe. For the past five years it has been working for the protection of the rights of the Roma in Hungary in general and in particular on the issue of equality before the law. The shadow report, which mainly focuses on the implementation of Article 15 of the FCNM is published in the first issue of their new periodical "Civil rights booklet." The Soros Foundation, the World Bank and the Embassy of the Netherlands, in Hungary, sponsor this new periodical.

<sup>110</sup> Collaboration of the Council of Europe and the European Commission, in co-operation with the Ministry of Foreign Affairs of the Republic of Slovenia. Seminar held in Brdo, Slovenia, 1-2 December 1997.

<sup>111</sup> Ibid. Context and aims of the seminar, page 7

commitments concerning minorities fully been implemented in the domestic legal systems of States.”<sup>112</sup> Both by the introduction of the Minorities Act, and the incorporation the FCNM into domestic law<sup>113</sup>, it can be said that the OSCE standards have been implemented in Hungary’s domestic legal system.

It can also be said that Hungary’s efforts in the field of minority protection are compliant with the OSCE 1990 Copenhagen Document, which articulates detailed standards, relating to national minorities. Paragraph 35, in particular, focuses on the right of persons belonging to national minorities to effective participation in public affairs. It states “the participating States will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities.”

The 1992 Helsinki Decisions on the Human Dimension reaffirm what was established at Copenhagen. Paragraph 24 reiterates the right to participate fully in the political, economic, social and cultural life of the State, in general and the right to participate in decision-making and consultative bodies at the national, regional and local level, in particular.<sup>114</sup>

The Lund Recommendations offer the most comprehensive guidelines related to participation of national minorities in political affairs. They describe mechanisms which enable States to fulfil this aim, which in fact can be said to facilitate the more effective implementation of the Oslo and Hague Recommendations<sup>115</sup> as they offer a framework, which provide minorities with greater control in the fields of education and language. As stated above this right to participation in public affairs must be viewed as an umbrella right. This is due to the fact that if minorities are allowed the freedom to properly

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<sup>112</sup> See note 6, page 32.

<sup>113</sup> The FCNM is incorporated in Act No XXXIV of year 1999.

<sup>114</sup> See Gudmundur Alfredsson and Goran Melander “A Compilation of Minority Rights Standards: a Selection of Texts from International and Regional Human Rights Instruments and Other Documents” Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Report No. 24, Lund 1997. Excerpts from the Helsinki Decisions on the Human Dimension, CSCE 1992: Enhanced Commitments and Co-operation in the Human Dimension – paragraph 24.

<sup>115</sup> The Hague Recommendations Regarding the Educational Rights of National Minorities, October 1996. The Oslo Recommendations Regarding the Linguistic Rights of National Minorities, February 1998. For both sets of recommendations: <http://www.osce.org/hcnm/documents/index.htm>.

exercise this right it in turn puts them in a better position and facilitates the exercise of their linguistic and educational rights. The Lund Recommendations set out a number of possibilities and solutions to respond to the needs of minorities and to accommodate their desires within the State.<sup>116</sup>

#### **4.3.4 Non-discrimination and special measures – equality as the result**

Another interpretation of the effective participation of minorities in public life can be found in the Report of the Meeting of Experts on National Minorities, CSCE, Geneva 1991.<sup>117</sup> Section IV states, “the participating States will create conditions for persons belonging to national minorities to have equal opportunity to be effectively involved in the public life, economic activities and building of their societies.”<sup>118</sup> This statement encompasses two fundamental tenets of the right to political participation of minorities: firstly, that they should have ‘equal opportunity’ with relation to the majority to become involved in public life and secondly, that this involvement should be rendered effective. The concept of special measures is also relevant here, because it can be argued that if individuals belonging to minorities or minority groups are treated equally by the law with regard to being elected to government either at the national or local level it is highly unlikely in a country like Hungary – where the minorities live as a scattered diaspora – that a candidate or political party would gain a seat with the normal threshold levels applying.

Therefore, to ensure that minorities have an equal opportunity of being elected to, and becoming involved in, the decision-making structures and mechanisms of the State, it is imperative that special measures are put in place, which will guarantee them a certain level of representation. These measures are not deemed to be discriminatory as they are in place simply to afford the minority group in question equality in fact, as opposed to simply equality in law. They need not be permanent; indeed such measures are flexible

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<sup>116</sup> These Recommendations provide guidelines and general principles with regard to: participation in decision-making, self-governance, constitutional and legal safeguards and remedies.

<sup>117</sup> Excerpts from this meeting can be found in Minority Rights Handbook, Latvian Human Rights quarterly #5/6, 1998. The Human Rights Institute of the University of Latvia, Faculty of Law.

<sup>118</sup> Ibid.

and may change from country to country. What is important, though, is that they achieve the aim of equality, not just in law but in practice as well.

To this end, the international community, through many different regional and global institutions, has set out a number of guidelines and recommendations, with regard to how the goal of equality in practice can be achieved. As de Varennes succinctly puts it, “the type of possible mechanisms for power-sharing and other methods that increase the participation and representation in public life of persons belonging to minorities are probably as diverse as is human nature.”<sup>119</sup>

Whichever recommendation a State chooses, and then legislates for, depends on a number of considerations e.g. how many minority groups inhabit a State? How “assimilated” are they? Is their minority status based upon religious, ethnic or linguistic grounds or a mixture of all three? What is the economic and financial situation of the state? And so on. Therefore, to reiterate, the special measures that Hungary has chosen, in order to improve the situation of minorities within the State - in particular with regard to the right to political participation, were entirely discretionary. One hasten to adds, however, what might be described as a truism: when deciding upon which measures to take the State is urged only to chose and decide upon solutions that have the full cooperation and backing of the minority groups themselves. The model of accommodation should be finalised through a negotiation process, which involves all perspectives; including representatives from minority groups, NGOs or other civil organisations working in the arena of minority protection.

One can therefore argue, that the national law in Hungary reflects international standards, as the international standards are not rigid on this issue and thus can be interpreted broadly. Hence, the principle of participation in public life of minorities as set forth in international documents is applied in the Hungarian model.

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<sup>119</sup> See note 20, page 4.

## **4.4 The right to establish self-government and national self-government**

### **4.4.1 National Provisions**

Article 68 para 4 sets forth the constitutional basis for the right to establish self-government and national self-government whereby it stipulates “national and ethnic minorities shall have the right to form local and national bodies for self-government.” Following on from this, Article 5 of the Minorities Act provides for the collective and constitutional right to establish local and national self-governments.<sup>120</sup> Self-governments are legitimately elected bodies, which represent the minority population of the given settlement.

#### **Article 5:**

- (1) “In the Republic of Hungary minorities have a constitutional right to establish self-governments and national self-governments.
- (2) The basic function of minority governments is to protect and represent the interests of minorities by performing their duties and exercising their statutory authority.
- (3) To assist them in performing their duties, this Act regulates the process of establishing a self-government, its rights and obligations, the terms of its operation, and its relations with governmental bodies.”

The right to establish self-government can be understood as providing the structural and practical arrangements through which the representation of minorities at both the local and national level is ensured.<sup>121</sup> The model of self-government can therefore be described a tool in the hand of minorities to achieve a certain degree of autonomy. In addition to this, autonomy can also be seen as representing a bundle of rights, which people can enjoy as a result of their status as free and equal members of a particular group or community. “A common structure of political action, articulated by autonomy and its related cluster of rights and obligations specifies the framework of possible participation in and through which people may enter and take a position in the fray of public debate.”<sup>122</sup> This common structure or framework can be described as self-government. It should be pointed out, however, that at present, there is no guaranteed

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<sup>120</sup> In addition to this, Article 17 of the Minorities Act states, “minorities have the right to establish civil organisations as well as self-governments and national self-governments.”

<sup>121</sup> See note 20, page 2.

