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Evaluation Report on Hungary

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I. INTRODUCTION

1. Hungary was the twentieth GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Salvador Viada Bardaji, Public Prosecutor, Anti-corruption Prosecution Office (Spain, prosecution expert), Mr Claus-Peter Holz, Bundeskriminaldirektor, Bundeskriminalamt (Germany, police expert) and Ms Ramune Sedvydyte, (Lithuania, policy expert). This GET, assisted by the Secretariat, visited Budapest from 8 to 12 October 2001. Prior to the visit, the GET was provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval I (2001) 40E).

2. The GET met with officials from the following Hungarian Government institutions: the Ministry of Foreign Affairs, the Ministry of Justice (e.g. Criminal Law Department), the Ministry of the Interior (including the Office of Supervision and Control and the Department of Education), the General Prosecutor's Office, the Central Investigative Office of the Public Prosecution, the National Headquarters of the Police, the National Headquarters of the Customs, the State Audit Office, the Government Control Office and Police Officers' College. Moreover, the GET met with Members of the House of Parliament (Commission of Immunities), the National Judicial Council and the Hungarian Gallup Institution. The latter organised a round-table discussion with representatives of civil society, which included the University of Miskolc (Law Faculty), the Hungarian Catholic Bishop's Conference (Justitia et Pax), Europa Nova Sociological Research Institution, a municipality (Erd), American Chamber of Commerce and a weekly newspaper[1].

3. GRECO agreed, at its 2nd Plenary meeting (December 1999) that the First Evaluation Round would run from 1 January 2000 to 31 December 2001 but was subsequently extended until 31 December 2002. Pursuant to decisions taken by GRECO in accordance with Article 10.3 of its Statute, this round of evaluation was based on the following provisions:

   - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
   - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
   - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).

4. Following the meetings indicated in paragraph 2 above, the GET experts submitted to the Secretariat their individual observations concerning each sector concerned and proposals for recommendations, on the basis of which the present report has been prepared. The principal objective of this report is to evaluate the measures adopted by the Hungarian authorities, and wherever possible their effectiveness, in order to comply with the requirements deriving from GPCs 3, 6 and 7. The report will first describe the situation of corruption in Hungary, the general anti-corruption policy, the institutions and authorities in charge of combating it - their functioning, structures, powers, expertise, means and specialisation - and the system of immunities preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation described previously, assessing, in particular, whether the system in place in Hungary is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations made by GRECO to Hungary in order for this country to improve its level of compliance with the GPCs under consideration.

[1] The journalist representing the media left the meeting at a very early stage, immediately after it started.

II. GENERAL DESCRIPTION OF THE SITUATION

5. The Republic of Hungary is a state of 93,030 km², neighbouring Austria, Croatia, Romania, Slovakia, Slovenia, Ukraine and Serbia and Montenegro, with a population (according to data of July 2002) of 10,070.340 inhabitants (population growth : - 0.3%). Hungary has a GDP per capita of 12,000 $, with an inflation rate of 9.2 %[2]. The unemployment rate is 6.5%.

a. The phenomenon of corruption and its perception in Hungary

i) Perception of corruption

6. Hungary is perceived as one of the least corrupt post-communist countries in Central and Eastern Europe. According to Transparency International's corruption perception index 2002, Hungary was ranked 33 out of 102 countries (rating 4.9 out of 10). Its economy is among the strongest in the region. Still, statistics show more convictions for corruption than in the surrounding states. In spite of that, the GET observed that there is a public perception of corruption as a relatively widespread phenomenon in the country. This has led to a certain amount of frustration and cynicism among citizens, who believe giving and taking bribes, is quite common. Low paid government officials, particularly the police, are perceived as particularly prone to soliciting bribes or payoffs.[3]

7. Between 1950 and 1990, there was hardly a single sphere of political, social and economic life in Hungary, untouched by corruption. The change of regime dramatically altered the previous system, made shortages gradually disappear and made goods and services generally available. It created, however, a certain feeling of imbalance, among those who had the resources to benefit fully from the open market place and the majority of the population. This climate is likely to have contributed to the survival of old forms and to the emergence of new forms of corruption under the new political regime. Nowadays, privatisation is gradually entering its last phase, and bank consolidation is about to be completed. However, non-transparent privatisation still continues to be a problem in Hungary. Transactions between the Government and private sector are considered business secrets, so that most information on public procurement is not made available to the public. More than half (52-53 %) of small and medium-sized domestic company managers consider[4] that there is a high level of corruption in the field of public procurements and state investments[5].

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[2] The official inflation rate in 2002 was 5.3 % according to the National Bank of Hungary.

[3] Following a complex review of the salary structure for the public service, the gap between earnings in the public and private sectors was further reduced: in January 2002 law enforcement officers received an increase of around 70 %, while other civil servants received a further salary increase of 30 % (which resulted for the latter in an overall increase of 70 % from 2001 to 2003. As a result of this the salary of "street-policemen" with a maturity degree has reached (or is even higher) as the level of salary of secretarial staff with the same level of education working in central administration or the courts.

[4] The Hungarian Gallup Organisation Corruption Monitor of September 2000.

[5] After the parliamentary election in spring 2002 the new Government has introduced a legislative conception on the transparency and control of the spending of the public funds and the use of public properties (Resolution No. 1134/2002.) An important element of the conception is the so called "glass-pocket program" which is containing a provision precisely defining what sort of data could be considered as business secret in the course of a public procurement procedure in order to ensuring the availability of as many data as possible to the public.
Also in 2002 the new Government has created in the office of the Prime Minister a new secretary of state which is responsible for the legal and transparent spending of the public funds and for the fair procedures of the public procurement. Furthermore it is also responsible for developing an anti-corruption plan to further decrease the corruption rate in Hungary. It also monitors public procurement procedures and undertakes a quasi "corruption ombudsman" role in the country.

8. Besides, certain forms of minor corruption are widespread, affect large social groups and are generally accepted by ordinary citizens as "normal" practice. The GET is referring here to the payment of gratuities for public services, which are, in principle free of charge. This concerns, in particular the healthcare sector. The assumption is that doctors' and nurses' salaries are in general rather low in Hungary and that additional payment by the user is admissible even commendable. According to this approach doctors and nurses working for the Social Security deserve a form of "reward" by the patients who have access to health services free of charge. This form of "accepted" corruption is widely known but no investigation / prosecution ever takes place.

9. According to available reports, the Hungarian population considers that the main institution associated with this form of corruption is the healthcare system[6], but the phenomenon of "gratuities" could also affect, at a much lower scale, other State institutions which are in contact with the public, such as the traffic police and the Customs and Excise Authority[7]. However, in these latter situations, the level of public tolerance is much lower than in case of the healthcare system. The public has very different opinion on the gratuity given to healthcare employees, than on other corruption-like phenomenon. For instance, in the case of health care employees 58-77 % of the public feels typical to give gratuity to the doctors and nurses, however this percentage is 39 % in the case of traffic police officers, in the case of Customs and Excise authorities 28 %, and in the case of Ministries this is 20 %. Furthermore, while in the case of the health care institutions this perception is mostly based on the own experience of the interviewee (62 % of the respondents have visited health care institutions and 34% of them hospitals); on the other side only 5 % of respondents had connection with ministries or the Custom and Excise Authority. Furthermore, within the different institutions of the central administration 7-12 % of the clients (consumers) felt that they were expected to give tips.

10. The belief that corruption affects the great majority of State officials is, according to the above-mentioned monitor, much more widespread among persons under 30 years of age than in any other age group. Public procurement and the financing of political parties are also areas where corruption is, according to a general belief, largely present but where very few cases ever emerge.

i) Legislation

11. Corruption is a well-known concept in Hungary, although there is no uniform definition of the term, which is generally understood as including a variety of behaviour going from the acceptance of gratuities and tips to bribery and influence. The Hungarian Criminal Code (hereafter, the "HCC") does not contain any reference to the word "*corruption"*, nor to any criminal act described as such but refers, instead, to various criminal acts against fairness in public life and criminal acts committed in office.

12. The HCC includes two clearly distinct types of criminal behaviour under the conduct defined as bribery: public bribery and economic bribery (bribery in the private sector). Both can be active or passive, depending on whether the perpetrator gives or accepts, promises or asks for the illegal advantage. Moreover, the HCC covers both bribery committed domestically and internationally. All these provisions are contained in Chapter XV of the "Criminal Acts Against the Proper Functioning of Administration, the Judiciary and Public Institutions", Title VII "Crimes against the

[6] *Ib idem.*

[7] Corruption and Anti-corruption Policy in Hungary, in: Monitoring the EU Accession Process: Corruption and Anti-corruption Policy, Open Society Institute, EU Accession Monitoring Program, p. 242-243.

Integrity of Public Life" (Articles 250 – 255) and Title VIII "Crimes against the Integrity of International Public Life" Articles 258/B - 258/D) of the HCC. Articles 250 – 255 HCC deal with bribery offences committed by persons occupying an official position as well as other people of influence, namely employees and members of State bodies, economic organisations, social organisations or an association and members of the press. Articles 258/B - 258/D describe offences of bribery in international relations committed against a foreign official person - i.e. a person holding a legislative, administrative or judicial office in a foreign state, a person serving at an international organisation created by international treaty or a member of an international court with jurisdiction over the Republic of Hungary or a foreign economic organisation.

13. The first basic bribery offence is defined in Article 250 HCC, which reads as follows: "(1) Any public official who requests an unlawful advantage in connection with his actions in an official capacity, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the advantage, is guilty of a felony punishable by imprisonment between one to five years. (2) The punishment shall be imprisonment between two to eight years if the crime is committed, *a)* by a public official in a high office, or by one entrusted to take measures in important affairs, *b)* by another public official in an important matter of great importance. (3) The perpetrator shall be punished by imprisonment between two to eight years, or between five to ten years in accordance with the distinction contained in Subsections (1) and (2), if he breaches his official duty in exchange for unlawful advantage, exceeds his competence or otherwise abuses his official position, or if he commits the act in criminal conspiracy or in a pattern of criminal profiteering."[8]

14. As regards the second basic bribery offence, i.e. economic bribery, it is defined by Article 251 of the HCC: "(1) Any employee or member of a budgetary agency, economic organisation or non-governmental organisation, who requests an unlawful advantage in connection with his actions in an official capacity, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the advantage, is guilty of a misdemeanour punishable by imprisonment not to exceed two years. (2) Any person who breaches his official duty in exchange for unlawful advantage is guilty of felony punishable by imprisonment between one to five years, or between two to eight years if the breach involves a matter of greater importance or if committed in criminal conspiracy or in a pattern of criminal profiteering." The same provisions apply, under Article 252 of the HCC, to "any employee or member who is authorised to act in the name and on behalf of a budgetary agency, economic organisation or non-governmental organisation", with the difference that the applicable sanction is imprisonment from two to eight years in case of breach of the official duty, whilst in case of breach involving matters of great importance or if the offence is committed in criminal conspiracy or in a pattern of criminal profiteering, imprisonment between five to ten years[9].

15. Other offences regulated in the HCC which may be related to acts of corruption are as follows: Money Laundering (Article 303), Smuggling and the Acquisition of Smuggled Goods (Article 312), Smuggling of Guns (Article 263/B), Performing of Foreign Trade Activities without Licence (Article 298), Breach of Accounting Discipline (Article 289) and Trading in Influence (Article 256).

16. The prevention of corruption is the focus of the various, detailed conflict of interests rules that exist in Hungary concerning the President of the Republic, Members of Parliament, Parliamentary Commissioners, Chair and Deputy-Chair of the State Audit Office, Ministers, civil servants, police officers, prosecutors and the judiciary. There are no statutory rules defining the moral conduct of

[8] For the definition of other forms of bribery, see Appendix I.

[9] See Appendix I.

different professions. Codes of conduct (codes of ethics) are available for certain professions, while in other areas, they are being elaborated in accordance with the Resolution on the Governmental strategy against corruption.

17. Hungary has subscribed to various international anti-corruption agreements, including the OECD Convention on combating bribery of foreign public officials in international business transactions (ratified by Act XXXVII of 2000), the Criminal Law Convention on Corruption of the Council of Europe[10] (ratified by Decree 67/2000 OGY), the Agreement on joining the Global Program against Corruption of the UNO (March 1999) and the Convention on laundering, search, seizure and confiscation of proceeds from crime of the Council of Europe (ratified by Act CI of 2000). There also exists, in addition to bilateral conventions, an Act on international mutual legal assistance in criminal matters (Act XXXVIII of 1996).

ii) General Anti-Corruption Policy

18. On 14 March 2001, the Government of Hungary adopted Resolution 1023/2001 on the Governmental Strategy Against Corruption (hereinafter referred to as the "GSAC"), which contains three main parts: 1) measures relating to the revision of the general legal framework; 2) measures relating to the modification of criminal legislation; 3) measures which do not require legislative actions. The Resolution provides for the elaboration of anti-corruption strategies and action plans within the different Governmental institutions. Interestingly, the Ministry of the Interior and the National Headquarters of the Customs and Financial Guard elaborated their own action plan against corruption, even before the adoption of the Governmental strategy.

19. Under the Resolution, the following changes were to be introduced in the general legal framework:

- review of conflict of interests rules, especially in the case of representatives of local authorities, mayors, official staff of law enforcement agencies and civil servants;
- the sources of property and the donations to political parties will be subject to more efficient monitoring with a view to disclosing donations of uncertain origin;
- establishment of an obligation for persons with executive powers or in public office, as well as for their close relatives[11] to declare their property accompanied with the possibility of periodic controls;
- review of the rules on business secrecy with a view to harmonising them with the requirement to disclose data of public interest;
- adoption of transparency rules for contracts concluded under public procurement, including the obligation to supply data, establishment of control procedure and specific sanctions;
- review of the Act on lobbying;
- creation of a co-ordination mechanism in charge of making legislation more concise and transparent to the public;

[10] The Republic of Hungary has withdrawn the reservation, made to the Convention on 22 November 2000: *"In accordance with Article 37, paragraph 1, of the Convention, Hungary reserves the right not to establish as criminal offence the passive bribery offence defined in Article 5 and 6 of the Convention."* The withdrawal of reservation, contained in a Note verbale from the Permanent Representation of Hungary, dates to 16 September 2002, registered at the Secretariat general on 19 September 2002.

[11] This obligation concerns, along with civil servants, namely: the President of the Republic, judges of the Constitutional Court, Parliamentary Commissioners, deputies of local governments, mayors, the President and the employees of the National Bank, the President and the auditors of the State Audit Office, deputies of the Parliament, members of the Economic Competition Office.

Most of the legal proposals included in the GSAC were, at the time of the evaluation visit, either adopted[12] or tabled before Parliament[13].

20. The amendments to the criminal legislation, required by the GSAC, were introduced by Act CXXI of 2001, which entered into force after the GET's visit to Hungary[14]. The Act, *inter alia*, provides more severe sanctions for bribery and introduces, in order to ensure effective measures against bribers, the concept of immunity from prosecution, i.e. the termination of punishability of the perpetrator (either the passive or active briber), provided that he/she reveals the case to the authority concerned. Under the Act, official persons are held liable for the omission of the obligation to report corruption cases to the competent authorities. The Act introduces the possibility of prohibiting the perpetrator of a bribery offence from exercising a profession on the basis of "moral inadequacy". With a view to increasing the efficiency of the fight against organised crime and corruption linked to it, the Act provides for a presumption of unlawfulness of any proceeds or enrichment from organised crime, thus the burden of proof is imposed on the perpetrator. In accordance with the GSAC, Act CIV of 2001 stipulates the criminal liability of legal persons, although the entry into force of this Act is postponed to the date when Hungary joins the European Union.

21. Apart from legal reforms, the GSAC Resolution further contains proposals for measures, which do not require legislative action, namely the elaboration of an action plan for the enhanced monitoring of activities of organisations entrusted with public power, as well as the training of persons at these organisations. The GSAC supports the elaboration of codes of ethics, especially for civil servants. In the field of public education, it foresees the elaboration of education programmes for raising awareness of the risks of corruption. Concerning the criminal records database, the GSAC proposes to register separately crimes of a corrupt character.

22. In order to promote an effective and co-ordinated implementation, the GSAC Resolution foresees the establishment of a Board against Corruption, the members of which will be appointed by the Ministry of Justice, the Ministry of the Interior and the Minister in charge of the Prime Minister's Office.

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[12] Some of the modifications suggested by the Resolution have already been implemented at the time of the evaluation visit. For instance, Act XXXI of 2001 on the amendment of Act V of 1972 on the Prosecution Service of the Republic of Hungary, according to which the investigation of severe forms of official bribery shall be conducted exclusively by the public prosecutor.

