

Introduction. BARNABÁS HAJAS – ÁGNES LUX – MÁTÉ SZABÓ – KATALIN SZAJBÉLY • Petitions for the Interest of Vulnerable Groups. LILLA BERKES AND LÓRÁNT CSINK • Re-Regulation of National Minority Rights. ANDRÁS MAGICZ • Segregation of Roma Students in the Public Education System. LÁSZLÓ FÓRIKA • Gay Pride and Fundamental Rights. LÁSZLÓ TÓTH • State Measures to Achieve Tolerance. PÉTER SERES – KATALIN SZAJBÉLY – VERONIKA VASS • Principles and Legal Basis of the Activities of the Ombudsman for the Protection of the Interests of Future Generations. MARCEL SZABÓ • Ambient Noise, Especially Noise Emanating from Road Traffic. GYÖRGY SOMOSI • Broader Context of the Right to a Healthy Environment and the Right to Health in View of the Ombudsman Regarding Poverty and Certain Public Services. SZILVIA KÉRI • Children's Right to Healthy Environment. ÁGNES LUX • The Dignity of the Most Vulnerable . BEÁTA BORZA – TÍMEA CSIKÓS– BERNADETT KISS – ÁGNES KOZICZ – ATILA LÁPOSSY – PÉTER SERES • Community Employment – Opportunity, Right or Stigma? ÁGNES RAJZINGER – GABRIELLA VARJÚ – ADRIENNE ZEMPLÉNYI • Being in Detention – Being Exposed. ERIKA PAJCSICS CSÓRÉ – ÉVA CSILLA VARGA • Refugees – Unaccompanied Minors. KATALIN MARGIT HARASZTI – ÁGNES WEINBRENNER • Enforcement Procedures and Evictions. ADRIENN DEZSÓ – ZOLTÁN JUHÁSZ • People in the Snow. BARNABÁS HAJAS – GÁBOR KURUNCZI

Their Shield is the Law

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THE OMBUDSMAN'S PROTECTION FOR VULNERABLE GROUPS



Edited by

Barnabás Hajas and Máté Szabó

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The Ombudsman's Protection for
Vulnerable Groups

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I am also grateful to my colleagues as well, who, beyond their activity of human rights protection, have carried out major social scientific and legal analytical work in order for this volume to provide a comprehensive overview of the social groups to be protected, under whom the social security is getting more and more transparent.

Prof Dr. Máté Szabó

Commissioner for Fundamental Rights

Introduction

by

BARNABÁS HAJAS – ÁGNES LUX – MÁTÉ SZABÓ – KATALIN SZAJBÉLY

*"We suffer because we are vulnerable, and we need, above all else, institutions that will give us some degree of security"*¹

Helping vulnerable groups and fighting for their rights to achieve equal dignity and equal treatment is a core objective in states under the rule of law and of ombudsman institutions.

Vulnerability and deprivation can be defined in various ways by different states, international stakeholders and NGOs. According to a definition given by the European Commission in 2010, *vulnerable groups experience a higher risk of poverty and social exclusion than the general population. Ethnic minorities, migrants, disabled people, the homeless, isolated elderly people, LGBT people and children all often face difficulties that can lead to further social exclusion, such as low levels of education and unemployment or underemployment, as well as discrimination. However, beside the groups mentioned above, any group can be considered vulnerable that is concerned by poverty and social exclusion to a higher ratio than other members of the population. Besides structural deprivation, also the phenomenon of deprivation/vulnerability by situation exists, for example ill persons or people struck by natural disasters are in the position of vulnerability by situation. (The two categories of deprivation are interconnected in many senses: e.g. homeless people are at higher risk of suffering from serious illness.)*

Vulnerable groups have always been at the core of ombudsmen's work in Hungary since the beginning in 1995, and the new institutional organization of the Ombudsman's Office did not change this priority. The *new constitution (Basic Law) and the new Ombudsman Act*, both adopted in 2011 by the Parliament and effective as of 2012, established the new in-

¹Bryan S. TURNER: *Vulnerability and Human Rights*. The Pennsylvania State U. P.: University Park, Penn. USA.2006.127.

stitutional arrangement of the ombudsman institution in Hungary. In accordance with the Basic Law of Hungary, Act CXI of 2011 on the Commissioner for Fundamental Rights created a unified ombudsman system. The offices of the special ombudsmen (Parliamentary Commissioners for the Rights of National and Ethnic Minorities and for the Interests of Future Generations) were integrated into the office of the general ombudsman, whereas the institution of the Data Protection Commissioner was transformed into the National Authority for Data Protection and Freedom of Information.

According to Article 30 of the Basic Law, the Commissioner for Fundamental Rights is an organ comprising a single person who shall be nominated by the President of the Republic and elected by Parliament to carry out activities guaranteeing the protection of fundamental rights. As of 1 January 2012, instead of the four independent ombudsman offices a new, single ombudsman system was established, where the interests of national minorities and future generations are represented by deputy commissioners.

According to the new Act the *Commissioner for Fundamental Rights pays special attention to the protection of the rights of children, the rights of nationalities living in Hungary, the values determined as ‘the interests of future generations’ and the rights of the most vulnerable social groups in general.*

The new legislation has widened and made more important the ombudsman’s competence in respect of safeguarding constitutionality. As of 1 January 2012, citizens may directly request legal remedy from the Constitutional Court only in case their individual rights have been encroached by the implementation of an anti-constitutional legal regulation or ruling of the court. In all other cases they can submit *the Commissioner’s* procedure to launch a petition; however, the Commissioner shall decide within his discretion, on the basis of his own investigation, and turn to the Constitutional Court on his own behalf.

The Ombudsman’s Office also qualifies as a general human rights mechanism: in May 2011, it received the United Nations’ *National Human Rights Institution* (hereinafter NHRI) “B-status” classification from the UN’s International Coordinating Committee for National Human Rights Institutions (ICC). A major success that is going to widen human rights activities of the ombudsman institution is the fact that on 12. January 2012, Hungary has joined the Optional Protocol to the UN Convention against Torture (OPCAT) adopted in 1984. The Convention requires the

establishment of independent bodies both on national and international levels, which execute regular visits in the detention institutions for verifying conditions therein. In Hungary the Commissioner for Fundamental Rights will carry out the task as national preventive mechanism from 1 January 2015.

As mentioned above, the new Ombudsman Act defines the *enhanced protection of the rights of persons belonging to the most vulnerable social groups* as an important priority. Ombudsmen have always paid special attention to the protection of the fundamental rights of persons who are not, or only partially able to protect their rights. Financial and economic difficulties affect the whole society adversely. They put pressure especially on persons belonging to the most vulnerable groups of society, such as ethnic minorities, homeless people, disabled persons and elderly people. Since entering his office in 2008, the ombudsman has launched in a non-traditional, proactive way *several projects* which have particular focus on the examination of the situation and fundamental rights of the most vulnerable groups. He has examined every year topics which are especially important for the society and the enforcement of the rule of law and have a particular significance from the point of view of rights and freedoms. During this work, he has closely co-operated with NGO's and also with the academic sphere.

Urbanization and modernization produced forms of social exclusion and the dissolution of communal housing which has led to the modern form of "homelessness". Disability, or disabilities were looked upon in many different ways, but the survival of the majority of the disabled was rather uncertain. Modern age has excluded and institutionalized them in the healthcare and social system, separating them from "normal" citizens: Old people were at the top of the traditional social hierarchy, but modernization devalued former experience, wisdom and authority. The nuclear family model resulted in the "elderly" being dumped into institutions of social care. In Hungary there is a special situation because the remnants of the former communist welfare system and the new beginnings of a society based on market economy and private property coexist, thus determining the field of social and health care where the homeless, the disabled and the elderly have to suffer severe cuts caused by the economic and social problems of transition and of the recent economic and financial crisis. Case studies and investigations have shown, however, that we are very far from the desired service level concerning social and

healthcare services. The Ombudsman's task has always been to remind government and public administration to fulfil their obligations taken on by agreeing to the European policies on vulnerable groups. Exclusion and rejection of people with special needs do not stop only at homelessness, disability and elderly age, but evolve further into gender-based and ethnic exclusion. The Ombudsman's investigations within a series of "human dignity" projects have focused on a specific type of exclusion and danger of reduced rights e. g. within the implementation process of human rights of special groups. The homeless, the disabled, the elderly and the patients were the subject of the examinations in the Hungarian Ombudsman's Office between 2008 and 2011.

Poverty is a decisive and multiplying factor of vulnerability and deprivation. There are several definitions for poverty, varying by defining it as an absolute, as opposed to a relative quality, as a dynamic or static notion, and by looking for the reasons of poverty in the lack of ability versus the lack of instruments. However, in the European Union, more than 80 million people – meaning 8% of population in the working age – are at risk of poverty. Combating poverty and social exclusion is therefore high on the EU agenda. A significant part of the Hungarian population qualifies as poor. According to data published in May 2013, the income poverty rate in Hungary was 14%. The comfort factor of homes shows a negative correlation with poverty, and so does the capacity to access services. Global economic and financial crises have worsened the phenomena of poverty, such as financial and social deprivation, as well as physical and mental health issues.

In the European Union today *20% of children live at risk of poverty*. Poverty is a denial of children's rights and can prevent them from realising their full potential. Child poverty has a negative impact on the whole society, both in the present and in the future. Poverty is much more than material deprivation. Poverty can also mean poor quality health care, education, housing and environment. A children's rights perspective takes all these factors into account. It explores all the influences over a child's well-being, both inside and outside the family. We cannot make a decisive impact on child poverty without addressing children's rights. The UNICEF in its latest published report on deprivation says *every 3. child is in need in Hungary*. According to the data of the National Social Inclusion Strategy, the child poverty rate is 21 %, means ca.380.000 children live at risk of poverty.

Homelessness and deprivation of housing are extreme forms of exclusion, unfortunately it became a more serious problem recent times. Lack of fuel does not mean only deficiency in heating or cooling at home, but also means crucial lack of warm water, light and in other everyday needs. Financial exclusion related to the lack of access to basic financial services and deeper indebtedness became more dangerous because of the financial and economic crisis, which can hinder the possibilities to be employed, find a decent job and can easily lead to a hopeless deprivation, as an evil circle. Official data show in Hungary the social services provide shelter for almost 11.000 homeless people, the officially authorized number of these places was 5500 in Budapest, 5200 in the countryside in December 2012.

Members of vulnerable groups are at higher risk of being victims of structural or individual discrimination therefore it is vital to provide effective mechanisms to counteract discrimination. Several international and European human rights conventions adopted by the United Nations or the Council of Europe stipulate the prohibition of discrimination according to single or multiple grounds.

The *European Union today fights actively against all forms of discrimination* and for universal respect for human rights, promoting the spirit of the ECHR and, since 2009, fulfilling its duty based on the legally binding Charter of Fundamental Rights. Article 21 of the Charter states that "any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited."

The EU is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, as well as the rule of law. Hence the EU must take all measures necessary to combat discrimination of all kinds: following a complex set of directives against gender discrimination, in 2000 two directives were adopted based on Article 13 of the Treaty of Amsterdam. Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin prohibits discrimination based on racial and ethnic origin in many sectors of activity, such as employment, education, access to social protection and to health care, social advantages, access to goods and services, particularly housing. Directive 2000/78/EC established a general framework for equal treatment in employment and occupation,

combating discrimination based on religion or belief, disability, age or sexual orientation.

In spite of all these instruments, discrimination is still frequent in the EU. According to the Eurobarometer Survey published in November 2012, *discrimination is considered to be common in the EU Member States*. The most widely perceived ground is “ethnic origin” (56%), followed by “disability” (46%), “sexual orientation” (46%) and gender identity (45%). According to Special Eurobarometer Survey 317, forms of discrimination based on ethnic origin, age, disability and gender seem far more widespread in Hungary than in the rest of the European Union (the differences noted vary between 11 and 21 percentage points). On the other hand, according to the respondents in Hungary, discrimination based on religion or beliefs seem less frequent in our country.

There are *some multiple vulnerable groups*, e.g. those who belong to different types of minorities (national or ethnic minorities, or even sexual minorities, etc.) or who are living with any kind of disability.

The number of the *Roma* among those fallen behind, in desperate, hopeless situation, is high above this minority’s share in the entire population. Some of the *Roma*, already pushed to the edge of society and subjected to prejudice, are unable to use the benefits offered, in principle, by the system of equal opportunities; their integration seems unrealistic, even though the amount of support allocated to the improvement of the situation of the *Roma* minority has been multiplied since the country’s democratic transformation and the supporting system and the assistance programmes also have become more complex.

The Ombudsman considers it one of his tasks to draw the legislators’ attention, through his *ex officio* investigations, to the fact that some of the legal norms from various branches of law, related to equal opportunity, do not have any or sufficient influence on the integration of groups with structurally impaired advocacy and enforcement capabilities, most of all on that of the *Roma*.

Rates of poverty among the ca. 12 million *Roma*/Travellers in Europe reach 10 times higher than a population as a whole. According to a 2011 EU survey, life expectancy for *Roma* in the EU is estimated to be approximately 10 years less than the majority population, and in some countries infant mortality rates are six times higher than average. These levels of poverty amongst *Roma* also play a part in the various exploitations of *Roma* children, particularly woman and girls, who suffer poverty more

than their male counterparts. In many cases, Roma are segregated regionally into isolated pockets in both urban and rural settings, and these communities are generally most deprived. Basic necessities are often lacking in such regions, incl. water, sanitation, electricity or heat. Poor road conditions and public transportation make it even harder to access employment opportunities, schools, social-health care services. Families who are impoverished to this extent struggle with daily life, children may stay at home instead of going to (pre)school to help with younger siblings, or parents may leave for extended periods. As well as being isolated as communities, these levels of poverty and social exclusion lead to the institutional exclusion of Romani, moreover in the last few years the financial-economic crisis has made the already disadvantaged situation of many Roma.

In Hungary according to the official data the number of *people living with disabilities* in 2001 was 577.000, which covers 5.7% of the whole population. Experts estimates - illustrated by international surveys – ca. 10 % of the total population live with any kind of disability, so the valid number has to be in our country also higher, approx. 1 million people.

People (especially children) with disabilities and their families constantly experience barriers to the enjoyment of their fundamental rights and their inclusion in society. Their abilities are overlooked, their capacities are underestimated and their needs are given low priority. Yet, the barriers they face are more frequently the results of the environment in which they live rather than the result of their impairment.

However, Hungary was among the first countries who signed and ratified the UN Convention on the Rights of the People with Disabilities (CRPD) which brought a paradigm shift at national and international level in the field of *disability policies*: the former paternalistic, medical perspective have been turned to a social model with respect of human rights, despite of this welcomed development there is more need to be done also in Hungary. The social model of disability acknowledges that obstacles to participation in society and its institutions reside in the environment rather than in the individual and that such barriers can and must be prevented, reduced and eliminated. Environmental obstacles come in many guises and are found at all levels of society. They are reflected in policies and regulations created by governments. Such obstacles may be physical. e.g. barriers in public buildings, transportation, recreational facilities; and attitudinal – widespread underestimation of

the abilities and potential of children with disabilities creates a vicious cycle of under-expectation, under-achievement and low priority in the allocation of resources.

The *freedom of sexual orientation* is considered to be a special case of non-discrimination in modern discourses on fundamental rights. This issue has come to focus in the last few decades as a result of the increasing interest of NGOs and human-right movements in the topic and as a result of some new issues on political and legal agendas around Europe, such as the legalization of gay marriage or domestic partnerships and adoption.

In Hungary in the last two decades many promising development tried to achieve equality, but LGBT people feel everyday discrimination, prejudice or even sometimes hate speech and violent attacks based on the ground of discrimination on sexual orientation. The Hungarian Academy of Sciences carried out a research on this topic in 2007, which found that $\frac{3}{4}$ of the people experienced already once at least any kind of negative discrimination. The Pride Marches are still controversial events in Budapest, however the conditions (safety of the routes etc.) and the level of acceptance are improving –partly as a consequence of the Commissioner’s continuous attention to the enforcement of freedom of peaceful assembly since 2008.

Since there is no separate/single parliamentary institution for the protection of the *rights of the children*, the Commissioner has operated during his mandate as an ombudsperson for children rights. That was the reason for the Commissioner to launch the so called Children’s rights project for his whole, six-year mandate in 2008, under which he designated a specific subject each year that he intends to focus on. *The special projects* were as follows, awareness-raising of the children about their rights in 2008; violence against and amongst children in 2009; children in care in 2010; right to health in 2011, child-friendly justice in 2012 and right to healthy environment (with special attention to deprived circumstances) in 2013. Today the ombudsman defends the rights of the child not only on the basis given by the Child Protection Act but, since 1st January 2012, also based on the new Ombudsman Act (Act CXI of 2011 on the Commissioner for Fundamental Rights) which prioritizes the defence of children’s rights as the Ombudsman’s main task. This means that the Commissioner has become stronger and more effective in fulfilling this responsibility. The Ombudsman’s activities related to children’s rights

are not limited only to the utilization of traditional means. He protects children's rights by a set of specific means adjusted to the enforcement of children's rights, therefore, in addition to dealing with individual complaints he lays greater emphasis on legal protection of holistic outlook and of proactive nature: to activities enhancing consciousness about law and shaping public opinion, to ex officio launched and comprehensive investigations and to organizing mechanisms of cooperation. He is member of the European Network of Ombudsperson for Children (ENOC), the Eurochild, and he is national focal point of the Council of Europe since 2010.

The Ombudsman, in addition to considering it his primary task to explore problems related to children's rights and deprivations of those rights during the course of his investigations and to word recommendations for their remedy as well as to press for the elaboration of solutions also considers it indispensable in the interest of efficient and broad realization of children's rights to establish direct contacts with the target groups of the project. For this purpose he discusses experiences obtained during ombudsmen's investigations and his related findings, recommendations and initiatives with experts dealing with children in professional meetings, workshops and conferences, and initiates cooperation between children and civil and state professional organizations and experts dealing with the vindication and protection of children's rights. In addition, in proportion to his own resources he also takes up roles in the presentation of children's rights and opportunities of the enforcement of those rights, including the protection of rights by the Ombudsman.

Helping vulnerable groups has been, the main principle of the ombudsman's activity since the very beginning. However, the "upside down pyramid" phenomenon shows that the most vulnerable people have the least possibilities to defend themselves; they cannot even articulate their problems by sending a complaint.

The Ombudsmen, alongside of the professional supporter social sphere, shall try to move this "pyramid" and highlight to the wider public these serious problems, otherwise they remain in invisibility and in shadow without the ability of formulate a complaint or even perceive abuse of rights.

Petitions to the Constitutional Court for the Interest of Vulnerable Groups

by

LILLA BERKES – LÓRÁNT CSINK

Prior to 2012 anyone without any legal interest could turn to the Constitutional Court to challenge a piece of legislation. Such a possibility terminated as the Basic Law entered into force. The typical competence of the Constitutional Court became the review of individual complaints instead of the abstract review of norms.