<sup>122</sup> See note 21, page 155.

right to autonomy. This right has not yet established a firm basis within the international instruments.<sup>123</sup>

The right to establish self-government can also be viewed as being part of the right to political participation, in that it is a mechanism through which political participation can be more effectively carried out. In addition to this, by exercising the right to establish self-governments minority groups are further enhancing their ability to exercise other rights. This right is a framework within which minorities can exercise their educational, cultural and linguistic rights. These rights are interconnected. A by-product of the implementation of rights in the field of political participation is that minorities have an increased chance to influence the law and policy making of the state with regards to issues such as education, culture and language.

#### **4.4.2 International standards**

An OSCE commitment contained in paragraph 35 of the Copenhagen Document refers to the establishment of appropriate local or autonomous administrations, as one of the possible means to protect and create conditions for the promotion of the identity of certain national minorities, in the context of the facilitation of effective minority participation in public affairs. However, there is no analogous reference in the UN Declaration on Minorities or the FCNM.

#### **4.4.3 Local Minority Self-government under Hungarian Legislation**

##### **Scope and duties**

Articles 25 – 30 describe and provide the legal basis for the scope of duties and authority of minority self-governments. The Act states that a minority self-government is a legal entity that is obliged to ensure the assertion of the rights of the minority it represents or indeed any other minority within the territory of Hungary.<sup>124</sup> Local minority self-governments have the right to consent in all areas of primary importance for minorities. In practice what this means is that the settlement's local authority can only decide upon

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<sup>123</sup> See note 22.

<sup>124</sup> Article 25 para 1 states, “a minority government is a legal entity.” Para 2 states, “in the course of the management of public affairs of self-interest, settlement-level minority self-governments, in accordance with para (1) – are obliged to ensure the assertion of the rights of the Hungarian population in a numerical minority, or the rights of any other national or ethnic minority.”

new regulations relating to local public education, culture, local media, local traditions and the collective use of language, if they gain the consent of the local minority government.<sup>125</sup> This fact means that the minority self-government and the local organisations must maintain sustained dialogue on all community issues. The relationship between the local minority self government and the local government can at times be fraught, and has resulted in complaints being made to the Ombudsman. In other matters minority self-government organisations have mainly consultative rights.<sup>126</sup> A minority self-government can consult any institution of public administration regarding an issue within its scope of authority. In addition to this, it may request information, submit proposals, initiate measures and file complaints concerning the functioning of an institution or a practice or decision that it believes violates the rights of the minority in question.<sup>127</sup>

### **Minority self-government election rules**

Minority self-governments may be elected in two different ways.<sup>128</sup> They can be elected indirectly or directly. An indirect election refers to the situation where candidates from a given minority gain over 50% of the seats in the local government elections. If this happens, the settlement becomes a local minority settlement.<sup>129</sup> Another example of how an indirect election could take place is if the candidates from a particular minority win over 30% of the vote in the local government elections. In this case, they then have the right to establish their own minority self-government within the municipality.<sup>130</sup> Article 23 of the Minorities Act outlines, how directly formed minority self-governments, are elected. It states that if a minority group has not succeeded in setting up an indirectly formed minority self-government, they may instead establish one directly formed minority self-government in any given settlement. In the case that a direct election is being held, the candidates of each separate minority run on a separate list. Candidates

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<sup>125</sup> Article 29 para 1 of the Minorities Act.

<sup>126</sup> See note 35, page 61.

<sup>127</sup> See note 41.

<sup>128</sup> It should also be mentioned that minority self-governments at the capital level are elected differently to those elsewhere in the country. In Budapest nine member self-governments of each minority can be chosen in either of two ways: by an assembly of electors or by an assembly of voters.

<sup>129</sup> Article 22 para 1 of the Minorities Act.

<sup>130</sup> Article 22 para 2 of the Minorities Act.

elected in this way form their own self-government organisation. Following this, a given settlement can have more than one directly elected minority self-government functioning. However, it is important to mention, “both directly and indirectly formed minority self-governments have the same scope of duties and authority.”<sup>131</sup> Therefore, both types shall simply be referred to as ‘minority self-government.’ In addition to this, even if a minority group presents a candidate and they do not have the minimum number of votes required to be elected, the minority group does not remain unrepresentative. The voting requirement is lowered so that s/he can become a member of the local self-government, thus ensuring at least minimal representation for the given minority<sup>132</sup>.

### **Problems encountered**

The Act sets the threshold for valid election very low. For a municipality with a population under ten thousand, no more than fifty votes are needed and it should be noted that all voters in the municipality – whether belonging to a minority group or not – are allowed to partake in voting. The concession that anybody can vote, coupled with the fact that minority elections take place simultaneous to local elections, allows one to speculate about whether or not minority self-governments are being elected by those immediately concerned. Criticism has been made about the fact that non-minority members can vote in minority government elections.<sup>133</sup> As ethnicity is not registered officially, voting on minority self-governments is not limited to the minorities themselves. Self-identification of minority membership is recognised as an important right; however, in practical terms it means that no-minority group can exert a decisive influence on the outcome of a minority self-government elections.

However, looked at in another way, one can argue that the current situation facilitates the election of smaller minorities. Even though the law stipulates that in municipalities composed of over ten thousand inhabitants, only a hundred, and in smaller places as few as fifty votes are needed for the creation of a minority self-government, smaller minorities would still be adversely affected by the existence of a register, as in many

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<sup>131</sup> Article 23 para 6 of the Minorities Act.

<sup>132</sup> See note 3, page 214.

<sup>133</sup> See note 41.

cases, they can only establish themselves as a minority self-government through the “sympathy” votes of those not affiliated to the minority.<sup>134</sup>

It is clear that a middle ground need to be established. The meaning of minority representation needs to be more clearly defined. A compromise with regard to the present situation is still being sought. The minority groups have refused, thus far, to participate in compiling a separate national minority electoral register. This would restrict ethnic candidates to those who had registered, beforehand, their affiliation with a national or ethnic minority. The ad hoc parliamentary committee has debated the issue of registration on numerous occasions and has now decided, due to negative feedback from the minority groups, to abandon this solution and is attempting instead to revise the operational regulations for elections. There are divisions among the minority groups themselves as to how best to remedy this problem. Many do not support the introduction of registration due to the negative experience with registration in the past.<sup>135</sup> Moreover, registration would be inconsistent with present laws on data protection. In addition to this, it would mean that those who do not wish to register their identity would be excluded from the election process.

An example of the contentious nature of the current workings of the electoral laws in practice, can be seen with regard to complaints received in relation to in manipulation of the law in the Autumn 1998 local government elections, whereby, certain individuals took advantage of the electoral law.

One of the most bizarre of these types of incidents - which the Ombudsman has investigated - can be briefly outlined as follows: Prior to the 1998 elections, the Hungarian-Romanian Democratic Federation (MRDSZ) was formed. They gained a huge victory in the minority self-government elections held in that year. However, according to the leaders of the Rumanian Cultural Society of Budapest members of the

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<sup>134</sup> It can be argued that the Greek and Armenian minorities could not form self-governments without a large number of “sympathy votes” from persons belonging to the majority.

<sup>135</sup> This negative view of registration finds its roots in the policy of registering ethnic affiliation carried out by Hitler and the Nazi’s during the Second World War.

MRDSZ had never appeared at any Rumanian social or cultural function and were not deemed to be part of the longstanding Rumanian community in this area. The Ombudsman was frustrated by the situation and by the fact that he was unable to take any legal action to rectify it. He noted that the dispute brought into question the whole purpose of the minority self-government. He concluded, that the legislation respecting the election of minority self-governments is, by its very nature, problematic, and one could argue, self-defeating.<sup>136</sup>

When looking at this issue, it is interesting to refer back to the definition that Hungary uses to recognise its national minorities: it stipulates that to be considered legally as constituting a minority group in Hungary, it is necessary to “demonstrate *a sense of belonging together*, which is aimed at the preservation of all these [language, culture and traditions] and the expression and protection of the interests of their communities, which have been formed in the course of history” [emphasis added].