[13] Other modifications suggested by the Resolution have been before Parliament at the time of the evaluation visit and implemented subsequent to the evaluation visit. These include the following acts:

- Act LXXIV of 2001 on the amendment of the rules of law regulating financial issues, which beside the Act on Customs, and the acts regulating taxes has also amended the Act on Public Procurement.
- Act CII of 2001 on the incompatibility and obligation for the declaration of assets of persons performing public functions and managing public property. This act has extended the obligation for the declaration of assets also for the president of the republic, judges of the Constitutional Court, ombudsmen, chairman, vice-chairmen and comptrollers of the State Audit Office, chairman, vice-chairmen and employees of the National bank, notaries, mayors and members of the council of local governments, and other persons who are managing public properties, but being outside of the personal scope mentioned above.
- Act CIV of 2001 on the Measures Applicable against Legal Entities under the criminal law. The entry into force of the act is the day of accession of Hungary to the European Union.
- Act CXXI of 2001 on the amendment of the Criminal Code, which is implementing the provisions of the resolution of the Government ordering the amendment of criminal legislation.

[14] Act CXXI of 2001 entered into force on 1 April 2002.

iii) Statistics

Number of crimes against the integrity of public life

Year	Passive official bribery	Active official bribery	Passive private bribery	Active private bribery	Trafficking in Influence	Total
1990	33	119	126	46	11	335
1991	47	138	107	29	23	344
1992	87	249	76	51	319	782
1993	57	155	101	97	54	464
1994	128	352	89	54	173	796
1995	101	195	97	41	75	509
1996	238	366	56	64	243	967
1997	132	248	143	127	215	865
1998	181	295	77	110	239	902
1999	191	266	54	52	46	609

23. These statistics show the number of persons convicted for bribery and trafficking in influence to be fairly stable over recent years[15]. The same statistics show in addition that in Hungary the number of corruption-related criminal acts constitutes only a minor fraction of the total number of criminal acts. Of course, this statement is only valid for the relationship between the total number of criminal offences discovered and corruption-related offences, which became known. It is a well-known fact that criminal corruption is highly prone to latency, which is logically not reflected in criminal statistics. In the years following the change of regime, the absolute number of known criminal acts committed against the proper functioning of public institutions never reached one thousand. Known perpetrators committing crimes against the proper functioning of public institutions numbered only a few hundred each year: for each year of the past decade, this group of perpetrators generally included less than five hundred people. In the GET's view, the relatively high number of convictions could very well be the result of more effective enforcement, rather that more extended corruption.

b. Bodies and institutions in charge of the fight against corruption

b1. General investigative authorities: the Police and the Public Prosecution Service (HPPS)

24. In Hungary, the general investigation authorities are the Police and the Public Prosecution Service (HPPS). The Customs and Finance Guard, the Border Police and the Internal Revenue Service[16] are also empowered to investigate certain criminal offences, as provided in the Code of Criminal Procedure (Act I of 1973).

25. The investigation of criminal offences "against the proper functioning of public institutions" – the category to which corruption offences belong - falls within the competence of the Police.

[15] For years 2000 and 2001, the report of the Open Society Institute indicates the number of detected crimes of bribery and trafficking in influence (in 2000: 650 and in 2001: 836) as well as the number of persons convicted for the same offences (in 2000: 274, whilst the figure for 2001 was not available). In: Corruption and Anti-corruption Policy in Hungary, in: Monitoring the EU Accession Process: Corruption and Anti-corruption Policy, Open Society Institute, EU Accession Monitoring Program, p. 239.

[16] The investigative authority of the Internal Revenue Service has been withdrawn by Act LXVI of 2002. The Financial Investigation Office has been reorganised and it is now deployed at the Police.

However, cases of corruption classified as more serious fall within the exclusive competence of the HPPS's investigative authority. The range of criminal offences falling within the HPPS's exclusive investigative competence is defined by the appendix to Act V of 1972 on the Public Prosecution Service. These include serious cases of bribery[17]. In addition, the HPPS supervises the legality of all criminal investigations.

26. The investigative authorities, for the prevention, detection and investigation of crime or for the identification and search of the perpetrator as well as for the gathering of evidence, are empowered to use a series of investigative techniques. Following amendments of the Criminal Procedural Code, new powers of investigation have been conferred upon the Police, which is entitled to carry out, under certain conditions and for certain serious offences, including corruption, the monitoring, interception and recording of telecommunications and correspondence, surveillance, infiltration of undercover agents, controlled deliveries and pseudo-purchase. In case of serious crimes, the use of these special investigative techniques requires an order issued by the judge upon a motivated request by the head of the competent headquarters, or in case of prosecutorial investigation, by the public prosecutor. In case of urgency, the head of the investigating headquarters or the public prosecutor may order the use of a special investigative technique, provided that at the same time the request to the judge is filed as well. The use of special investigative techniques is authorised for a maximum period of 90 days, which is renewable for an additional maximum period of the same length.

i) The Police

27. The main body in charge of criminal investigations in Hungary is the police, which is under the umbrella of the Ministry of the Interior. Divided into regional and municipal units, the Hungarian Police Force is 40,000 strong, but in reality many positions are vacant and the effective staff does not go beyond 35,000. The structure of the Police Force is based on the National Headquarters of the Police in Budapest and the territorial headquarters, which are directly subordinated to the National Headquarters. Local headquarters of the Police are under the umbrella of the territorial headquarters, with a defined scope of activities. The head of the National Police Headquarters (National Chief of Police) is appointed, upon the proposal of the Minister of the Interior, by the Prime Minister. The Government controls and governs the activities of the Police through the Minister of the Interior. Recruitment of police officers and other staff is subject to criteria and vetting foreseen by law.

28. The National Police Headquarters are divided into a number of Directorates, one of which is the Directorate for the investigation of organised crime that employs 200 officers and has competence for investigating organised crime-related serious offences across the country. The Directorate has several specialised units, which are dedicated to the investigation of organised crime–related offences, such as money laundering, terrorism and corruption. In accordance with the provisions of the GSAC Resolution, a new unit, with the task of detecting and investigating acts of corruption, was set up. This corruption unit has a 10-person staff, all investigators, assisted by 5 external experts.

29. The Police are empowered to gather intelligence and investigate on both public and private corruption. However, since June 2001, the "open" investigation into public corruption (bribery of public officials), is conducted by the Central Investigation Office of Public Prosecution Service

[17] Section 1(e) provides: "Bribery of persons listed under point *b)* [Article 253 of the Criminal Code] and of senior officials or other public officials authorized to act in major cases [paragraph (2) point *a)* and the second item of paragraph (3) of Article 250 of the Criminal Code] and trading in influence [Article 256 paragraphs (1)–(2) of the Criminal Code]".

(CIOPPS), if it involves officials above a certain level in the public administration, i.e. the Prime Minister, Ministers, State Secretaries, or Members of Parliament. Cases of corruption involving Heads of county administration will fall under the CIOPPS' jurisdiction if the responsible prosecutor in charge of the case so decides. In cases falling under the CIOPPS' jurisdiction, the Police must forward the case to the CIOPPS after the (covert) intelligence-gathering phase.

30. At the time of the visit the Police had about 60 ongoing investigations into corruption cases. As stated above, investigators are supervised by public prosecutors, who can give instructions to the police regarding the investigation and need to be consulted on significant procedural decisions, e.g. the termination of the investigation. Most of the ongoing investigations originate from internal control procedures conducted by public authorities, but some also result from police intelligence or reports made by citizens. About one third of the investigations are completed and forwarded to the HPPS for prosecution, the remaining cases are filed for lack of evidence. In this regard, the GET noted the concern expressed by the Police regarding their lack of equipment and budgetary means, which may hamper investigations.

ii) The Enforcement Service of the Law Enforcement Agencies (ESLEA)

31. Within the Ministry of the Interior, the prevention and detection of corruption within the law enforcement agencies fall within the competence of the Enforcement Service of the Law Enforcement Agencies (ESLEA). This organisation is independent of the police and their staff consist of assigned police officers. Following an informal investigation conducted by the ESLEA, cases are transferred to the HPPS for further investigation and, if appropriate, for formal indictment.

32. In execution of its Anti-corruption action plan the Ministry of the Interior had increased ESLEA's staff by 59 persons to a total of 274[18], at the time of the visit.

33. A special twelve-member mobile unit was set up within the organisation of the National Police Headquarters for the elimination of police corruption in the streets. Their duty is to detect and report cases where police officers accept bribes from members of the public (usually in cases of traffic offences), and to initiate disciplinary or criminal proceedings against such police officers. There are strong links between the mobile unit and the ESLEA covering not only regular exchanges of information but also other forms of co-operation.

iii) Customs and Finance Guard

34. The Hungarian Customs and Finance Guard is a law enforcement body, which is exclusively empowered with the investigation of certain criminal offences related to Customs legislation. These do not include corruption. Investigations are conducted by the Central Investigation Directorate.

35. Customs and Excise have around 7,922 staff, of which 6,442 are customs officials and 1,480 are other staff.

36. A Security Department was set up within the organisational framework of the General Department for Special Cases of the National Customs and Finance Guard's Headquarters. This Security Department collects information on breaches of duty committed by Custom's officials in connection with their position (bribery, abuse of authority, exceptionally negligent performance of

[18] The total number of staff at the time of adoption of the report was 285.

duty, falsification of private or public documents, forgery of official documents or stamps of the organisation, customs processing in the case of goods with high tax content, which are particularly susceptible in the course of processing), and collaborates with fellow organisations in order to prevent and detect corruption-type criminal offences.

b2. Public Prosecution Service

37. The Hungarian Constitution deals in Chapter XI with the organisation of the Hungarian Public Prosecution. Article 51 provides that the Prosecutor General and the Prosecution Service must ensure the protection of the rights of citizens, maintain constitutional order and prosecute any act which violates or endangers the security or the independence of the country and ensure that all social organisations, government bodies and citizens comply with the law (see Appendix II). In Hungary, the system of criminal procedure is based on the principle of mandatory prosecution, according to which the authorities are under the obligation to institute criminal proceedings once the conditions stipulated in the Act on Criminal Procedure are fulfilled (Article 2 of Act I of 1973). This principle is also upheld by the new Act on Criminal Procedure (Act XIX of 1998), which will enter into force on 1 July 2003, replacing the current Act on Criminal Procedure.

38. The Head of the Prosecution Service, the Prosecutor General is elected, on the proposal of the President of the Republic, by the simple majority of the Parliament for 6 years, and he/she is answerable to Parliament. The Deputy Prosecutor General is appointed for an undetermined term, upon the recommendation of the Prosecutor General, by the President of the Republic. The Prosecution Service is functionally independent and cannot be instructed on individual cases by any Governmental or other body. Prosecutors are appointed by the Prosecutor General for three years the first time (first appointment) and subsequently for an undetermined period of time.

39. The Prosecutor General enjoys extensive powers over the Hungarian Public Prosecution Service (hereafter, "HPPS"). The Prosecutor General appoints high-ranking officials within the HPPS after consulting the Council of Public Prosecutors, whose opinion is not binding. The 20 (19 county and 1 metropolitan) Chief Public Prosecutors and other high-ranking posts at the HPPS are appointed for an undetermined period of time but they may be removed at any time by the Prosecutor General,[19] without an obligation neither to state reasons nor to consult again the Council of the Public Prosecutors. Those removed from a high-ranking[20] post remain in the HPPS and can be appointed at the same level of the Prosecution Service to a different high-ranking post or, upon the prosecutor's request, to a lower prosecution office.

40. In addition, the Prosecutor General may also remove ordinary public prosecutors for a set of given reasons, e.g. due to cuts in staff or structural re-organisation. The age of retirement of the public prosecutors is normally 62 years but the Prosecutor General can use his/her discretion to extend the period of service of a particular public prosecutor until the age of 70.[21] According to Art 28 (2) of the Act, the prosecutor cannot be removed due to cuts in staff or structural re-organisation in cases stipulated by the Code of Labour as prohibition on dismissal notice. Furthermore, due to cut on staff or structural re-organisation the prosecutor can be dismissed

[19] Article 22 of Act LXXX of 1994 on the organisation of the Prosecution Service: "The appointment of chief or high-ranking prosecutors by the Prosecutor General is for an indefinite period of time, but can be revoked, without the obligation of motivation, at any time. The opinion of the Council of Prosecutors on the fact of revoke is not required."

[20] Those high-ranking prosecutor positions are listed at paragraph 2 and 3 of Article 16 of Act LXXX of 1994 (See Appendix II).

[21] Article 26 para. k of Act LXXX of 1994.

only for lack of prosecutorial posts suitable for his qualification, or if he did not agree to his transfer to other prosecutorial post. (Art 28 (3))

41. According to Act V of 1972 on the HPPS, public prosecutors are subordinated to the Prosecutor General and must follow the instructions of the Prosecutor General and higher-ranking prosecutors. This Act reflects the strict hierarchical organisation of the HPPS. Under the Act LXXX of 1994, there exists a clause of conscience[22] pursuant to which, if the prosecutor in charge of a case receives from a superior a written order, which he/she does not agree with, considering it incompatible with the laws or otherwise in conflict with his/her opinion on legality, he/she has the option of executing the said order or of abandoning the case. In such circumstances the public prosecutor in charge of the case will be exempted from any negative consequences. In such situations he/she can also register his/her position in writing, and this legal opinion will be incorporated into the file. The system in place does not otherwise provide for means to deal with conflicts between the superior and inferior prosecutors in a given case. In pursuance of the principle of hierarchy, the superior's views would normally prevail.

42. The HPPS includes a central Prosecutor General's Office and is organised at county and local levels. It also includes a Military Prosecution Service. The competence of each particular prosecution service corresponds, in general, to the jurisdiction of the court on whose territory the prosecution service concerned is working. Otherwise, the structure and activities of the prosecution service are determined by orders of the Prosecutor General.

43. In the Hungarian legal system, the prosecutor supervises the activity of the investigation authorities, which means that the prosecutor can review and overrule decisions taken by the investigating authority, order supplementary investigations or terminate investigations. The prosecutor also ensures that prosecution is not discontinued as a result of undue influence, outside pressure or undue consideration (corruption). Corruption cases that are deemed serious, due to the position of the perpetrator or the nature of the offence must be investigated directly by the HPPS – and not by the police or other enforcement authority.

i) Central Investigation Office of the Public Prosecution Service (CIOPPS),

44. In Hungary there are no independent bodies or instances exclusively devoted to the investigation of corruption or specialised in it. However, Directive No. 6/2001 (ÜK. 6.) by the Prosecutor General set up, on 1 June 2001, a Central Investigation Office (CIOPPS) within the Metropolitan Chief Prosecutor's Office, and entrusted it with the duty, *inter alia,* of taking more effective action against organised crime and corruption. At the time of the visit, 10 specially-trained public prosecutors were working in this Office. They had all attended a 12-week criminology training course, which was jointly organised by the Prosecutor General's Office and the Police Academy, as well as an FBI organised training course on corruption in public life[23].

45. The CIOPPS is a separate organisational unit within the Metropolitan Chief Prosecutor's Office, and has jurisdiction over the entire country. It performs prosecutor's investigative tasks: it executes the appropriate procedural acts in the investigation stage of the criminal proceedings,

[22] Article 43 paragraph (5) of the Act LXXX of 1994: " If the prosecutor deems the instructions to be incompatible with statutory regulations or with his interpretation of the law, he may request to be relieved of the case in writing, attaching an explanation of his position concerning the law. Such requests may not be denied; the case must be assigned to another prosecutor, or it may be taken over by the prosecutor's superior."

[23] At the time of the adoption of the report (March 2003), there were 16 prosecutors working at the CIOPPS, and a further increase of staff was already foreseen. All prosecutors at the CIOPPS benefit nowadays from continuous training.

takes decisions on matters within the public prosecutor's jurisdiction, and has the authority to continue or discontinue any given case on its own merits.

46. The Prosecutor General appoints the prosecutors who will be serving the CIOPPS. CIOPPS's operations are supervised by the Metropolitan Chief Prosecutor. The decision of the Metropolitan Chief Prosecutor concerning the assignment of any CIOPPS public prosecutor to a different task or post is subject to the prior authorisation of the Deputy Prosecutor General for Criminal Matters (Article 1 para. 3. of Directive No. 6/2001 by the Prosecutor General).

47. Legal supervision of investigations performed by CIOPPS is exercised by the General Investigation Supervision Department (Special Cases Section) of the Prosecutor General's Office. Public prosecutors perform investigative tasks and were assisted, at the time of the evaluation visit, by other staff from the Chief Prosecutor's Office who participated in the proceedings[24] (e.g., by the execution of tasks of a technical nature, taking minutes and memos, etc.).

48. CIOPPS has exclusive jurisdiction as regards criminal offences committed by Members of Parliament or judges and prosecutors. Also as regards assaults committed against public officials, homicide committed against a police officer, bribery involving a judge or a prosecutor and non-military offences committed by police officers, etc. (Appendix II) The CIOPPS's responsibility also covers the investigation of cases assigned to it by the Prosecutor General, the Deputy Prosecutor General for Criminal Matters or the Head of the General Investigations Supervision Department of the Prosecutor General's Office. The Chief County (or Metropolitan) Public Prosecutors may also make recommendations for referring a given case to CIOPPS's jurisdiction.