As a result of this alteration, the Ombudsman's competence to turn to the Constitutional Court for posterior law review has gained significant role. The experience of the first 18 months (from January 2012 until June 2013) shows that the Constitutional Court performs this competence upon the petition of the Commissioner for Fundamental Rights. Therefore, a large number of individuals, organs and social groups turn to the Commissioner to challenge the law they find unconstitutional at the Constitutional Court. In this competence the Commissioner answers all submissions and either he launches a petition or states his reasons for not initiating the Court's procedure.

On the basis of the citizens' complaints since the beginning of 2012 the Commissioner has examined all complaints, regardless if they were submitted by individuals or civil organizations or even by political entities. However, it is not the amount of petitions but the quality of the argumentation with which the society may help the constitutional corrections in the Constitutional Court proceedings. For this purpose not the unconstrained use of the direct ex post review of norms would be necessary, since comprehensive processing may not be expected from the jurist elite organisation doing the Constitutional Court proceedings, but an organization is needed with a suitable screening function and which is experienced in handling civil complaints and has the appropriate level of constitutional law expertise such as the Ombudsman.

Such a solution is included in the Basic Law instead of the *actio popu-*

laris. Although the new constitution established two more channels of much more of a political nature (namely the Government and one-fourth of the MP-s), they currently do not fulfil the function of forwarding civil complaints to the Constitutional Court. The head of government authorised by a two third supermajority is unlikely to be uncertain regarding at least the legislation by his own government and Parliament in order to resort to the Constitutional Court for ex post review of the norms. For instance, this way the international organizations' criticisms may be "tried" through the internal constitutional control institutions by the head of government. This is much more likely in a divided coalition government, though; in this case the coalition cooperation agreement may limit using this opportunity. Another channel is the one quarter of the representatives, this does not function under the current political division, however in principle this can be easily accomplished by two cooperating parties which may bring this way their voters' demands. This opportunity may arise with a changing parliamentary composition in which the comprehensive critical attitude of the opposition is likely to appear in the submission of petitions. Therefore, the current situation after the *actio popularis* placing the ombudsman to the front may quickly transform. Until that time, basing on the very short experience of the 18 months, neither the government nor one quarter of the representatives is likely to challenge Acts at the Constitutional Court.

The Ombudsman's petition has a different nature compared to the one of the political parties. Political entities are likely to launch petitions due to their political aims, for the implementation of the political values they represent. On the other hand, it does not belong to the ombudsman's task to translate the general political criticisms into the language of the Constitutional Court. The ombudsman, within his or her competence, focuses on partial questions, single issues. The petitions do not challenge the legal institutions but their partial aspects, for example, the types of pension, but not the whole of the pension system, certain anomalies of the education system, but not the foundations of the education system.

It also needs mentioning that the Fourth Amendment to the Basic Law authorised the president of the Curia and the Supreme Prosecutor to request ex post review of laws. However, they have not taken this opportunity yet.

The legal base of the Ombudsman's competence to launch a petition is stipulated in the Basic Law itself. The detailed regulations can be found

in the Ombudsman Act and the Act on the Constitutional Court. Besides, the Ombudsman stipulated the most basic aspects of such an enquiry and pointed out that the Commissioner paid close attention of the most vulnerable groups also in this competence.

The Commissioner's right to launch a petition has a subsidiary nature. If someone has already turned to the Constitutional Court with an individual complaint then the Commissioner's petition for abstract review would have had no function. The Commissioner practices his right to turn to the Court mainly if the circumstances of the individual implementation of a right are missing.

The Commissioner is entitled to challenge all pieces of legislation; while the Constitutional Court's competence to review financial issues is restricted. The Commissioner can ask the Court to conduct a posterior law review or to review whether a law is contrary to international treaties. Yet it cannot request the abstract interpretation of the Court in a specific constitutional issue.

As of 1 January 2012, not every citizen has the *actio popularis* at his/her disposal for initiating the abstract *ex post* review of norms. The eighteen-month-long experience is that those initiatives are able to provide basis for the ombudsman's petitions to the Constitutional Court in which the professional legal expertise had played an important part from the beginning. The mass of the "lay" complaints means in itself an important confirming and guiding feedback, however no directly constructive or critical fundamental law arguments are derived from them (though such arguments can be formulated through experts' deductions). The colloquial problem interpretation may be of a symptomatic value; however, it requires further professional elaboration.

Secondly, we focus on the issues in which the Commissioner launched petitions for the sake of the most vulnerable groups. At this part of the essay we summarise the Commissioner's statements on issues concerning homelessness, minorities, social allowances and subventions, measures against minors, the pension system and health care. Since 2007 the parliamentary commissioner for citizens' rights, depending on the result of the examinations, turned to the Constitutional Court 3-5 times annually. Since the beginning of 2012, the Commissioner turned only four times to the Constitutional Court *ex officio* for *ex post* review of norms on the basis of the "old" ombudsman's competence to submit a petition. On

the other hand, the Commissioner launched nearly 30 petitions within the first one and half year of the Basic Law.

To set an example, among the petitions the review of *Act on Elimination of Early Retirement Schemes, Early Pensions and Service Dues* needs mentioning. According to the Act, the allowances established earlier are continued to be paid under another legal title, as so-called early retirement allowances, e.g. transitional miners' allowance or, in case of the armed forces as service allowance. In the petition the Commissioner requested the annulment of certain provisions of the Act. The reason for this is that the Act stipulates the reduction of the monthly amount of certain allowances (e.g. early retirement allowance to Members of the Parliament or service allowance) by the amount of the personal income tax, when the provisions of the Act stipulating to burden the nominal amount of old age pensions with public dues, i.e. deductions, are in breach of a requirement deriving from the rule of law. The Act defines the suspension of the service allowance as an automatic, "supplementary punishment-like" legal consequence to certain crimes. Since it comes from the Basic Law that the state may not arbitrarily use the instruments system of penal law, the Commissioner also initiated the annulment of these provisions.

By virtue of the Act, old age pension shall be terminated if the person entitled engages in, in lay terms, "black work" (undeclared gainful activity). The Act links two unrelated issues: the payment of the old age pension-type allowance to the entitled and his/her failure to comply with the obligation to pay tax on the income from such undeclared work. Therefore, this provision is also in breach of the requirements of the rule of law.

Having analysed all the petitions and the hundreds of complaints one can state that the group of petitioners is rather diverse, ranging from university professors, self-governments of nationalities, members of the European Parliament through private citizens. In the course of submitting petitions based on the complaints on file and other related requests (establishment of default, proposition of provisional measures) several substantial issues and dilemmas have emerged that we have to refrain from introducing here due to size considerations.

Petitions to the Constitutional Court

I. Ex officio

	Date of initiation	File	Subject	Decision of the CC	Reaction of the legislator
1.	15/04/2012.	AJB-3298/2012	Detention of minors	In process	None
2.	24/05/2012.	AJB-1041/2012	Family allowances	In process	None
3.	28/10/2012.	AJB-6980/2012	Law enforcement measures against truancy	Refusal	None
4.	05/12/2012.	AJB-4492/2012	Environment protection in investment cases (problem of single decision of the authority)	Refusal	None
5.	24/06/2013.	AJB-1565/2013	National security check	In process (entry into force suspended)	None

II. Upon submission

	Date of initiation	File	Subject	Decision of the CC	Reaction of the legislator
1.	13/03/2012.	AJB-2302/2012	Transitional Provisions of the Basic Law	Annulment	Amendment to the Basic Law
2.	22/03/2012.	AJB-1961/2012	Free legal aid concerning the submission of constitutional complaint	Annulment	None
3.	30/03/2012.	AJB-2834/2012	Government decree on student contract	Annulment (due to formal causes)	Amendment to the Act on Higher Education
4.	27/04/2012.	AJB-2709/2012	Rights of minorities	Rejection	Amendment to the Act on Minorities
5.	04/05/2012.	AJB-3299/2012	Election of the Media Council	In process	Amendment to the Media Act
6.	10/05/2012.	AJB-2303/2012	Party and campaign financing	In process	None
7.	24/05/2012.	AJB-4159/2012	Family protection	Annulment (previously the entry into force was suspended)	None
8.	26/06/2012.	AJB-2332/2012	Rules of taxation	Refusal	None
9.	28/06/2012.	AJB-4436/2012	Insulin supply for people suffering from diabetes	Refusal	None
10.	19/07/2012.	AJB-2523/2012	Public education	Refusal	None
11.	24/07/2012.	AJB-2883/2012	Vocational training	Refusal	None

12.	27/07/2012.	AJB-2638/2012	Transformation of the Social Service System of the Disabled	Partial annulment	None
13.	10/08/2012.	AJB-2784/2012	Act on churches	Annulment	None
14.	30/08/2012.	AJB-2834/2012	Act on higher education (student contract)	In process	None
15.	04/10/2012.	AJB-6347/2012	The right of the Government Control Office to challenge contracts at courts	In process	None
16.	04/10/2012.	AJB-4744/2012	Pensions granted before the age of retirement	In process	None
17.	02/12/2012.	AJB-5695/2012	State property of documents previously owned by the Institution of Political History	In process	None
18.	14/12/2012.	AJB-6468/2012	Protection of labour legislation of pregnant women	In process	None
19.	14/12/2012.	AJB-7505/2012	Limitation of arbitration	refusal (constitutional requirement settled)	None
20.	21/12/2012.	AJB 7342/2012	Prohibition of the Operation of the Slot Machines	In process	None
21.	31/01/2013.	AJB-44/2013	Hungarian Academy of Arts	In process	None
22.	21/02/2013.	AJB-8476/2012	Copyright of prisoners	In process	None
23.	21/02/2013.	AJB-702/2013	Accessibility of public transport	In process	None
24.	23/04/2013.	AJB-2054/2013	Fourth Amendment to the Basic Law	partially rejected, partially refused	None
25.	03/05/2013.	AJB-5757/2012	Tax Execution	rejected	None
26.	11/05/2013.	AJB-7272/2012	Procedural rules of the Media Act	In process	None
27.	16/05/2013.	AJB-726/2013	pension system, prohibition of dual allowances	In process	None
28.	27/06/2013.	AJB-1812/2013	New Civil Code – scope of relatives	In process	None
29.	14/07/2013.	AJB-2580/2013	New Civil Code – guardianship	In process	None
30.	28/07/2013.	AJB-2249/2013	New Civil Code – criticisms on public figures	In process	None
31.	04/08/2013.	AJB-5350/2013	Local regulations on social behaviour	In process	None
32.	04/08/2013.	AJB-3384/2013	Exclusion from public work	In process	None

III. Petitions initiated before 2012 and upheld later on

	Date of initiation	File	Subject	Commissioner	Decision of the CC	Reaction of the legislator
1.	31/01/2012.	AJB-1878/2012	Rights of detainees	Commissioner for Fundamental Rights	In process	None
2.	15/02/2012.	AJB-700/2012	Environment protection; noise and oscillation load	Commissioner for Future Generations	In process	None
3.	15/02/2012.	AJB-1667/2012	Building rules of Dunakeszi	Commissioner for Future Generations	Annulment	None
4.	15/02/2012.	AJB-1925/2012	Concession of an establishment	Commissioner for Future Generations	In process	None
5.	15/02/2012.	AJB-1874/2012	Omission concerning the Act on strike	Commissioner for Fundamental Rights	Rejection	
6.	16/02/2012.	AJB-1040/2012	Sanctioning improper use of public areas	Commissioner for Fundamental Rights	In process	
7.	16/02/2012.	AJB-2078/2012	Dustbin scavenging	Commissioner for Fundamental Rights	Refusal (the local government withdrew its decree)	
8.	16/02/2012.	AJB-1877/2012	Misdemeanour; resisting police measures	Commissioner for Fundamental Rights	In process	
9.	19/04/2012.	AJB-2466/2012	Protection of classified data	Commissioner for Data Protection	In process	None
10.	19/04/2012.	AJB-2467/2012	System of criminal records	Commissioner for Data Protection	Rejection	None
11.	19/04/2012.	AJB-2469/2012	Act on Civil Procedure	Commissioner for Data Protection	In process	None
12.	19/04/2012.	AJB-2470/2012	National Security Services	Commissioner for Data Protection	In process	None

IV. Petitions rejected or refused

	Date of initiation	File	Subject	Date of rejection
1.	19/04/2012.	AJB-2467/2012	System of criminal records	18/09/2012.
2.	15/02/2012.	AJB-1874/2012	Omission concerning the Act on strike	26/06/2012.
3.	16/02/2012.	AJB-2078/2012	Dustbin scavenging	26/07/2012. Refusal (the local government withdrew its decree)
4.	27/04/2012.	AJB-2709/2012	Rights of minorities	04/12/2012.
5.	28/10/2012.	AJB-6980/2012	Law enforcement measures against truancy	28/02/2013.
6.	19/07/2012.	AJB-2523/2012	Public education	28/02/2013.
7.	05/12/2012.	AJB-4492/2012	Environment protection in investment cases (problem of single decision of the authority)	05/03/2013.
8.	12/07/2012.	AJB-2332/2012	Rules of taxation	19/04/2013.
9.	23/04/2013.	AJB-2054/2013	Fourth Amendment to the Basic Law	21/05/2013.
10.	24/07/2012.	AJB-2883/2012	Vocational training	27/05/2013.
11.	14/12/2012.	AJB-7505/2012	Limitation of arbitration	11/06/2013.
12.	28/06/2012.	AJB-4436/2012	Insulin supply for people suffering from diabetes	18/06/2013.
13.	03/05/2013.	AJB-5757/2012	Tax execution	15/07/2013.

V. Petitions the CC declared to be well-founded

	Date of initiation	File	Subject	Date of decision	Decision
1.	30/03/2012.	AJB-2834/2012	Government decree on student contract	03/07/2012.	Total annulment
2.	16/02/2012.	AJB-1040/2012	Sanctioning improper use of public areas	12/11/2012.	Annulment
3.	27/07/2012.	AJB-2638/2012	Transformation of the Social Service System of the Disabled	04/12/2012.	Partial annulment
4.	24/05/2012.	AJB-4159/2012	Family protection	17/12/2012.	Annulment (previously the entry into force was suspended)
5.	15/02/2012.	AJB-1925/2012.	Building rules of Dunakeszi	17/12/2012.	Annulment
6.	22/03/2012.	AJB-1961/2012	Free legal aid concerning the submission of constitutional complaint	18/12/2012.	Annulment
7.	13/03/2012.	AJB-2302/2012	Transitional Provisions of the Basic Law	28/12/2012.	Annulment
8.	2012. 08. 10.	AJB-2784/3012	Act on churches	01/03/2013.	Annulment

VI. Petition upheld

	Date of initiation	File	Subject	Date of maintenance	Reason of enquiry
1.	13/03/2012.	AJB-2302/2012	Transitional Provisions of the Basic Law	27/09/2012.	Legal background altered

Number of submissions: 936

Re-Regulation of National Minority Rights

Restriction of Rights or Acknowledgement of Realities?

by

ANDRÁS MAGICZ

According to the data of the census of 2011, the number of the Hungarian national minorities is more than half million; however, real data are estimated to show at least twice of this number. Consequently, regulation of national minority rights may directly affect approximately 10 per cent of the Hungarian population.

Apart from the Roma community, Hungarian national minorities cannot be considered a deprived group on the basis of social, labour market or health care conditions. At the case of these national minorities, the special minority rights are not affirmative actions but to facilitate the preservation of their identity, culture and traditions. The use of mother tongue and the local and national representation are exceptions; in these fields the minority rights are to countervail the real disadvantages owing to the proportion within the population.

This present paper reviews how the changes of the legal regulation are expected to impact certain elements of the autonomy of the national minority. In this regard, this paper sets out the main establishments of the ombudsman's inquiries.

The Act on Ethnic Minorities passed in 1993 set out the definition of the national and ethnic minority. Nevertheless, it was not obvious how this definition could be applied to the individuals belonging to a given community. Therefore, instead of the free choice of identity, even completely arbitrary choice of identity prevailed, which led to many abuses.

The basis of distinguishing the national and ethnic minorities was whether the given ethnicity has a fatherland or not. By the entry into force of the Basic Law on 1 January 2012, this was changed to the unified definition of national minority, which expresses better the complete right to equality.

Hungarian legal rules enable only exceptionally, in full compliance

with the data protection rules, to register belonging to a nationality voluntarily. Therefore, the legislator intends to use population statistics in order to assess the number of a given nationality without individual identification of members of the community in the settlements. Considering the data collected by census has the objective not to avoid that certain national minority rights are exercised in such settlements where members of the given community do not live.

Anonymous confession of belonging to a nationality on the occasion of a census is a right and not an obligation for those who belong to the concerned community. In numerous settlements, essentially less number of people declared their nationality identity than it was realistically expected, while in certain big towns and in the metropolitan districts a significantly greater number of people did so. Consequently, the Commissioner for Fundamental Rights holds the use of the data collected by census controversial for the election of national minority self-governments and for determining the amount of their state subsidy.

In Hungary, after World War II, the process of preserving national minority languages was interrupted. Generations have grown up without learning the language of their community or just learned it at basic level. Legislation broadly ensures the use of nationality languages, however, in practice, priority of the Hungarian language prevails.

In the administrative proceedings, people belonging to a national minority may also submit their petition in their mother tongue and may request translation of the decisions. Translation costs incurred in the course of the use of national minority languages are on the authorities.

The inquiry of the Commissioner for Fundamental Rights has pointed out that demand for the use of national minority languages arises only in very few proceedings. On the one hand, the reason for this is that the majority of those belonging to a national minority can express themselves better using the Hungarian language than in the language of their community. On the other hand, there are not any colleagues working for the authorities, whose language skills would enable them to proceed in national minority languages. Local self-governments and government offices hardly have forms in national minority languages, not even in those settlements where significant national minority population lives. The Commissioner for Fundamental Rights made several proposals in order to propagate the use of nationality mother tongue.

Hungarian national minorities may elect their own self-governments.

For almost 20 years, however, national minority self-governments may also be founded where members of the represented community do not live at all or just in a very small number. In 2011, the legislator built in a number of safeguards in the legislation on the elections of nationality self-governments. However, they have not remedied the problems that arose earlier. Anyone having a vote in the election of local government deputies and mayors and confesses that he or she belongs to a national minority then he or she may apply for being registered in the electoral registry. As a consequence of the extension of the personal scope of the Act on Nationalities, adult citizens with a Hungarian address of the member states of the European Union and also adult persons recognized as refugees, immigrants or persons established may also be entitled. The new rules will be applied for the first time in the election of 2014, thus it cannot be foreseen how those will work in practice. Predictably, the new regulation will not prevent the abuse of the right to establish a national minority self-government.