The Ombudsman received a number of complaints and therefore decided to launch an investigation into the issue.<sup>137</sup> He is trying to discover how non-minority candidates in certain municipalities are gaining seats, through the guise of belonging to a particular minority and as illustrated above, in some cases even succeeding in pushing out “genuine” minority candidates.<sup>138</sup>

A number of proposals have been tabled by the ad hoc committee with regard to the operational regulations for elections e.g. a situation whereby affiliation to a community would have to be proven, for instance, by activity in the community over a period of time – however this option could raise constitutional problems.<sup>139</sup> One simple and practical

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<sup>136</sup> Hungarian Helsinki Committee, Report on the Situation of Minorities in Hungary, September 1999. [http://www.riga.lv/minelres/reports/hungary/hungary\\_NGO.htm](http://www.riga.lv/minelres/reports/hungary/hungary_NGO.htm). This report looks at how Hungary meets the requirements of the FCNM. The report follows the structure of the FCNM focussing on those Articles the implementation of which raises the most problems in Hungary.

<sup>137</sup> One of the complaints came from the President of Office for National and Ethnic Minorities, Toso Donchev.

<sup>138</sup> The Hungarian Quarterly volume 40 details such cases. E.g. in the 1994 elections a Greek minority self-government was established in the Ferencvaros district in Budapest whose “Greek” origins were tenuous and furthermore they had no contact with the established Greek community in Hungary. See note 4.

<sup>139</sup> This approach would virtually prevent independent candidates from standing which is deemed unconstitutional.

step that could be taken without much controversy is the staging of minority and regional self-government elections on different days.

### **Possible reasons for problems encountered**

In part, the reason why these types of incidents occur is because the formation of a minority self-government offers certain benefits and privileges and can be seen by many as bestowing “prestige” upon those elected. From a practical point of view, those elected have the right to be given an office with a telephone line and other such benefits. This gives the minorities an incentive to organise themselves. This can be seen as a positive, but only when minorities are organising themselves for the right reason i.e. to represent the group they belong to. Another reason could be that civil minority organisations are now being allotted less money as compared with minority self-government, by the local authorities.

In addition to this, the Ombudsman believes these problems are a reflection of the fact that two Articles in the Constitution contradict one another: Article 68 stipulates that nationalities have the basic right to self-government, however Article 70 provides for the right of all adult Hungarians citizens to vote in minority self-government. The Parliamentary Commissioner correctly argues that the right to self-government must take priority.

### **The relationship between the local and minority self-government**

It is important to point out that central to the successful functioning of the minority self-government system and the entire minority policy is the attitude of local governments. This is because firstly, local governments operate the most important public service systems - the largest two being education and health care. The importance of these two issues, in particular that of education, needs to be highlighted. Secondly, the major partners of minority self-government are local governments. Finally, approximately one-third of the central budget, and hence by definition of taxpayers money is channelled through local government.

The Parliamentary Commissioner states, “the majority of the complaints submitted to the Ombudsman criticise the decisions of local governments, mayors and district administrators.”<sup>140</sup> The Ombudsman attempts to ascertain why this is the case. He maintains that the system of local self-government suffers from an acute lack of adequate funding, resulting in the hindrance of the implementation of the local government’s duties. Subsequently, the local government officials must prioritise in what way the limited resources are to be spent. This difficult situation is also due, in part, to the privatisation process and economic transition embarked upon in the past ten years. Therefore, the establishment of the minority system of self-government in 1994 -1995 added an even greater financial weight to an already overburdened system.

It is clear that the negotiation process for the allocation of funds to the minority self-government is fraught with tension. In addition to this, 102/C of the Act on Local Governments makes it possible for the body of representatives of a local government to transfer a number of functions to the local minority self-government. This would not seem to be problematic except when seen in the light of financial implications. First of all, there is always disagreement as to the amount of money that the minority self-government should receive in order to carry out the additional task assigned to it by the local self-government. Secondly, the local self-government often ignores the fact that it is prohibited, by law, to transfer powers connected to its scope of authority or public utilities to the minority self-government. The latter has special significance for the situation of the Roma. It can be argued that at times the local self-government tries to pass on responsibility of some of the social problems, to the Roma minority self-government. There is a distinction being made between the competences of the local governments as compared with the minority self-governments. The body of representatives of the local government must determine and lay down in its by laws which of its functions and activities it is allowed to renounce and assign to the minority self-government.<sup>141</sup>

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<sup>140</sup> 1998 Report, page 37.

<sup>141</sup> 1998 Report, page 40.

However, despite the negative aspects described above with regard to the separation of competences and powers, the Office for National and Ethnic Minorities, acknowledges that the minorities themselves want to receive more power and competence from the local self-government. Several initiatives have been taken by minority groups to try to obtain new rights and competences. The most frequent request makes reference to the right of disposing and distributing social benefits and payments. The solution that the Office for National and Ethnic Minorities gave in this case was to attempt to establish better cooperation between the local and the minority self-government.<sup>142</sup> The situation should be that they mutually rely on each other's competences and complement each other's experiences. In reality this is not always the case, as will be demonstrated below.

Minority self-governments are subject to the goodwill of the local self-government both financially and professionally. What this means in practice, is that the success of the minority self-government in fulfilling its mandate, depends a great deal on its relationship with and the political will of the local self-government. This has led, in many cases, to the politicisation of the problems that self-governments face. The Ombudsman points out that the reoccurrence of simple irregularities in benefits, housing, and education, become charged with political meaning and result in accusations of discriminatory practice, especially when they consistently happen to one minority group - in this case the Roma. However, these problems cannot just be blamed on the lack of political will or co-operation of one or two mayors or municipality boards. The Ombudsman also pinpoints the municipality system itself as being part of the problem, or at least one of the potential obstacles in terms of the effective implementation of minority rights.

A number of weaknesses in the system can be established and remarked upon. Complaints received by the Ombudsman clearly indicate that in the majority of cases complaints were filed because in the local government and central public administrative authorities did not always apply provisions of legal regulations properly. One of the sources of problems is that minority self-governments do not independently exercise regulatory and administrative powers in the traditional sense. They carry out their duties

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<sup>142</sup> For the Constitutional basis of Local Governments see Chapter IX of the Constitution.

specified by law while integrated in an existing public law system. In other words self-governments do not constitute parallel administrative structures, they form a part of public administration but they are not allowed to act as a local authority in the field of public administration. In addition to this, as mentioned above, especially with regard to the Roma, it is important to point out, that local governments are not allowed to pass these rights on to them.

The provisions of conditions required for the operation of the board and office of local minority self-governments, as well as for the fulfilment of their duties, is the obligation of local governments as stipulated in the Local Self-Government Law. The ad hoc committee however, in an effort to harmonise the law relating to the protection of minorities in Hungary, is proposing that these provisions be transferred to the Minority Act itself. This will help to clearly demarcate their individual roles and responsibilities.

### **Problems in financing minority self-government**

The local minority self-governments are eligible for central financial assistance. In addition to this the local self-government is obliged to provide technical assistance for the functioning of the minority self-governments. The issue of financing is problematic and causes complaints being lodged to the Ombudsman.

Chapter 8 of the Minorities Act outlines provisions relating to the financing of minority self-government. In 1998, the Hungarian Parliament supported the work of national minority self-government with a subvention of 400 million forints<sup>143</sup> (of this amount 120 million forints were given to the Roma national self-government.)<sup>144</sup> The size of the support distributed to national minority self-governments is proportional to the estimated size of the given minority. Local minority self-governments also receive the same amount of support, which in 1998 equalled 474,000 forints for each of them. There is also the possibility to get support for different projects.

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<sup>143</sup> 1 euro is equal to 419 forints (July 2000)

<sup>144</sup> See Office for National and Ethnic Minorities in Hungary: "The System of Minority Self-Governments in Hungary," editor, Doncsev Toso (President), 1999.

Two central public foundations, the Public Foundation for National and Ethnic Minorities<sup>145</sup> and the Public Foundation for Roma living in Hungary, have been established with the aim of supporting project proposals. In 1998 these two foundations disposed of more than 545 million forints. For their operation minority self-governments can use funds from the following sources: State budget contribution, the contribution of the local or the county self-government, grants from different foundations and organisations, donations and in addition to this they are allowed to undertake their own income-generating activities as well.