49. In order to ensure that cases falling under the exclusive jurisdiction of the CIOPPS, are transferred to it, the Chief County (Metropolitan) Prosecutor is under the obligation to report complaints and investigations conducted under his authority on a list of offences[25] to the Special Cases Section of the General Investigation Supervision Department of the Prosecutor General's Office.

50. The CIOPPS is bound to report on important investigative events, results, evidence, suspects, completed investigations and decisions to the Prosecutor General. It does so through the Metropolitan Chief Prosecutor.

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[24] Subsequent to the evaluation visit, the number of assistant staff has been increased at the CIOPPS. Therefore technical assistance from the Chief Prosecutor's Office is no more necessary.

[25] Article 5 para. 3 of Order 6 of 2001 of the Prosecutor General: *a)* abuse of authority (Article 225 of the Penal Code), criminal complicity in the course of official duties [Article 244, paragraph (3), point *b)* the Penal Code], creation of a criminal organization (Article 263/C of the Penal Code), crime against the proper functioning of public institutions (Title VII of Chapter XV of the Penal Code), criminal offence of an economic nature (Chapter XVII of the Penal Code), criminal offence against property (Chapter XVIII of the Penal Code), and the person accused or in the case of an investigation in course, the person charged or likely to be charged is: - a government minister, political or administrative secretary of state, deputy secretary of state or a person of the same legal status, or; - a mayor, lord-mayor, president of a county assembly, council clerk, chief council clerk, a head of the Metropolitan City or County Administration Office; - a notary public, a deputy notary public, an independent judicial seizure officer, an independent judicial seizure officer's deputy or a county (or Metropolitan) judicial seizure officer, or if *b)* the given criminal offence was committed in connection with activities regulated by the Act on Concessions, the Act on the Sale of State-owned Entrepreneurial Assets, the Act on Public Procurement or the Act on Credit Institutes and Financial Enterprises, including actions taken in avoidance of the statutory provisions.

b3. The Courts

51. Corruption cases are adjudicated by the courts. The Constitution and the Act on the Organisation and Direction of Courts of Law contain the basic provisions governing the structure of the judicial system, which is organised in three kinds of courts: 111 local courts, i.e. first instance of jurisdiction, 20 county courts, including the Metropolitan Court in Budapest, which can be both the first instance and appeal jurisdiction, and the Supreme Court of Hungary, which deals with appeals and extraordinary legal remedies. About 2,600 judges serve at these courts, two thirds of which adjudicate at local courts. A court administration body, the Office of the National Judicial Council, was set up on 1 December 1997, to handle financial and personnel issues of courts. The members of the National Judicial Council are: 9 judges, the Minister of Justice, the Prosecutor General, the President of the National Bar Association, one MP representing the Constitutional and Judicial Committee and another MP representing the Budgetary and Financial Committee of the Parliament. The National Judicial Council is presided by the President of the Supreme Court.

52. The President of the Supreme Court is elected, upon the proposal of the President of the Republic, by a two third majority of the Parliament. The Vice-Presidents of the Supreme Court are appointed, upon the proposal of the President of the Supreme Court, by the President of the Republic. High-rank judges, such as the Head of the Court, the Deputy Head of the Court or the Head of the Judicial Conference, are appointed by the National Judicial Council for 6 years. Judges are appointed and removed by the President of the Republic, at their first appointment for three years and subsequently for an undetermined period of time. The work performed by each judge is periodically evaluated, both as regards its quality –compliance with substantive and procedural law- and quantity. Inaptitude may be a cause for removal. Judges normally retire at the age of 70, although a judge may ask for retirement after passing the age limit for general retirement (62 years). The Act on the status of judges an their remuneration governs internal disciplinary procedures in cases of alleged irregularities, breach of duties or violation of the prestige of the judiciary.

53. One of the institutional guarantees for avoiding interference with and undue influence on courts results from Article 11, paragraph (2) of Act LXVI of 1997 on the Organisation and Direction of Courts of Law, which provides an automatic and pre-established order of assignment of cases to the judges of the competent court. This order of assigning cases may only be by-passed in special cases, regulated by law. The order of assigning cases thus determines in advance which judge or which panel of judges will adjudicate each case. The order of assignment is set by the Chief Justice of the County Court pursuant to Article 90, point c) of the Act, but the assignment order is submitted to the judicial conference, a body existing at every county court, for prior evaluation and commentary.

54. The judiciary is institutionally and financially autonomous and completely independent in the exercise of its functions[26]. According to Article 50 para.3. of the Hungarian Constitution: "Judges are independent and are submitted only to the law. Judges can not be members of political parties and can not participate in any political activities". Since July 2001, judges are submitted to the obligation of declaring their property (every three years) and their declarations are subject to periodical control.

[26] **"**Act LXVI of 1997, Article 26 (1) A judge must act free of any influence or partiality in every case.
(2) A judge must decline any attempt at influencing his decision and must report all such attempts to the President of the Court."

b4. The relationship between the Police and the Public Prosecution Service in pre-trial proceedings

55. In Hungary, the investigation of crimes of a general character lies within the remit of the police. The police, dependent on the Ministry of the Interior, have general competence to investigate crimes, although the Police needs to apply for the authorisation of the Public Prosecutor or the judge to resort to certain investigative measures, which could interfere or restrict fundamental rights and freedoms guaranteed to all citizens. It might be worth noticing that the institution of the investigative judge does not exist in the Hungarian legal system.

56. In general, the investigation of criminal offences falls within the competence of the Police. However, as mentioned above, cases of serious corruption will fall within the exclusive competence of the Central Investigation Office of the Public Prosecution Service (CIOPPS). In these cases the Police must forward all documents to the CIOPPS after the completion of the intelligence-gathering phase.

57. The public prosecutor is in charge of supervising the activity of the investigation authorities, reviewing and overturning decisions and ensuring that prosecution is not discontinued as a result of undue influence, outside pressure or undue consideration (corruption). Persons whose rights or interests are violated by a decision, measure or omission of measure by the authority are entitled to lodge a complaint (Article 148 of Act I of 1973). Where the competent authority does not agree with the complaint, it must refer it to the prosecutor entitled to decide on the complaint or to the superior prosecutor. The institution of "*actio popularis*" is unknown in the Hungarian criminal procedure, but anyone can lodge a report on a criminal offence. The new Act on Criminal Procedure recognises the institution of the supplementary civil action, which will provide the plaintiff with the opportunity of bringing charges if the prosecutor or the investigation authority has rejected the action or discontinued the investigation.

58. The police are obliged to ask for the authorisation of the Public Prosecutor to obtain access to bank information, accounts or records. However, in money laundering cases banks which track down suspicious movements of capital are obliged to report them to the police. Nevertheless, even in the latter case, in order to obtain additional information, the police have to apply for the authorisation of the HPPS. In case of some other types of measures, such as house search or seizure of correspondence, the police as well as the HPPS, where the investigation is carried out by the latter, need to ask for the authorisation of the judge.

b5. Other bodies and institutions

59. Apart from the police, the prosecution office and the judiciary, other State authorities play a role in the prevention and detection of corruption, although not specifically in the criminal law area. These bodies are, namely, the State Audit Office, the Government Audit Office and the recently set up Co-ordination Centre for Fighting Organised Crime.

60. In accordance with the aforementioned GSAC Resolution, the amendments introduced to the Criminal Code (Art. 255/B of the Act CXXI of 2001) provide for sanctions, including imprisonment for up to two years, against public officials who violate their obligation to report acts of bribery brought to their attention.

i) State Audit Office

61. The State Audit Office (hereafter, the "SAO"), is the financial and economic control organ of Parliament and, at the same time, the supreme control organ of the State. Although its remit does not expressly include combating corruption, the inspections carried out by the SAO can make, nevertheless, an important contribution to informing decision-makers on public finances. The SAO controls the four sub-systems of the finances of the State: management of the central budget, local government, Social Security and earmarked State funds. Furthermore, the SAO must, by law, control the management and financing of political parties, business chambers and civil organisations subsidised by the State. As a result of the inspections, the SAO prepares and submits proposals aimed at the elimination of loopholes in statutory regulations. Although SAO inspections are invariably conducted retrospectively, they play an indirect crime-prevention role. Besides, the publication of the experience gained through the control exercise contributes to tightening up processes of public expenditure. In order to achieve this objective the SAO prepares comprehensive studies to search and analyse the reasons, causes for corruption and to indicate the respective risks and trends. In addition to the Hungarian experiences, the international experiences and trends related to corruption are also evaluated in the studies. Thus, the SAO assists the Parliament and parliamentary committees, in preparing their decisions.

62. Under Article 25 of Act XXXVIII of 1989 on the State Audit Office, the person conducting the control on behalf of the SAO is obliged to inform the authorities concerned in case he or she finds that there is a reasonable suspicion of a criminal offence; in case of any other omissions, he or she may initiate disciplinary measures before the employer of the person concerned.

ii) Government Control Office and Audit Department of Ministries

63. The Government Control Office is the main control body of the Hungarian Government. It controls governmental expenditure from the central budget, the revenues collected, the approved grants and subsidies both at the authorising and at the beneficiary levels and the lawfulness of the Government guarantee redemption. It also exercises control of public subsidies granted to private companies and individuals from the relevant budget chapters. The office is subordinated to the Prime Minister.

64. Independent Audit Departments are in operation in individual ministries and ministerial institutions, whose competence covers the financial management of the given organisation and which are also entitled to check financial instruments disbursed from the funds of the organisation to entities outside State management. The prevention of corruption is served by the organisational and operational order of the individual institutions, in particular, that of the internal audit system, which ensures legal procedures and bias-free decision-making.

65. A national subsidy monitoring system was set up in the Hungarian Treasury in order to continuously monitor the use of various subsidies distributed among small and medium-sized enterprises and filter any unlawful use of public finances.

iii) Co-ordination Centre for Fighting Organised Crime

66. In order to increase the effectiveness of the fight against organised crime, facilitate co-operation between State agencies engaged in investigative tasks and detect redundant investigative operations, Parliament has set up the Co-ordination Centre for Fighting Organised Crime (hereinafter: "Centre") by Act No. CXXVI of 2000. The Centre is an independent central office

responsible for supporting and co-ordinating law enforcement activities carried out by various Government agencies (hereafter, "co-operating public bodies"), which are defined in the Act itself, involved in the investigation of criminal offences under the terms of statutory provisions. Furthermore, the Centre helps Governmental decision-making on issues related to organised crime by supplying statistical data – not suitable for the identification of individual perpetrators – resulting from the analysis of available information. It monitors new trends and phenomena emerging from organised crime, and prepares analyses and studies on these.

67. The Centre aims at contributing to the prevention and detection of offences specified in the Statute, including certain qualified forms of corruption in addition to serious offences committed by members of a criminal organisation or on their behalf. For this purpose the Centre performs the following functions:

a) gathering of data received from the co-operating public bodies;
b) monitoring any redundant investigations pursued by co-operating public bodies and notification of any overlap;
c) responding to requests of information from co-operating public bodies provided that the data may be disclosed under applicable statutory provisions;
d) comparing information requests emanating from different co-operating public bodies;
e) forwarding data received from a public body and falling outside the investigative competence of that body – after analysis and evaluation – to the competent co-operating public bodies and, depending on the results of the analysis made of the information, making recommendations for supplementary intelligence work, inquiries, or measures required;
f) checking all data available in relation with the information received and notifying co-operating public bodies concerned if any connections are found;
g) monitoring the activities, appearance, disappearance and mutual relationships of criminal organisations and analysing forefront legal companies established for the purpose of laundering or investing proceeds of unlawful activities.

c. Immunities from investigation, prosecution and adjudication for corruption offences

68. Under the Hungarian legal system, the following persons benefit from immunities in criminal proceedings:

- The President of the Republic
- Members of Parliament and candidates to Members of Parliament
- The President and members of the Constitutional Court
- Parliamentary Commissioners and candidates for Parliamentary Commissioners
- Chair and Deputy-Chairs of the State Audit Office
- Judges and lay judges of the courts
- Public Prosecutors, as well as trainees and prosecutorial investigators

69. There are two types of immunity attributed to the range of persons listed above:

- non-liability (professional immunity), which provides that beneficiaries shall not be held liable before a judicial authority for any vote cast or any statement of fact or opinion expressed by him/her in the course of his/her mandate. This immunity does not cover the violation of State secrets, libel and defamation, or liability under civil law.

- procedural immunity, or inviolability, which provides that no criminal investigation can be initiated or pursued against the beneficiaries, except if caught red-handed. Moreover, no coercive measures can be used against the beneficiaries of this immunity without prior authorisation from the relevant authority. Relevant authority is the Parliament in the case of Members of Parliament, the President of the Republic (impeachment procedure) parliamentary Commissioners, Chair and deputy-Chairs of the State Audit Office and the Prosecutor General. Relevant authority is the Constitutional Court in the case of the President and members of the Constitutional Court. In the case of judges, the relevant authority is the President of the Republic, on recommendation from the Office of the National Judiciary Council. In the case of prosecutors, the relevant authority is the Prosecutor General.

70. The procedural immunity is temporary, i.e. it covers the period of the mandate. However, the right to procedural immunity may become a definite obstacle for undertaking criminal investigation, as the period of the mandate is included in the statutory limitation set for the given offence (e.g. three-year term of expiry, while four-year Parliamentary cycle). For this reason, the Government proposed [Government Resolution 1023/2001. (14 March)] the amendment of the Criminal Code in relation to provisions on the calculation of lapse of time of punishability for persons benefiting from procedural immunity[27].

71. The main authority for lifting immunity is, as already mentioned, Parliament. Act LV of 1990 contains the principal provisions on procedure, while the House Rules provide detailed regulations. The House Immunity Committee, seized upon by the Speaker of the House on the exclusive initiative of the Prosecutor General, examines the request for lifting immunity without delay. The Parliament has to be notified about the initiation of the procedure within one day. If Parliament is not in session, the Speaker of the House decides whether it is justified to call an extraordinary session. The Chair of the House Immunity Committee must notify the MP concerned. The Committee presents a draft resolution to the Parliament within 30 days of being seized of the case, aimed at either the maintenance or at the suspension of the immunity of the MP concerned. The draft resolution regarding the immunity of the MP is treated by Parliament with priority. The MP concerned may address the House before a resolution is adopted. The quorum for a decision to suspend a MP's immunity – in the form of a Resolution of Parliament – is constituted by a two-thirds vote from all the MPs present. In cases where an MP is prosecuted for an ordinary criminal offence, the House Immunity Committee almost always – with few exceptions – recommends the suspension of immunity, as it is also in the MP's interest to be given an opportunity to clear him-/herself, and the authority of Parliament also requires that there should be nothing in the way of initiating or pursuing criminal proceedings in public prosecution cases by lifting the MP's right to immunity. In fact, the Parliament has lifted the immunity in 21 cases out of 32 (66%) since 1990.

III. ANALYSIS

a. General policy on corruption

72. Hungary is ranked as one of the least corrupt post-communist countries in various international comparisons. In spite of that, national surveys of perception show a widespread belief among citizens, particularly those under 30 years of age, that corruption affects considerably most public services. The recently adopted Resolution on a Governmental Strategy Against Corruption (hereafter, "GSAC"), identifies various measures and reforms to prevent corrupt behaviour, such

[27] Act CXXI of 2001, amending the Criminal Code was adopted in December 2001. It introduced the rule that the period of immunity shall not be taken into account in the lapse of time of punishability.

as increasing the transparency of economic affairs, and better informing the public as to the pervasive nature of corruption and existing counter-measures.

73. The GET noted with satisfaction the adoption of the GSAC Resolution, which identified, above all, the conditions which favour corruption and foresaw the measures and reforms, including legal reforms, necessary to curb corrupt behaviour. The GET considered that this global anti-corruption strategy was an important tool to prevent and deter corruption in the public sector. Additional efforts should aim, in particular, at an effective, complete and co-ordinated implementation of the GSAC, including those areas (e.g. education, training, awareness raising, etc.) which do not require legislative reform (Chapter III of GSAC). Above all, this will require, in the GET's view, continued Government commitment and appropriate resources. **Therefore, the GET recommended to ensure continued political support to the implementation of the GSAC and the functioning of the Board Against Corruption, as foreseen in Resolution N° 1023/2001, and mobilizing the necessary resources**.