Because of their number, Hungarian national minorities are unable to obtain a mandate in the election of local self-governments in the majority of the settlements. In the last years, certain candidates could have obtained a mandate by fewer votes for a settlement and for a minority than the deputies elected in compliance with the general rules. However, this had led to abuses in a number of cases; therefore, this opportunity was terminated by the amendment of the Act in 2005. The Act on Nationalities re-introduced preferential mandate, however, the conditions are so strict that it is unlikely to win such a mandate, even in the settlements with significant nationality population.

Hungarian nationality politics have delayed passing the Act on the representation of national and ethnic minorities in the Parliament for two decades. Representation of national minorities was set out in the Constitution. On the contrary, participation of national minorities in the work of the Parliament is ensured in the Basic Law. The new electoral legislation enables the list of nationalities to obtain mandates by fewer votes as well. Those who request to be registered as nationality electorates may only support the candidate of the list of national minority and cannot vote on a party list. Consequently, it is questionable if the lists of national minorities may be able to reach the number of votes required for the mandate of a deputy. In the absence of this, a few spokespersons with consultation rights may be elected here and there.

By passing the Basic Law, the regulation of the national minority rights has taken a new direction. The laws adopted in the last two years primarily do not extend the catalogue of national minority' rights but they intend to ensure the conditions for better implementation. Certain new elements of the regulation, such as the introduction of the Parliamentary and local governmental preferential mandate, have given answer to questions having been unsolved for long time. However, the applied legal solutions only partly comply with the expectations of the nationality communities and the earlier undertakings of the political decision-makers.

Hungary's Population by Nationality (*On the basis of the 2011 census*)

	2001	2011
Hungarian	9,416,045	8,314,029
Bulgarian	1,358	3,556
Roma	189,984	308,957
Greek	2,509	3,916
Croatian	15,597	23,561
Polish	2,962	5,730
German	62,105	131,951
Armenian	620	3,293
Rumanian	7,995	26,345
Ruthenian	1,098	3,323
Serbian	3,816	7,210
Slovakian	17,693	29,647
Slovenian	3,025	2,385
Ukrainian	5,070	5,633
Arab	1,396	4,537
Chinese	2,275	6,154
Russian	2,341	6,170
Vietnamese	958	3,019
Other	36,472	28,068
Refused to answer / no data	570,537	1,455,883
Altogether	10,343,856	10,373,367
Population	10,198,315	9,937,628

Source: Hungarian Central Statistical Office
www.ksh.hu

Segregation of Roma Students in the Public Education System

What Can the Ombudsman Do Against School Segregation?

by

LÁSZLÓ FÓRIKA

There is currently no social consensus either on “diagnosis” or “therapy” regarding the problematic issue of the co-existence of Hungarian gypsies and non-gypsies. Nevertheless, it is generally agreed that for the Hungarian population of gypsy descent, in general, education and knowledge may give a real chance for integration, advancement prospect that may be sensed systematically and already in the medium term.

In this study, considering the significant social integration weight of public education generally agreed, using the Ombudsman’s case law as well, a brief overview is given on the causes underlying school segregation, state of interests, the characteristic practice of segregation and the enforcement of the legal regulation of integration/segregation.

From the perspective of the social context of the subject, it should be highlighted that, due to the advanced assimilation pronounced and living language, the cultural, traditional differences associated with the Roma nationality existence can be demonstrated only in case of a small part of the Gypsies, but the problems arising from the different social status and prejudice affect almost all the Gypsies.

From the perspective of the “Gypsy question”, the number of Gypsies is of special significance because according to the study of the Publicus Institute in 2012 based on the survey in 2008, “the majority considers Gypsies as a source of danger that merely by the increase in their number endangers the security of the society.” Indeed, the size of Roma population is growing and their age composition shows an essentially younger population than that of the non-gypsy population.

The regional concentration of this social class is significant in the poorest regions of the country. Certain research has shown that the employ-

ment rate of the gypsy population is extremely low (it hardly reaches 20 per cent), while the 10 per cent employment rate of Roma women is downright catastrophic. In Hungary, Roma die on average 10 years earlier than non-Roma.

Prejudice has already been significant in the 90s; however, by today it has "gained" a new quality since these prejudices are represented by a political party in the Parliament.

The proportion of unemployed of gypsy descent is so high because their level of qualification is low. The reason for which they cannot obtain higher qualifications is that in the absence of employment the social status of gypsy families remains low, while in Hungary school performance is basically determined by the financial situation (and closely related other situations) of the family. All this makes the problem characterized by the logic of unemployment/qualification/social status turning into one another insoluble.

Schools, where the number/proportion of disadvantaged students is high, are demonstrably known to perform worse than others under current conditions in all respects (competence, entry to higher education, etc.). The majority of parents connect the increase of the number of gypsy students with the fall of the performance of school performance, independently of the eventual disadvantaged situation of gypsy students.

On this basis, it is almost inevitable that frustrated, discontented parents of the Hungarian mainstream society afraid of come-down tend to choose a school where the disadvantaged/gypsy student rate is low, bearing in mind the career chances of their children.

Before the schools had been put in state maintenance, if the municipality maintained several schools, its interest was that a significant proportion of gypsy student go to one or two schools, "removing the burden" of other schools. The decreasing number of students creates a strong competition among schools. Schools want to "stay alive" by increasing the number/quality of pedagogic services, using better advertisement and/or serving the segregation demands of parents. Sections, lessons in rated groups, integration classes (creating opportunities) are organised in order to solve segregation by an internal rating system, keeping up the appearance of objectivity. Eventually, this goal is served by the organisation of gypsy minority education as well.

Research has shown that a cumulatively disadvantaged student is Roma with a 50 per cent probability and statistics have shown that out

of 100 Roma students approximately 75 per cent are cumulatively disadvantaged.

According to the results of scientific research of Gábor KERTESI and Gábor KÉZDI, the lower performance rates of gypsy students have no “ethno-specific” reasons; the differences are related to the disadvantaged situation and the segregation based on the disadvantaged situation and/or prejudice based on ethnicity.

It has been shown in this study that parents, schools and the maintainers, as we have seen, may be interested in the creation or maintenance of segregation for several reasons. Against this informal unity of interest, there is no sufficiently efficient control mechanism.

The Ombudsman's investigations on Roma in the systems of public works, education and social catering for children

The Commissioner started *several investigations in this field during 2012*: he inquired *ex officio* into the equal opportunities of the Roma in the systems of public works, education and social catering for children during the summer.

In 2012 the Ombudsman received some fifty petitions concerning social care for the active population; about one fifth of the petitioners indicated their belonging to the Roma minority. Accordingly, within the frameworks of his comprehensive inquiry into the system of public works, the Commissioner issued a special report on the problems and issues of equal opportunity for the Roma.

According to his conclusions, public works are just temporary solutions to socially disadvantaged persons. The Ombudsman pointed out that the labour market positions of the marginalized Roma might be improved in the long term only as a result of the coordinated implementation of various measures aimed at equalizing their opportunities. Public work programmes can have an equalizing role *vis-à-vis* the Roma population only if they encompass the most disadvantaged actors of the labour market, as well.

The Commissioner for Fundamental Rights reckoned that in the legal relationship of public works characteristically the state and its organs are the major actors; therefore, the implementation of the requirement of equal opportunity is of utmost importance. He requested the government to take the necessary measures in order to *provide*

free legal advice to the disadvantaged public workers on the local level and/or through a call-in client service.

In 2012 the Ombudsman inquired into an equal educational opportunity programme, too. The “School-Net Programme” is aimed at reducing the social differences in the educational system through the inclusion by the state of the cumulatively disadvantaged students. The programme focused on locations where the ratio of disadvantaged social groups was the highest, where the negative influences of needs, deficiencies and social disadvantages were mostly felt and having their impact on the local communities and schools.

On the basis of his inquiries the Ombudsman concluded that the processing of applications within the School-Net Programme is unpredictable, contradictory, infringes on the requirements of child care, equal opportunity, legal certainty deriving from the rule of law and the applicants’ right to a fair procedure.

The Ombudsman deems it essential that the norms of the rule of law, the requirements of legal certainty and fair procedure and right to legal remedy should be fully implemented in the course of the application procedure. He thinks it extremely important that the foundations and the reasoning of the decision-making process should be unambiguous and recognizable for all concerned since the transparency of decision-making is one of the cornerstones of fair procedure.

The Ombudsman also carried out *an investigation on a TV-program* (so called Pesty Fekete Doboz) titled „The Gypsy-Hungarian coexistence” in October 2012. The documentary violated the principle of equal dignity since it goes for answers to social problems on the basis of assumptions regarding ethnic origin and stereotypes – found the commissioner for fundamental rights after his inquiry carried out upon the initiative of the deputy ombudsman responsible for the protection of the rights of nationalities living in Hungary. Ombudsman Szabó pointed out that in case of human rights violations, especially violation of the right to human dignity, the National Media and Infocommunications Authority is obliged to take official measures provided by law.

Gay Pride and Fundamental Rights

by

LÁSZLÓ TÓTH

The history of social movements is also the story of the protests; however, their outcome is quite variable. If the goals of the movement stay unattainable, it may come to a halt, loses its support and disappears from the scene. On the basis of “slow water washes ashore”, the political opposition can use the tools of civil disobedience and it may channel into the system. By the network of capillaries, it may pervade and shape the society. After its accomplishment, it may be institutionalized by the acquisition of social support; it loses its nature of movement and becomes part of the “establishment”, and it changes to a building stone of a transformed system.

Certainly, the organic development and this life-cycle-like description may not be necessarily applicable for all the social movements. The movements of the social outcasts, the organisations of the members with minority identities whom are not accepted by the majority of the society; the struggles for the civil right of equality of persons with the sense of being second-rated which can be caused by ethnic, sexual or religious reasons and the struggle for life without any discrimination seem to never be able to totally completed or lose their substance.

The change of nature of the struggle for civil equality is enriched by more-and-more aspects – e.g. from the criminal sanctioning of homosexual relationships up to the problem of recognition as a family – and it urges the social movements for renewal even in liberal constitutional democracies, which statement is especially valid for LGBT organisations.

My aim is to present the development from the particular movements against discrimination based on sexual orientation to the great political protests which operates on a large scale of global network. Furthermore, I intend to present how the demand for legal equality has channelled into the national and international basic documents of fundamental

rights, and how this is reflected in the national protection of fundamental rights, particularly with regard to the activity of the ombudsman.

The expressive and carnival-like marches have significant and worldwide importance in regard to the struggle of LGBT movements for legal equality, which “gay pride” marches can be considered as identity-creating forces, political demonstrations and cultural festivals at the same time.

In the paper, all these are discussed with special regard to the self-definition of LGBT movements; to the Hungarian fundamental legal aspects of the “Pride-demonstrations” which are organized to increase the public acceptance; and to the problems of national legal aspects of the issue with a special focus to the right to assembly in regard to the ombudsman’s legal protection.

The current issues of equal opportunity and equality in relationship will be also briefly discussed, which are important and relevant for fulfilling the constitutional protective duties of the Commissioner for Fundamental Rights since 2012.

The Ombudsman’s Reports on the Freedom of Assembly and the Pride Marches
The 2008 Pride March (Report OBH 3262/2008): After many withdrawn notifications, the Rainbow Mission Foundation notified the police of the Pride March on 9 June 2008. Budapest’s chief of police first banned the Pride March, then withdrew his own decision and authorised the march. Parallel to the Pride March, a private person registered another demonstration in the name of the so-called “Transition Forum”, and three other private persons registered demonstrations following the same route that the Pride March would take. The police, taking the aggressive events of 2007 into consideration as well, had divided the different events with cordons and police forces.

In his report, the Ombudsman stated that in the case of a hermetic blockage of the area of assembly (or the route of a demonstration), the right to communication (or the freedom of expression) is violated because the message cannot reach its addressees, the viewers of the communication process. Thus, vacating the demonstration area carries in itself the direct danger of an anomaly concerning the freedom of expression. In the case under discussion here, it was the participants in the LGBT march of 5 July 2008 who were attacked by those standing along the route throwing things at the marchers, despite the fact that the po-

lice had totally isolated the event from the street environment in most places. The Ombudsman studied how the police could have secured the march so that the participants would not suffer from such attacks while still making it possible for the opinion intended to be expressed to reach its addressees. The Ombudsman sent his report to the Deputy and Acting President of the Supreme Court and to the Supreme Prosecutor by way of information, asking them to consider a proposal for a process of legal unification so that the procedures in cases of objects being thrown should be uniformly carried out. In his report, the Ombudsman also emphasized that the Act on the Freedom of Assembly does not properly regulate events organised in parallel. Naturally, anyone can express his or her opinion and say that he or she does not agree with a demonstration's aim. But freedom of expression is only valid up to the point at which other people's fundamental rights (in this case their freedom of assembly and right to life and human dignity) are violated. The participants in the unregistered events abused the freedom of peaceful assembly of the participants in the Pride March. The (even more violent) behaviour is not under the protection of any fundamental freedom but has to be judged from the aspect of criminal law.

The 2009 Pride March (Report OBH 6021/2009): On 28 May 2009, the Rainbow Mission Foundation notified the police of an LGBT March organised for September 5; three counterdemonstrations were also registered but all three were later withdrawn. The Ombudsman requested all the formal documents and DVDs and his staff attended the march. The chief of the national police informed the Ombudsman that the preliminary notification had been examined by the police, who found that it could be held as requested but that because of the date (it was the first weekend after school had started) some negotiation would be needed with Budapest Public Transport Ltd.

In his report, the Ombudsman stated that the police had violated fundamental rights by allowing the disproportional blockage of public transportation. Based on the provisions of the Act on Administrative Procedures, if an agency is unable to decide a professional question (in this case, what the proportional and adequate length and duration of a blockage is), it must request support from authorities who have the relevant expertise and competence. As for the police's press release on public taste, the Ombudsman stated that the police did not have the competence to

issue such a release, because there could be no legal consequence linked to a behaviour abusing public taste (since it is not defined by law), but the attitude of citizens could nonetheless be affected. The Ombudsman repeated the conclusion of his report on the 2008 Pride March concerning the disproportional blockage, highlighting again that although the police was able to protect the participants from any physical damage, the hermetic blockage (that was kilometres long and used cordons and police forces) infringes on the subjective part of the freedom of assembly. And finally, in the policing issue concerning the preparation, method, and execution of dispersion of a crowd, the Ombudsman found that the visible conflict and lack of cooperation among different police forces (the national, Budapest, and riot police) caused problems.

The 2011 Pride March (Report OBH 871/2011): The Ombudsman did not investigate the Pride March in 2010 because of the preliminary information that there was no disorder expected. In 2011 the Ombudsman was informed by the media that the Budapest police had banned the Pride March. The Rainbow Mission Foundation, as the organiser, had sent the notification in September 2010 that they would be holding a march on 18 June 2011. After necessary consultations, the police accepted the registration of the march. In February 2011, the organiser added an amendment to the original notification, making the march route longer (so that it would reach Kossuth Square, in front of the Parliament). The police consulted again and decided to handle this notification as a new one, because the changes related to substantive elements of the planned demonstration. The date of the Pride March fell during the Hungarian EU Presidency (January–June 2011) and a major part of Kossuth Square was occupied by an international photo exhibition, so during that time it was not a public space that was available for any other demonstration. Moreover, the police argued that the transportation of the highly protected VIPs would have to be amended. As a result of the consultation, the organisers decided to finish the march nearby, but not at the square itself. Finally, though, the police decided to ban the event, arguing that the march (and the protection for it) would hinder the ordinary functioning of the tram operations in the affected area. The organisers asked for a review of the decision. The Budapest Court found the petition of the organisers to be well-established and valid, and repealed the decision of the police.

In his report, the Ombudsman stated that police crowd management

is basically a policing issue and, as such, may only be the object of Ombudsman investigations when the exercise has an impact on fundamental rights. Thus, the action itself and overall cannot be examined by the Ombudsman. However, during the procedure, the Ombudsman always looked at whether the police's actions promoted the enforcement of fundamental rights (this question goes beyond the question of the professionalism or legality of the actions). The fact that the police have the legal right to take a measure does not mean that the measure taken cannot then be examined from the perspective of human rights; and in fact, such an examination is especially important in the case of freedoms. With respect to the counterdemonstration at the intersection, the Ombudsman emphasized the right to leave a demonstration as part of the freedom of assembly (specifically the right of nonparticipation). This caging, or kettle formation, used by the police (named after the "Polizeikessel" or "police kettle" used to detain demonstrators in Hamburg, Germany in 1986) was neither proportional nor necessary after the Pride March participants had moved on, and it violated the counterdemonstrators' right to move about freely (specifically here, to leave the event). The police maintained a high profile during the entire event, whereas the Ombudsman pointed out the virtues of low-profile, knowledge-based crowd management as a positive practice according to the experiences in the Godiac project.

The 2012 Pride March (Report AJBH 5595/2012): Notifications for many different demonstrations were submitted to the police for 7 July 2012. The Rainbow Mission Foundation, as the organiser of the LGBT march for that day, was turned down by the Budapest police, who said that the traffic could not be managed there or on any other route, and therefore the event was banned. The organisers turned to the Budapest Court for a review as they had done the previous year, and the court repealed the decision of the police, so the demonstration could be held. This year, some international LGBT organisations and many diplomatic missions (including the United States embassy) had indicated that their representatives would like to attend. The march proceeded basically undisturbed; at the endpoint (Kossuth Square), a few counterdemonstrators arrived as the march was arriving and chanted homophobic and/or fascist slogans. The police separated the demonstrators and the chanting counterdemonstrators with cordons and high-profile police officers. After a while, when the march participants were starting to leave the square, the counterdemonstrators—in spite of warnings from the police and ef-

forts by the Dialogue Officers—started to provoke the police officers (for instance by spraying them with irritants and hitting them). One of them, who wore a Nazi swastika, was arrested, as were some others who physically attacked the police forces.

In his report, the Ombudsman found that the police had operated professionally in order to protect the participants in the Pride March, and also that the numerous Dialogue Officers who had been involved from the preparatory phase through the post-event management had had a positive influence. He repeated his concerns about the unclear (and therefore misleading) preliminary call from the police to the participants to refrain from behaviour that would offend “public taste”.

The 2013 Pride March: the Ombudsman investigated again the Pride and he found police sufficiently guaranteed the freedom of peaceful assembly of the participants and could protect them from any violence. Ca.4000 participants attended at the event (first time also some well-known companies demonstrated their solidarity and the around 300 counter-demonstrators were separated with fences in a distance and protected the march also with cars and police forces. The organizers and the police cooperated with each other, and the pride run peacefully.

The Ombudsman needed to emphasize the importance of guaranteeing to leave peacefully and in safe an event as they are parts of the freedom of assembly.