### **Accommodation of minority self-governments**

The issue of the accommodation of minority self-governments may seem like a purely practical one, but the implications for the minority groups, in the case of non-compliance of local governments with this responsibility, are vast. Today, only a small proportion of minority self-governments have their own office where they can have their meetings and carry out their work. The others are, at best accommodated in the building of the mayor's office of the local self-government or, at worst in a private room of a restaurant or in the village library.<sup>146</sup> In practice this makes the running of the minority self-government cumbersome and less effective. The provision of office equipment also remains the responsibility of the local government. However, despite the fact that they can claim a refund from the central budget for these expenses, the facilities of the local self-governments vary from settlement to settlement. Therefore, one may argue that it is not just a matter of finance, but also of political will.

### **Training individuals belonging to minority self-governments**

The operation of the minority self-government is greatly hindered by minority politicians not being adequately informed of their rights and obligations. To this end, the Office of the Ombudsman, together with the Office for National and Ethnic Minorities, produced a handbook for minority self-governments. They also propose to conduct a related training programme in conjunction with the distribution of the handbook.<sup>147</sup> This point can also

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<sup>145</sup> See Article 55 (3) and (4) of the Minorities Act. See also Article 55.

<sup>146</sup> 1997 Report, page 39.

<sup>147</sup> 1998 Report, page 69.

be seen in relation to an issue that has become an internal impediment to the Roma, in particular, fully exercising their rights; that of lack of unity within the group and lack of experience with regard to organising the group along political lines. There is great diversity among the Roma community, which means that in reality they cannot always rally enough support - as one group - to put pressure on the Government to do something more about their situation.

#### **4.4.4 National minority self-government under Hungarian legislation**

Article 31 of the Minorities Act provides for the establishment of the national minority self-government, hereinafter, the national council. The minority representatives, who are members of all the minority self-governments that have been set up across the country, including the spokespersons<sup>148</sup>, elect the members of the national council. The operation of national minority self-governments can be divided into two parts: making decisions within the framework of their autonomy and taking part in general sectoral management.<sup>149</sup> With regard to their consultative rights, national minority self-governments operate as negotiating partners for the government and are consulted with regard to the drafting of legislation on national, county and capital city level. They are also requested to take part in the professional control of minority education. The Minority Law obliges the Government to provide the national self-governments with headquarters and money for their functioning.

#### **National minority self-government election rules**

These rules merit particular attention, as the Ombudsman believes that the 75% participation ratio required for a quorum at electoral assemblies is too high.<sup>150</sup> If this level of participation is not met, a new national minority self-government cannot be

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<sup>148</sup> Article 23 of the Minorities Act, stipulates that a spokesperson may only represent a minority in a settlement government if the minority represented by that person is not already represented by minority self-government. Article 40 outlines the powers of the self-spokesperson for minorities. In short, s/he is entitled to have access to information at the local level that affects or is within the scope of the minorities' interest. In addition to this s/he has the right to initiate action with regard to issues affecting minorities.

<sup>149</sup> 1997 Report, page 36.

<sup>150</sup> The members of the local minority self-governments constitute the electorate for the national council elections. The Ombudsman points out that there is no constitutional or other practical consideration that would necessitate a minimum of 75% attendance for an electoral meeting to become quorate and thus capable of electing a national minority self-government. See Report 1998, page 29.

created and the old one ceases to exist, hence a vacuum would remain. The law also provides that a minority elector's right to vote is, in terms of both electiveness and electivity, conditional upon his/her participation in the electors' meeting. This has, on occasions, caused practical problems.<sup>151</sup> The Ombudsman has appealed to the constitutional court with a request that this Article be deleted from the Interior Ministry Decrees that regulate national self-government elections.

Thus far, the only problems in the election of the national minority self-government are those experienced by the Roma and Rumanian minority. For the Roma these complications were, in the main, due again to the fact that 75% of the electors have to be present in order for the national self-government to be elected.<sup>152</sup> As stated above, this figure is deemed to be too high, as in this case, it translated to over three thousand electors from the Roma community for the 1999 elections.<sup>153</sup> The election rules have made it possible for one organisation to form a politically homogeneous national self-government, while excluding smaller yet influential organisations. In this way, it can be said that the current Roma national-self government does not in fact reflect the diversity of the Roma community.<sup>154</sup> An *ex officio* inquiry was conducted with regard to the 1998 minority self-government elections. It concluded "the effective rules of law as well as some constitutional regulations are in many ways contradictory."<sup>155</sup> This problem, the Ombudsman argues, can only be remedied through legislation. To this end, the Ombudsman has made proposals to the ad hoc committee to amend the minority election system in order to make it more consistent with the Constitution.<sup>156</sup>

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<sup>151</sup> There was a case whereby, a voter hoping to become a member of the self-government was held up by traffic and hence could not vote in the election or indeed put himself forward for election.

<sup>152</sup> For a description of the complaints the Ombudsman has received with relation to this issue, see 1998 Report, page 29.

<sup>153</sup> On a purely practical and financial plane it is difficult for members of the Roma community to find the resources to travel to where the national council elections are taking place. The elections were held in Budapest in 2000 and it was reported that voting was carried out openly due to the large amount of people needing to vote in a short space of time. Electors filled out their ballots in full view of other delegates.

<sup>154</sup> An example of such a case: in 1995, Lungo Drom, a Roma organisation, won only 39% of the local elections but still managed to win 100% of the national self-government seats.

<sup>155</sup> 1998 Report, page 29.

<sup>156</sup> 1998 Report, page 69.

## **Issue of representation in the National Assembly**

Article 20 of the Minorities Act stipulates that minorities have the right to be represented in the National Assembly. This right is to be determined by a separate Act. One of the most noticeable differences between the legislation and practice of the Minorities Act is the lack of legislation guaranteeing minority groups parliamentary representation. Article 68 para 3 of the Constitution states “the laws of the Republic of Hungary shall ensure representation for the national and ethnic minorities living within the country.” As the constitutional court has already ruled on the necessary legislation, Parliament’s failure to meet this demand can be deemed a violation of the Constitution. In addition to this, Hungary’s failure to implement this provision can also be seen negatively in the light of the international standards, listed in the previous section, that directly encourage States to provide guaranteed parliamentary representation for its minorities.<sup>157</sup>

The debate continues over how representation should be guaranteed. Two options have been put forward: firstly, it has been suggested that each of the listed national minorities should simply delegate one representative to Parliament.<sup>158</sup> A second proposal is that elections could take place with an element of positive discrimination. Parliament’s concerns regarding the guaranteeing of seats to minority representatives rest upon the fact that there currently exists a delicate balance among the parties, and even one or two votes by the minorities could disrupt this equilibrium. This fact is positive for the minorities, as what it amounts to is that when they do gain Parliamentary representation they can exert, at least a certain degree of influence, on policy and law.<sup>159</sup>

## **The right of agreement**

The right of agreement is the *sine qua non* of cultural autonomy. However, some of the officials of public administration seem not to be familiar with the nature of this right of

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<sup>157</sup> A roundtable was set up before the 1998 elections and attempted to bring in guaranteed representation for minorities. However, the two-thirds agreement required to amend existing legislation was not reached, by four votes.

<sup>158</sup> If this method is chosen the Roma community are pressing that representation should be proportional as they are the largest and most discriminated against, minority group in Hungary. However, all parties rejected this proposal, as it would mean that the Roma would be guaranteed more than one seat in the Parliament. However, one can argue that proportionally, the Roma are the largest minority in Hungary and therefore should have greater representation than the other minority groups if equality is to exist in practice.

<sup>159</sup> See Venice Commission, “Electoral Law and National Minorities” Strasbourg, 25 January 2000. This gives an overview of States Practice in this field.

agreement and therefore it is not always complied with. A number of complaints regarding this issue have been lodged with the Ombudsman.<sup>160</sup> An example is of such a case is as follows<sup>161</sup>: draft copies of relevant legislation were sent late - by the Minister of the Interior and the Minister of Finance - to the national minority self-governments. In practice, the result of this was that the national self-governments did not have the time to formulate their position on the merits in connection with either draft. Following an investigation into the matter by the Ombudsman, the respective Ministers admitted their responsibility and stated that there would be no such anomaly in the future. In other cases cited by the Ombudsman, Parliament has sought the opinions of the minority self-governments after the final draft of a Bill has been decided upon.