74. The GET observed a high level of tolerance, even acceptance, of certain practices such as of gratuities, rewards or other forms of remuneration to employees of public services notably in the healthcare sector. Not only the population but also the authorities themselves seem to admit, as a sort of standard practice, these forms of private, extra-budgetary remuneration of doctors and nurses for the performance of their duties, which in theory at least, should remain free of charge for the individual citizen. Healthcare represents, in this respect, a particularly vulnerable area as more than half of the population, instead of considering these illegal practices as corrupt, was ready to admit the need to pay a gratuity, reward or other remuneration in exchange of the delivery of a proper service in a healthcare institution. There are indications that similar situations may also appear in other public services, although on a much more limited scale. Confronting this problem of private remuneration of public employees requires more than simple criminal law measures or sanctions. The low level of salaries in the healthcare system makes employees much more prone to accept or even expect or request such illegal sources of remuneration. **The GET therefore recommended that the Government elaborates a comprehensive programme, including preventive and awareness raising measures, aimed at progressively eliminating the widespread practice of gratuities, rewards or other forms of private remuneration paid to public employees in the healthcare sector and any other public service where they are found to exist.**

75. The GET was aware that the issue of the funding of political parties remained outside the remit of GRECO's First Evaluation Round. In its opinion, however, corruption related to the illegal funding of political parties appears to be an important problem in Hungary, in spite of financing regulations, which are relatively stern. Act XXXIII of 1989 provides rules for the operation and financial management of political parties, according to which donations can be accepted from any source save foreign governments, State enterprises, foundations supported by the State and anonymous donors. In most cases, the party has to declare private donation, from individuals or companies, in its balance sheets audited by the State Audit Office. Parties have to submit reports on their financial situation every year, while the State Audit Office audits the accounts of parties receiving funds from the State budget every two years. However, in the GET's opinion, supervision of party funding was, as a whole, rather formal and insufficient. Whilst State subsidies to political parties were inadequate, parties are bound to rely on their own assets and donations from the private sector, including donations of uncertain origin. The GET observed, therefore, that the Hungarian authorities should consider the revision of the legal framework applicable to the financing of political parties as a key element of their anti-corruption strategy. It

observed, more particularly, that a more effective monitoring of the resources, property and donations of political parties would be required.

76. The GET noted that public procurement legislation was relatively advanced. Act XL of 1995 stipulates procedural rules promoting the rational cost effects of public procurement, with the objective of ensuring the optimum quality of goods, while allowing competition and transparency of procurements made from State budget sources. The Act allows social and economic criteria to be used in the evaluation procedure; furthermore, it includes preferential rules for local companies. Disputes in connection with public procurement can be submitted to the Procurement Arbitration Committee. In spite of the aforesaid, the GET noticed that favouritism in the awarding of public procurement contracts, especially at local level, was being regularly reported in the media. In addition, the GSAC already foresees, as a necessary measure, the revision of the Act on public procurement, as well as of the legal consequences, penalties set forth for the violation of the Act or for non-contractual fulfilment of contracts. However, the GET felt that the ambiguity of public expenditure and the lack of transparency concerning the procedures of public contracts could hamper equality in competition. **The GET recommended, therefore, the creation of conditions for transparency and equality in competition, in order to minimise the risk of corruption opportunities in the field of public procurement.**

77. The GET noted with satisfaction that, in conformity with the GSAC, senior public officials[28] are, since July 2001, under the obligation to submit declarations of interests, income and assets, covering also those of their close relatives living in the same household. The GET noted that the intentional submission of false information in the asset declaration is a criminal offence and can result in the termination of employment as an administrative sanction, including the omission of any assets. Failure to declare would automatically result in the termination of the job. According to Article 22/A. of Act XXIII of 1992 on the legal status of civil servants the employer of the civil servant shall periodically compare the asset declaration in the presence of the civil servant with the previous declaration within 60 days from its submission. If the increase of the assets of the civil servant can not be justified taking into account the legal income of the particular civil servant, the head of the given administrative institution shall initiate a control procedure at the Control Office of the Civil Service. The Head of the Administrative Department can order the submission of a new asset declaration by the civil servant if a member of the public submits a report, according to which there is well-founded basis to believe that the asset increase of a certain civil servant can not be justified in the light of the legal income of the particular civil servant. It is not allowed to order the submission of a new asset declaration if the reporter is anonym, or the report is obviously unfounded or it refers to facts or circumstances which motivated a previous compulsory asset declaration. Although the new provisions enhance the legal basis for detecting potential corruption in the civil service, the GET observed that the current system of verification does not authorise random checks on the reliability of asset declarations submitted by public employees. **The GET, therefore, recommended that the employer should be empowered to check such declarations or have them checked by an appropriate body**. **The GET, moreover, recommended to provide appropriate safeguards against retaliation for members of the public who lodge complaints about potential cases of suspicious enrichment, including potential cases of corruption.**

78. The GET noticed that public opinion is generally that the level of corruption is, in reality, much higher than the one shown by official statistics. According to surveys, many citizens believe that

[28] The range of such officials includes ministers, parliamentary under-secretaries, public service under-secretaries, deputy under-secretaries, senior public servants, who have the obligation to submit declaration annually, while all other employees have the obligation to submit declaration every two years.

public administration is contaminated by corruption. The GET also became aware of a certain mistrust or even resignation, probably unjustified but nonetheless perceptible during the visit, about the reality or the effectiveness of the counter-measures adopted in this area. The GET expressed the opinion that efforts to curb corruption and the results achieved needed to be better explained to the public. In its view it was critical, that the measures taken against corruption are seen and understood by the public, as amounting to a credible fight against corruption. The GET noted with satisfaction that the GSAC foresees the introduction of special awareness courses into public education programmes, such as "Citizenship and Society" and "Human Nature and Ethics", covering the recognition of the risks of corruption, their avoidance, prevention and national legal regulation. In its view, the media could also play a much more important role, e.g. by reporting corruption cases, following up the development of cases or conducting investigative journalism. **The GET recommended, therefore, to associate the public more closely to the authorities' action against corruption, in particular by better informing it about the measures adopted to counter corruption and by disseminating information on the results achieved. In the GET's opinion, special efforts were required, in this respect, to promote access by the media to public information**.

b. Institutions involved in the prevention, investigation, prosecution and adjudication of corruption offences

b1. The Police

79. Aware of the fact that traffic police were widely perceived as corrupt, followed by other branches of the police in contact with the public, the GET noted with satisfaction that the ESLEA unit of the Ministry of the Interior, tasked with prevention and detection of internal corruption cases, had been expanded. The GET also noted the adoption of a number of measures to deal with police corruption, such as, *inter alia*, the prohibition for police officers to collect directly on the spot the fines imposed, the obligation to wear badges in order to be easily identified by citizens; the possibility of offering immunity to the offender who reports to the authorities. Furthermore, the police benefits from specific training activities dealing with corruption issues.

80. The GET also noted with satisfaction the establishment of a new specialised unit dealing with corruption offences under the auspices of the Directorate of investigation of organised crime-related serious offences at the Police Headquarters. The GET expressed the view that this unit was poorly staffed, particularly taking into account the size of the country and given the current practice of secondment of officers to other units. **The GET, thus recommended that the special police unit for investigating corruption offences be more appropriately staffed.**

b2. The Hungarian Public Prosecution Service

81. The GET carefully examined the constitutional configuration and the internal structure of the Hungarian Public Prosecution Service (hereafter, "HPPS"). According to the Hungarian Constitution, the HPPS is functionally independent from the executive branch. Indeed, the Head of the HPPS, i.e. the Prosecutor General is elected by Parliament, on the basis of a proposal made by the President of the Republic, for a period of six years. Besides, the Prosecutor General enjoys, in principle at least, a stable term for the exercise of his/her functions. Nevertheless, the GET was given to understand that the former Prosecutor General resigned from his position two years prior to the end of his term of office, although he did not provide any motivation for doing so, neither at the time of resignation nor subsequently, which he was not obliged to do under Article 25 para.1. of Act LXXX of 1994.

82. The GET noted, in this connection, that Parliament elected the Prosecutor General by simple majority. This would be, in normal conditions, the same majority which supports the Government. It is easy to suppose that close ties must exist, at least at the time of the election, between the Governmental majority and the Prosecutor General. However, once elected and during his/her term of office the Prosecutor General can only be removed by Parliament, on the proposal of the President of the Republic, if he/she was unable to carry out his/her duties (Art 25 (1) b and Art 20 para. 3). This being so, the GET considered, taking a comparative perspective, that the Prosecutor General of Hungary would be in a position to exercise of his/her duties with sufficient independence even from those who had elected him/her in the first place. In spite of this overall positive assessment the **GET observed that the public perception of the Prosecutor General's independence and impartiality would be enhanced if he/she was elected by a qualified majority of votes in Parliament. The same type of majority ought to be required for the Prosecutor General's dismissal.**

83. The GET further examined the system of appointment and removal of high-rank prosecutors in Hungary. It noted, in this connection, that the Prosecutor General had almost entire discretion when adopting decisions in this area. The GET agreed with the argument raised by the Hungarian authorities that the Prosecutor General being an independent authority accountable to Parliament, he/she should be entitled to appoint freely his/her closest collaborators – the high-ranking prosecutors – among those prosecutors he/she could trust or have confidence in. The GET further noted that applications for vacancies must be submitted to the Council of Public Prosecutors so as to seek its opinion on candidates. The Prosecutor General will be informed by this opinion but is not bound by it. In the GET's opinion this procedure provided sufficient safeguards that appointments of high-ranking prosecutors would be made transparently, after an adequate professional debate. On the other hand the GET noted that the Prosecutor General was empowered to remove any high-ranking prosecutor - appointed for an undetermined period of time- any time, without providing justification and without consulting the Council of Public Prosecutors. In the GET's view the Prosecutor General's power to remove high-ranking prosecutor was not, in principle, objectionable as it appeared as the necessary corollary to the power of appointing high-ranking prosecutors, it could potentially affect the whole HPPS's leadership structure and as such seemed as an unwarrantably large power in the hands of the Prosecutor General. The GET noted in this regard that no specific guarantees are foreseen in the case of their dismissal, though the GET was aware that high-ranking prosecutors removed from their post would still remain members of the HPPS and that the removed prosecutors could be appointed to an equivalent post or, if they so request, to a lower post. In both cases, their salaries would decrease.

84. The GET noted with satisfaction that the Act on the functioning of the HPPS contained a clause of conscience, enabling a prosecutor who disagrees with the instructions received from his/her superiors about the handling of a given case to request that the instructions be given to him in writing and to be discharged from his/her responsibility in the case in question. The elected position of the Prosecutor General and the clause of conscience provide guarantees for the professional independence of prosecutors. However, the GET felt that the current powers vested with the PG as regards certain aspects of the career system, in particular the withdrawal of prosecutors from high-ranking positions, were too broad and by their nature, could entail a risk of misuse in politically sensitive cases such as corruption cases. This issue is particularly crucial as regards high ranking positions within the CIOPPS, due to the role of this body in the combat against serious cases of corruption. Moreover, the GET became aware that cases assigned to a prosecutor within this unit could be reassigned by the CIOPPS management and hierarchy

above, without giving reasons or without any particular procedure. The GET felt that further guarantees were necessary to enhance the professional position and tenure of office of these prosecutors in order to ensure their impartiality, in particular when taking important prosecutorial decisions (e.g. dropping or changing the charges). **The GET therefore recommended that additional guarantees be provided to safeguard the professional impartiality of prosecutors assigned to the CIOPPS, in particular those in a leading position, and to ensure that the cases can only be reassigned on the basis of objective professional criteria.**

85. The GET was made aware of the fact that the Prosecutor General could, at his/her discretion extend the period of service of a particular public prosecutor, who had reached the retirement age (62), until the age of 70. The prospect of an extended period of service may exert an influence on some prosecutors coming close to the age of retirement. Given the strict hierarchical structure of the HPPS, public prosecutors in charge of certain sensitive cases may feel the pressure of their superiors, including the Prosecutor General, who will be later deciding on the extension of the prosecutor's professional career for eight more years. The GET had the opinion that the system of retirement in the case of judges, who normally retire at the age of 70, although may ask for retirement after passing the age limit for general retirement (62 years), could eliminate the risks that discretionary decisions relating to the determination of the age of retirement of a particular prosecutor interfere with the independent and impartial exercise of prosecutorial functions. **Therefore, the GET recommended that the system of retirement of prosecutors be harmonised with the criteria applied to judges.**

b3. The Courts

86. The GET observed that the legal framework for an independent judiciary is in place in Hungary, allowing for considerable judicial independence with regard to the Government as well as to the Parliament. Allegations that some court decisions could had been politically influenced, in particular as regards the timing of certain decisions were unsubstantiated and the GET noted that no corruption case affecting the judiciary was proven in recent years.

87. The GET had the impression that training and awareness-raising of the risks of corruption among the judiciary is non-existent in Hungary, although training and specialisation organised by the National Judicial Council are available for all judges. Judges seem to assume that they are by nature in a corruption-free profession, which would resist any undue influence by its structure and integrity. **The GET recommended, therefore, the introduction of regular training and awareness-raising programmes among the judiciary on the risks of corruption, in particular on the typologies of corruption, including its international dimension.**

c. Immunities

88. The GET examined the legal framework and the scope of immunities in Hungary. It noted that the circle of persons immune from arrest and prosecution is comparatively quite large and covers Members of Parliament, candidates to Parliament during the electoral period, judges and lay judges, prosecutors, trainees and prosecutorial investigators, parliamentary commissioners and candidates for parliamentary commissioners, President and members of the Constitutional Court, Chair and Deputy Chairs of the State Audit Office. Although immunity covers bribery offences, it is temporary and may be lifted. The GET noted with satisfaction that the practice of the Hungarian Parliament is to grant the vast majority of requests for the lifting of immunity. The GET had the impression that the investigation and prosecution of corruption offences committed by the

beneficiaries of immunity may have been jeopardised by the rules on statutory limitation applicable at the time of the visit. The Hungarian authorities were, however, already committed (see para. 71) to the introduction of legislation which would bar the laps of time set for statutory limitation until the end of the immunity period. **The GET, therefore, recommended to guarantee immunity only for the period of the mandate and to bar the laps of time set for statutory limitation until the end of immunity, as proposed by the Government.**

89. The GET noted that it was for Parliament to lift immunity of MPs. In these circumstances, it cannot be excluded that decisions on immunities are taken on the basis of political or other inappropriate considerations rather than on the interest of justice or on the proper functioning of State institutions. In order to avoid this unwarranted situation the GET considered that it would be preferable to set objective criteria to assist those authorities responsible for deciding on whether or not immunity should be lifted. These criteria should be based on the exceptional nature of immunity, which should be seen as an exception to the ordinary course of the judicial process and needs accordingly to be interpreted restrictively. **Thus, the GET recommended the adoption of guidelines containing objective criteria for deciding on the lifting of immunity, avoiding, to the largest extent possible, political or other undue considerations**.

IV. CONCLUSIONS

90. Hungary is one of the post-communist countries least affected by corruption. However, corruption remains an important problem which affects a number of public services, including healthcare, traffic policing, public procurement and political party funding. In recent years, the Hungarian Government has made considerable efforts to prevent and combat corruption. In terms of international commitments, Hungary has signed, and even ratified, most relevant international conventions against corruption. Internally, these efforts have led to the adoption of Resolution n° 1023/2001 containing a comprehensive Governmental Strategy Against Corruption, which has prompted major improvements in legislation and in the institutional framework. Nonetheless, these commendable efforts have not been adequately conveyed to the population, which seems to create distrust. Despite the intention of the Hungarian Government to eliminate corruption, the lack of information to the public on the measures adopted and the results achieved in the fight against corruption, seems to hinder the trust in governmental institutions. More favourable conditions provided for the media, in this connection, could promote the appreciation of the public. Continued governmental support is needed not only for implementing the improvements of the GSAC but for eliminating the rampant practice of gratuities existing in certain public services. The law enforcement system appears to be well structured for the fight against corruption, however the independence and impartiality of the HPPS could be emphasised.

91. In view of the above, the GRECO addressed the following recommendations to Hungary:

i. **ensure continued political support to the implementation of the GSAC and the functioning of the Board Against Corruption, as foreseen in Resolution N° 1023/2001, and mobilizing the necessary resources;**

ii. **elaborates a comprehensive programme, including preventive and awareness raising measures, aimed at progressively eliminating the widespread practice of gratuities, rewards or other forms of private remuneration paid to public employees in the healthcare sector and any other public service where they are found to exist;**

iii. **create conditions for transparency and equality in competition, in order to minimise the risk of corruption opportunities in the field of public procurement;**

iv. **ensure that the employer be empowered to check declarations of interests, income and assets or have them checked by an appropriate body. Also, provide appropriate safeguards against retaliation for members of the public who lodge complaints about potential cases of suspicious enrichment, including potential cases of corruption;**

v. **associate the public more closely to the authorities' action against corruption, in particular, by better informing it about the measures adopted to counter corruption and by disseminating information on the results achieved. Also, make special efforts, in this respect, to promote access by the media to official documents;**

vi. **ensure that the special police unit for investigating corruption offences be more appropriately staffed;**

vii. **provide additional guarantees to safeguard the professional impartiality of prosecutors assigned to the CIOPPS, in particular those in a leading position, and to ensure that the cases can only be reassigned on the basis of objective professional criteria;**

viii. **ensure, that the system of retirement of prosecutors be harmonised with the criteria applied to judges;**

ix. **introduce regular training and awareness-raising programmes among the judiciary on the risks of corruption, in particular on the typologies of corruption, including its international dimensions;**

x. **guarantee immunity only for the period of the mandate and to bar the lapse of time set for statutory limitation until the end of immunity, as proposed by the Government;**

xi. **adopt guidelines containing objective criteria for deciding on the lifting of immunity, avoiding, to the largest extent possible, political or other undue considerations.**

92. Moreover, the GRECO invites the authorities of Hungary to take due account of the observations made by the experts in the analytical part of this report.