STATE MEASURES TO ACHIEVE TOLERANCE

Experiences of the Ombudsman's Project 'With communication for Equal Dignity – Inclusive Speech Versus Hate Speech'

by

PÉTER SERES – KATALIN SZAJBÉLY – VERONIKA VASS

Hate speech and verbal exclusion affect by definition all vulnerable groups, amongst them especially Roma, people living with any kind of disabilities, homeless persons, migrants, religious minorities and LGBT persons. According to the recent Eurobarometer survey, discrimination is still considered to be common in the EU Member States. The three most widely perceived grounds are “ethnic origin” (56%), “disability” (46%) and “sexual orientation” (46%). Similar tendencies prevail in Hungary, however, age discrimination is perceived as the most common ground for discrimination (75%), followed by discrimination based on ethnic origin (70%) and disability (54%). There is no unified data collection about the number of hate crimes in Europe, however, victimisation research indicates that migrants and other ethnic minorities (such as Roma) and LGBT persons are at risk to be victims of verbal or physical abuse and hate crimes. According to a research conducted by the Fundamental Rights Agency of the EU (FRA), in Hungary, in 2008, 19% of Roma respondents were attacked based on their ethnic origin.

Prejudice and hate crimes are connected to each other in multiple ways: biased thoughts form prejudiced words and discriminatory actions, and may be a legitimisation and/or an emotional preparation for violent, criminal acts. The complex connection between these phenomena is demonstrated by Gordon Allport's famous scale of prejudice, according to which, there are five stages of prejudice: (1) antilocution, (2) avoidance, (3) discrimination, (4) physical attack and (5) extermination.

The essential question of combating acts of hate is the goal the legislator realistically sets: may legislation aim to combat negative attitudes behind words and acts of hate, or should its goals be restricted at com-

batting actual actions and words of discrimination? In different periods of time, within different social contexts, a different answer was given to this dilemma. Anyhow, legal prohibition of hate speech should – if applied consistently – result in the confinement of such phenomena. However, consistent and effective application of legal prohibition requires sensitizing and educating actual and potential legal practitioners.

The most effective way to combat hate speech is in any case to decrease its acceptance in the society: if the majority of society despises intolerant words, hate speech will get neither attention, nor sympathy at the marketplace of opinions. Therefore, it is of essential importance to increase tolerance and understanding of vulnerable groups in the society. The 2013 project of the Commissioner '*With communication for equal dignity – inclusive speech versus hate speech*' aims to map views and actions of stakeholders at different fields of life (such as public education, higher education, media, criminal justice system, European funds and programmes, local NGOs, churches and minority self-governments on the promotion of an inclusive society. The ombudsman investigated on the views of nearly hundred stakeholders in the above fields in order to get a picture of the integrative capacity of society.

Hate speech has always been an issue of ombudsmen's work: the previous ombudsmen responsible for minority rights made proposals to modify the criminal code, whereas ombudsmen have conducted several investigations in cases of hate speech. Our study aims to give a context of ombudsmen's activities in this field, by showing the way to the present approach, which gradually shifts the emphasis from legal prohibition to the mapping of proactive, preventive measures. In the study, the authors – colleagues of the ombudsman who all have actively participated in the project-work – sum up the most important findings of the recent project, complementing them with their subjective views on some findings.

On 29 April 2013 the Commissioner launched a thematic workshop on hate speech. Several scholars and representatives of the civil society were presented on the one-day event which was held in the Office of the Commissioner for Fundamental Rights.

In his welcome speech the ombudsman emphasized the importance of the theme that should be examined and dealt closely by every participants of the society. He urged the change of mentality and attitude towards the question, as the prevention should be in the centre of at-

tion and not the sanction and penalization of the convicts. A tolerant society should be developed with members having an appropriate political behaviour. Therefore, education receives a special attention and importance on this field. Within the framework of the project and investigations, the colleagues of the Office have contacted several relevant authorities for receiving information on their actions and plans regarding the prevention of hate speech and the promotion of tolerance. The results were depressing: the state authorities have been failed to comply enough. The goal should be a creation of a democratic society with participants with adequate political culture, for which the state organs should support every initiatives of the civil society.

The leader of the project, Ms Katalin Szajbély, placed the issue in a conceptual environment. She reminded the participants of the workshop to the unsuccessful attempts of the former ombudsman being responsible for minority issues: when Dr. Jenő Kaltenbach drafted the legal provision on the issue of hate speech, or when Dr. Ernő Kállai proposed an amendment to the act on equal treatment to regulate the question. The current Commissioner, Prof. Máté Szabó, launched a project in 2012 touching the issue: *“Losers of the crisis - In the captivity of paragraph”* which had a segment which examined the strengthening prejudices and discrimination in the context of financial and economic crisis. From social-psychological aspects, the colleagues of the ombudsman investigated relevant cases; furthermore they had contacted the civil society and examined the specialised literature to propose a comprehensive report on the issue during this summer.

Following the introductions, lecture was given on the European Union funding opportunities and their implementation in Hungary which target the support of vulnerable groups and tolerance (by Ms. Bernadett Gergely from National Development Agency). Later, Ms. Márta Pánczél from the Equal Opportunity Authority emphasized the importance of developing social tolerance and acceptance.

Mr. Lajos Aáry-Tamás, the Commissioner for Educational Rights, introduced a successful awareness-raising programme in cooperation with the Canadian Embassy accredited to Hungary. The programme aimed the education of human rights to school children with diverse backgrounds.

Mr. Péter Radó, a public policy expert and education specialist talked about tolerance in education and its obstacles. Speaking about education

and tolerance, deficiencies can be explained by problems related to the quality of the teaching-learning process: by pedagogical methodology used by the teachers, by the way how in-classroom interactions and conflict situations are managed (usually it's only between teacher-student, student-student communication is prohibited many times in the classroom), the education and the expectations of teachers. He added that high quality training programs on anti-discrimination were launched for teachers. Ethnic segregation is still a common phenomenon in the Hungarian education system. He concluded that good practices are useful, however their successful implementation requires a shift in mentality and paradigm.

Mr. Zoltán Fleck, professor of the Faculty of Law of ELTE University of Budapest gave a short summary on his recent study concerning how law students are influenced by prejudice in Hungary

In order to avoid and prevent this kind of attitude, good practices should be implemented at first place in the educational system and pedagogical mentality. Evidently, changes of cultural attitude and paradigms are also necessary to fight stereotypes and prejudice.

According to Mr. Fleck, in countries of unstable culture ideologies, norms and institutions have an outstanding role in consolidating the moral and ethical rules of society.

In her presentation about the image of Roma in the Media Ms. Vera Messing, research associate of the Institute of Sociology at the Hungarian Academy of Sciences explained that according to a study prepared by herself and Gábor Bernáth, based on research samples from online and print news providers and from the programmes of commercial and state-funded television, one-third of all coverage on gypsies relates to criminality. Insinuating and indirect messages are often revealed in media. Materials that promote prejudice and stereotypes about Roma are widespread.

There are very few reports that show real Roma culture. Another phenomenon is that in the past 15 years or so degrading speech concerning Roma people has become increasingly accepted both in politics and in public forums. Accordingly, state officials and public figures have a greater responsibility in forming public opinion.

Concerning good practices Ms. Messing mentioned cross categorization, when a Roma person appears in the media not because of his or her race

but in connection with the current topic. Another example is when minority groups and majority are striving for the same goal together in the media.

Mr. Marcell Lőrincz, representing the Subjective Values Foundation, gave a short summary of the Foundations activities, paying special attention to various projects carried out by the Foundation, including the Urban Culture against Racism in Europe (U-CARE) project, the launching of the No Hate Speech Movement Campaign and the Lunar New Year Festival.

Mr. Bence Tordai of the 'Haver' Informal Jewish Educational Public Benefit Foundation spoke about the educational programmes aimed at facilitating Jewish–non Jewish dialogue among secondary school and university students, stressing that they intend to promote critical thinking and improve debating culture.

The representative of the 'UCCU' Roma Informal Educational Foundation, Ms. Flóra László spoke about the Foundation's educational programme.

Mr. Gábor Kulcsár of the Waldorf Pedagogical Institute gave an overview of the Institute's pedagogical programme with a special emphasis on the education of Roma children. Ms. Ilona Móricz, representative of the Independent Media Centre spoke about the Centre's role in training media specialists and about the responsibility of journalists in handling issues like the situation of minorities and various disadvantaged groups.

Mr. Márton Illés, representative of the Junk Dreams Theatre shortly presented his company's activities. The theatre is a civil initiative, performing cultural actions in the public space to raise awareness to Hungarians who make a living on junk collected from house clearances, with special emphasis on making use of sites other than the traditional places of art, as well as on social integration. The activists of Junk Dreams work for turning these events into civilized community festivals instead of the planned termination of the institution of house clearances across Budapest's districts. During these "performances" artist-trainers involve the children of local residents and junk collectors in creating art products from rubbish and junk on the street and realizing street actions.

Ms. Katalin Horváth made a short presentation on the project of Káva Cultural Group (the first Theatre in Education company in Budapest), entitled "The missing class mate". The aim of the project was to break down stereotypes and prejudice among classmates through theatrical performances.

Mr. Zsolt Virág, speaking on behalf of the 'Being Gay and Being Aware Programme', focused on prejudice against LGBT people, stressed the importance of education and openness. Dr. Judit Takács deputy director of the Institute of Sociology of the Hungarian Academy of Sciences concluded that the presentations underlined two common goals: preventing discrimination and the urging need of raising cultural awareness.

Mr. Ferenc Orosz, chairman of the Raoul Wallenberg Association gave a short presentation on the foundation's activities and goals. He agreed with the previous presenters that social and cultural instruments and education have an important role in promoting tolerance but legal instruments are essential to prevent racism and discrimination. Mr. Orosz shortly presented one of the foundation's recent projects.

Principles and Legal Basis of the Activities of the Ombudsman for the Protection of the Interests of Future Generations

by

MARCEL SZABÓ

Besides the numerous vulnerable social groups the protection of which is entrusted to the commissioner for fundamental rights, it is important to keep in mind that there is a further defenceless group consisting of the members of the future generations, who are by nature unable to represent their own interests and are therefore in need of special protection. The Hungarian Parliament amended Act LIX of 1993 on the Parliamentary Commissioner for Fundamental Rights establishing the institution of the Parliamentary Commissioner for Future Generations. Thus, Hungary has been promoting the enforcement of the interests of future generations through the introduction of institutional guarantees for over half a decade now.

The fundamental issues related to the legal status of future generations are heavily disputed in both the international and domestic scholarly literature. Differences of opinion pertain as to who the members of the future generations would be, whether or not they are entitled to rights, are such rights discernable and whether such rights or interests are of a collective nature. At the same time, starting with the 70's, various international declarations have been issued evidencing the fact that the states wish to adapt their activities to comply with the needs of future generations. The most significant of these documents are the Stockholm Declaration on the Human Environment of 1972, the 1992 Rio Declaration and the 1997 UNESCO Declaration on the responsibilities of the present generation towards future generations. Speaking of the rights of future generations in the ambit of international law is problematic since originally only states were deemed to possess international legal personality. With the development of international law however, international

organizations were also afforded legal personality and according to certain scholars, the concept of the common heritage of mankind as well as the common concerns of humankind may amount to the recognition of the international legal personality of the entirety of mankind in special situations.

From the aspect of domestic legal regulation, Decision 64/1991. (XIII. 17.) CC of the Constitutional Court is of prime importance, since it gives clear guidance declaring that the recognition of the legal personality of future generations is not a precondition for the Constitutional Court to stipulate the state's obligation to secure the general life conditions for future generations.

The new Basic Law of Hungary elevates the contract between the present and future generations to the level of the Constitution. The preamble (the so-called National Avowal of Faith) emphasizes: „Our Basic Law shall be the basis of our legal order: it shall be a covenant among Hungarians past, present and future.” As members of the Hungarian nation, the Hungarians past, present and future constitute one unity and this shared identity serves as the basis of the responsibility of the Hungarians of the present towards those of the future, similar to the great sacrifices taken on by Hungarians of the past to protect our homeland.

The relevant rules of the Basic Law stipulate – not as a right of future generations, but much rather as the common obligation of the present generation, the state and each and every individual – to protect the common heritage of the nation, that is, all natural resources, especially agricultural land, forests and drinking water supplies, biodiversity, native plant and animal species and cultural assets for the benefit of future generations.

The Basic Law of Hungary considers future generations a part of the Hungarian nation together with the Hungarians past and present and forges a sort of symbolic legal personality for future generations through emphasizing the covenant of these generations. The interpretation of the details of the rights and obligations stemming from such legal personality however, shall be the task of the Constitutional Court of Hungary.

Environment Protection, Protection of the Interests of the Future Generations
The Commissioner for Fundamental Rights is assisted in his work by the Deputy Commissioners for Fundamental Rights, responsible for the Protection of the Interests of Future Generations and for the Rights of National

Minorities living in Hungary. The Deputy Commissioner for the Protection of the Interests of Future Generations shall monitor the enforcement of the interests of future generations, and (1) regularly inform the Commissioner for Fundamental Rights on his/her experience regarding the enforcement of the interests of future generations or minorities living in Hungary, (2) draw the attention of the Commissioner to the danger of infringement of the rights of a larger group of natural persons, (3) may propose the Commissioner to institute proceedings ex officio, (4) participate in the inquiries of the Commissioner for Fundamental Rights; (5) may propose the Commissioner for Fundamental Rights to turn to the Constitutional Court.

The Commissioner for Fundamental Rights pays distinctive attention to the values (interests of the future generation set out in Article P) of the Basic Law in the course of his activity, especially by conducting ex officio proceedings. In terms of this Article, natural resources, in particular agricultural land, forests and the reserves of water, biological diversity, in particular indigenous plant and animal species, as well as cultural assets shall form the nation's common heritage; the State and every person shall be bound to protect, maintain and preserve them for future generations. The Commissioner has conducted his inquiries in 2013 considering the right to physical and mental health and the right to a healthy environment. However, he often referred to the legal certainty deriving from the rule of law and the requirement of fair trial.

In 2012, as part of the project entitled "*Losers of the Crisis – in the Captivity of Legal Provisions*," several ex officio inquiries on the subject of environment were launched. In the framework of the project, the Commissioner examined how the State measures taken due to the crisis had influenced the institutional system of environment protection and its efficient operation. According to the Commissioner, the reorganization and restructuring affecting the organizational system of environment protection, the continuous decrease of the budgetary resources experienced in the last period, the absence of the specialist staff being displaced gradually weakened the organizational system of the environmental administration. As a consequence of the insufficient financial resources, the efficiency of the performance of duties of the environmental, water public and administrative organizational system gradually decreased, the control over the environ-

ment users weakened. It is important for the current government to recognize the importance of environment protection and to accordingly form the system of the institutions from the level of Ministries to the territorial authorities, to enforce the interests of environment protection in the course of passing decisions and not to regard this field as an obstacle to economic development, a sector to be reduced and overshadowed. It is inconceivable to take into consideration the interests of the future generations without environmental, nature conservancy and water institutions of suitable prestige and managing sufficient budgetary resources since the right to a healthy environment will lose its substance.

In 2012, similar to the previous years, a number of individual complaints concerned the *public service of the transport of waste*. Principally, the complaints concern the mandatory access and the establishment of the amount of the fee of the transport of waste and they are usually associated with the obligations set out in laws. Compared to earlier years, the number of ombudsman's inquiries related to *tree felling* considerably increased, too.

On 15 September 2009, the Parliamentary Commissioner for Future Generations asked for the establishment of the unconstitutionality of the Government Decree 358/2008 (of 31 December) regarding productive and certain service activities subject to site permits and site establishment notices, and site authorisation procedure and rules of notification. The Constitutional Court established that the law was contrary to the Basic Law, therefore it annulled that with effect from 28 February 2013.

Related to the Europe-wide known *red sludge disaster* was taken place in 2012 in Hungary, the ombudsman proposed the amendment of rules of law. He found the disaster management authority and the environment protection inspectorate did not participate in each other's proceedings; they made their decisions in isolation, unaware of the activity of the other authority. That cooperation system of specialised authorities did not adequately take into consideration difficult licensing cases of a complex nature which require the joint decision of several authorities.

The Ombudsman carried out an investigation on the requirement of healthy drinking water supplied for children's daily drink in 2013. It may violate children's right to protection and care if their access to safe

drinking water is denied – commented the Ombudsman in his report published as part of a series of inquiries concerning children and the right to a healthy environment. The Commissioner urged for further measures to ensure safe water supply at least for children. In 2013, the Commissioner has analysed the enforcement of children's right to a healthy environment conducting several ex officio inquiries into the topic. The inquiry titled „Does the child have access to tap water if he or she is thirsty?“ and launched in connection with the EU Children's Environment and Health Action Plan for Europe (CEHAPE) program examined some problems concerning access to safe drinking water. As a result of close cooperation between the competent ministries and other relevant bodies, works begun under national water-quality-improvement-program investments are planned to be finished by 2015 in those settlements where the tap water's quality does not meet the required standards. Meanwhile, it is up to the families whether they consume low quality tap water or safe drinking water available at external water supply distribution points, the latter being more complicated and time consuming. Communities should be adequately informed concerning the availability of the provisional drinking water supply in order to ensure their right to health and to safe drinking water. The Ombudsman's report also noted that, parallel with water-quality improvement programs and due to network reconstructions, iron and manganese compounds and noxious substances originating from domestic water supply networks, more comprehensive and coordinated measures are needed to ensure adequate water quality.

The Commissioner also pointed out that legal background of imposing water use fee on those who cover their water needs from public sources, such as public water pumps, is still unsettled.; he has also proposed to develop a water fee subvention system for persons in need.

Several clauses of the *smog decree of the municipality of Miskolc* in the North East of Hungary are contrary to the laws found the Commissioner in his investigation. In case of a smog alert, they jeopardize the right to health and the right to a healthy environment. The Commissioner initiated that the Curia annul the offending provisions. *Data measured with automatic instrumentation at the local station of the Hungarian Air Quality Network located at the industrial area of Dorog*

city have not been updated in the last year – informed a complainant ombudsman. According to the competent Ministry of Regional Development, data supply was interrupted due to technical reasons while the local environment inspectorate argued that long term interruption was a result of financial problems. Therefore, Máté Szabó asked the government to take immediate action in order to restart and ensure the adequate operation of the air monitoring station.

Ambient Noise, Especially Noise Emanating from Road Traffic

by

GYÖRGY SOMOSI

Noise has a special place among environmental nuisances, since a considerable part of the population lives in areas polluted with noise generated by road traffic and various types of industrial or recreational activities.

Industrialization, the evolution of motorization, the constraint of developing enterprises, the fulfillment of ever-changing social needs are performed accompanied by a certain degree of disturbance, since every development, investment also tends to violate someone's interests. However, it is a legitimate demand, often formulated in complaints submitted to the Ombudsman, that citizens should be able to live their lives undisturbed in their homes, without suffering from adverse effects polluting their environment and damaging their health.