### **Lack of legal control**

Another deficiency, highlighted by the Ombudsman, with relation to the workings of the national self-governments is that they operate without legal control. What this means is that the legal regulations of the functioning of self-governments fails to provide for the legal supervision of national minority self-governments. For this reason, the Ombudsman is unable to take a position with respect to the legality of decisions made by the national councils within their own scope of authority.

### **Issue of county level minority self-government**

Another gap in the law with regard to the establishment of minority self-government can be described as follows: experience has shown that the introduction of county level minority self-government is needed for the proper representation of minority regional interests. This lack of county-level self-government councils reflects a gap in the public administration decision-making structure, whereby minority groups do not have adequate representation in Hungary. At the regional level therefore, they have neither say nor control. Some initiatives have already been taken by the minority groups themselves to fill this gap e.g. the national Roma self-government has established county offices. In other cases, local minority self-governments are creating country federations. However,

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<sup>160</sup> For examples of such cases see 1997 Report, pages 36 – 38.

<sup>161</sup> 1997 Report, page 37.

despite the benefits of these initiatives, at present, the effectiveness of the establishment of county level representation depends solely on the will of the public administrators in each individual county. This is due to the fact that they lack legislative force.

#### **4.5 The right not to be discriminated against:**

##### **4.5.1 National provisions**

Article 70/A of the Constitution stipulates:

- (1) The Republic of Hungary shall respect the human rights and civil rights of all persons in the country without discrimination on the basis of race, colour, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.
- (2) The law shall provide for strict punishment of discrimination on the basis of para (1)
- (3) The Republic of Hungary shall endeavour to implement equal rights for everyone through measures that create fair opportunities for all.

In addition to this, Article 3 paragraph 5 of the Minorities Act states, “any form of discrimination against minorities is prohibited.”

The Ombudsman holds the opinion that the general anti-discriminatory provision set out in Article 70/A of the Constitution also formulates the obligation for the state to provide equality of rights for individuals belonging to minorities. In practice, what this means is that the state must protect minority communities, provide for their collective participation in public life, as well as for the protection of their culture, and use of mother tongue.<sup>162</sup> Indeed, one can argue that the Minorities Act, pursuant to the provision contained in the Constitution, establishes licences for positive discrimination for minority communities.

##### **4.5.2 International standards**

The Human Rights Committee of the UN, in its General Comment on Article 27, places emphasis on the issue of non-discrimination.<sup>163</sup> “Non-discrimination, together with equality before the law and equal protection of the law without discrimination, constitute

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<sup>162</sup> 1997 Report, page 36.

<sup>163</sup> See note 10.

a basic and general principle relating to the protection of human rights.”<sup>164</sup> The Committee maintains that it is up to the State Parties to determine appropriate measures to implement the relevant provisions. The Committee is to be informed, however, about the nature of such measures and their conformity with the principles of non-discrimination and equality before the law.

The Committee also points out, that the principle of equality sometimes requires States Parties to take affirmative action in order to diminish or eliminate conditions, which cause or help to perpetuate, discrimination prohibited by the ICCPR. They give a concrete example of how to implement this: in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting, for a time, to the part of the population concerned, certain preferential treatment in specific matters. However, as long as such action is taken in order to correct discrimination in fact, it is a case of legitimate differentiation under the ICCPR. Article 2, paragraph 1 and Article 26 enumerate the grounds of discrimination, which include grounds cited by the Roma minority in Hungary, in their complaints to the Ombudsman i.e. race and national or social origin. This point can be linked back to what was stated above, whereby, to ensure that minorities have equal opportunity to become involved in the political processes of the State, special measures are sometimes necessary, in order to enable equality to exist in fact.

It is important to note that while Article 2 limits the scope of the rights to be protected against discrimination, to those provided for in the ICCPR, Article 26 does not specify such limitations. In the opinion of the Committee, Article 26 prohibits discrimination in law, or in fact, in any field regulated and protected by public authorities. Article 26, is therefore not limited to those rights that are provided for in the Covenant.<sup>165</sup> This provides a greater degree of protection for the minority groups in Hungary, most

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<sup>164</sup> Ibid.

<sup>165</sup> Ibid.

especially the Roma. The CERD reinforces this point by urging for “increased attention to the protection of the Gypsies’ civil, political, economic, social and cultural rights.”<sup>166</sup>

In its concluding observations with regard to the report submitted by Hungary, under Article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), the CERD described Hungary’s report as frank and comprehensive.<sup>167</sup> However, the Committee also remarks upon factors and difficulties impeding the implementation of the Convention, as will be illustrated below.

The UN Declaration on Minorities states that minorities may exercise their rights, “without any discrimination.”<sup>168</sup> Following on from this, Article 4 places a positive obligation upon the State, to ensure that minorities can actually exercise their rights without being discriminated against: “States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.” This is not the case for the Roma in Hungary. Thus, Hungary can be said to be in violation of this law. The Roma face discrimination on a number of grounds, in particular in the fields of education, employment and provision of services. They also face discrimination in relation to their treatment by the police authorities.

The European Convention for the protection of Human Rights and Fundamental Freedoms (ECHR) also prohibits discrimination against minorities far as the rights provided for in the Convention are concerned. Article 14 must be read and understood in relation with the exercise of another substantive right set forth in the Convention. It guarantees, “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, *association with a national*

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<sup>166</sup> CERD/C/304/Add.4 This can be found at <http://www.unhchr.ch>.

<sup>167</sup> Ibid. It should also be noted that this report was long overdue and that Hungary has not submitted a report since this time. No report was submitted in 1996, or 1998 as requested by the CERD. See <http://www.unhchr.ch/tbs/doc.nsf>.

<sup>168</sup> Article 3 para 1: “Persons belonging to minorities may exercise their rights, including those set forth in this Declaration, individually as well as in community with other members of their group, without any discrimination.”

*minority, property, birth or other status*” [emphasis added]. In addition to this the Council of Europe Committee of Ministers has just adopted Protocol No.12 to the ECHR, which provides for a general prohibition of discrimination. The new Protocol removes the limitation of Article 14, described above, in that it guarantees that no one shall be discriminated against on any grounds by any public authority.<sup>169</sup>

Paragraph 40 of the Copenhagen Document is also worth quoting here. It states:

“The participating States clearly and unequivocally condemn totalitarianism, racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds. *In this context they also recognise the particular problems of the Roma (Gypsies)*” [emphasis added].

The Copenhagen Document goes on to recommend measures that the participating States should take in order to ensure that people are protected against any of the above-mentioned phenomena. Specifically, it commits the State to take appropriate measures to “protect persons or groups who may be subject to threats of acts of discrimination.”<sup>170</sup> It can be said that Hungary has taken some “appropriate measures” in that it has provided for anti-discrimination legislation. However, these legislative measures as will be illustrated below, are not sufficient in order to combat discrimination in practice.

Paragraph 40 of the Copenhagen Document also recognises the right of the individual to effective remedies and endeavours to recognise, in conformity with national legislation, the right of interested persons and groups to initiate and support complaints against acts of discrimination, including racist and xenophobic acts.<sup>171</sup> As the work of the Ombudsman in this area will show, the remedies for redress against these violations have not proved to be effective so far except in a very small number of cases.

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<sup>169</sup> The new Protocol will be opened for signature by member States in Rome on 4 November 2000. Its entry into force requires ten ratifications. For the full text of Protocol No. 12 and of the explanatory report see: <http://www.dhdirhr.coe.fr>.

<sup>170</sup> Copenhagen Document para 40.2.

<sup>171</sup> Ibid. para 40.5.