93. Finally, in conformity with Article 30.2 of the Rules of Procedure, GRECO invites the authorities of Hungary to present a report on the implementation of the abovementioned recommendations before 30 September 2004.

APPENDIX I

Act IV of 1978
on the Criminal Code
GENERAL PART

Territorial and Personal Scope

Section 3

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

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

Section 4

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

a) criminal acts in accordance with Hungarian law and are also punishable in accordance with the law of the place of perpetration,
b) it is a criminal act against the state (Chapter X), excluding espionage against allied armed forces (Section 148), regardless of whether it is punishable in accordance with the law of the country where committed,
c) crimes against humanity (Chapter XI) or any other crime, the prosecution of which is prescribed by an international treaty.

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

(3) In the cases described in Subsections (1)-(2) the indictment shall be ordered by the Prosecutor General.

Chapter IX
Interpretative Provisions
Section 137

For the purposes of this Act

1. official persons are:

a) Members of Parliament;
b) the President of the Republic;
c) the Prime Minister;
d) members of the Government, political state secretaries;
e) constitutional judges, judges, prosecutors;
f) ombudsmen of citizens' rights and national and ethnic minority rights;
g) members of local government bodies;

h) notaries public and assistant notaries public;
i) independent court bailiffs and assistant court bailiffs;
j) persons serving at the constitutional court, the courts, prosecutors offices, state administration organs, local government organs, the State Audit Office, the Office of the President of the Republic, the Office of Parliament, whose activity forms part of the proper functioning of the organ;
k) persons at organs or bodies entrusted with public power, public administration duties on the basis of a legal rule, who fulfil tasks of public power, or state administration,

2. person performing public duties shall mean

a) employees of a postal service provider performing executor's or security services, persons performing executor's or security services for an economic organisation operating public mass transportation vehicles, and other persons performing passenger carriage services on public roads,
b) soldiers performing security services,
c) persons enlisted in a civil defence organisation and performing civil defence services,
d) members of the ambulance service,
e) defence Prosecutors or legal counsels acting in a court or other official proceeding,
f) health-care employees in the case set forth in the Act on Health Care, and other persons in work-related relationship with a health-care service provider,
g) teachers in the case set forth in the Act on Public Education,
h) fire fighters as a member of a state, municipal, voluntary or private fire brigade,
i) members of the civil self-defence organisation created to protect life and property of the public within the sphere described in the Act on the Police, for the activities performed to improve public safety,
j) the pastor of a church registered according to the Act on the Freedom of Belief and Religion and on the Church,

3. "foreign public official" shall mean

a) a person serving in the legislature, law enforcement or administrative body of a foreign state,
b) a person serving in an international organisation created under international convention, whose activities form part of the organisation's activities,
c) a person elected to serve in the general assembly or body of an international organisation created under international convention,
d) a member of an international court that is vested with jurisdiction over the territory or the citizens of the Republic of Hungary, and any person serving in such international court, whose activities form part of the court's activities,

4. a) "armed commission of a crime" shall mean when the perpetrator has a firearm or a destructive device in his possession while engaged in a criminal act; the provisions on armed commission shall also apply if the criminal act is committed using a replica or imitation of a firearm or destructive device,
b) "assault with a deadly weapon" shall mean when the perpetrator has a deadly weapon in his possession while engaged in a criminal act to suppress or subdue any resistance,

5. "damage" means the loss of value of one's property; "pecuniary injury" means damage to one's property and the loss of financial gain,

6. relative: relative in the direct line and his spouse, adoptive and foster-parents, adopted and foster-children, siblings, spouses, common-law spouses, and fiancés, relatives in direct line and siblings of the spouses, as well as the spouses of the siblings,

7. "criminal conspiracy" shall mean when two or more persons are engaged in criminal activities under arrangement, or they conspire to do so and attempt to commit a criminal act at least once, however, it is not considered a criminal organisation,

8. "criminal organisation" shall mean when a group of three or more persons collaborate to deliberately engage in an organized fashion in criminal acts, which are punishable with five years of imprisonment or more,

9. a crime is deemed to be committed in a business-like manner if the perpetrator is engaged in criminal activities of the same or similar character to generate profits on a regular basis,

10. war shall also mean a danger gravely jeopardizing the security of the state,

11. product is an industrial and agricultural product (produce), be it raw material, semi-finished product or ready goods; live-stock and means of production come under the same consideration as product, even if the latter is a real property,

12. broad publicity shall mean, among others, when a crime is committed through publication in the press, another mass media or by reproduction, or by the publication of electronic information in a telecommunications network,

13. a crime is perpetrated in group if at least three persons participate in the perpetration,

14. recidivist shall mean the perpetrator of a premeditated criminal act, if such person was previously sentenced to imprisonment without probation for a premeditated criminal act, and three years have not yet passed since having served such term of imprisonment or the termination of its executability until the perpetration of another criminal act,

15. special recidivist is the recidivist, who commits on both occasions the same crime or a crime of similar character,

16. habitual recidivist shall mean a person, who has been sentenced to imprisonment without probation as a recidivist prior to the perpetration of a premeditated criminal act, and three years have not yet passed from having served the last term of imprisonment or the termination of its executability until the perpetration of another criminal act punishable by imprisonment,

17. "economic organisation" means the economic organisations listed under Paragraph c) of Section 685 of Act IV of 1959 on the Civil Code, as well as organisations which, according to the Civil Code, are subject to the provisions on economic organisations concerning the civil law relations of such organisations in connection with their economic activities.

Title VII
Crimes Against the Purity of Public Life
Bribery

Section 250

(1) Any public official who requests an unlawful advantage in connection with his actions in an official capacity, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the advantage, is guilty of a felony punishable by imprisonment between one to five years.

(2) The punishment shall be imprisonment between two to eight years if the crime is committed

a) by a public official in a high office, or by one entrusted to take measures in important affairs,
b) by another public official in an important matter of great importance.

(3) The perpetrator shall be punished by imprisonment between two to eight years, or between five to ten years in accordance with the distinction contained in Subsections (1) and (2), if he breaches his official duty in exchange for unlawful advantage, exceeds his competence or otherwise abuses his official position, or if he commits the act in criminal conspiracy or in a pattern of criminal profiteering.

Section 251

(1) Any employee or member of a budgetary agency, economic organisation or non-governmental organisation, who requests an unlawful advantage in connection with his actions in an official capacity, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the advantage, is guilty of a misdemeanour punishable by imprisonment not to exceed two years.

(2) Any person who breaches his official duty in exchange for unlawful advantage is guilty of felony punishable by imprisonment between one to five years, or between two to eight years if the breach involves a matter of greater importance or if committed in criminal conspiracy or in a pattern of criminal profiteering.

Section 252

(1) Any employee or member who is authorized to act in the name and on behalf of a budgetary agency, economic organisation or non-governmental organisation, who requests an unlawful advantage in connection with his actions in an official capacity, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the advantage, is guilty of a felony punishable by imprisonment between one to five years.

(2) Any person who breaches his official duty in exchange for unlawful advantage may be punished by imprisonment between two to eight years.

(3) The punishment shall be imprisonment between five to ten years

a) if the breach involves a matter of greater importance,
b) if committed in criminal conspiracy or in a pattern of criminal profiteering.

Section 253

(1) Any person who gives or promises unlawful advantage to a public official or to another person on account of such official's actions in an official capacity is guilty of a felony punishable by imprisonment not to exceed three years.

(2) The person committing bribery shall be punished for a felony by imprisonment between one to five years, if he gives or promises the advantage to a public official to induce him to breach his official duty, exceed his competence or otherwise abuse his official position.

(3) The director of a business association, or a member or employee with authority to exercise control or supervision shall be punished according to Subsection (1), if the member or employee of the business

association commits the criminal act defined in Subsections (1) and (2) for the benefit of the business association, and the criminal act could have been prevented had he properly fulfilled his control or supervisory obligations.

(4) The director of a business association, or a member or employee with authority to exercise control or supervision shall be punished for misdemeanour by imprisonment not to exceed two years, work in community service or a fine, if the criminal act defined in Subsection (3) is committed involuntarily.

Section 254

(1) Any person who gives or promises unlawful advantage to an employee or member of a budgetary agency, economic organisation or non-governmental organisation, or to another person on account of such employee or member, to induce him to breach his duties is guilty of a misdemeanour punishable by imprisonment not to exceed two years.

(2) The punishment shall be imprisonment not to exceed three years if the unlawful advantage is given or promised to an employee or member who is authorized to act in the name and on behalf of a budgetary agency, economic organisation or non-governmental organisation.

Section 255

(1) Any person who gives unlawful advantage to another person, or to a third person on account of such person, to induce him to refrain from exercising his lawful rights in a court or other judicial proceeding, or to induce him to neglect his duties is guilty of felony and may be punished by imprisonment not to exceed three years.

(2) Any person who accepts unlawful advantage so as to refrain from exercising his lawful rights in a court or other judicial proceeding, or to neglect his duties shall be punished according to Subsection (1).

Section 255/A

(1) The perpetrator of a criminal act defined in Subsections (1) and (2) of Section 250, Subsection (1) of Section 251, Subsection (1) of Section 252, and Subsection (2) of Section 255 shall be exonerated from punishment if he confesses the act to the authorities first hand, surrenders the obtained unlawful financial advantage in any form to the authorities, and reveals the circumstances of the criminal act.

(2) The perpetrator of a criminal act defined in Section 253, Section 254, and Subsection (1) of Section 255 shall be exonerated from punishment if he confesses the act to the authorities first hand and reveals the circumstances of the criminal act.

Failure to Report Bribery
Section 255/B

(1) Any public official who has learned from credible sources of an act of bribery (Sections 250-255 of the Criminal Code) yet undetected, and he fails to report it to the authorities at the earliest possible time is guilty of misdemeanour and may be punished by imprisonment not to exceed two years, work in community service or a fine.

(2) The close relative of the perpetrator cannot be punished pursuant to Subsection (1).

Trafficking in Influence
Section 256

(1) Any person who - purporting to influence a public official - requests or accepts an unlawful advantage for himself or on behalf of another person is guilty of a felony punishable by imprisonment between one to five years.

(2) The punishment shall be imprisonment between two to eight years if the perpetrator

a) purports to or pretends that he is bribing a public official,
b) pretends to be a public official,
c) commits the crime in a pattern of criminal profiteering.

(3) Any person who commits the crime defined in Subsection (1)

a) in connection with an employee or member of an economic organisation or non-governmental organisation is guilty of misdemeanour and may be punished by imprisonment not to exceed two years,
b) in connection with an employee or member who is authorized to act in the name and on behalf of an economic organisation or non-governmental organisation is guilty of felony and may be punished by imprisonment not to exceed three years.

(4) Any person who commits the crime defined in Subsection (3) in a pattern of criminal profiteering is guilty of a felony punishable by imprisonment not to exceed three years, or between one to five years, as consistent with the categories specified therein.

Persecution of a Conveyor of an Announcement of Public Concern
Section 257

Any person who takes any detrimental action against a person who has made an announcement of public concern is guilty of a misdemeanour and may be punished by imprisonment not to exceed two years, work in community service or a fine.

Confiscation
Section 258
Interpretative Provision
Section 258/A

For the purposes of this Title

1.
2. violation of duty shall also be the fulfilment of a duty bound to the granting of a favour.

Title VIII
CRIMES AGAINST THE PROPRIETY OF INTERNATIONAL AFFAIRS
Bribery in International Relations
Section 258/B

(1) Any person who gives or promises unlawful advantage to a public official of another country, or to a third person on account of such public official, in connection with his actions in an official capacity is guilty of a misdemeanour punishable by imprisonment not to exceed three years.

(2) The person committing bribery shall be punished by imprisonment between one to five years, if he gives or promises the unlawful advantage to a foreign public official to induce him to breach his official duty, exceed his competence or otherwise abuse his official position.

(3) The director of a business association, or a member or employee with authority to exercise control or supervision shall be punished according to Subsection (1), if the member or employee of the business association commits the criminal act defined in Subsections (1) and (2) for the benefit of the business association, and the criminal act could have been prevented had he properly fulfilled his control or supervisory obligations.

(4) The director of a business association, or a member or employee with authority to exercise control or supervision shall be punished for misdemeanour by imprisonment not to exceed two years, work in community service or a fine, if the criminal act defined in Subsection (3) is committed involuntarily.

Section 258/C

(1) Any person who gives or promises unlawful advantage to an employee or member of a foreign business association, or to another person on account of such employee or member, to induce him to breach his duties is guilty of a misdemeanour punishable by imprisonment not to exceed two years.

(2) The punishment shall be imprisonment not exceeding three years if the unlawful advantage is given or promised to an employee or member who is authorized to act in the name and on behalf of a foreign business association.

Section 258/D

(1) Any foreign public official who requests an unlawful advantage in connection with his actions in an official capacity, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the advantage, is guilty of a felony and shall be punished by imprisonment between one to five years.

(2) The perpetrator shall be punished by imprisonment between two to eight years, if he breaches his official duty in exchange for unlawful advantage, exceeds his competence or otherwise abuses his official position, or if he commits the act in criminal conspiracy or in a pattern of criminal profiteering.

Profiteering with Influence in International Relations
Section 258/E

Any person who - purporting to influence a foreign public official - requests or accepts an unlawful advantage for himself or on behalf of another person is guilty of a felony punishable by imprisonment not to exceed five years.

Interpretative Provisions
Section 258/F

For the purposes of this Title

1.
2. foreign economic organisation shall mean organisations functioning as an artificial person according to its personal law, which is entitled to perform economic activities in its prevailing organisational form.

Title III
Crime Against Public Confidence
Forgery of Official Documents
Section 274

(1) The person who

a) prepares a forged official document or falsifies the contents of an official document,
b) uses a fake or forged official document or an official document issued under the name of somebody else,
c) co-operates in the inclusion of untrue data, facts or declarations in an official document regarding the existence, changing or termination of a right or obligation, commits a felony and shall be punishable with imprisonment of up to three years.

(2) The person who is engaged in the preparation for the forging of official documents as defined in Paragraphs a) or b) of Subsection (1) is guilty of misdemeanour punishable by imprisonment not to exceed one year, work in community service, or a fine.

(3) The person who performs the forging of official documents defined in subsection (1), paragraph c) by negligence, shall be punishable for a misdemeanour with fine.

Section 275

The official person who - abusing his official competence -

a) prepares a forged official document or falsifies the contents of an official document,
b) includes falsely an essential fact in an official document,
commits a felony, and shall be punishable with imprisonment of up to five years.

Forgery of a Private Document
Section 276

The person who uses a fake, forged private document or a private document with untrue contents for providing evidence for the existence, changing or termination of a right or obligation, commits a misdemeanour, and shall be punishable with imprisonment of up to one year, labour in the public interest, or fine.

Abuse of Document
Section 277

(1) The person who unlawfully acquires an official document or a document which is not or not exclusively his own, from another person without the latter's consent, or destroys, damages or conceals the same, commits a misdemeanour, and shall be punishable with imprisonment of up to two years, labour in the public interest, or fine.

(2) A person who perpetrates the act defined in Subsection (1) in respect of a private document in order to gain unlawful advantage or to cause unlawful disadvantage shall be punishable for misdemeanour offence by imprisonment of up to one year, labour in the public interest, or fine.

Acquisition of Unlawful Economic Advantage

Section 288

(1) Any person who obtains financial assistance

a) allocated by virtue of law from the central budget, or the budget of local authorities, or from appropriated government funds
b) provided by a foreign state or international organisation for a specific purpose
or any other economic advantage by making an false affidavit to this extent, or by using a false, counterfeit or forged document or instrument is guilty of felony punishable by imprisonment not to exceed five years.

(2) The person who uses financial support for purposes other than what it was provided for, and fails to repay such support, and the person who makes a false statement, or uses false, counterfeit or forged documents or instruments for the purposes of accounting and reporting obligation prescribed in connection with the financial support, shall be punished according to Subsection (1).

Interpretative Provision
Section 288/A.

For the purposes of Section 288, financial assistance provided by a foreign state or international organisation shall also cover the funds managed by Hungarian administrative agency or financial institution on behalf of the foreign state or international organisation. Section 288 shall not apply to criminal acts involving assistance provided from funds managed by or on behalf of the European Communities and to payments made to funds managed by or on behalf of the European Communities.

Infringement of Accounting Regulations
Section 289

(1) The person who

a) infringes annual reporting, bookkeeping and auditing obligation,
b) the documentation system
prescribed in the Accounting Act or in the legal regulations adopted under its authorization, and thereby obstructs the transparency or inspection of his financial situation is guilty of a misdemeanour punishable by imprisonment not to exceed two years, work in community service or a fine.