The report of the European Commission on the implementation of the EU Environmental Noise Directive established that environmental noise is a significant problem in the whole EU. According to the brochure prepared by the Joint Research Centre of the WHO (World Health Organization) and the European Commission, noise emanating from transport may decrease the population of EU member states and other Western European countries by 1 million healthy life years. Urbanization, the more and more growing demand for motorized transport and inappropriate urban planning are considered to have accounted for the exposure to environmental noise. It is another problem that noise pollution often affects those urban areas where the air quality is also a problem. According to the report, noise pollution may cause tension and sleep disorder; it influences the intellectual performance of school children; it may generate physiological stress reactions and it often leads to heart and cardiovascular problems. Among the economic aspects of noise pollution, *inter alia*, the report makes mention of the case of real estate prices and the fall-out in production due to the health impacts.

Through the legal provisions of the late nineteenth century, the paper describes the period regulation of noisy activities and gives a detailed analysis of the adverse effects of noise on human health.

Taking into account the large number of the people affected and considering that a significant number of complainants request the Ombudsman's help concerning noise generated by road traffic, this problem is treated in a separate chapter.

In general, people turning to the Office of the Commissioner for Fundamental Rights have complained about the amount of the traffic of the main roads leading through the settlements, bigger inner roads and the roads leading to the industrial sites and shopping centres and the emanating exposure of the environment. The people concerned often complain about the risk of accident and the continuous dilapidation of the condition of their houses as well as against the depreciation of the real estates.

Concerning road traffic, it is a rather serious problem, beside the large masses of population subjected to significant noise pollution, that the difference between daytime and nighttime noise levels is relatively small – noise load does not diminish substantially even in the periods of recreation.

People subjected to the adverse effects of traffic often initiate civil proceedings, suing for damages. That is the reason why the paper also deals with the relevant court rulings of recent years and the decision of the European Court of Human Rights adopted in 2010.

Although the law provides the authorities with various ways and means to act, measures are always taken subsequently, often as a conclusion of a lengthy administrative or court proceeding – instead of subsequent actions and sanctioning we should concentrate our efforts on prevention. One should also take into consideration the human factor while investigating this topic: the level of noise pollution and, consequently, the level of disturbance might be significantly reduced not only with expensive investments and architectural modifications but also through paying attention, being considerate and, if needed, taking resolute action. It is especially true in cases of neighbor law complaints.

The paper concludes by stating that, although we cannot exclude noise pollution from our lives, it is our common responsibility to keep it at acceptable level.

Broader Context of the Right to a Healthy Environment and the Right to Health in View of the Ombudsman Regarding Poverty and Certain Public Services

Water and Human Beings as Entities to be Protected, Waste Management as an Expression of the Values and Financial Situation of a Society

by

SZILVIA KÉRI

Environment protection is self-defence. Nevertheless, this social view is hard to enforce under circumstances in which the large part of the population has difficulties to make ends meet. Regarding waste management, water management and the related public services to meet subsistence, the objective of the studies has been to present that the interests of future generations and the present individual and society have to be balanced. This study has referred to that if the state protection were not extended to the environmental elements, the natural resources, (i.e. there were no environment protection), the life conditions of the future generations and thereby their right to life would be endangered. In this regard, the future generations themselves are to be protected and the basis for this protection is the requirement of justice between generations. The present generation is responsible for creating balance in the course of using finite natural assets so that the life-support services provided by them will be available to the future generation as well. The present decision-makers and society must not consider only fulfilling the ongoing common necessities, instead, they have to think of the common necessities of the future generations, too.

Regarding the insurance of access to healthy drinking water, the study has explained that insurance of access to healthy drinking water according to the legal system means that water resources as finite natural asset has to be protected horizontally and the citizens have to be sup-

plied with drinking water of suitable quality and quantity. In technical terms, drinking water may be ensured only if there is a water producing establishment based on water resources. Drinking water supply from Hungary is ensured in 95 per cent from groundwater. In case there is no groundwater or to a smaller extent surface water which is suitable for abstraction drinking water, then at the same time access to drinking water cannot be ensured, either. Consequently, the protection of water resources pursuant to Article P of the Basic Law is a prerequisite to the access of drinking water. The horizontal protection of natural assets such as water resources is therefore a priority. Consequently, the protection of water resources and/or the insurance of drinking water are closely related at both at the level of the protection of basic rights, at the level of legal regulation and with respect to the technical system. In these cases, the right to a healthy environment is a prerequisite to the right to health.

The limit values determined by the EU on the qualitative parameters of drinking water are not entirely fulfilled in Hungary. Currently temporary supply of drinking water has arisen with regard to arsenic, boron and fluoride in those settlements where the limit value exceeds the limit value set out in the applicable directive after 25 December 2012. This means that in settlements where there is an ongoing programme improving the quality of drinking water, temporary drinking water supplying solutions ensures access to healthy drinking water for the population. Interestingly, in spite of the settlement is supplied with water utility service, currently, the right to health, including the right to drinking water supply, can be implemented only in case of suitable information provided to the inhabitants, since citizens decide themselves whether they acquire healthy drinking water from the water distributing point outside their home. In connection with equal opportunities, the study has addressed the issue of how the destitute parts of society have access to drinking tap water, in the absence of which where they could take water from, under what conditions and/or what kind of financial aid could be given to people in need for paying water bill. Nevertheless, further systemic review is required to learn the extent the social need that may determine the chances of having access to healthy drinking water.

Within waste management, in connection with the public service of garbage delivery in the settlement, a tension can be noticed between public and private interests. The Commissioner received a number of complaints in connection with this public service for ages. Remarkably,

in the last months the number of such complaints has risen. The more difficult it is to make ends meet, the more one wants to get rid of the constraint of obligatorily using the public service. The study has pointed out that besides the public interest underlying the obligatory use of public service (insurance of public health), the other determining factor is the polluter pays principle. One has to experience himself through the public utility bill that human life itself impacts the environmental elements ensuring his life conditions through consumption and consequently through waste production. The gist of waste management is to deposit the non-renewable waste in a way that excludes environment pollution. Either the regulation or the operation of the system of waste management is not sufficient, damage is caused in the environmental elements.

On the other hand, for the real estate owners, it is equally important for the bill to be payable and that the bill should be proportional to the service and give incentive for compliance with legal rules. The ombudsman has pointed out several times that in this field there are still some discrepancies in regulation. The ombudsman consistently represents the view according to which fewer and fewer will be able to pay the increasing public service bills. This process requires supplying certain groups of population with financial subsidies. The current tendency justifies considering what kind of central subsidies and regulations could be used to give concessions and exemptions in the area of public utility service fees and how their uniform, nation-wide introduction could be facilitated.

Children's Right to Healthy Environment

On the Focus of Children's Rights Project 2013

by

AGNES LUX

There is no separate children's rights ombudsman institution in Hungary, one of the main tasks of the commissioner for fundamental rights that requires priority under the law is the protection of children's rights since the new Ombudsman Act entered into force on 1 January 2012. As part of a project which has been running since 2008, the ombudsman explores the issue of children's right to a healthy environment in 2013.

Environment has positive and negative impacts on human rights. It plays a vital role in ensuring human life, producing food and raw materials essential for the industry and development. At the same time, some environmental risk factors like excessive radiation or contaminated drinking water may endanger people's fundamental right to life. Persons exposed to the dangerous effects of contaminated soil, air, food or drinking water on reserves may have their health get worse, may suffer from genetic defects or have reduced quality of life.

It should be emphasized that the *meaning of the right to a healthy environment is completely different in the case of children living in extremely poor conditions*, since their primary threats are not (only) environmental risk factors of "higher level" (air quality, chemical-free environment, deficiency of bio organic food) but often the lack of minimum environmental conditions – like adequate food, housing and health facilities. Different quality and capacity levels of state-provided public services present a continuous violation of the right to a healthy environment. As a result of institutional and supply system deficiencies, not every child has equal access to adequate quality care and supply services. These children face challenges in accessing quality health care or sports and physical training activities and they have difficulties in access to cultural facilities as well.

In view of this, the project builds upon two major pillars: (1) right to

a healthy environment in schools (education, environmental consciousness, access to services and to bio /organic food, local products); (2) ensuring rights of disadvantaged children or children living in extremely poor conditions in the context of the right to a healthy environment.

The article tried to give a comprehensive overview of the current international standards related to children's right to healthy environment (UN CRC, CEHAPE action plan, EU Agenda on the Rights of the Child) of the European and national strategies on social inclusion with special attention to child-poverty (Europe 2020, Commission recommendations, related UNICEF reports, WHO reports); and also the national framework for tackling these advantages (National Social Inclusion Strategy(2011), child-poverty surveys, statistics); and last but not least the brief conclusions of the ombudsman's investigation's findings.

On 27 June 2013 the Ombudsman organized *a conference on children's right to a healthy environment*. Prof. Máté Szabó, Commissioner for Fundamental Rights of Hungary hosted this event on the actual situation, problems and challenges concerning children's right to a healthy environment. Several scholars and representatives of governmental bodies and the civil society were presented on the one-day event.

The Ombudsman in his welcoming notes emphasized the importance of examining children's right to health in a broader context, focusing as well on the interest of future generations, poverty, environmental risks and access to basic services, like clean water. Referring to one of his inquiries concerning heavy schoolbags, he commented that schoolbag is a fine symbol for expectations, requirements, problems and stress burdening children.

Ms. Ágnes Lux, deputy head of department of the Office of the Commissioner for Fundamental Rights briefly summarized the inquiries conducted in the course of 2013 concerning children's right to a healthy environment in the framework of the children's rights project launched by Ombudsman Szabó in 2008. During the inquiries, the commissioner relied not solely on previous related works of the parliamentary commissioner for future generations and the parliamentary commissioner for the national and ethnic minorities' rights but on the results of the project 2011 on children's physical-mental health and provisions of the Basic Law and the UN Convention on the Rights of the Child, as well. She emphasized that environment

plays a vital role in ensuring human life, producing food and raw materials essential for the industry and development. At the same time, *some environmental risk factors like excessive radiation or contaminated drinking water may endanger children's fundamental right to a healthy environment or even life.* In view of this, the inquiries focused on three main areas: right to a healthy environment in schools (education, special trainings, environmental consciousness, access to services, meals/special needs, bio organic food, local products); environmental hazards' effects on children (air pollution, noise, waste management) and ensuring rights of disadvantaged children or children living in extremely poor or conditions in the context of the right to a healthy environment.

Ms. Judit Pump, legal advisor of the secretariat of the deputy-commissioner for the interest of future generations presented the EU Children's Environment and Health Action Plan for Europe program (CEHAPE). CEHAPE is a policy document with accompanying tools presenting 4 Regional Priority Goals: 1) preventing and reducing morbidity and mortality arising from gastrointestinal disorders and other health effects, by ensuring that adequate measures are taken to improve access to safe water and adequate sanitation for all children; 2) to prevent and substantially reduce health consequences from accidents and injuries and pursue a decrease in morbidity from lack of adequate physical activity by promoting safe, secure and supportive human settlements for all children; 3) preventing and reducing respiratory disease due to outdoor and indoor air pollution, thereby contributing to a reduction in the frequency of asthmatic attacks in order to ensure that children can live in an environment with clean air; 4) reducing the risk of disease and disability arising from exposure to hazardous chemicals (such as heavy metals), physical agents (e.g. excessive noise) and biological agents and to hazardous working environments during pregnancy, childhood and adolescence. In 2010, European governments adopted a declaration pledging to reduce the adverse health impact of environmental threats in the next decade. The text was endorsed by 53 Member States attending the Fifth Ministerial Conference on Environment and Health in Parma, Italy. Through the Declaration and Commitment to Act, and referring to the CEHAPE program, participating governments agreed to implement national programs to provide equal opportunities to each

child by 2020 by ensuring access to safe water and sanitation, opportunities for physical activity and a healthy diet, improved air quality and an environment free of toxic chemicals

Mr. László Fórika, senior legal advisor of the Office of the Commissioner for Fundamental Rights summarized the experiences gained during the on-the-spot inquiries conducted on Roma compounds situated in the Northern region of Hungary. Mr. Fórika explained that Hungarian society faces serious problems of integration. Unemployment and poverty are an increasingly serious problem, and the most affected group of society is Roma people. These problems can be detected at regional level, as well (1/3 of the Roma population in Hungary live in the Northern region of the country.). Mental depression is very common and living conditions (like in ghettos) make it very difficult to find a job or to have access to healthcare services, education or housing. 50-60% of the Roma people living in these slums are children. Life expectancy is low, career prospects are poor. Roma segregation in schools is very common in this region. Kindergartens and schools are not able to cope with the problems of these children with cumulated disadvantages. Competency level of these children is often very low. Some might continue studying in vocational schools but drop-out is very common. And the vicious circle starts all over again: unemployment, poverty, a lot of children, segregation in schools.

Ms. Ágnes Kozicz, chief legal advisor of the Office of the Commissioner for Fundamental Rights summarized the findings of the Ombudsman's inquiry concerning good and bad practices of schoolbag carriage, the weight of children's schoolbags and the negative consequences of such heavy loads on the developing spine. Children might develop irreversible back deformities because of the weight of the bags they carry to school. The reason for choosing this topic was that from 2004 national legislation went into effect on measures to be taken in order to reduce schoolbag weight but according to media reports, practice does not seem to be in line with the relevant regulations. For this reason, the commissioner conducted an ex officio inquiry into the structure of schedules and the weight of schoolbags and the availability of physiotherapy or spinal stabilization training in schools as a possible way to avoid possible risk of future spinal problems.

Ms. Szilvia Kéri, legal advisor of the Office of the Commissioner for Fundamental Rights summarized the findings of two inquiries conducted ex officio concerning children's access to clean water and the situation of environmental education and training in public education. The inquiry – titled „Does the child have access to tap water if he/she is thirsty?“ – found that it might constitute a violation of the child's right to protection and care if access to clean water is not possible for several reasons.

As a result of cooperation between the competent ministries and other relevant bodies, temporary water supply is ensured in those settlements where – due to some amendments of the relevant regulations – tap water quality does not meet required standards. As the Ombudsman pointed out, given this situation it is up to the families choice whether to consume low standard quality tap water or to drink safe drinking water available at external water supply distribution points, which is more complicated and time consuming. Communities should be adequately informed concerning the availability of temporary drinking water supply availability in order to ensure the right to health and access to safe drinking water. The report also stated that further measures (like water supply network reconstructions), are needed to be taken in order to ensure adequate drinking water supply in these regions. Concerning his other inquiry, the Ombudsman found that children should be given adequate education concerning environmental protection/sustainability in order to ensure that life conditions of future generations based on natural resources are well protected.

Ms. Ágnes Darvas, associate professor at the Faculty of Social Sciences of Eötvös Lóránd University spoke about child poverty and health in Hungary. Social inequalities have worsened even at regional level. Poverty risk for families with children is larger than average. Status of families is worsened by earning conditions that become more and more difficult. Long term poverty has very serious mental and physical impact on a child's whole life. Poverty and deprivation have negative effects on a child's personal capacity development, social integration and might lead to social exclusion. Therefore, well-coordinated, long-term programs and their implementation are needed to prevent and combat child poverty with the development of early childhood services.

Mr. Attila Varga, senior researcher of the Hungarian Institute for Educational Research and Development) gave a presentation on the role of eco-schools in environmental education. He gave a short summary of the most important international initiatives in this field (UN Decade of Education for Sustainable Development-2005-2014; the European Council conclusions on education for sustainable development). At the national level, Mr. Varga summarized the role and the place of eco-schools in the new national educational-institutional framework emphasizing that environmental education is a cross-curricular priority area of the National Core Curriculum. Finally he shortly presented the functioning and activities of the EcoSchool Network and some projects which aim to promote the work of this network. One of these projects is "Widening Green Kindergarten and Ecoschool movements" project sponsored by the Swiss government. The main goal of the project is to strengthen the environmental consciousness of children and pupils. For this purpose, the level of environmental education in public institutions is increased by widening the green kindergarten and ecoschool movements. The green institutions integrate the topic Natura 2000 in their environmental education activities in a systematic way.

Reflecting to the presentations, Mr. Gyula Dura, director of the National Institute of Environmental Health emphasized that the institution attaches priority to decreasing the burden of disease due to environment pollution and to the protection of the health of children and vulnerable population groups, determination, identification and investigation of environmental risk factors that are determinants of health and disease, as well as elaboration.

Why the state has to examine children's health condition? The burden of diseases of environmental origin is increasing. The number of non-infectious diseases (asthma, accidents, potential damages caused by endocrine-disruptors) is raising among children. Therefore it is essential to examine and understand environmental risks effecting children (transportation, accidents, contaminated soil of urbanizations or playgrounds), to survey disease burden (like respiratory diseases or allergy) and support the development of child-friendly and healthy environments (in-door air quality, rural and urban development etc.)

Mrs. Zsófia Pusztai, office manager of WHO Country Office Hun-

gary briefly summarized the office's main activities and goals concerning social inequalities and "health-inequalities" and the fields of cooperation with WHO. The main objectives of collaboration reflect the new goals of WHO included in the WHO/Europe's new Country Strategy and the European health policy – Health 2020. The aim of this program is to reduce inequity in the distribution of health within the population and raise the level of health (with particular emphasis on vulnerable and the Roma population. As to Hungary, Mrs. Pusztai emphasized that Hungary needs a comprehensive strategy for mobilizing resources for health at governmental level in order to address challenges of economic policy objectives and the health care professionals human resource crisis emerging in the country. The Hungarian Ministry of Human Resources is now preparing a study – in cooperation with WHO Regional Office Europe – on health-inequalities and health determinants of society in Hungary. Civil society, local governments, experts, and governmental bodies will be consulted for the preparation of the study in order to contribute to the promotion of awareness, political commitment and action to address the conditions that make people vulnerable to ill health and in particular to address the needs and expectations of vulnerable groups.

Ms. Mária Herczog, member of the UN Committee on the Rights of the Child in her video message spoke about the importance of encouraging early child development. Health, social skills and learning are to a great extent determined by the quality of care and education in the first years of life. Essential cognitive, emotional and social competences develop during this period. In present day Hungary, parents lack the appropriate knowledge and skills at the time of starting a family and in the period following is — among many other factors — a fundamental determinant of social marginalization and isolation, failures at school and the subsequent generation problems. Parenting, motherhood and skills are primarily acquired: parenthood, the developmental needs of the child and the appropriate ways to respond to these needs must be learnt and the most successful methods identified. She emphasized that people with low levels of education, those living in difficult social circumstances or in social isolation, those struggling with mental problems or disabilities and those out of work are in a particularly difficult situation but those people with a higher social status are not immune to problems either.

Mr. Iván Sörös, (Head of Section, Dep. Responsible for Social Inclusion, Ministry of Human Resources) summarized the on-going social inclusion programs of the ministry. He emphasized, that in the framework of these programs the ministry is conducting an intensive and structured dialogue with regional and local authorities, the civil society and churches. The monitoring system of the social inclusion strategy keeps track of the progress of implementation and the social impacts of the measures, extends to all relevant sectors, and supports added data collection and research. He mentioned as well the strategy called "Making things better for our children" which aims to tackle child poverty, promote their social inclusion and to avoid reproduction of social exclusion, deprivation and poverty.