Hungary has not complied with the provision stipulated by Copenhagen Paragraph 40.6 which states, “[States should], consider adhering, if they have not yet done so, to the international instruments which address the problem of discrimination and ensure full compliance with the obligations therein, *including those relating to the submission of periodic reports.*” [emphasis added] States Parties are required to submit comprehensive reports to the CERD every four years, with brief updating reports at intervening two-year periods. Hungary has not done this and is late with the submission of 3 reports. Hungary did, however, make the declaration under Article 14 (1) on September 13 1990.<sup>172</sup> It therefore recognises the competence of the CERD to “consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forward in this Convention.”<sup>173</sup>

#### **4.5.3 Special measures and equality in fact**

The proposals set out by the ECMI seminar held in May 1999, link together a number of issues dealt with in this paper. As argued above the proposals maintain that the effective participation of minorities in public life is a necessary component of good-governance. Within this understanding of what constitutes ‘good-governance’, it is correctly argued that it must include accountability by the government to all groups in society on the basis of non-discrimination and equal rights. Here the linkages established above can be clearly seen. If Hungary wishes to genuinely be accountable to all groups in the State, it must provide for the necessary conditions for the exercise of equal rights in practice. As seen in the above two sections, it has recognised the need for the political participation of national and ethnic minorities in public life and has facilitated this participation by providing for the establishment of self-government. However, this is not enough in order to fully implement the requirements of good-governance as discrimination still exists in fact and not all citizens in Hungary enjoy equal rights in practice. Therefore, it can be argued that the Hungarian Government is not responding in full to the needs of the whole population. Here, the issue of special measures plays a vital role in the fulfilment of the goal of equality in practice. The seminar’s proposals summarise this idea by stating “the

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<sup>172</sup> See <http://www.unhchr.ch/html/menu6/2/fs12.htm>. This details the status of State Parties to the Convention, with regard to Article 14 para 1.

<sup>173</sup> Article 14 of the ICERD

variety of needs and aspirations of different types of minority groups, requires identification and adoption of the most appropriate ways to create conditions for effective participation in each case.”<sup>174</sup>

The Roma minority require more robust measures in order to equip them to tackle the broad range of problems that they face in exercising their human rights. Eide reinforces this point through his remarks on the position of the Roma and describes them as “the most vulnerable minority in many parts of Europe.”<sup>175</sup> He urges that European wide measures should be taken to prevent continued discrimination and to promote their equality in fact.<sup>176</sup> A primary role of the State is to facilitate the equitable sharing of the economic wealth and social benefits of the nation as a whole. Subsequently, priority in minority protection should be given to members of groups, which are truly vulnerable, and subject to discrimination and marginalisation by the majority. In order to implement these aims in practice he maintains that specific guidelines on how to fulfil such a task can be derived from a combined use of the provisions of the ICERD and the UN Declaration on Minorities. In particular, he states that the CERD has a crucial role to play in harmonising the two concerns of both non-discrimination and the measures necessary for the creation of equality in fact.

#### **4.5.4 The role of the Ombudsman:**

The latest statistics issued by the Office of the Parliamentary Commissioner for National and Ethnic Minorities, indicate that it is the Roma minority that face the greatest obstacles when it comes to exercising their rights in Hungary.<sup>177</sup>

The Ombudsman reinforces what the international institutions have already established; that the Roma minority’s problems and status are essentially different from those of other nationalities. In other words the traditional legal institutions of minority protection have

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<sup>174</sup> See note 19, page 2.

<sup>175</sup> See note 98.

<sup>176</sup> Ibid. Page 6.

<sup>177</sup> See 1998 Report, page 73. In the table detailing the minorities affected by cases filed to the Office of the Ombudsman in 1998, the Roma community filed 281 of the 409 cases.

proved ineffective in the case of the Roma.<sup>178</sup> The problem here is that what most minorities are seeking to achieve is the reversion of the process of assimilation. However, as argued above, unlike the twelve other minorities in Hungary the Roma are not at all assimilated. In fact the opposite is the case for the Roma. What they are seeking is social integration, and at the same time they wish to maintain the distinctive features of their language and culture. Presently, they find themselves in an isolated position in relation to State structures and mechanisms and have - to a greater extent since the collapse of Communism - been placed in a marginalized position in society. The CERD also highlights this issue: "the persistent marginalisation of the large Gypsy population in spite of continuing efforts by the Government, is a matter of serious concern."<sup>179</sup> The Committee emphasises the *de facto* discrimination that the Roma face - despite the attempts made by the Government to do something about the situation - in the enjoyment and exercise of their human rights. PER reinforces this point by stating, "anti-Roma sentiments and prejudices have increased."<sup>180</sup>

The Ombudsman argues that the problems that the Roma face require special measures in order to be tackled effectively. The programmes undertaken by the Government since the Minorities Act has come into force have not adequately solved the unique problems experienced by the Roma minority. The Government has attempted to deal with these issues, as can be seen in a recent publication "Measures Taken by the State to Promote the Social Integration of Roma Living in Hungary."<sup>181</sup> The most important point to be made with relation to the Roma community is that the legislative guarantees of the Minority Act do not address the key social and economic problems that this group faces.

However, despite these measures members of the Roma minority still face discrimination in the area of education, employment, social services and authority and law-enforcement procedures. The Ombudsman calls for a number of changes to be made, and special measures to be invoked, in order to tackle the problems; civil servants should be trained

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<sup>178</sup> 1998 Report, page 67.

<sup>179</sup> See note 166.

<sup>180</sup> See note 41.

<sup>181</sup> This document, published in early 2000, can be found on: <http://www.mfa.gov.hu/sajtoanyag/roma-a.html>

to identify and eliminate discrimination and at the same time equality should be promoted with legal means and via the media. Another possible idea given is that businesses employing a large workforce should be given incentives such as tax allowances if they agree to apply quotas with regard to the employment of individuals from minority groups – this measure could also be implemented by Government agencies and public companies. Also redress for incidents of discrimination should be sought, within the framework of appropriate legislation.<sup>182</sup> Consequently, the Parliamentary Commissioner considers the enforcement of the human and civil rights of the Roma minority in Hungary as a duty for the whole society.<sup>183</sup> He urges that a more comprehensive system of protection should be established to deal with the problems of racial discrimination experienced by this minority in the areas of education, social services and employment. He calls for a revision of the legislation to include the possibility of an anti-discrimination or equal chances Act.<sup>184</sup>

Opinions differ as to how best to enforce the constitutional requirements.<sup>185</sup> Hungary has, in addition to those outlined in the Constitution and the Minority Act, a number of other anti-discrimination provisions contained in legislation.<sup>186</sup> The Ombudsman's report highlights the difficulties regarding evidence in cases of ethnic discrimination.<sup>187</sup> Most of the time there are no witnesses, so one can only rely on the account of the alleged victim. One of the most frequent complaints made to the Ombudsman, is in relation to racial motivation behind a refusal to provide a service.<sup>188</sup> It is suggested that perhaps a useful way of solving the issue of burden of proof is if the *onus probandi* is charged on the accused party, whereby, they must justify the refusal to provide a service, instead of the individual having to prove that the service was refused to them.<sup>189</sup>

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<sup>182</sup> 1998 Report, page 68.

<sup>183</sup> Ibid. Page 70.

<sup>184</sup> Ibid.

<sup>185</sup> One view is that complex anti-discrimination laws are needed. Another proposal is that sanctions are needed to complement the existing anti-discrimination provisions included in the constitution and the rule of law.

<sup>186</sup> For a list of regulations in force forbidding discrimination, see: <http://www.meh.hu/nekh/Angol/6.htm>.

<sup>187</sup> 1998 Report, page 49.

<sup>188</sup> Ibid. Pages 49-52.

<sup>189</sup> Precedent in Hungarian law for the refusal of the *onus probandi* can be found in the Labour Code.

#### **4.5.5 Cases of discrimination**

##### **Provision of a services**

Article 5 (f) of the ICERD stipulates that States Parties undertake to prohibit and eliminate discrimination in all its forms, it specifically mentions, in para (f) “The right to access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.”