(2) Any private entrepreneur who violates his record keeping and documentation obligation prescribed by law, and thereby obstructs the transparency or inspection of his financial situation shall be punished according to Subsection (1).

(3) The punishment shall be imprisonment not exceeding three years if the act defined in Subsection (1)

a) results in an error corrupting the true and fair view in relation to the given financial year and distorts the amount of profit, equity capital or the balance sheet total, or
b) obstructs the transparency or inspection of financial situation in the given year.

(4) The punishment for felony shall be imprisonment not to exceed three years in the case of Subsection (1) or five years in the case of Subsection (3) if committed in a financial institution, insurance institution or investment firm.

Money Laundering
Section 303

(1) Any person who uses items obtained by the commission of criminal activities punishable by imprisonment in his business activities and/or performs any financial or bank transaction in connection with the item in order to conceal its true origin is guilty of felony punishable by imprisonment not to exceed five years.

(2) The punishment shall be imprisonment between two to eight years if money laundering

a) is committed in a pattern of criminal profiteering,
b) involves a substantial or greater amount of money,
c) is committed by an officer or employee of a financial institution, investment firm, investment fund manager, clearing house, insurance institution, or an institution engaged in gambling operations,
d) is committed by a public official,
e) is committed by a Prosecutor-at-law.

(3) Any person who collaborates in the commission of money laundering is guilty of misdemeanour punishable by imprisonment not to exceed two years.

(4) The person who voluntarily reports to the authorities or initiates such a report shall not be punished for money laundering, provided that the act has not yet been revealed, or it has been revealed only partially.

(5) The term "item' referred to in Subsection (1) shall also cover instruments embodying rights to some financial means and dematerialised securities, that allow access to the value stored in such instrument in itself to the bearer, or to the holder of the securities account in respect of dematerialised securities.

Section 303/A

(1) Any person who uses an item obtained from criminal activities committed by others

a) in his business activities, and/or
b) performs any financial or bank transaction in connection with the item,
and is negligently unaware of the true origin of the item is guilty of misdemeanour punishable by imprisonment not to exceed two years, work in community service or a fine.

(2) The punishment shall be imprisonment for misdemeanour not exceeding three years if the act defined in Subsection (1)

a) involves a substantial or greater amount of money,
b) is committed by an officer or employee of a financial institution, investment firm, investment fund manager, clearing house, insurance institution, or an institution engaged in gambling operations,
c) is committed by a public official.

Non-performance of Reporting Obligation in Connection with Money Laundering
Section 303/B

(1) Any person who fails to comply with the reporting obligation prescribed for financial service organisations by the Act on the Prevention and Combating of Money Laundering is guilty of felony punishable by imprisonment not to exceed three years.

(2) Any person who negligently fails to comply with the reporting obligation referred to in Subsection (1) is guilty of misdemeanour punishable by imprisonment not to exceed two years, work in community service or a fine.

APPENDIX II

The Organisation of Public Prosecution

Chapter XI of the Hungarian Constitution

Article 51

(1) The General Prosecutor and the Organization of Public Prosecution of the Republic of Hungary ensure the protection of the rights of the citizens, maintain constitutional order and shall prosecute to the full extent of the law any act which violates or endangers the security, or the independence of the country.

(2) The Organization of Public Prosecution of the Republic of Hungary shall exercise rights specified by law in connection with investigations, shall represent the prosecution in court proceedings, and shall be responsible for the supervision of the legality of penal measures.

(3) The Organization of Public Prosecution of the Republic of Hungary shall help to ensure that all social organizations, government bodies and citizens comply with the law. When the law is violated, the Office of the Public Prosecutor shall act to uphold the law in the cases and manner specified by law.

Article 52

(1) The Parliament shall elect a candidate for General Prosecutor upon the recommendation made by the President of the Republic; the President of the Republic shall appoint the Deputies to the General Prosecutor on the basis of the recommendation made by the General Prosecutor.

(2) The General Prosecutor shall answer to the Parliament and shall provide a report on his activities.

Article 53

(1) Public prosecutors are appointed by the General Prosecutor of the Republic of Hungary.

(2) Public prosecutors may not be members of political parties and may not engage in political activities.

(3) The Organization of Public Prosecution of the Republic of Hungary is directed by the General Prosecutor.

(4) The rules pertaining to the Organization of Public Prosecution of the Republic of Hungary shall be determined by law. "

Extracts of the Act LXXX of 1994 on the Status of Public Prosecutors and the Treatment of their Personal Data

Article 14/C

(1)The Prosecutor General appoints (...) prosecutors after an open tender procedure.

Article 16

(1)Top level and high level prosecutors (...) are appointed by the Prosecutor General. (...)

(2)Top level prosecutors are:

a) Deputy Prosecutor General
b) Head of Department
c) Deputy Head of Department
d) Head of Division at the Office of the Prosecutor General, (...)
e)-h) (...)
i) County Chief Prosecutor
j) Deputy County Chief Prosecutor
k) (...)

(3)High level prosecutors are:

a)-c) (...)
d) Head of Division at the Office of the Chief County Prosecutor
e) Head of Article at the Office of the Prosecutor General
f) Head of Article at the Office of the County Chief Prosecutor
g) (...)
h) Local Chief Prosecutor
i) Deputy Local Chief Prosecutor
j) Head of Division at the Local Prosecutors' Office

(4)The Prosecutor General fills (...) the posts of top level and high level prosecutors by an open tender procedure. (...)

Article 17

Before evaluating the applications, the Prosecutor General has to learn the opinions of the Council of Prosecutors[29] and the (...) [relevant high ranking prosecutors] about the applicants.

Article 20

(1) Assignment of the Prosecutor General ceases in the following cases:

a) Expiration of the time of service[30]
b) Relieving
c) Resignation
d) Conflict of interests
e) Becoming an MP, a member of local government, a mayor, or other state official stipulated by law
f) Declaration of dismissal
g) Conviction by a criminal court for imprisonment, labour in the public interest or prohibition from public affairs (...)

[29] A body of prosecutors elected by their colleagues in a democratic way.
[30] On proposal of the President of the Republic, the Prosecutor General is elected by the Parliament for six years by simple majority (50 % + one vote). Re-election is possible without limit.

h) Turning the age of 70
i) Death

(3)On proposal of the President of the Republic the Parliament by a resolution can relieve the Prosecutor General of his function if, for reasons he is not to blame, he is unable to carry out his duties.

(4)In case of paragraph 3 the ex-Prosecutor General, with his own consent (...), should be transferred to another prosecutorial job. (...)

(5)The Prosecutor General, in a statement sent to the Parliament via the President of the Republic, can resign his post anytime without giving reasons. For the validity of the resignation the acceptance of the Parliament is not necessary.

(6)In case of paragraph 5 the ex-Prosecutor General, with his own consent (...), should be transferred to another prosecutorial job. (...)

(8)On proposal of the President of the Republic, the Parliament by a resolution can declare the dismissal of the Prosecutor General if, for reasons he is to blame, he does not carry out his duties, or if the court finds him guilty of a felony in a legally binding judgement, or if he becomes unworthy of his post in any other way.

Article 22

(1)Top level and high level prosecutors are appointed for an indefinite time, and their appointment can be withdrawn any time without giving reasons. The opinion of the Council of Prosecutors about the fact of the withdrawal need not be asked.

(2)In case of withdrawal the prosecutor, with his own consent (...), should be transferred to another prosecutorial job. (...)

(4)Top level and high level prosecutors (...) can resign their posts. In case of resignation, the prosecutor, with his own consent (...), should be transferred to another prosecutorial job. (...)

Article 26

The function of a prosecutor appointed by the Prosecutor General ceases in the following cases:

a) Mutual consent of the parties
b) Relieving
c) Resignation
d) Extraordinary resignation
e) Conflict of interests
f) Becoming an MP, a member of local government, a mayor, or other state official stipulated by law
g) Conviction by a criminal court for imprisonment, labour in the public interest or prohibition from public affairs (...)
h) Legally binding decision on the application of the most severe disciplinary sanction
i) Expiration his appointment for definite time[31]

[31] First time prosecutors are appointed for three years. If, for any reasons, they are not appointed for indefinite time, their function ceases.

j) (...)
k) Turning the age of 70
l) Death
m) (...) If he deliberately does not fulfil his obligation to declare his assets, or if he deliberately gives false important information about his assets, or if he withdraws his declaration of assets and his statement of authorisation concerning the treatment of his personal data.

Article 28

(1)The Prosecutor General can cease the function of the prosecutor by relieving if

a) The prosecutorial task he was active in has ceased
b) His work became unnecessary, due to staff cuts or structural reorganisation
c) He was declared to be durably unfit for carrying out his duties[32] (...)
d) He reaches the age of retirement[33]
e) (...).

(3)In cases of paragraph 1 points a)-c) the prosecutor can be relieved only if there is no vacant prosecutorial post suitable for his education and fitness to fill in, or he does not consent to his transfer to this post.

(6)Relieving should be reasoned. The reason of the decision should be made perfectly clear. The burden of proving the veritable and reasonable character of the decision lies on the employer.

Article 29

(1)The Prosecutor, in a statement sent to the Prosecutor General, can resign his post.

Article 31

(1)The prosecutor can resign his post by extraordinary resignation, if the employer

a) Deliberately breaks, or negligently seriously breaks its important duty deriving from the service relations of the parties
b) Behaves in a way that makes the maintenance of the service relations impossible.

Article 43

(1)The prosecutor is obliged to follow the instructions of the Prosecutor General and his superior.

(2)Instructions, at the request of the prosecutor, should be put in writing. Before this happens, the prosecutor - except of the case of paragraph 7 - is not obliged to execute the instruction.

(3)The prosecutor is obliged to deny the execution of the instruction that constitutes a crime or a contravention.

[32] As a result of the procedure laid down in the Act
[33] According to the relevant legislation, the age of retirement is 62 for both women and men. Between the age of 62 and 70 it is at the discretion of the Prosecutor General to decide on the employment of the prosecutor.

(4)The prosecutor can deny the execution of the instruction, if its performance would directly and seriously threaten his life, his health or his corporal integrity.

(5)If the prosecutor considers the instruction to be incompatible with the laws or his legal conscience, he can ask for his exemption from conducting the case. The request should be put in writing and it should contain the legal opinion of the prosecutor. Compliance with such request cannot be denied; in such a case conduction of the case should be entrusted to another prosecutor, or the superior prosecutor can take over the case.

(7)The prosecutor is obliged - except of paragraphs 3 and 4 - to take the vitally urgent measures even if he made a request of exemption from executing the instruction.

Exclusive jurisdiction of prosecutorial investigation

Annex to Act V of 1972
Criminal Acts Falling within the Exclusive Jurisdiction of the Central Investigation Office of the Public Prosecution Service

1. a) Any criminal offence committed by Members of Parliament or by officials of the institutions listed in the Constitution and elected by Parliament, or acts of violence committed to the detriment of such persons in their official capacity, furthermore, any criminal act committed against them in connection with their functions.

b) Acts of violence against public officials, furthermore, robbery committed against public officials while performing their official duties, provided that such criminal act has been committed to the detriment of a person being a staff member of a court, public prosecution authority or the police, or being an independent bailiff or an independent deputy bailiff. [Article 229, furthermore, Article 321 paragraph (3) point d) and paragraph (4) points b)–c) of the Criminal Code].

c) Any offence committed by judges, prosecutors, secretaries, abstractors and clerks of courts and prosecution services, furthermore, independent and county bailiffs and their deputies, as well as notaries public and their deputies, furthermore, any offence committed by lay judges in connection with the administration of justice.

d) Homicide committed against a police officer;

e) Bribery of persons listed under point b) [Article 253 of the Criminal Code] and of senior officials or other public officials authorized to act in major cases [paragraph (2) point a) and the second item of paragraph (3) of Article 250 of the Criminal Code] and trading in influence [Article 256 paragraphs (1)–(2) of the Criminal Code].

f) Criminal acts other than military offences committed by official staff members of the police, criminal acts other than military offences falling under tribunal procedure committed by official staff members of civil national security services, furthermore, offences committed by official staff members of the Customs and Finance Guard or by members of the investigation body of the Internal Revenue Service.

g)

h) Of the criminal offences committed against the administration of justice (Title V, Chapter XV of the Criminal Code):

- libel (Articles 233–236 of the Criminal Code);
- offence of misleading official bodies (Article 237 of the Criminal Code);
- perjury (Articles 238–241 of the Criminal Code);
- offence of subornation (Article 242 of the Criminal Code);
- offence of concealment of a mitigating circumstance (Article 243 of the Criminal Code);
- offence of abetment in the course of the procedure of public officials [Article 244, paragraph (3) point b) of the Criminal Code];
- crime of abuse committed by Prosecutor-at-law [Article 247 of the Penal Code];
- offence of petty forgery [Article 248 of the Criminal Code].

2. The following matters shall fall within the exclusive jurisdiction of investigation by the military prosecution service:

- military offences committed by servicemen [Article 122 paragraph (1) of the Criminal Code],
- military offences committed by servicemen if
- there has been another criminal offence committed in connection with the military offence [Article 331 paragraph (2) of the Rules of Criminal Procedure],
- distinction is not justified in case there are several accused parties [Article 331 paragraph (3) of the Rules of Criminal Procedure],
- non-military offences committed by active service members of armed forces,
- offences committed by official staff members of civil national security services and penal facilities at their places of service or in connection with their official functions,
- offences falling under Hungarian criminal jurisdiction, committed by members of allied armed forces serving in Hungary (Article 368 of the Criminal Code) within the territory of Hungary or aboard Hungarian ships or Hungarian aircraft while outside the territory of the Republic of Hungary.

APPENDIX III

Act XXXIII of 1989
on the Operation and Financial Management of Political Parties

It is the social purpose of political parties (hereinafter: parties) to provide an organisational framework for the formation and manifestation of the will of the people and for the participation of citizens in the political life. Therefore, in order to implement the political rights and the freedom of association of citizens, as well as to promote the democratic representation and enforcement of the various interests and values existing in society, Parliament hereby passes the following Act:

CHAPTER I
Scope of the Act

Section 1

The scope of this Act shall cover social organisations that have registered members and that declare before the court registering them than that they consider the provisions of this Act as binding on themselves.

CHAPTER II
Operation of Parties

Section 2

(1) The parties may not establish organisations or operate at workplaces (places of service, educational institutions).
(2)

CHAPTER III
Termination of Parties

Section 3

(1) The party may cease to exist by:

a) union with another party,
b) split-up to two or more parties,
c) dissolution,
d) dissolution by court,
e) statement of its termination.

(2) The court of justice shall establish the termination of the party upon the motion of the public prosecutor's office if it terminates its activities and does not provide for its property.

(3) Upon the motion of the public prosecutor's office, the court shall establish - leaving the further operation of the party as a public organisation unaffected - the termination of the operation of the party, if the party fails to nominate candidates at two subsequent general parliamentary elections.

(4) In the case mentioned in subsection (3), the provisions of this Act shall govern the pecuniary consequences of the termination of the social organisation.

(5) In case the party is dissolved, the registered representative of the party shall publish a statement with the following contents in Magyar Közlöny (Hungarian Gazette):

a) an indication of the place where the creditors can report their claims within 90 days of the publication of the statement;
b) whether the party wishes to establish a foundation.

(6) In the case indicated in subsection (5), the party shall hand over the documents on its financial management to the court following the completion of the work of preparing final accounts.

(7) In case the party is dissolved, the court shall cancel the party from the register, if the party handed over the documents on its financial management, and certified the satisfying of creditors and

a) the registration of the foundation, or
b) the fact that no property remained after satisfying the creditors, or
c) that its remaining property was transferred to the property of the foundation under Section 8, subsection (1).

CHAPTER IV
Assets and Financial Management of Parties

Section 4

(1) The assets of the party shall originate from the fees paid by the members, the subsidy granted from the state budget, the real properties transferred by the state free of charge pursuant to Section 5 of this Act, the pecuniary contributions of legal entities, unincorporated economic associations and private persons, the estates of private persons inherited on the basis of their will, the business activities of the party defined in Section 6 as well as the after-tax profit of companies and one-man limited liability companies founded by the party.

(2) Apart from the exceptions included in Section 4, subsection (1) budgetary organs, furthermore, state-owned enterprises, economic associations operating with the participation of the state, foundations receiving direct budgetary subsidies or subsidies allocated by budgetary organs from the state budget may not extend pecuniary contributions to the parties, and in turn, parties may not accept pecuniary contributions from budgetary organs, furthermore, from state-owned enterprises, economic associations operating with the participation of the state, foundations receiving direct budgetary subsidies or subsidies allocated to budgetary organs from the state budget.

(3) The party may not accept financial contributions from another state. The party may not accept anonymous donations; such donations shall be paid for the purposes of the foundation mentioned in Section 8, subsection (1).

(4) The party that has accepted a pecuniary contribution by violating the rules contained in subsections (2) and (3) shall be obliged to pay - on the demand of the State Audit Office - the sum of the said contribution to the state budget within fifteen days. In the case of a delay, the debt must be collected as in the case of taxes. In addition, the budgetary subsidy of the party shall be reduced by the sum of the pecuniary contribution accepted.