Mr. Sörös highlighted another program called "Sure Start". This program was launched against child poverty and exclusion in the United Kingdom in 1999. The program has two main purposes: to promote children's social and emotional development, skills and abilities, advancement and healthcare, and to promote and strengthen the family as a community. Hungary joined the *Sure Start Program* in 2003 to provide children aged between 0 and 6 and their families with some chance and help in order to facilitate their abilities and to develop their skills. Model programs were introduced in 2003 in different types of settlements and townships, such as Ózd, Vásárosnamény, Józsefváros in Budapest, Csurgó and Órtilos. From 2005 Katymár and Győr also started their local *Sure Start* experimental model program.

Since its starting, the program could provide approximately 400 families and 700 children with disadvantages under the age 6. One among many excellent programs works in a nursery in Józsefváros District in Budapest.

The Dignity of the Most Vulnerable

On Homeless, Persons Living with Disabilities, Patients, Women, the Elderly – as Main and Sub-constituting Elements of Groups of Vulnerable Persons

by

BEÁTA BORZA – TÍMEA CSIKÓS– BERNADETT KISS – ÁGNES KOZICZ –
ATTILA LÁPOSSY – PÉTER SERES

This study intends to draw the attention to possible European solutions “treating” marginalized social groups, to the mainstream appearing or lacking at the national level. Practical experience shows successful implementation of certain solutions and the lack of qualified defence mechanisms of human rights way of thinking. The Ombudsman’s traditional reactive mechanism of human rights protection gave the illusion of a real defence system therefore the proactive-type project method based on annual programs had an efficient defence function. Concerning certain vulnerable groups, the data of the up-to-date 2011 census data and the conclusions drawn therefrom can be applicable.

As for the protection of the rights of the most vulnerable people, the Ombudsman’s task is to draw up a logical, coherent argumentation setting out from the Basic Law and using the Constitutional Court’s case law of nearly two decades. In addition, without ignoring the social aspects, one should lay strong emphasis on the fundamental law considerations. In this sphere the Ombudsman acts as coordinator and sometimes as mediator. The rule of law as an institutional order and a socially accepted value based on the pattern of cultural behaviours as a whole – remains consistent with the awareness raising role of the Ombudsman.

Protection of basic rights of homeless persons and persons living with disabilities: Social and legal judgment of being homeless and disabled is different, acceptance and inclusion is present at the surface, the intersection point of the analysis is being vulnerable. While the phenomenon of homelessness goes back to the period of political transition in historical terms, the outcome is still varying at the European level, while the phenomenon of

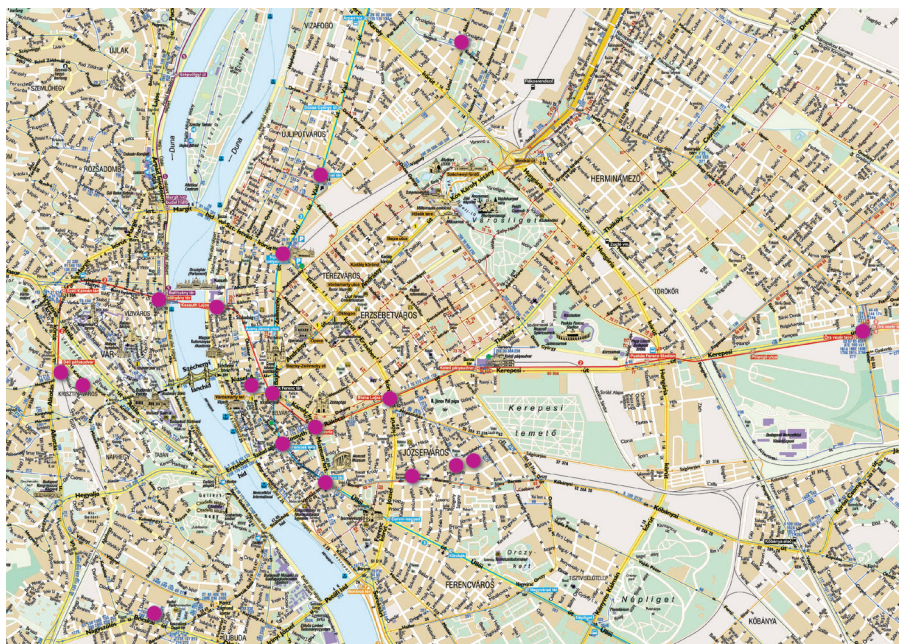
disability has been present in the professional and legal argumentation since the World War II. The issue of homelessness was analysed starting from the streets and based on the monitoring of the social care system with the complete review and critical analysis of the legal background. The issue of disability became a current topic after the ratification of the relevant UN CRPD, fundamental/human rights considerations had to be put clear and the doctrine of equal opportunities had to be made evidence with constitutional arguments.

The new Ombudsman Act defines the enhanced protection of the rights of persons belonging to the most vulnerable social groups as an important priority. Ombudsmen have always paid special attention to the protection of the fundamental rights of persons who, left by themselves, are not or only partially able to protect their rights. Financial and economic difficulties affect the whole society adversely. They do however strike especially persons belonging to the most vulnerable groups of society, such as ethnic minorities, homeless people, disabled persons, elderly people etc.

Since entering his office, the Ombudsman has launched several projects which have particular focus on the examination of the situation and fundamental rights of the most effected and vulnerable groups. In 2012, the Commissioner conducted a quick survey on the current situation of the homeless living in the capital. The Ombudsman studied the "homeless policies" of some districts greatly affected by homelessness in order to explore the current conditions in the streets, and contacted the local governments for information regarding their to change some legal provisions allowing them to take measures against the homeless. From the responses received it became clear that there were no plans to pass legislation regulating the stay of homeless people in public areas. The staff of the Ombudsman's Office also gathered information in some areas of Budapest. In his reports, the Commissioner emphasized that he may only investigate measures and programs regarding the homeless or tackling the issues of homelessness only if they are of social nature and suitable for fostering the long-term social reintegration of homeless people

On 3 February 2012, in second stage of on-site inspections carried out in order to examine the situation of the homeless crisis, the Office's staff members visited the newest homeless shelter inaugurated at the end of 2011 and other institutions supporting homeless people, e.g. the Budapest Methodological Social Centre and Institutions (BMSZKI). During

the visit of the colleagues of the Ombudsman, official authorization and acceptance procedure to the building took place in the presence of local government officials and the director of the institution. The director of the facility sowed the visitors around the freshly painted, but vacant building, explaining that the furnished institution would operate both as a night shelter with a capacity of 340 persons and a day-care shelter with fixed opening hours. Homeless persons would be provided with washing and cooking facilities and other social services: a general information service and recruitment service assisting social reintegration would also be available, and a medical room had been established. A co-educate, barred detention room with fixed furniture had also been established, which had been highly criticized (on the grounds that it lacks legal basis) by several social experts, mainly because its operation would fall within the competence of Budapest Police Headquarters. The director drew the visitors' attention to the fact that recent changes in the financing system of the institution might cause serious shortcomings in its functioning.



The colleagues of the Ombudsman made inquiries on the spot in Budapest Lehel tér, Nyugati tér, Ferenciek tere, Nagyvárad tér, Déli pályaudvar, Batthyány tér, Blaha Lujza tér, Keleti pályaudvar, Nyugati pályaudvar between 27 January 2012 and 3 February 2012.

After the visit, on 13 February 2012 the director informed the Ombudsman that conditions had not changed a lot since 3 February, smaller finishing works like fixing door-locks and installation of washing machines were still going on. The final installation of equipment was financed by the Ministry of Interior and the Ministry of National Resources, the transfer of the money was in process. In the course of its on-site inspection, the licensing authority noted the missing equipment and, presumably for this reason, did not issue the operating license. Other official licenses (fire department, National Public Health and Medical Officer Service) had been previously obtained, the operation was secure; however, allocated state funds could be used by the City only upon getting the operating license.

Saving homeless persons from freezing to death is only first step. Besides helping to avoid immediate risk of death there should also be individual solutions to end or prevent "reproduction" of homelessness. The commissioner for fundamental rights summarized the findings of its on-the-spot inspections carried out during the days with extremely cold temperatures.

Following his report listing serious problems regarding homeless situation in Budapest and "subway-cleansing", the ombudsman has found in 2013 that the so called survival spots were eliminated; however the welfare system intended to solve the problem by opening new hostels and increasing capacity. Helping to avoid immediate risk of death is only the first step, social welfare system should provide further, personalized solutions to fight homelessness and to stop its reproduction – the ombudsman pointed out. He recalled that being homeless, sleeping and staying in public places is not a crime in itself to be sanctioned by the authorities, but a social emergency which calls for socio-political response.

In the Ombudsman's opinion, social welfare services assisting homeless people should be clearly distinguished from elements of sanctions applied within the framework of the state's penal power. The local governments which were inquired by the Ombudsman have not adopted new regulations sanctioning homeless persons staying in public places and, apart from some exceptions, no such regulations are planned to be adopted.

The Ombudsman holds that there are no professional or legal reasons for the establishment of detention rooms and police areas within the

shelters for homeless people. This – for the moment – symbolic action as well as the communication emphasizing that some homeless people staying in shelters are ex-convicts – contribute to strengthen prejudice in society against homeless people. In his report the Commissioner stressed that the only programmes and measures which he considers acceptable are those of social character and suitable for the long-term social reintegration of homeless people.

In his “Dignity of Labour” project the Commissioner paid special attention to the employment of people living with disabilities, their circumstances and opportunities on the labour market. In the interest of a thorough investigation, the project proceeded on three main topics: the chances of the disabled to enter the labour market, the circumstances and conditions of their employment and the education system facilitating and supporting the employment and the work of people living with disabilities.

In the Hungarian legal system there is no single definition for ‘person with disabilities’. Job centres use a broader notion of persons with reduced work capacity, a notion which includes both persons suffering from health problems and persons with disabilities. The support scheme does not provide incentives for employers to employ persons with disabilities. The ombudsman has inquired into the domestic regulation and the employment opportunities of persons with disabilities.

In his labour law project entitled ‘The Dignity of Labour’, the Commissioner has found that although there are positive changes in different rules of law, persons with disabilities are still disproportionately excluded from the labour market.

In his report the Commissioner pointed out that the tendering system aimed at improving the employment situation of persons with disabilities in its current form is unpredictable and chaotic, it does not allow the elaboration and implementation of long term strategies for the promotion of the employment of people with disabilities. At the same time, setting up a unified registration system, covering all relevant aspects of the employability of the disabled, would facilitate the elaboration of such strategies. The Commissioner requested the Minister for National Economy to pay special attention, together with the Minister of Human Resources, to the

employment of people living with disabilities and initiate decisive measures in order to facilitate the integration of the disabled into the labour market.

The Ombudsman's inquiry into the working conditions of the disabled established that, although the New Labour Code and the Act on Provision of the Rights of Persons Living with Disability and Equality of Opportunities adopted the concept of rational adaptation, the legislator failed to define the system of its content requirements. It is mainly because the resources and the supporting system necessary for creating the conditions of rational adaptation are not accessible for the employers. At present only accredited employers may apply for support from the central budget, the legislator intends to support non-accredited employers through the institution of the rehabilitation card and by freeing them from under the obligation to pay rehabilitation contribution. The current, not so transparent and not well elaborated employment and support system still cannot ensure the implementation of labour safety guarantees for people living with disabilities. Therefore, the rights of persons with disabilities to human dignity and free choice of occupation are infringed on, persons with disabilities do not receive the protection stipulated in the Basic Law and the requirements of equal treatment and legal certainty are not respected. The current practice of the law and the activities of the various bodies enforcing the law create insecurity on many occasions. To grant remedy for this situation, the Commissioner requested the Minister for National Economy to work out, in cooperation with the Minister of Human Resources, the detailed rules of rational adaptation and to harmonize the support system designated to facilitate the employment of people living with disabilities. In the course of his inquiries into the education system, the Ombudsman concluded that the *training of people living with disabilities* cannot be separated from their successful employment, so the competent ministries should pay particular attention to efficient cooperation and continuous consultation with each other. It turned out, however, that the ministries concerned distance themselves from one another referring to various legal regulations, accentuating their lack of competence in the given subject. It is clearly demonstrated by the absence of concrete measures aimed at implementing the National Disability Programme. According to the Ombudsman, the absence of a

clear and unambiguous regulation and a harmonized, hierarchical system of institutions under central guidance, supporting the training and employment of people with disabilities, can also be traced back to the absence of inter-ministry cooperation. The creation of a uniform system of regulations and institutions and the compilation of a list of various trainings with labour market relevance are also hindered by the absence of an extensive database which would keep track of the institutions providing training for people with disabilities. In the absence of an institutional framework, civil society organizations organize trainings for people with disabilities using money tenders, which is an unpredictable solution that cannot be planned in the long run. Although there are some equal opportunity tenders for people living with disabilities, the tender conditions usually put such restrictions on the range of prospective candidates that the civil society organizations interested cannot effectively participate in them.

The report concluded that there are no uniform regulations and institutions functioning in a coordinated way, under central control, that could support the employment and training of people with disabilities in an efficient and transparent manner. The current legal environment is not fully compatible either with the provisions of the Europe 2020 Strategy of the European Union or with the norms of independent life and social participation stipulated by the UNCRPD, promulgated by Act XCII of 2007 in Hungary. Disabled people may not be constrained in their access to the public goods available to the non-disabled people because of their disability. Because of their condition, they need to be supported so that they have equal chances and quality to exercise their universal rights. This justifies the requirement of preference in all fields of the society, for which the public services have to be organized depending on the differing necessities of the various groups of disabled persons. It is not sufficient to determine the requirement of preference by legal means. The law applying organs have to ensure the conditions of the enforcement of these rights as well.

The data of the national census referring to the position of disabled people on the labour market – without the demand of the completeness – can be summarized as follows:

The number of disabled persons increased from 368.000 in 1990 to 577.000 in 2001, their portion within the population increased from 3.5% to 5.7%.

Economic activity and types of disabilities %

Economic activity %	1990			2001		
	Total	Disabled	Non-disabled	Total	Disabled	Non-disabled
Employed	43.6	16.6	44.6	36.2	9.0	37.8
Unemployed	1.1	0.7	1.1	4.1	2.0	4.2
Inactive earner	25.6	57.5	24.5	32.4	76.7	29.8
Supported	29.7	25.2	29.8	27.3	12.2	28.2
Total	100.0	100.0	100.0	100.0	100.0	100.0

Type of disability	Total	Em- ployed	Unem- ployed	Inactive earners			Sup- ported
				Total	Receives pension on his own right	Receives disability pension	
Physically disabled	100.0	7.0	1.5	85.7	42.0	37.1	5.8
Visually disabled	100.0	13.0	2.9	72.3	44.1	18.8	11.7
Mentally disabled	100.0	7.0	1.2	47.2	8.5	33.1	44.6
Hearing disability	100.0	11.0	2.0	77.2	52.1	16.4	9.8
Other disability	100.0	10.3	2.9	75.0	24.4	45.7	11.8
Total:	100.0	9.0	2.0	76.7	35.9	34.1	12.2

Employed persons according to sectors of the national economy, professions and disability 1990, 2001 (%)

Specification	1990			2001		
	Total	Disabled	Non-disabled	Total	Disabled	Non-disabled
Agriculture and forestry	15.6	16.1	15.6	5.5	6.5	5.5
Industry, construction industry	37.6	46.2	37.5	32.9	38.1	32.8
Sectors of service character	46.8	37.7	46.9	61.6	55.4	61.7
Total	100.0	100.0	100.0	100.0	100.0	100.0
Managers, intellectuals	16.4	12.4	16.4	20.5	18.3	20.5
Other white-collar jobs	17.1	14.5	17.2	20.3	18.7	20.4
Jobs in the service industry	8.6	5.6	8.7	15.8	11.3	15.8
Jobs in the agriculture	4.0	4.5	4.0	3.1	4.3	3.1
Jobs in the industry, in the construction industry	40.1	40.3	40.1	31.5	33.4	31.4
Others	13.7	22.8	13.6	8.8	14.1	8.8
Total:	100.0	100.0	100.0	100.0	100.0	100.0

Disabled persons according to disability and education level (%)

Education level	Disabled persons
Elementary school, less than 8 grades	32.5
Elementary school 8 grades	38.3
Secondary school without final exams, with vocational certificate	10.2
Secondary school with final exams	14.1
University, academy etc.	4.9
Total:	100.0

Sources: Central Statistics Office (recruitment; II. Quarter 2002)

Unfortunately the only source of gaining the relevant data is the national census (in every tenth year), and there is no other authentic statistic made by the state available. It follows that we do not have also any appropriate information (except see question 2.) about persons with disabilities working in the informal sector.

The Ombudsman's inquiry on the disabled students studying in higher education pointed out several contradictions. Among the problems he highlighted that the definitions of a disabled person and the scope of persons covered by that definition are different in the UN CRPD and the domestic

rules on higher education. The diverging practice of the higher education institutions (in certain cases their individual faculties) may be due to the fact that they established their procedures not or not completely in compliance with the legal provisions.

According to the Commissioner, those disabled students who had already passed their final examination and, respectively, whose student status had been terminated but did not receive their diploma due to their failure to meet the language examination requirement, could have turned / can turn, in possession of the required expert opinion, to their former higher education institutions under both the former and the prevailing legislation. Their petitions have to be judged by the higher education institution concerned upon the merits of their content. The higher education institution may not refer to the termination of student status. The immunity petitions submitted and positively judged while still in student status serve as proper reference for doctoral schools, too, since the provisions of the Act on immunities and benefits have to be applied in their case, as well.

The ombudsman turned to the Minister of Human Resources and requested the harmonization of the relevant legal provisions. In addition, he suggested that the presidents of higher education institutions should facilitate the enforcement of the disabled students' rights in accordance with the provisions of the relevant legal regulations.