In cases of discrimination with regard to refusal to provide a service, the strongest mechanism of redress that exists in Hungary is the power of the district administrator to temporarily close the business that was found to have violated the law or in some cases s/he may even withdraw the operation permit.<sup>190</sup> However, despite the existence of such punitive measures, district administrators are reluctant to use such powers, preferring instead to simply question the accused party, which usually denies the allegations made.<sup>191</sup>

The shadow report by the Roma Civil Rights Foundation, describes the situation in strong terms: “apartheid at places of entertainment is also a frequent phenomenon.”<sup>192</sup> The report cites examples of towns where the Roma, in certain shops and even on the streets face discrimination. The Hungarian Helsinki Committee also cites similar cases where such discrimination has occurred.<sup>193</sup>

In many cases, the Ombudsman is not vested with the power to act on a complaint and must therefore, pass it on to the relevant authority that in turn should investigate it and find a suitable remedy. An example of the co-operation between the Ombudsman and the relevant authority can be described as follows: Representatives of the Roma minority self-government complained that individuals belonging to the Roma community were not admitted to the pub in the centre of town. In order to sufficiently prove the existence of

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<sup>190</sup> 1998 Report, page 50.

<sup>191</sup> However, the Act on General rules of the administrative procedure provides that the administrative organ is required to enforce the rights and obligations guaranteed by law. Para 26 specifies the need for the investigation of a case brought to its attention.

<sup>192</sup> See note 109, page 65.

<sup>193</sup> See note 136.

discrimination, the county level consumer protection authority, together with the Roma minority self-government, organised a mock purchase involving Roma customers in order to prove the act of discrimination. On this basis, the authority set the following precedent: it obliged the business in question, to serve every customer regardless of their ethnic affiliations; it demanded the business report on the relevant actions within fifteen days. Finally, it warned the business that should it ignore this obligation - temporary closure, thereof, by the district administrator, would be initiated.<sup>194</sup> This decision is important and it can be said to have its legal basis in Article 3 paragraph 5 of the Minorities Act.

### **The police authorities**

In its concluding observations with regard to the report submitted by Hungary, under Article 9 of the ICERD, the CERD<sup>195</sup> voices its concern with regard to the “apparent harassment and use of excessive force by the police, against gypsies and foreigners.”<sup>196</sup> This concern is brought to light through complaints made via the Office of the Ombudsman. These complaints can be looked at under the heading of discrimination because the cases submitted to the Ombudsman under this heading refer to the plaintiffs’ Roma descent as the alleged cause of the arrest and subsequent detention.<sup>197</sup> Members of the Roma community make the vast majority of the complaints in this category.<sup>198</sup> In addition to this the Government, in its report on the FCNM, when detailing the efforts it has made with regard to the implementation of Article 4, admitted, “one could say that the number of complaints about the police is still relatively high.”<sup>199</sup> The Roma Civil Rights Foundation in its commentary on the FCNM report emphasises that the Government, in suggesting that “the first signs of favourable tendencies are to be seen,” is not seeing the breath of the problem as it exists today.<sup>200</sup> In the shadow report it is argued that in certain settlements, when criminal procedures – on the initiative of the

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<sup>194</sup> 1998 Report, page 51.

<sup>195</sup> See note 166.

<sup>196</sup> Ibid. Section D: Principal subjects of concern, point number twelve.

<sup>197</sup> 1998 Report, page 31.

<sup>198</sup> See 1998 Report, page 31 – 35 for a description of the complaints made to the Ombudsman.

<sup>199</sup> See note 109, page 42.

<sup>200</sup> See also Human Rights Watch World Report 1998, p 262. Here, it is observed that the Roma are most likely to be victims of police abuse. See: <http://www.hrw.org>.

Roma Civil Rights Foundation – were started against policemen on suspicion of having committed mistreatment against individuals belonging to the Roma minority. However, every parliamentary party supported all the officers in question, thereby rendering the procedure ineffective. Furthermore, it is noteworthy, that according to estimations given by Roma organisations, only every hundredth crime committed by a police officer against a member of the Roma minority, is officially recorded.<sup>201</sup>

The US Department of State, Human Rights Report on Hungary for 1999 concludes, “police continue to harass and physically abuse Roma and foreign nationals.”<sup>202</sup> The action taken by the Ombudsman with regard to these cases, illustrates the efficacy and intrinsic worth of the Office. In all cases, a procedure was immediately initiated and the complaint dealt with by the relevant legal body e.g. forwarded to the relevant district attorney’s office and acted upon accordingly.

### **Discrimination with regard to education<sup>203</sup>**

Article 12 of the FCNM establishes that “The Parties undertake to promote equal opportunities for access to education at all levels for persons belonging to national minorities.” The obstacles that face the Roma, in exercising their educational rights, are repeatedly cited. The Act itself recognises this by stipulating, “to relieve the disadvantages of the Gypsy minority in the field of education, specific educational conditions may be introduced.”<sup>204</sup> The legislators recognised the need for the implementation of special measures in order to bring about equality in fact, with relation to the Roma community’s access to education.

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<sup>201</sup> See note 109, page 68.

<sup>202</sup> 1999 Country Reports on Human Rights Practices. Released by the Bureau of Democracy, Human Rights and Labour US Department of State, February 2000. [http://www.state.gov/www/global/human\\_rights/1999\\_hrp\\_report/hungary.html](http://www.state.gov/www/global/human_rights/1999_hrp_report/hungary.html). It states that in 1998, 2,296 reports of police abuse were filed and of these complaints only 312 resulted in court cases. In 845 cases no investigation occurred.

<sup>203</sup> The international legal protection with regard to minorities and their educational rights is found in the following international norms; issue of the protection of minorities with regards to discrimination in the field of education can best be seen in the light of the UNESCO Convention against Discrimination in Education. (1965). Article 5 para c and UN Declaration Article 4 para 3. See also Article 13 of the International Convention for Economic Social and Cultural Rights.

<sup>204</sup> Article 45.2 of the Minorities Act.

However, despite these legislative efforts the shadow report of the FCNM claims, “the Hungarian educational system is not prepared for the education of the Roma pupils.”<sup>205</sup> The report goes on to argue that only one secondary school – which was established by a private initiative – has implemented an educational programme geared towards minorities. Furthermore, the report highlights numerous cases of discrimination in the education of children belonging to national and ethnic minorities. The most arresting of these examples is as follows: In certain settlements,<sup>206</sup> Roma children are nearly always identified as “mentally handicapped in a mild extent.”<sup>207</sup> Consequently, in a primary school for the mentally handicapped, the proportion of children belonging to the Roma minority is about 50%. Despite the Government’s acknowledgement of the discriminatory nature of the segregation of the gypsies and the “catching-up” policies followed, no measures, the report maintains, have been taken towards their elimination.<sup>208</sup>

### **Solutions proposed**

In 1997, the Office of the Ombudsman carried out a survey of the national education system.<sup>209</sup> One of its aims was to ascertain the extent of ethnic discrimination. The report outlines both legislative and executive cases of non-conformity with the law. The Ombudsman made a number of recommendations regarding these anomalies.<sup>210</sup> Those referring to the uncovering and remedying of discriminatory practices include the following: firstly, the Ombudsman requested that the Minister for Culture and Education initiate the amendment of the Act on Public Education so that it includes the regulations related to negative discrimination in education. The aim of these regulations would be to further enhance work in the uncovering of cases of negative discrimination, the confirmation and proving of such instances of discrimination and finally, the provision of the necessary sanctions in law. Secondly, a nation-wide survey was proposed in order to

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<sup>205</sup> See note 109, page 63.

<sup>206</sup> For example, in Ercsi in County Fejer.

<sup>207</sup> See note 109, page 64.

<sup>208</sup> The report states that Balint Magyar, the Minister for Education of the MSZP-SZDSZ Government in Office from 1994-1998, did acknowledge the existence of “catching-up school” discrimination. page 64

<sup>209</sup> See note 136. The Hungarian Helsinki Committee Report, points out that one of the issues that this survey brings to light, is the segregation of Roma students in educational institutions.

<sup>210</sup> 1998 Report, page 61.

establish the level of discriminatory practices that exist in the organisation of public education of children belonging to national and ethnic minorities. The Office argued that this survey would further enable the Government to bring in measures to eliminate such discrimination. The above-mentioned Ministry, however, did not meet such requests with much enthusiasm<sup>211</sup>.