(5) If the pecuniary contribution was extended to the party by means other than cash, the party shall provide for its valuation (determination of its value). If the party has accepted a prohibited, non-pecuniary contribution by violating the rules contained in subsections (2) and (3) the value thereof shall be determined by the State Audit Office.

Section 5

(1) Pursuant to this Act, the real properties listed in Schedule 3 shall be transferred free of charge into the property of the parties entitled to receive state budgetary subsidies from the property of the state in accordance with subsection (2), according to the ownership ratios defined therein.

(2) The parties shall be entitled to state budgetary subsidies according to the provisions of this Act.
Twenty-five per cent of the amount of the state budget appropriated for the support of parties shall be divided - in equal proportion - among the parties that are represented in Parliament. The amount corresponding to the remaining 75% shall be due to the parties in proportion to the votes cast in favour of the party and the candidates of the party in the first valid round on the basis of the result of the parliamentary elections. The party that has not obtained 1% of the votes cast by voters participating in the balloting shall not be entitled to any budgetary subsidy.

(3) With respect to the distribution of budgetary subsidies, the results of the elections shall be first taken into consideration as of the first day of the month following the establishment of the validity of the mandate of the Members of Parliament.

Section 6

(1) In order to cover their expenses and to expand their assets, parties may carry out the following business activities:

a) in order to acquaint the public with their political aims and activities, they may publish and distribute publications, may sell badges symbolizing the respective party and other objects of similar purpose, and may organize party events;
b) may let on lease and alienate - against charges - the real and personal property owned by them.

(2) In the sphere of the business activities of the parties mentioned in subsection (1), the sale of products and the provision of services shall be exempted from Value Added Tax. Parties need not pay any corporate tax on their above business activities.

(3) The party may establish an enterprise [Civil Code, Section 70, subsection (1)] or a one-man limited liability company, however it may not acquire a stake in another economic association.

(4) The party may invest its liquid assets in securities with the exception of purchase of shares.

(5) If the party violates the rules contained in subsections (1) to (4), the legal consequences defined in Section 4, subsection (4) shall duly apply thereto.

Section 7

If the party is terminated according to the contents of Section 3, subsection (1), paragraph a) or b), its assets shall become the property of the legal successor party. In the case of a split-up, the proportions and way of dividing the assets shall be determined by the party.

Section 8

(1) If the party is terminated in accordance with Section 3, subsection (1), paragraphs c) to e), its assets remaining after satisfying the creditors shall be transferred into the ownership of the foundation established by Parliament. The detailed objectives and the manner of using the foundation shall be worked out by a committee appointed by Parliament, consisting of one representative of each party that obtained mandates on the national list. The vote of two-thirds of the Members of Parliament present shall be required for the establishment of the foundation.

(2) If the party is terminated by stating its dissolution, the foundation mentioned in subsection (1) may be established by the party itself, or the party may offer its assets remaining after satisfying the creditors for a foundation already in operation.

Section 9

(1) The parties shall publish a report (final accounts) by 30 April each year on their financial management in the previous year in Magyar Közlöny (Hungarian Gazette) in accordance with the model defined in Schedule No. 1 to this Act.

(2) Contributions exceeding five hundred thousand forints or the equivalent of one hundred thousand forints in the case of foreign contributions provided in one calendar year shall be shown separately in the financial statements by indicating the name of the contributors and the sums.

(3) In other terms, the general rules applicable to the financial management of social organisations shall apply to financial management of parties.

CHAPTER V
Control of the Financial Management of Parties

Section 10

(1) The State Audit Office shall be authorized to control the legality of the financial management of the parties.

(2) State administration bodies shall not be authorized to control the economic and financial management of the parties.

(3) The State Audit Office shall biennially audit the financial management of the parties that receive subsidies from the state budget on a regular basis.

(4) If the State Audit Office notices that the party has acted illegally in the sphere of its financial management, it shall request the party to re-establish its legal state of affairs. In the case of a more serious infringement of law or if the party fails to comply with the request, the chairman of the State Audit Office shall move to institute court proceedings.

CHAPTER VI
Closing Provisions

Section 11

(1) This Act shall come into force on the day of its promulgation.

(2) Simultaneously with the coming into force of this Act, all legal provisions that contain any provision concerning the party or a member thereof shall cease to be in force with regard to the party or the member thereof.

Section 14

Parties in operation at the time of the coming into force of this Act shall apply for their registration within three months reckoned from the coming into force of this Act. The registration of these parties shall not affect the legal continuity of their quality of legal entity.

Section 15

If an already registered social organisation wishes to operate as a party, it shall be obliged to notify the court that it recognizes the Act on the Operation and Financial Management of Political Parties as binding on itself and to submit its statutes simultaneously to the court.

Section 16

Such a social organisation may operate as a party that has submitted to the court, simultaneously with its application for registration as well as the notification mentioned in Section 15, its statement of assets and liabilities drawn up in conformity with the provisions of Schedule No. 2.

Section 17

Before the establishment of the State Audit Office, its competence established in this Act shall be exercised by an eleven-member committee consisting of independent experts designated by Parliament. Parties receiving budgetary subsidies shall make proposals collectively on the persons of the experts.

Section 18

(1) The party that pursues business activities forbidden in Section 6, subsections (3) and (4), shall be obliged to terminate this situation by 31 December 1989.

(2) The organisations of parties shall be dissolved in courts, in the official organisation of Parliament, in the public prosecutor's offices simultaneously with the coming into force of this Act; at the state administration agencies, by 31 December 1989; at the armed forces and the police, by 31 December 1990; and at other workplaces, at least ninety days prior to the parliamentary elections.

(3) Situations in contradiction with the provisions of Section 2, subsection (2) shall be terminated by 31 December 1989.

APPENDIX IV

Relevant regulations of the Criminal Procedure Code (Act I of 1973)

Act I of 1973
On Criminal Procedure

PRINCIPLES OF CRIMINAL PROCEDURE

Ex Officio Proceedings

Section 2

The official bodies acting in criminal cases shall conduct criminal procedure in case the conditions provided for by this Act prevail.

DISQUALIFICATION OF MEMBERS OF AUTHORITIES ACTING IN CRIMINAL CASES
General Rules of Disqualification

Section 35

(1) The following persons may not be involved as members of authorities acting in a specific case of criminal law:

a) those who are or have been involved in the case as the accused party or a counsel for the defence, furthermore, as the aggrieved party, the accuser or a representative or a close relative of such persons;
b) those who are or have been involved in the case as a witness or an expert;
c) those from whom an unbiased adjudication of the case may otherwise not be expected.

(2) It shall not constitute a reason of disqualification from further criminal procedure if a member of an official body has denunciated an offence that came to his knowledge while exercising his functions.

(3) The rules relating to the disqualification of officials are applicable, as appropriate, to recorders as well.

(4) With the exception of authorities holding nationwide authority, authorities whose head is subject to disqualification provided for in paragraph (1) point a) shall not act in the criminal case concerned.

Section 36

(1) The authority acting in a criminal case shall ensure that no person in whose respect there is any reason of disqualification is involved. In such a cases, the head of the authority concerned shall initiate disqualification of the incompatible person ex officio.

(2) The official of the authority must immediately report to the head of the authority if any circumstance of an incompatibility prevails in his regard. All such persons shall bear disciplinary and financial liability for failure or delay in meeting this reporting obligation.

(3) Disqualification for specific reasons may be initiated by the public prosecutor, the accused party, the counsel for the defence, the aggrieved party, and the aggrieved party's representative as well.

Section 37

(1) The official who has himself declared a reason of his disqualification may not act in the case concerned until his declaration is judged.

(2) If the accused party, the counsel for the defence, the aggrieved party or the aggrieved party's representative announces an apparently unjustified reason of disqualification or repeatedly announces a reason of disqualification against the same member of an authority in the same criminal case, a fine may be imposed on him by way of the decision turning down the proposal of disqualification.

(3) The public official concerned may act without the limitations provided for in Section 38 paragraph (2), Section 39 paragraph (2), and Section 41 paragraph (2) if after the denial of disqualification the party having proposed a reason of disqualification makes a repeated proposal for disqualification in the same phase of the criminal procedure.

Disqualification of Members of Investigating Bodies

Section 38

(1) In addition to the cases provided for in Section 35, the member of an investigating body who has acted in the same case as a judge or is a close relative of such a judge may not be involved in the investigation procedure. The member of the investigating body, which has acted in the basic procedure, is also excluded from further investigation ordered in the course of retrial.

(2) If the reason of disqualification has been proposed by a party other than the member of the investigating body himself, he may continue to act until the objection is judged but he may not take any compulsory action except for cases of emergency.
(3) Decision about the disqualification of a member of the investigating body is made by the chief official of the investigating body concerned, while the respective decision concerning the latter person is made by the chief official of the superior investigating body.

Exclusion of Prosecutors

Section 39

(1) In addition to the cases provided for in Section 35, the person who has acted as a judge in the same case or who is a close relative of such a judge may not be involved as a prosecutor in the criminal procedure.

(2) If a reason of disqualification has been proposed by a party other than the prosecutor himself, he may continue to act until the objection is judged but, except for the reason of disqualification provided for in Section 35, paragraph (1), point c), he may not refuse or terminate the investigation procedure or take any compulsory action except for cases of emergency, nor may he make an indictment or represent the prosecution.

(3) Decision about the disqualification of a prosecutor of the local prosecution service is made by the local chief prosecutor, while the respective decision concerning the latter or a prosecutor of the district prosecution service is made by the chief district prosecutor, and the disqualification of the district chief prosecutor or a prosecutor of the Prosecutor General's Office is decided by the Prosecutor General.

Exclusion of Judges

Section 40

(1) In addition to the cases provided for by Section 35, the person who has acted as a member of the investigating body or as a prosecutor or is a close relative of such persons, may not act as a judge in the same case.

(2) The judge who participated in the adjudication of the case at the first instance shall be excluded from further procedure at the second instance.

(3) The judge who participated in the decision of annulment passed by the court of second instance shall be excluded from repeated procedure at the first instance due to annulment.

(4) The judge who participated in the decision contested by a request for retrial, a bill of review or a protest seeking recourse on legal grounds shall be excluded from the procedure of retrial or from adjudicating the bill of review or the protest seeking recourse on legal grounds.

(5) To be excluded from any further procedure by the court shall be the judge who, in the same case,

a) has acted as an appointed judge under Section 379/D,
b) has decided on the authorization of gathering intelligence by covert methods in accordance with separate rules of law, regardless of whether or not the data collected by covert methods have been used in the criminal procedure.

Section 41

(1) After the case is opened, the reason of disqualification provided for in Section 35, paragraph (1), point c) may only be enforced as relevant by the person provided for in Section 36, paragraph (3) if he can render it probable that the fact serving as the basis of objection has come to his knowledge after opening the case and if the objection is immediately raised thereafter.

(2) If the reason of disqualification has been proposed by a party other than the judge, he may continue to act until the objection is judged but, except for the reason of disqualification provided for by Section 35, paragraph (1), point c), he may not be involved in passing a prevalent decision.

Section 42

(1) The presiding judge shall see to the appointment of another judge if the judge concerned has declared a reason of disqualification or if the same judge has consented to his disqualification. In such cases, it is not necessary to pass a separate decision of disqualification.

(2) If the proposal for disqualification cannot be judged in the manner provided for by paragraph (1), it shall be adjudicated by another counsel of the court.

(3) In the cases provided for in Section 35, paragraph (4), furthermore, if the court has no counsel that is not concerned by the proposed reason of disqualification, the decision on disqualification shall be made by the court of the second instance. If the proposal for disqualification is sustained, the provisions of Section 34 are applicable, as appropriate, to the appointment of the proceeding court.

(4) The decision on disqualification is passed by the court at a counsel session. The prosecutor's motion shall be obtained beforehand. If the reason of disqualification has been proposed by a party other than the judge, the judge's declaration shall also be obtained.

(5) No appeal shall lie against the decision pronouncing disqualification, while the refusal of disqualification may be objected to in the appeal against the prevalent judgment.

Witnesses Given Special Protection

Section 64/A

A witness may be declared to be under special protection in the following cases:

a) his testimony concerns important circumstances of a case of special significance,
b) the evidence likely to be produced through his testimony cannot otherwise be produced,
c) persons whose identity and/or place of abode or the fact that he is to be heard as a witness by the investigating body are not known by the suspect and the counsel for the defence,
d) if his identity were made known, the life, limb or freedom of movement of either the witness or his relatives would be subject to serious risk.

Evidence

Section 82

(1) To be regarded as exhibits are all manner of things that are suitable for proving the fact to be proven, and in particular ones that carry traces of the crime committed or were produced by way of committing the crime or were used as an instrument when committing the crime or in whose respect the crime was committed.

(2) For the purposes of this Act, to be regarded as exhibits are documents that may serve as evidence, as well as all kinds of objects suitable for recording data, generally, in a technical or chemical way (photograph, film, sound recording, etc.)

(3) If an exhibit cannot be seized, its photograph or a description of its individual properties related to the crime shall be attached to the documents.

Documentary Evidence

Section 83

(1) To be regarded as documentary evidence are all records (documents) certifying some fact or circumstance, which are suitable for proving the fact to be proven.

(2) The provisions relating to documents are applicable to all kinds of objects that were produced in the way laid down in Section 82, paragraph (2) for the purpose of attesting some fact or circumstance.

(3) Documents recording the contents of a testimony (statement) may only be used as documentary evidence in accordance with the provisions of this Act, without prejudice to the principle of direct evidence. The document may be used and its contents shall prevail if the person having made the

testimony concerned cannot be heard or refuses to make a testimony or if there is any discrepancy between the contents of the documents and the testimony made.

Seizure

Section 101

(1) The authority shall seize all objects which

a) are deemed as evidence,
b) can be confiscated under the respective rules of law or whose confiscation may be ordered,
c)

(2) The authority shall bail the objects confiscated. Another appropriate way of safekeeping shall be ensured for confiscated objects not suitable for bailment, or if it is justified by other substantial reasons.

(3) Postal and telecommunication consignments not yet served to the addressee may only be seized on a respective decision by the prosecutor or the court, as appropriate; until such a decision is passed, the consignment may only be withheld.

Section 102

(1) Seizure shall be terminated as soon as it is no longer necessary for the purposes of the criminal procedure. Instead of the termination of seizure, other appropriate ways laid down by separate rules of law shall be followed if the possession of the confiscated object is against the law.

(2) When seizure is terminated, the object seized shall be handed over to the person who was its owner at the time the crime was committed and who can prove this fact beyond any doubt. If there is no person to whom the seized object can be handed over in accordance with the former provision, and the data available from the procedure does not suggest anything to the contrary, the seized object shall be handed over to the person who has filed an apparently justified claim to it. If there is no such person, and no such claim appears from the data available from the procedure, the seized object shall be handed over to the person from whom it was originally seized. Seized objects may be handed over to the accused person only in case it cannot be handed over to any other party in accordance with the former provisions.

(3) Objects seized from the accused party shall be assigned into state ownership if they are undoubtedly due to another person whose identity cannot be established. Claimants appearing later on may apply for regaining such objects or the proceeds from their sale, as appropriate, within the term of limitation.

(4) If the seized object is of no value and no one raises a claim thereto, it shall be destroyed after the termination of seizure.

(5) Objects to be handed over to the accused party may be retained as security for the settlement of any fine, confiscation, material benefit, value to be confiscated, costs of criminal proceedings or civil law claims. Retention as security for civil law claims shall be terminated if the private party does not request distress within 60 (sixty) days of expiration of the term of performance or, in case the enforcement of his civil law claim is directed to another legal way, if he fails to document in 60 (sixty) days to have filed a request of action for security by way of civil action.

(6) If seizure is terminated and the seized object can no longer be handed over in kind, the proceeds from prior selling of the object concerned, while in respect of bonded goods, the accepted customs value, together with the interests calculated thereon at the prevailing official rate of interest pro rata temporis, up to the time of refunding, shall be refunded on deducting the costs of handling and storage, including in respect of bonded goods the customs duty, too. The rightful claimant in accordance with the rules of civil law may enforce any claim in excess of the sum derived as set out in the foregoing.

House Search

Section 103

(1) Houses, flats, other premises or enclosed areas belonging to such places, as well as vehicles may be searched in possession of a warrant in case it is presumed with a good cause that such action may lead to finding and arresting the criminal, discovering traces of the crime or finding evidence.

(2) In general, house searches shall be performed in the presence of the person concerned; before it is begun, the warrant ordering a search of the place in question shall be produced and the person concerned shall be summoned to voluntarily present the object sought. If the person concerned is absent and there is no one representing him on the spot, the authority proceeding shall appoint a representative to safeguard his interests.

(3) House searches may only be performed without a warrant in case

a) any delay may jeopardize the results of the action,
b) a flagrant offender has escaped,
c) an accused person shall be found whose preliminary arrest has been ordered,
d) action is necessary for preventing a crime.