The rights of the disabled students are not enforced in a uniform practice by the higher education institutions, moreover, in certain cases, by the faculties within the institutions. The Commissioner has concluded from this that the legislation is inadequate or ambiguous. He asked the Minister of Human Resources to establish a clear legal context. In his response the secretary of state in charge of higher education partly concurred with and partly disputed the findings of the ombudsman. The Minister noted that he would revise the practices of the higher educational admission procedure and the data publication and registration procedures of the Higher Educational Information System taking into account the Commissioner's proposals. The secretary of state agreed with the ombudsman that the institutions of higher education had failed, in many cases, to adjust the provisions of their institutional regulations to the changed legal environment. Since all institutions of higher education are free to formulate their organizational and operational practices, it does not, in itself, infringe the requirements of legal certainty and equal opportunity

if institutions internally enforce the rights of those living with disability to different extents, responded the State Secretary to the Ombudsman. *The Ombudsman also investigated if the institutions of higher education reviewed the background and circumstances of students when deciding on awarding exemptions and benefits.* The State Secretary does not feel necessary, due to the diversity of higher education, to further regulate reviewing criteria, since most cases are unique, requiring individual reviewing. The ombudsman also pointed out that in many cases higher educational institutions deny the applications of students living with disability requesting exemption from the mandatory language exam after having passed the final examination saying that the students' legal relationship with the institution has been terminated. In the Ombudsman's view, such requests should be reviewed on their merits and the institutions may not refer to the termination of the legal relationship. In his response the State Secretary stressed that, under the relevant statute, such requests may be submitted and reviewed on an individual basis even after the termination of the students' legal relationship with the institution of higher education; however, further legal regulation of the issue would lead to unwanted difficulties in implementation. The secretary of state acknowledged that the current regulation of the issue does not cover the possibility of exemption in the case of doctoral schools. According to the Ministry, the possibility of exemption in the case of doctoral schools should be considered not while the student is in legal relationship with the school but during his/her admission, and also pointed out that, as of 2016, a certificate of foreign language will be required also for the admission of high school graduates to institutions of higher education – doctoral schools will review exemption requests accordingly.

As a conclusion, the State Secretary stressed that the findings in the Ombudsman's report would be taken into consideration during the revision of relevant legal regulations and efforts would be made to regulate the scope of benefits and exemptions of students living with disability in an unambiguous and predictable manner.

The ombudsman about patients' rights: "Being sick", being a patient, forming a relatively vulnerable group, might be a temporary, permanent or pseudo status. Historically, human rights discourses helped the development of special, patient oriented jurisdictional thinking. The evolution of patients' rights draws a classic curve in the European dimension but with a slow adaptation in out national healthcare. The scientific litera-

ture generally does not consider patients as a vulnerable group given the fact that healthcare systems (see R & D, insurance mechanisms) operate so that patients can become able to work within the shortest time possible. In Hungary, this intention can be hardly detected, mainly at the level of private service providers and in the insurance market.

As the Constitutional Court pointed out on several occasions, the right to physical and mental health in itself cannot be interpreted as a subjective right. Consequently, access to healthcare services is not a subjective right, either; it is possible on the basis of another legal relationship. The state's obligations are limited to the creation of the proper economic and legal environment and to the organization of medical care and the network of healthcare facilities – all those within the state's capacities, taking into account the society's power.

The competence of the Ombudsman in the sphere of healthcare is rather limited. Under the statute regulating his activities, he may not investigate all types of grievances, e.g. medical professional issues. Nor can he take a stance in matters related to malpractice compensation claims which fall within the jurisdiction of the civil courts.

Formulating the professional and legal conditions of healthcare, then controlling the practical implementation of its legal regulations are the tasks of the state both as legislator and law enforcer. In order to explore the practical implementation of this principle, the Ombudsman initiated an inquiry into after-hours hospital duty and, in this context, into some issues of training and employing residents and interns.

Since the practices of healthcare institutions vary in this field, the Ombudsman deemed necessary to draw up a competence list that would identify the rights and duties of residents and interns and the character of their professional supervision in order to guarantee the enforcement of the patients' rights, the efficient, secure and professionally adequate provision of healthcare services. In order to introduce a uniform practice nationwide, the Commissioner requested the Minister of National Resources in charge of healthcare to determine, with the participation of the professional associations and colleges concerned, the exact contents of activities to be carried out by residents and interns, including after-hours hospital duty, and forms of their professional supervision, and to take the necessary measures in order to promptly compile the competence list identifying those activities.

The Commissioner also established that there not enough pharma-

cists, assistants and professional assistants in Hungary, continuity is not guaranteed and the level of the training of healthcare assistants is uneven. The universities do not educate enough pharmacists, certain basic activities (e.g. extemporaneous pharmacy) are atrophying, the pharmacists and assistants are overloaded and overworked. In many cases they have to carry out activities not matching their competences, and pharmacies find it harder and harder to secure the continuous presence of at least one pharmacist during business hours. During his investigations the Ombudsman established that the level of the assistants and professional assistants' training is uneven, the system of their education is deteriorating and the legal regulations governing their training are often disrespected in practice. The personal and material premises of transferring and acquiring professional knowledge are inadequate, legal regulations specifying the length of training are not harmonized. Market competition between institutions specializing in adult education may also be conducive to the deterioration of the quality of education.

According to the Ombudsman, the above mentioned factors may infringe upon the fundamental right to health and healthcare, therefore, he requested the Minister of Human Resources, in charge of both education and healthcare, to take into account the factors leading to the shortage of professionals while determining the university admission quota of pharmacists and to revise, cooperating with the ministries concerned, the contents of the professional training of healthcare assistants. He also requested the Minister for National Economy and the Minister of Human Resources to harmonize the legal regulations specifying the length of training. In his response the Minister of Human Resources *de facto* accepted the Ombudsman's recommendations.

In 2012 the Commissioner for Fundamental Rights proposed to set up an inter-ministry committee in order to work out the comprehensive strategy for regulating and supporting the medical herb sector, since the system-level management of problems is subject to the active and continuous cooperation of all ministries and sectors concerned. He also initiated the amendment of two ministerial decrees: one on solidifying the legal status of curative substances not classified as medicinal products, and another on regulating the activities of small-scale producers. The Ministry for National Economy agreed with the contents and the recommendations of the Ombudsman's report on the subject because the special task force that had been set up within the ministry came to the same conclusions.

The situation of elderly people: Growing old, as a status leading to a situation of vulnerability is a special Eastern-European phenomenon. Given the fact that the topic is not only an issue of basic rights but one of social science, our investigations and research occasionally tried to comprise a much broader image that could be expected from the Ombudsman's role. The daily social portrait can be seen more clearly in the axis of interdisciplinary context, therefore, diverting from the so far strictly professional analyses of the Commissioner, this time we rather called attention to the fact that according to domestic researches, every fourth Hungarian would be over sixty in ten years, and Europe is not in a better position, either. One component of a general human evolutionary process is care for the elderly, and the creation of harmony between policies managing social tensions and human rights in the framework of the state based on the rule of law. And why are elderly people considered to be vulnerable in Hungary today? Looking at the isolation of market and the national pension system in the last ten years can give us the answer.

Protection of Women: The problem concerning the situation of women in Hungary have been raised repeatedly, but within different contexts considered as a sub-group of vulnerable groups of society since it was not the special subject of basic rights investigations or special interpretations. Gender-based cases of discrimination - especially in the world of labour - the issue falls within the competence of the Equal Treatment Authority. In some cases, women as mothers were in the focus of the Ombudsman's investigations because of healthcare services or other type of social benefits claims. As an example, there were two cases when the Ombudsman intervened for the protection interests of two pregnant women as a vulnerable group¹. The relevant report of UN CEDAW is determinant in the national public law considerations, as well².

¹Examination carried out by OEP on the preconditions of maternity leave (No. CFR-1569/2012. Reports), and the petition to the Constitutional Court challenging certain regulations of the Labor Code which provide that a pregnant women may rely on her pregnancy against her dismissal only if she previously informed her employer about her pregnancy prior to her dismissal. (. No. CFR-6468/2012. petition).

²For the whole text of the Report of the UN CEDAW click here: Concluding Observations on the combined seventh and eighth periodic reports of Hungary adopted by the Committee at its fifty fourth session (11 February – 1 March 2013)

Community Employment – Opportunity, Right or Stigma?

by

ÁGNES RAJZINGER – GABRIELLA VARJÚ – ADRIENNE ZEMPLÉNYI

Nowadays community employment is one of the most disputed tools of employment policy. As a result of the ever-growing number of unemployment and the decreasing number of the employed, the focus of creating jobs and increasing employment has shifted to this special form of employment.

The primary goal of this paper is to clarify, without passing judgment either on economic or employment policy basis, whether community employment really gives a chance, ensure the *right* and create an *opportunity* to work or, on the contrary, it does *stigmatize* those who do not have a job and are in need.

Judging by the peculiarities of the current Hungarian community employment model, this is a legal relationship which is supplemented with specific elements of public authority and executive power and based on neither co-ordination nor voluntary contracting, and which is *lacking* the *guarantees* fundamentally inherent to labour law. As a result, community employees are ‘cumulatively exposed’. This model is simultaneously giving way to the *arbitrary implementation of the law* both by the *employer* and the *authorities*. However, exposure is many-sided: both the community employees and the unemployed who cannot get into the system are exposed; the latter remains without work and any means of subsistence. On the other hand, the massively growing number of community employees is amplifying, strengthening the already palpable problems and anomalies.

The current, uniform system of community employment, introduced in 2011, is not without antecedents. A historical overview of the evolution and the forms of community employment shows us that all the elements of the current community employment programs could also be found in earlier public work programs. The new system, however, put forward new conditions increasing the community employees’ exposure. One of the changes,

significantly increasing exposure, is that while under the earlier regulation a person in need might be excluded only if he or she had rejected the public work opportunity provided by the local self-government, in the new system obtaining the 30 days eligibility period is the exclusive responsibility of the durably unemployed person and the local self-government does not have to provide any opportunity therefor.

The paper investigates the community employees' exposure from several angles. On the one hand, it describes the heterogeneity of the community employees as employees: nowadays the 'group' of community employees consists of persons with diverse educational and social backgrounds. As a result, beside the system-specific issues concerning all community employees, these people also have to face specific problems.

On the other hand, the paper gives a detailed analysis of the problems arising in connection with certain elements of the system, such as the shortcomings of planning, professional preparation and control, the subjectivism of the selection process and the issues of cancelled trainings and the community employees' wage-system. These issues are introduced in a special way, from the standpoint of those in need, pointing out the system's immediate and often irreversible influences on their lives. Such an adverse effect may be the case in which someone is not entitled to public services. Such a situation constitutes a permanent threat for persons both inside and outside the program, as the inadequateness and dysfunction of certain system elements generate effect mechanisms leading to and increasing the exposure of the participants of the programs.

*Unemployed involved to community employment
Comparison of the data of the first halves of years 2011-2013*

Place	Unemployed involved to community employment		
	2011	2012	2013
Budapest capital	3 017	2 417	3 211
Baranya county	8 334	6 339	13 458
Bács-Kiskun county	8 783	6 436	9 093
Békés county	9 809	9 286	15 248
Borsod-Abaúj-Zemplén county	23 271	18 367	33 521
Csongrád county	5 169	5 256	6 313
Fejér county	3 737	3 697	5 547

Győr-Moson-Sopron county	1 731	1 659	2 457
Hajdú-Bihar county	13 759	6 578	15 467
Heves county	5 363	4 084	6 394
Komárom-Esztergom county	2 815	2 547	2 857
Nógrád county	6 141	2 678	7 314
Pest county	5 857	4 381	5 888
Somogy county	8 806	7 762	10 409
Szabolcs-Szatmár-Bereg county	24 543	20 665	29 081
Jász-Nagykun-Szolnok county	9 151	8 918	14 583
Tolna county	4 661	3 605	5 243
Vas county	1 844	1 695	2 234
Veszprém county	4 283	5 219	5 750
Zala county	3 725	3 642	4 928
Total	154 799	125 231	198 996

The paper also analyses whether the public services for community employees base on merits and also examines the conditions upon which the services are applicable. This approach primarily *differentiates between the deprived, disadvantaged persons on the basis of moral criteria*. The system supports those who considered worthy of the support, those who are, according to the decision-makers, not personally responsible for the disadvantaged situation they are in.

The shortcomings and system-level regulatory and operational problems of community employment affect the interests and fundamental rights of all community employees; however, in the case of certain special groups, such as the Roma, people with health problems or over 50 and women, they *may make the community employees even more exposed*.

Although, as a result of the ombudsman's recommendations, there have been some positive changes in the regulation, the continuous monitoring of the system of community employments, focusing on fundamental rights, still remains a necessity. Due to the cumulative exposure of those in need resorting to community employment, the guarantees protecting their fundamental rights and ensuring the requirement of equal treatment are essential and indispensable in both regulation and practice. Consequently, in their case, it is not the breakdown of legal regulations protecting their rights and equality what is needed but, on the contrary, the incorporation of further, extra guarantees.

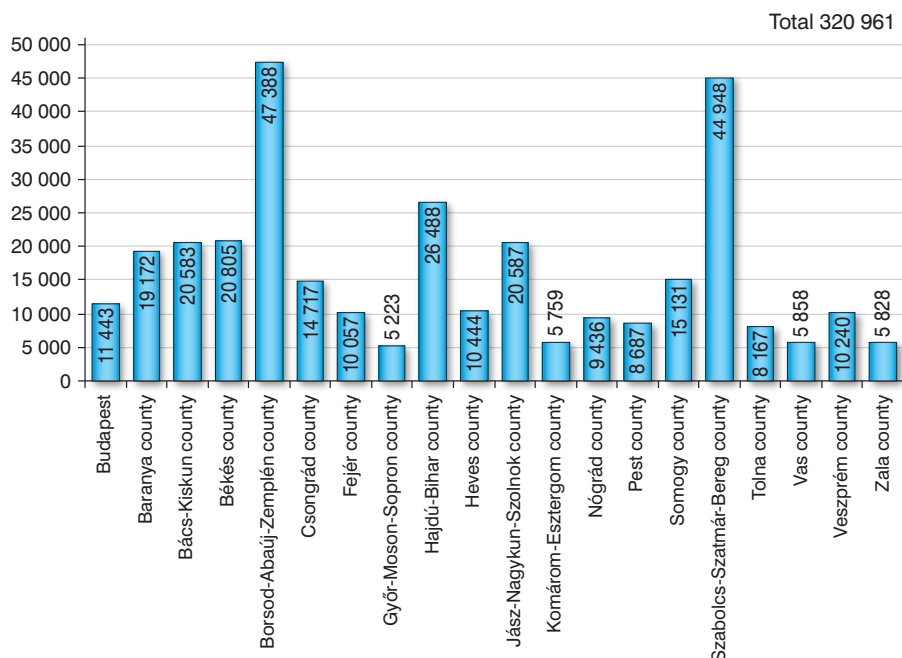
On the basis of the experience of the *on-site inspections* (AJB-4162/2012) carried out by his working group Ombudsman emphasized the problems related to the payment of the wages of persons in community employment, to the consequences of not participating in community employment and to the absence of training. Relying upon his preliminary report the Commissioner for Fundamental Rights has already formulated his recommendations to the local governments concerned as well as to the competent Minister.

In the first half of 2012 many citizens complained to the Ombudsman about their vulnerable situation and raised objections against community employment programmers organized by local governments. Several persons complained that indirectly they have lost their entitlement to welfare aid because they were left out or got out of the community employment scheme, and so – in the absence of other job opportunities – cannot provide proof of the necessary 30 days of work activity per year.

The members of the Commissioner's working group held talks with the local governments of four settlements (Jászkarajenő, Bánytereny, Gyöngyös and Máty) situated in four different counties and with the officials of the competent employment offices, made interviews with persons in community employment and established several improprieties concerning the application of the law and the relevant regulation itself. Among others, it constitutes an infringement of the requirement of legal certainty and of the right to due process that there is no fix schedule for the payment of the wages of people in community employment, advance information about the date of wage payment is incidental, and there is no precise procedure. Because of the contradictory assignment of tasks and contradictory requirements, obligations for training programmers are in general ignored, and necessary training courses related to national community employment programmers cannot be started in spite of those laid down in the relevant legal provisions, which is detrimental for the effectiveness of agricultural programmers.

In his report the Ombudsman underlines that both in the settlements where the inspections took place, and nationwide many people drop out of welfare aid through no fault of their own because they are unable to provide proof of at least 30 days of work

activity per year. In the majority of the settlements affected by an inspection local governments do not have information about how they could organize voluntary community work and they are also uncertain about which documents are needed to certify work performed within the framework of simplified employment or domestic work.



The Commissioner has prepared a package of recommendations related to the regulation in question and to the practice of its application, and he has sent this package to the Minister of the Interior, the Minister of Human Resources and to the notaries of the settlements concerned.

On the situation of community employment the Ombudsman has also organized a workshop in his office, at the 3rd of October 2012, with the participation of experts and researchers of the government, local governments, trade unions and civil society.

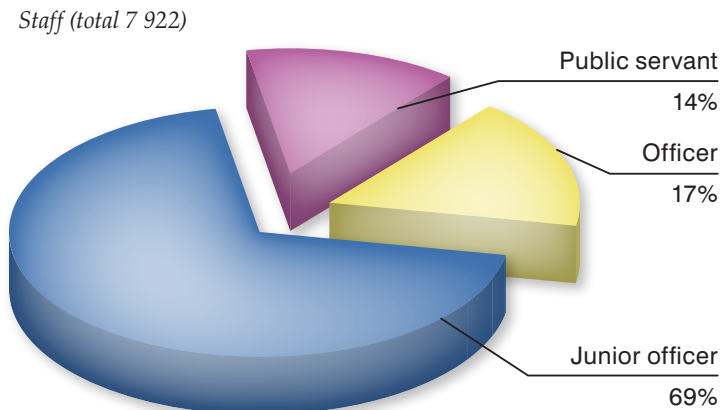
Being in Detention – Being Exposed

by

ERIKA PAJCSICS CSÓRÉ – ÉVA CSILLA VARGA

Prisons are among the basic means of administering justice anywhere in the world. At present, there are about 10 million detainees in various penitentiary institutions all around the world.¹ It is not difficult to list the adverse effects of imprisonment or to argue why it would be more beneficial to use it as a form of punishment to a much lesser extent. Certainly, there are cases when it is unavoidable. The population's sense of justice and the protection of the society require the perpetrators of serious crimes to be sentenced to imprisonment. At least for a certain period of time.

What happens to offenders during and after their detention? Do they feel remorseful, responsible for what they have done? Do they even have the chance to perceive these sentiments? When they are released, what kind of plans may they have, what opportunities can they count on in society? What chance do they have to reintegrate, to re-establish their families and human relationships? And the questions may go on and on!



¹E.g., there are less than 100 detainees for every 100 thousand German or Belgian citizens, but about 150 for every 100 thousand Hungarian or British nationals.

The ombudsman's review of the situation of the detainees in the penitentiary system is especially acute before July 1 2013, when the new Penal Code, Act C of 2012 enters into force, since it is the penitentiary system that realizes and may also balk the objectives of penal law, including those of the punishment itself.

It is widely known that the number of registered crimes in our country is, regrettably, showing an increase.² There are new, previously unheard but becoming more and more frequent methods of committing crimes and types of victims' behaviours.³

Judging by the lessons drawn from the ombudsman's visits to penitentiary institutions, the state of these institutions is not equally deterrent for all members of the society. A law-abiding citizen with a clear criminal record might find the confinement, the ambience and the spirit of the place depressing. An average person would abhor the circumstances within a penitentiary institution and, after a few hours in confinement, he or she would discard the misbelief that inmates have a decent living standard in Hungarian prisons. There might be some elements in our society living in bad conditions who would be not distressed by the crumbling plaster, the limited personal space and the meals of varying quantity and quality, albeit served three times a day. For the latter, freezing and being hungry are not an alternative to a heated cell with regular meals.