### **Discrimination in employment**

This issue can be looked at in the light of the 1958 ILO Convention no. 111 concerning discrimination in respect of employment and occupation. Article 2 states, “each member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national condition and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.” Eide, in his report to the UN Sub-Commission, encourages the ILO to develop further its efforts in the fields of workers’ rights, employment and access to sources of livelihood. Again, it is reiterated that vulnerable minorities are often subjected to discrimination in access to work and conditions of work.<sup>212</sup> Following the same line, the CERD expresses concern, with regard to the fact, that three quarters of Gypsies are unemployed with almost no prospect of entering the labour market.<sup>213</sup>

Almost all the complaints related to discrimination in employment are made by the Roma minority.<sup>214</sup> Moreover, the Ombudsman states clearly that in fact the numbers of reported cases of discrimination in the work force are lower than the actual situation, not because of the lack of occurrences of this kind but for another reason. Due to the high level of unemployment - especially amongst the Roma population - job seekers are not willing to confront their would-be employers. Following on from this, another reason

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<sup>211</sup> Ibid. The Minister dismissed these requests on the following grounds: firstly he stated that the regulation of these questions do not belong to the issue of public education and he argued that the existing procedures currently in effect provided sufficient guarantee for the elimination of abuses. However, other proposals that the Ombudsman made e.g. to organise training programmes for minority self-government representatives and public employees in charge of education, were taken on board and acted upon accordingly.

<sup>212</sup> See note 166, page 9.

<sup>213</sup> Ibid.

<sup>214</sup> 1998 Report, page 52.

given for such latency - one that relates to all aspects of discrimination - is that the victims of such treatment rarely have any knowledge of the legal remedies available to them. For this reason, in 1998, the Ombudsman went beyond his mandate of dealing solely with individual cases and initiated a proposal to uncover the whole range of acts of discrimination in employment – the aim being to reduce the overall number of cases.<sup>215</sup> To this end an *ex officio* enquiry was established. Hungary has a number of legal guarantees to prevent discrimination in employment and in the workplace.<sup>216</sup> However, despite the existence of such a comprehensive set of provisions protecting the individual against discrimination, the enquiry revealed that in reality these sanctions have little or no practical impact.<sup>217</sup>

The FCNM shadow report reinforces the findings of the Ombudsman by detailing discrimination that occurs in the workforce.<sup>218</sup> They agree with the Hungarian Government when it states, in the FCNM report, that the majority of the Roma became unemployed after the collapse of Communism in Hungary.<sup>219</sup> Since that time, they argue, the Government has not tackled this problem effectively. The Government state that the unemployment rate of the entire population is 8-10%. However, there are, it admits, settlements where 90-100% of the Gypsy population is unemployed.<sup>220</sup> The shadow report attempts to ascertain why the Roma face such discrimination with regard to employment. It is elucidated that employers are often ‘afraid’ of Roma and do not want to place them in a position of employment, where they would be visible. This fact is perpetrated by a general lower standard of education of the Roma, which can in part be argued, is a result of the discrimination they face in this area - as outlined above. Hence, it is clear that a ‘vicious circle’ exists and it is one that will not be broken by legislation alone. It has been demonstrated above that Hungary has provided for adequate anti-

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<sup>215</sup> Ibid.

<sup>216</sup> The Government Decree on Misdemeanours directly penalises discrimination in employment. In addition to this the district administrator, the labour safety and management authorities are also entitled to prosecute this kind of misdemeanour.

<sup>217</sup> 1998 Report, page 53. The Ombudsman points out that neither in the year of the enquiry, or at any time before that was any investigation carried out in connection with ethnic discrimination in employment, nor was any labour authority imposed for such an offence.

<sup>218</sup> See note 109, page 65.

<sup>219</sup> See note 34, page 43.

<sup>220</sup> Ibid.

discrimination legislation in an attempt to solve this problem but the roots of the problems are deeper. “Though the Hungarian statutes forbid discrimination in employment, it cannot be realised in practice.”<sup>221</sup>

### **Solutions proposed**

The Parliamentary Commissioner has made a number of proposals to the Minister for the Family and Social Welfare, in an effort to tackle some of the aforementioned issues.<sup>222</sup> He suggested that a bulletin be produced detailing existing legal remedies for cases of discrimination in employment. In addition to this, it was suggested that the Minister should provide for the collection and processing of information on discrimination in employment. The Minister accepted both proposals. The Ombudsman also made proposals to the Minister of Justice regarding discrimination in employment.<sup>223</sup> He highlighted the difficulties that exist, especially for the poorer minorities, when they are attempting to put into motion the anti-discrimination procedures. At present, victims of discrimination can only resort to civil trials and they have the burden of the *onus probandi*. Moreover, many cannot afford legal representation. This, the Ombudsman claims, puts them in a “virtually hopeless situation.”<sup>224</sup> Therefore, he is calling for an amendment of the Code of Civil Procedures Act, and in this way, cases of illegal refusal of employment could be heard in summary procedures and employers would be required to justify the rejection of the person seeking employment. The Minister in question, although not accepting all the proposals, has still taken on board part of the recommendations made. Consequently, a comprehensive revision of the Code of Civil Procedures has begun.

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<sup>221</sup> See note 109, page 66.

<sup>222</sup> 1998 Report, page 54.

<sup>223</sup> Ibid. Page 55.

<sup>224</sup> Ibid.

## **Conclusions**

“In order to meet the needs and aspirations of minorities as well as to manage ethnic, linguistic, religious and cultural diversity, it is necessary to involve minorities at the international, national and local levels in the suggestion, formulation, adoption, implementation and monitoring of standards and policies on the protection of their rights.”<sup>225</sup> This paper has demonstrated that Hungary has, with a certain degree of success, provided mechanisms to increase the opportunities for minorities to participate in the decision-making mechanisms of the State. Hungary has provided the thirteen minorities living on its territory, with cultural autonomy, through the framework of minority self-government, at both national and local levels. Thus, the Government has taken the necessary legal measures to ensure that minority groups have a certain degree of say and control over the issues that affect them. In this way, it can be said to be carrying out the necessary components of good governance and the prerequisites of a democratic State.

However, despite these efforts, this paper has set out the arguments in support of the following statement “minority rights are adequately protected at the level of Acts and Statutes. The problem is that the practice is often different.”<sup>226</sup> Three rights were analysed: the right to political participation, the right to establish self-government and the right not to be discriminated against. In terms of international standards, one can argue that Hungary has in place, the necessary domestic legal provisions to ensure the protection of these rights. The biggest exception is that the Parliamentary representation of minorities, is not guaranteed. With regard to representation in legislative, administrative and advisory bodies, Hungary has provided for – at the local level – guaranteed representation, veto and consultative rights and reduced voting thresholds.

However a number of discrepancies exist in the minorities exercising of their rights. As regards the right to establish self-government, problems exist at a number of different levels; the fact that minorities do not register their affiliation means that in the local

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<sup>225</sup> See note 18, page 2.

<sup>226</sup> See note 136, page 1.

minority self-government elections, any individual can vote, whether or not they belong to the minority. In practice what this means is that those elected do not always represent the minority in question. The ad hoc parliamentary committee is tackling this problem, however, and an attempt is being made to reach a compromise on this issue. The relationship between the local and minority self-government is often tense, due mainly to a lack of political will on the part of the local self-government to co-operate with the minority group in question. Also, the local government and central public administrative authorities do not always apply provisions of legal regulations properly. In addition to this, both groups are competing for available funds. At the national level, problems exist with relation to the election of the national councils, the issue of representation in the National Assembly and the right of agreement. Also highlighted, was the lack of county level minority self-government.

The majority of problems exist with regard to the implementation of the right not to be discriminated against. The Roma community experience most difficulties in this area. The need for the existence of special measures in order to bring about equality in fact was highlighted. The Roma face discrimination with regard to the provision of services and in their relations with the police. They also face obstacles in the exercising of their rights in the fields of employment and education. The challenge, therefore, to the Hungarian Government and in particular, to the ad hoc parliamentary committee – that is currently entrusted with the task of drafting the amendment to the Minorities Act – is to deal comprehensively and effectively with these issues.

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