Copying Official Documents

Section 119/B

(1) Copies of documents produced during criminal procedure, including documents obtained by the proceeding authority or filed by the persons involved in the criminal procedure, respectively, may be issued by the authority prior to which the criminal procedure is in progress, within 15 (fifteen) days of request by the accused party, the counsel for the defence, his legal representative, the aggrieved party, the accuser, the private party, other parties concerned, furthermore, by the representatives of the aggrieved party or the private party or of other parties concerned, in a scope limited to the persons specified.

(2) Informers shall only have right to a copy of the report made by them.

(3) Until the investigation procedure is completed, the parties listed in paragraph (1) may only receive copies of documents produced about acts of investigation where they may be present under the provisions of this Act. The accused and the defence are entitled to receive copies of expert opinions during the investigative phase, too, and copies of other documents as well, as long as the success of the investigation is not jeopardized thereby.

(4) The accused person and the counsel for the defence may receive copies of the documents specified in paragraph (3) also in case the accused person and/or the counsel for the defence has been subsequently involved in the procedure.

(5) Copies of certificates concerning the clean criminal record, taxation file, income and social circumstances of the accused or any report on his surroundings or any of his medical documents shall only be issued to the accused, the defence and the legal representative of the accused.

(6) The copy made of an investigative document containing the testimony given by the victim or a witness may not include their personal particulars.

(7) No copies may be issued of

a) draft resolutions by the official bodies proceeding,
b) protocols of court counsel sessions,
c) the written opinion held by the judge in minority.

Reporting Offences

Section 122

(1) Any person may report an offence, while pressing charges is obligatory in cases where a failure to do so itself constitutes an offence.

(2) Every public authority and official must report all criminal offences that come to their knowledge in their official capacity, including the name of the offender if known. The report must include the evidence available or, if this is not possible, such evidence must be retained.

Denial of Investigation

Section 127

(1) Investigation shall be denied by way of a decision if it is established on the basis of the report or from data obtained through its completion that

a) the reported act is not an offence or the suspicion of an offence is not duly grounded,
b) there prevails a cause excluding or terminating culpability,
c) the reported offence has already been adjudicated and a final decision has been made.
d)

(2) If there is a grave suspicion of an offence, the investigating body may deny investigation on prior consent by the prosecutor if there is a national security or criminal investigation interest attaching to collaboration with the person against whom there is a grave suspicion of having committed an offence, which is stronger than the state interest of enforcing the criminal law claim against the suspect. The investigation may not be denied in respect of anyone suspected of intentional homicide.

(3) If the investigating body has denied investigation with reference to national security interests, the respective decision shall be presented for approval to the prosecutor appointed by the Prosecutor General.

(4) If the accused person is reprimanded (Section 71 of the Penal Code) at the time investigation is denied, investigation shall be ordered in case the reprimanded person raises a complaint unless there is any other reason to deny investigation.

(5) The denial of investigation does not prevent a subsequent investigation in the same case.

Participation of the Persons Involved in the Investigation

Section 134

(1) The defence Prosecutor is entitled to be present at the interrogation of the accused and – unless the statute on criminal proceedings provides otherwise – at that of the witness, and may question them. The exercise of this right may not hinder or delay the interrogation of the accused or the witness.

(2)

(3) The accused, the defence and the victim are entitled to attend the hearing of an expert witness, the inspection of the scene and the surroundings of the scene, the re-enactment of the crime, and the presentation of the exhibits for recognition. Notification of the persons listed above may be dispensed with if any delay may put the results of the action at stake. Notification shall be omitted if, as a consequence, the witness' particulars handled as classified material would become disclosed to the suspect, the counsel for the defence and the aggrieved person.

(4) Those who are present during an act of investigation in accordance with the provisions of paragraph (3) may put forward motions and comments.
(5) During acts of investigation where presence of the counsel for the defence is allowed, a lawyer candidate may also be present as a clerk Section to, or a deputy of, the counsel for the defence.

Termination of Investigation

Section 139

(1) Investigation shall be terminated by way of a resolution if

a) the reported act is not an offence or the offence was committed by a person other than the suspect,
b) it cannot be established on the basis of the data gathered during the investigation procedure than an offence was committed or whom it was committed by or the fact that it was actually committed by the suspect, and no better results may be expected from further procedure either;
c) there prevails a cause excluding or terminating culpability,
d) the offence has already been adjudicated and a final decision has been made.
e)
f)

(2) If there is a grave suspicion of an offence, the investigating body may terminate investigation on prior consent by the prosecutor if there is a national security or criminal investigation interest attaching to collaboration with the person against whom there is a grave suspicion of having committed an offence, which is stronger than the state interest of enforcing the criminal law claim against the suspect. The investigation may not be stopped in respect of anyone suspected of intentional homicide.

(3) If the investigating body has terminated investigation with reference to national security interests, the respective decision shall be presented for approval to the prosecutor appointed by the Prosecutor General.

(4) Investigation may not be terminated if the ordering of compulsory therapy seems necessary.

(5) If investigation is terminated, the costs incurred shall be borne by the state, while the suspect shall be obliged to bear the costs incurred as a result of his negligence.

Presentation of the Documents of Investigation and Closing of the Investigation Procedure

Section 142

(1) Once the authority has completed the investigation procedure, it shall notify the suspect and the counsel for the defence that they may inspect the documents of investigation or it shall bring the detained suspect before the authority for the same purpose. When inspecting the documents, the accused and the defence may suggest additional investigation and may also make other suggestions and comments. The suspect shall be advised of this right. Failure to meet the deadline for the inspection of documents cannot be justified.

(2) When presenting the documents of investigation, it shall be ensured that the suspect and the counsel for the defence may inspect all documents produced during the investigation procedure with the exception of classified ones.

(3) If no additional investigation is proposed, or if the relevant motion has been turned down, or if additional investigation has already been performed, the investigating body informs the suspect and the counsel for the defence about closing the investigation procedure.

Section 143

(1) The protocol recording the procedural acts provided for in Section 142 shall contain the following:

a) a list of the documents placed at the disposal of the suspect and the counsel for the defence, as well as the starting and ending times of the document inspection,
b) the motions and comments made by the suspect and the counsel for the defence,
c) the action taken by the authority regarding the motions put forward,
d) if the suspect does not exercise his right of inspection of the documents, the reason for this fact,
e) the fact of information of the suspect and the counsel for the defence about closing the investigation procedure.

(2) If the suspect and the counsel for the defence have failed to appear for the inspection of documents despite having been notified, this fact shall be indicated in the documents instead of drawing up a protocol.

Legal Remedy During the Investigation Procedure

Section 148 (1)

Persons whose rights or rightful interests are prejudiced by a decision, act or failure to take action by the authority may lodge a complaint.

(2) No complaint may be lodged with reference to ordering the completion of a report, procedural acts during other forms of data collection by the investigating body, as well as the ordering and ranking of investigation, arraignment, furthermore, other acts of investigation falling within the scope of probation. Only the aggrieved party may raise a complaint for the omission of arraignment.

(3) Unless an exception is provided for by this Act, complaints lodged against an official decision or action shall have no delaying force. In exceptional and duly justified cases, the authority may suspend enforcement of a decision or an action until the complaint is adjudicated.

(4) Complaints may be lodged with the authority within eight days of notification about the decision or of the omission, as appropriate, of an action coming to the knowledge of the person who has the right to lodge a complaint.

(5) If the authority does not sustain the complaint, the documents, along with the authority's respective statement, shall be sent within 24 hours to the prosecutor authorized to adjudicate the complaint or to the superior prosecutor, as appropriate. The prosecutor or the superior prosecutor, as the case may be, shall adjudicate the complaint within a period of eight days.

(6) Complaints may be rejected also in case they are late or come from persons other than the rightful party.

(7) The complainant and – in case the decision objected to is modified or rendered ineffective – those who have been notified about the decision shall be notified about the adjudication of the complaint.

(8) To be excluded from the adjudication of the complaint are the persons who have passed or approved the decision, or took or omitted the action, which is objected to.

Section 180/A

(1) When the justice chairing the panel notifies the accused and the defence of the charges, he shall also inform them that the prosecution wishes to use testimony from a witness under special protection as evidence; he shall remind them of their right to view the abstract of the record taken at the hearing of the witness under special protection and to submit questions in writing to the witness.

(2) If the accused or the defence wishes to question the witness under special protection, the court may order a new hearing of the witness by the justice designated pursuant to Section 379/D. The provisions of Section 379/E are applicable to such hearing.

(3) The appointed judge shall ensure during the repeated hearing as well that no conclusion may be drawn from the abstract of the protocol recording the testimony as to the identity and abode of the witness under special protection.

Hearing of Witnesses Under Special Protection

Section 379/D

(1) Before an indictment is filed, the local court judge appointed by the presiding judge of the district court shall decide on placing vulnerable witnesses under special protection (Section 64/A), hear the witnesses placed under special protection, and order the performance of surveys, visits to the scene, attempted probation and presentation for recognition by the involvement of the especially protected witnesses.

(2) Witnesses under special protection may initiate their hearing at the prosecutor.

(3) The appointed judge shall act in the course of proceedings conducted by the prosecution services operating within the jurisdiction of the district court regardless of whether the adjudication of the offence serving as the basis of criminal procedure falls within the jurisdiction of the local or county court.

(4) Decisions passed in the subject of placing a witness under special protection shall be communicated to the prosecutor and to the person whose special protection has been initiated by the prosecutor.

Section 379/E

(1) If there is a motion to place a witness under special protection, the appointed judge shall conduct hearings to hear the witness under special protection, furthermore, in case surveys, visits to the scene, attempted probation and presentation for recognition are held with the involvement of the witness under special protection. The prosecutor is responsible for the appearance of the witness at the hearing. During the hearing, the evidence justifying the motion is presented by the prosecutor either in writing or in speech.

(2) When a witness under special protection is heard, only the prosecutor may be present. The appointed judge shall handle as classified material the protocol made at the hearing and the decision passed by the court. The contents of the protocol shall be summarized in an abstract, which may only indicate the names of the judge and the prosecutor present at the hearing, furthermore, the fact of having placed the witness under special protection, as well as the testimony made by that person. The abstract of the protocol shall be handled separately, as classified material until the bill of indictment is filed.

(3) At request, the judge may order the recording of the hearing by means of visual or audio technique or some other equipment. Such recordings may, however, not substitute for a protocol. In copies of the recording, the individual features (e.g., face and voice) suitable for identifying the witness may be distorted by appropriate technical methods. The provisions related to handling as classified material are applicable to such recordings as well.

APPENDIX V

Relevant provisions of the Act XXXIV of 1994 on the Police

Act XXXIV of 1994
on the Police

Section 2

(1) The Police shall provide protection against acts that imminently jeopardize or harm the life and limb of persons or endanger property, and shall provide information and help to persons in need or such assistance. The Police shall respect and protect human dignity and shall safeguard human rights.

(2) While fulfilling its duties, the Police shall

a) cooperate with state and local government organs, social and business organisations, citizens and the communities thereof;
b) provide assistance for the smooth implementation of official procedures by state and local government organs in statutorily defined cases;
c) Support the voluntary activity of local governments and citizens' communities aimed at improving public security.

(3) While fulfilling its duties, the Police shall proceed unbiased by any political parties.

(4) Based on international treaties and reciprocity, the Police shall cooperate with foreign and international law enforcement bodies and take action against international crime. Under international agreements, Hungarian Police Officers may exercise Police authority abroad and foreign Police Officers may exercise Police authority in Hungary.

Direction of the Police Department

Section 4

(1) The Government shall control the activities of the Police Department through the Minister of the Interior.

(2) The National Chief of Police is appointed or relieved by the Prime Minister on recommendation by the Minister of the Interior. The appropriate Parliamentary Committee that makes a decision on his suitability for the office hears the candidate proposed for the post.

(3) The Minister of the Interior shall

a) represent the Police Department at the sessions of Parliament and the Government,
b) prepare drafts of statutes, international agreements and other high-level government decisions relating to the operation, tasks and jurisdiction of the Police Department and/or participate in their preparation,
c) ensure the execution of tasks defined for the benefit of public security and the protection of internal order,
d) regulate the activity and operation of the Police Department through legislation and other legal instruments of administration,

e) keep contact in order to promote the international cooperation and development of the police Department,
f) provide for the supervision of the Police Department.

Section 5

(1) In his capacity of directing the Police, the Minister of the Interior

a) may determine Police responsibilities and, unless otherwise provided by an Act, may issue instructions for the accomplishment of the tasks of the Police Department and for the execution of Government resolutions adopted for the protection of public security and internal order;
b) shall specify the activity of the organisation participating in directing and supervising the Police, exercise employer's rights in respect of the leader of that organisation, and provide for internal control to prevent criminal offences and expose criminal activities within the Police by way of that organisation;
c) shall control the management of the Police budget and, upon the initiative of the National Chief of Police, approve schedules for the development of the Police Department, and conduct expediency and efficiency checks regarding financial management;
d) shall determine trends in the instruction, training and in-service training of Police Officers and in police science research, and shall harmonize the relevant activities;
e) shall, upon the proposal of the National Chief of Police, endorse the organisational and operational regulations of the National Police Headquarters;
f) shall prepare a recommendation to the Prime Minister for the appointment or relief of the National Chief of Police, attaching the opinion of the competent Committee of Parliament;
g) shall prepare a recommendation for the President of the Republic for the appointment or relief of generals;
h) shall exercise employer’s rights – with the exception of the right of appointment and relief – in respect of the National Chief of Police, and appoint or relieve deputies of the National Chief of Police;
i) on proposal by the National Chief of Police, shall decide on the establishment or dissolution of County Police Headquarters, Police Headquarters or organs of the same legal status.

(2) The Minister of the Interior, however, may not use his capacity to remove any case from the competence of the Police Department if such case falls within its jurisdiction or hinder the Police in exercising its jurisdiction.

(3) The Minister of the Interior may issue individual instructions to the Police Department through the National Chief of Police.

GENERAL PRINCIPLES AND RULES FOR THE OPERATION OF THE POLICE DEPARTMENT

The Obligation to Perform Police Duties and to Follow Instructions

Section 11

(1) The Police Officer shall perform his duties specified in a service assignment in accordance with the provisions of law, follow the instructions of his superior, taking into account the contents of the present Act, and shall protect internal order, even risking his life if necessary.

(2) The internal organisation of the Police and the detailed rules of its operation, the order of issuing instructions shall be determined in a way that always permits the identification of individual responsibility for issuing and for executing instructions.

Section 12

(1) When performing his duties, the Police Officer shall execute the instructions of his service superior. He must refuse to carry out the orders if it involves committing a criminal act.

(2) With the exception contained in paragraph (1), the Police Officer shall not refuse to execute the unlawful instructions of his service superior, but he shall immediately warn the superior of the unlawfulness of the instruction should this be apparent to him. If the commanding officer maintains the order, he must issue it in writing on request from the person receiving it. Denial or omission of issuing the instruction in written form may be reported to the immediate superior of the person issuing the instruction, but exercising this right shall have no delaying effect on the fulfilment of the instruction.

(3) If the provisions of law are violated by the superior of the Police Officer, the Police Officer is entitled to report it directly to the superior of the commanding officer or if a violation of law is committed lay the leader of the organ of the Police, to the superior organ of the Police or to the organ responsible for supervising the Police. The director of the organisation receiving the report must investigate the breach and inform the person who made the report, within eight days of its receipt, about the results of the inquiry and the measures taken.

(4) The person who makes the report may not suffer any disadvantage as a result of reporting the breach, but reports made without grounds may give rise to disciplinary action.

Requesting Information

Section 68

(1) In the interest of the investigation of intentional criminal offences subject to a punishment of two years or more imprisonment, the head of the investigative organ of the Police authorized to carry out covert intelligence collection – with the consent of the prosecutor obtained in advance – may request information related to the case from the tax authority, foreign exchange authority, telecommunications service provider, health care institution and related data handling organisation, and from bodies handling data that qualifies as bank, security, cash-desk-related, and other business secrets. The investigative body may determine a deadline for providing the data. The supply of such information shall be free of charge and compulsory. The information thus obtained shall be used only for the purpose indicated in the request.

(2) If the request is urgent, and if any delay would entail risk and the case involves drug trafficking, terrorism, illegal arms-trade, money laundering or organized crime, no prior consent of the prosecutor is required for requesting information, and the request shall be duly complied with. In such cases the request shall be marked with the words “urgent action”. Action shall be taken simultaneously with the submission of the application for the prosecutor’s approval. If the prosecutor refuses approval, the Police shall immediately destroy the data so obtained.

(3) For the benefit of asserting security requirements, the procedural rules relating to the supply of social security, health care, taxation, budgetary, and statistical data, archive inspection carried out in the interests of protecting permanent documents, and currency use falling within the scope of special operating costs may be laid down – in observance of the provisions of law – by the Police Department and the organisation competent for the given subject-matter in a separate agreement.