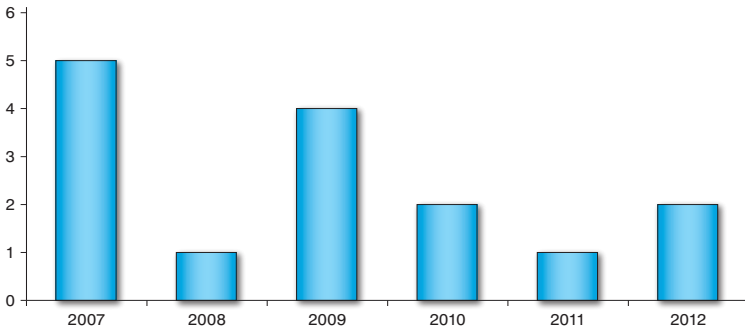
The ombudsman's actions, proposals, requests and briefings attracting attention relative to the penitentiary system are indicative, in the first place, of the thoroughness of his investigations, the firm grounding of his opinions and not of the shortcomings and inadequateness of the system. It is well demonstrated by his findings which, beside pointing out the problems, have also recognized practices in conformity with the protection of fundamental rights. His unbiased statements have an encouraging and inspiring effect on the often tired, jaded and exhausted staff of the penitentiary service.

The penitentiary system is over-burdened, which is made even worse by the decrease of available resources. Under these circumstances, any and all positive statements are highly appreciated.

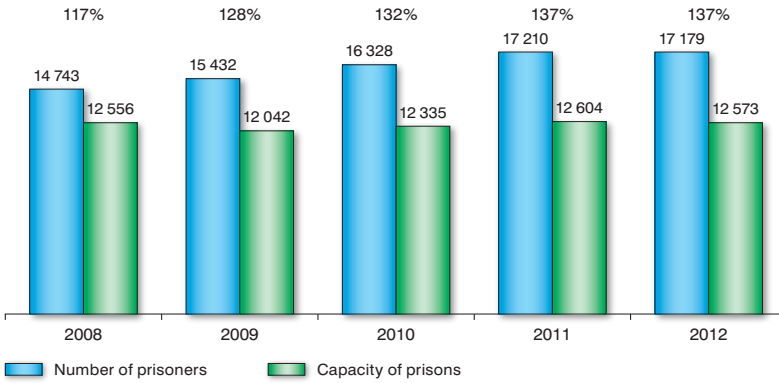
²According to the Uniform Law Enforcement and Criminal Prosecution Statistics, there were 472,236 acts of crime registered in 2012 as opposed to 431,935 in 2011.

³Report No. 7175/2013 of the National Police Headquarters, p. 6, clause IV.

Escape of Prisoners (cases per year)

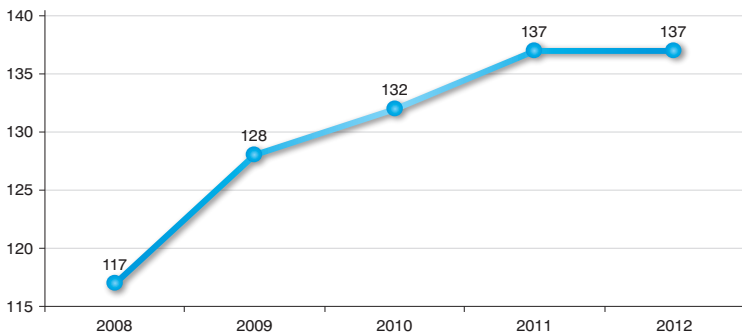


Number of prisoners and capacity of prisons



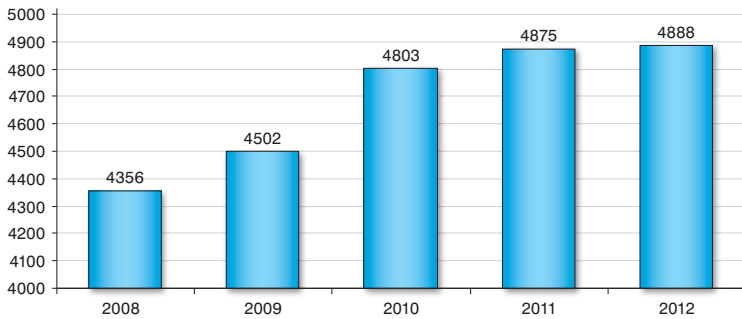
One can draw the conclusion that, as a result of the ombudsman’s recommendations, there have been many improvements within the penitentiary system; the management is ready to heed the ombudsman’s criticism and move towards creating better conditions for the convicts.

Utilization rate of prison (%)

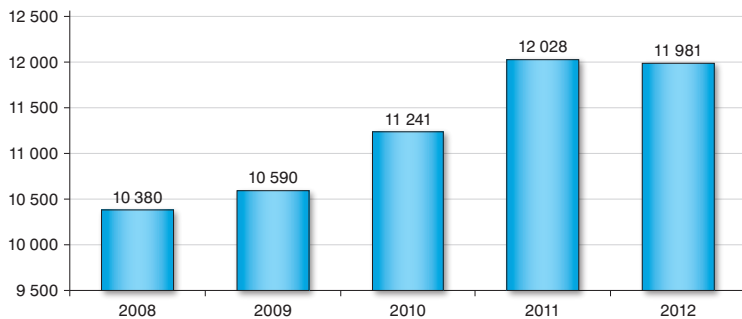


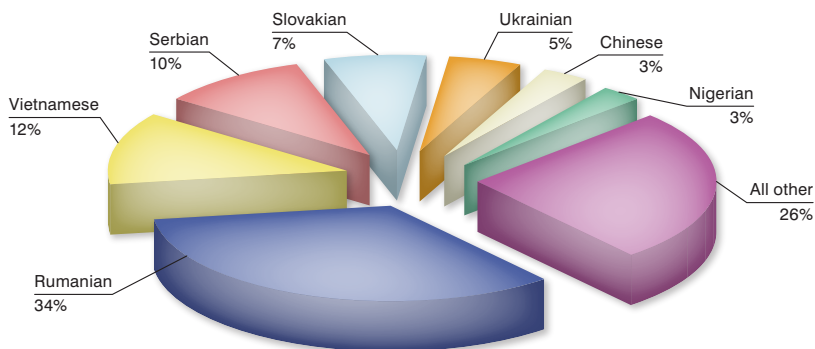
We reckon that the Hungarian penitentiary system is surrounded by a well-developed framework of guarantees, focusing on European values. Under the Act on the Commissioner for Fundamental Rights, the ombudsman is exercising a wide-ranging, complex control, covering almost all segments of the penitentiary service. The overwhelming majority of the ombudsman's findings are connected to the most pressing issue, to the over-crowdedness, vis-à-vis which all other improprieties transpire mostly as individual infractions of the law. The penitentiary service has always been paying due attention to the ombudsman's recommendations, doing its best to accommodate them. There has been a well-balanced, long-term working relationship forming between the two organizations, based on a mutual goal: to serve the enforcement of human rights in such a delicate situation as the legitimate deprivation of personal freedom.

Number of detainees without final decision



Number of detainees upon final decision



Non-Hungarian detainees

A prisoner had been having a toothache for months, could hardly eat and, yet, he had not received any medical treatment but painkillers – he complained to the ombudsman, who found it unacceptable that the penitentiary institution did not ensure dental treatment to a prisoner in pain. A convict in the penitentiary institution of Jász-Nagykun-Szolnok County consulted the prison doctor complaining of a toothache back in August 2012. The doctor prescribed some pain killers and informed him that dental treatment was provided on a first come first serve basis. The prison doctor requested the prisoner to present his social security identification number, since without it special medical treatment could not be provided. The prison does not operate a dental office, if necessary, the services of an outside regional healthcare provider are called in.

From August 2012 through the midst of January 2013, the prisoner had not received any medical treatment, having to take pain killers for months until, finally, he was taken to the medical centre where his tooth was extracted.

The Commissioner stated that the penitentiary institution had infringed the prisoner's right to health because it had failed to ensure him dental treatment for months. Furthermore, it had breached the requirement of legal certainty deriving from the principle of the rule of law and the right of fair procedure because it had not taken the necessary measures to obtain the social security identification number of the prisoner while putting it as a condition to providing special medical treatment.

Once the Ombudsman had requested information on the prisoner's health condition and the reasons of the medical treatment's delay, the warden and his colleague called the prisoner to account for having complained to the Ombudsman. Therefore the commissioner concluded that the warden and his colleague had violated the prisoner's right to complain, the right of fair procedure and the prohibition of degrading treatment.

The Ombudsman asked the Director General of the Hungarian Prison Service to call the attention of all wardens under his direction to the fact that prisoners shall not be held accountable for the contents of their complaints submitted to the commissioner for fundamental rights. The commissioner suggested to the warden to take all necessary measures to request and obtain social security identification numbers for prisoners if required for treatment in medical institutions outside the prison.

The prison in Sopronkőhida is extremely crowded, inmates spend their lengthy imprisonment in cramped cells, there are fewer psychologists than needed; on the other hand, inmates can attend family consultations before being released. It was for the first time in the history of the Prison and Penitentiary of Sopronkőhida, built in 1886, that the Ombudsman conducted an investigation in 2013.

Among the most important conclusions of the Commissioner one can be mentioned that the number of inmates exceeds the holding capacity of the penitentiary, there are 15 inmates in a place for 10, so they have to be placed on three-bunk beds. It infringes on the inmates' rights to human dignity and physical and mental health that several of them are crammed into small cells built for one, and the use of three-bunk beds is contrary to the prohibition of inhuman, degrading treatment.

The prison's administration tries to balance the ill effects of crowdedness by keeping the inmates occupied. Currently there are 200-230 inmates working on a regular basis, but the penitentiary intends to raise this number to 300, as a minimum.

There are only two psychologists conducting individual and group therapies for inmates convicted for serious, violent crimes, spending their lengthy sentences in the prison, but these two professionals are also in charge of taking care of the psyches of the prison's employees. Two psychologists are clearly not enough considering the tasks at

hand – the Ombudsman sees it as a potential danger to the inmates' and employees' right to mental health and to their mental care. The Commissioner, however, has praised the practice of so-called "family consultations", organized for inmates to be soon released. Such consultations may help the families to work off the accumulated tension, settle conflicts, and to prepare convicts having spent a considerable time in confinement for being freed. The Ombudsman has also thought favourably of the penitentiary's initiative to allow inmates to get in touch with their former or prospective employers during the last 6 months of their sentence. On the basis of all of the above, Commissioner has requested the Director General of the Hungarian Prison Service to consider the possibilities of increasing the number of prison psychologists and the prison's holding capacity, lessening the prison cells' crowdedness and transferring some of the inmates to other penitentiary institutions.

The Ombudsman's Special Project on the Penitentiary Institutions of Hungary

The Commissioner has paid particular attention to the human dignity and the rights to life and humane treatment of those limited in their freedom (persons in custody, convicted, detained under alien policing) in 2012, as well, for one cannot dispute the actual and/or perceived exposedness of detainees.

The rule of law and the democratic principles of law require that the implementation of the loss of freedom should be humane, educational and leading back to society, in other words, the convict should be given the chance of rehabilitation.

Decision 13/2001. (V. 14.) CC of the Constitutional Court points out the following: *"The convict is not an object, but a subject of law enforcement who has rights and duties. ... The margin values of the constitutional framework of law enforcement are partly set by the right to human dignity and personal safety on one hand, and by the prohibition of torture, cruel, inhuman and degrading treatment and punishment on the other.* It can be deduced from this framework, as well as from the constitutional prohibition pertaining to the limitation of the essential content of fundamental rights, to what extent the state may interfere in the life of the individual and put restriction on his/her basic rights and freedoms under the pretext of implementing punishment and other measures." The treatment of detainees may be deemed legal if it complies with both the prevail-

ing legal regulations and the expectations formulated in international agreements.

The penitentiary system is an important element of the social and political control mechanisms in the broad sense. Beside law enforcement, jurisdiction, civic education and the normative structures (values, ethics, model ways of life), the penitentiary system is also a strong sanctioning instrument. In a state governed by the rule of law, penalty should also serve behavioural correction as an instrument of education and re-socialization.

Law enforcement has its global aspects, as well. One can find more and more foreigners and migrants of various nationalities among perpetrators. The number of migration-related crimes is increasing, so is the number of detainees who do not speak the official language of the host country. At the same time, with the trends toward international, e.g. European standardization of penitentiary rules, the role of global and regional control norms and institutions in law enforcement is increasing (e.g. the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its implementation/supervision mechanisms). It is a major success that on 24 October 2011 the Hungarian Parliament adopted Act CXLIII of 2011 on the Promulgation of OPCAT. Under the provisions of Article 24 of OPCAT, Hungary opted to introduce its own national prevention mechanism as of 1 January 2015: this task will be carried out by the Commissioner for Fundamental Rights.

The phenomenon of the “crisis of crisis management” is manifesting itself in law enforcement, as well. Law enforcement is using the penalty of imprisonment more and more; however, since additional funding for law enforcement is scarce or non-existent, the penitentiary system is chronically overcrowded,⁴ inhumane and degrading. What the over-burdened and under-paid personnel neglects is exactly the func-

⁴Utilization ratio of domestic penal institutions between 2007 and 17 December 2012:

2007 – capacity (number of detainees): 11,252; actual number of detainees: 14,353; utilization ratio: 128%

2008 – capacity: 12,556; actual number: 14,743; utilization ratio: 117%

2009 – capacity: 12,042; actual number: 15,432; utilization ratio: 128%

2010 – capacity: 12,335; actual number: 16,328; utilization ratio: 132%

2011 – capacity: 12,604; actual number: 17,210; utilization ratio: 137% and

2012 – capacity: 12,609; actual number: 17,524; utilization ratio: 139%

tion of education and re-socialization. Therefore, an ever-growing number of convicts may become repeat offenders or carriers of prison abuse; special treatment requirements vis-à-vis juvenile delinquents and those in custody pending trial are rarely if ever met. Crisis management institutions themselves may be over-burdened by the crisis to an extent when functional anomalies and troubles may arise.

Among the detainees, extremely exposed are those not speaking Hungarian and foreign children torn from their adult relatives, i.e. unaccompanied foreign minors who, due to their age, are not in the position to independently exercise their own rights. It is rightfully presumed that, due to their lack of knowledge of the Hungarian language and the local circumstances, especially while in detention, even foreign adults not speaking Hungarian would not be able to file a complaint to the Commissioner for Fundamental Rights if their rights or the rights of their under-aged children were infringed upon.

This project was closely intertwined with the project on the rights of lawyers and their clients. It was prompted by practical experience, a typical problem of lawyers: legal counsels having difficulties entering penitentiary institutions and having to wait several hours before they can speak to their clients. Infrastructural conditions for maintaining contact with the detainee are not duly provided in every prison, either. On the other hand, law enforcement's demand to have the institutions' special discipline observed is also natural.

In view of all of the above, the Ombudsman deemed extremely important that the problems related to the assertion of fundamental rights in the aforementioned fields be uncovered and solved. Within the project's frameworks, the Commissioner for Fundamental Rights inquired into two major topics. During his investigations, he tried and explored the connection between the fundamental rights situation of detainees in penitentiary institutions and that of foreigners detained under alien and asylum policing. The Commissioner has published a detailed report on his findings, dilemmas and proposals in a separate booklet.



In the course of the project, on-the-spot inspections were carried out in 10 penitentiary institutions and 3 temporary alien detention facilities. Altogether 17 reports have been compiled on the following subjects:

- *On healthcare for juvenile detainees (Pécs, Juvenile Section; Tököl; Kecskemét; Szirmabesenyő)*
- *Evaluation of the conditions for providing healthcare to detainees (Pécs, Adult Section; Győr; Sátoraljaújhely; Állampusztá; Solt; Forensic Psychiatric Mental Institution; Máriaosztra)*
- *Social security status of working detainees and the dilemmas of their employment*
- *The rights of unaccompanied minors (Fót)*
- *Observations of the Ombudsman's inquiry into the detainees' reintegration into society*
- *Detention of families with small children under alien policing (Békéscsaba)*
- *Detention of single males from outside Europe under alien policing (Nyírbátor)*
- *How many bars are needed to protect a child? (Special Children's Home of Fót)*

Two conferences (on 24 April and 30 October 2012) and a press conference were held where representatives of organs cooperating with the Office of the Commissioner for Fundamental Rights also had a chance to comment on the aforementioned subjects.

Refugees – Unaccompanied Minors

by

KATALIN MARGIT HARASZTI – ÁGNES WEINBRENNER

According to the Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, “unaccompanied minors shall mean persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it shall include minors who are left unaccompanied after they have entered the territory of Member States”.⁵

The reasons behind the migration of unaccompanied minors are manifold: to escape from wars and conflicts, poverty or natural disasters, discrimination or persecution; to be sent by their family in the expectation of a better life or in order to access education and welfare, including medical attention; to join family members living in the Member States; as victims of trafficking destined for exploitation.⁶

Generally it can be stated due to their vulnerable situation comes from their young age, the multi-country or cross-continent self-migration capability of these children are considerably limited compared to the adults. Regardless the age and the legal status of aliens, a child who is separated from his/her family and missing the protection and care of a parent or the legal guardian suffers from serious social and psychological disadvantages. Therefore, the investigation of the enforcement of the fundamental rights of unaccompanied minors is a priority area for the ombudsman.⁷ During his term of office, the Commissioner for Funda-

⁵Article 2 (h) of the Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers: available on the following website: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003L0009:EN:HTML>

⁶Point 1 of The European Commission’s Action Plan on Unaccompanied Minors (2010 – 2014): available on the following website: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0213:FIN:EN:HTML>

¹⁰Article 1 (part 2) of the Act CXI of 2011 on the Commissioner for Fundamental Rights.

mental Rights examined the enforcement of the fundamental rights of unaccompanied minors four times. According to the experiences of these inquiries, children with foreign nationalities and whom are separated from their families and staying in Hungary without any adult relatives can be categorized into three groups: the ones with the immigration status (this category also includes the stateless persons); the asylum beneficiaries and the victims of human smuggling. Besides the unaccompanied minors entering illegally the territory of the country⁸, children derived from unknown father whom are born in Hungary from a mother of foreign nationality and been left in the hospital shortly after birth also belong to one of the categories.⁹

The first part of the paper outlines the institutional system of international law which provides the protection of the rights of unaccompanied minors. Therefore, the authors deal in details how the Member States should implement the provisions of the UN Convention adopted in New York and dated on 20 November 1989 (hereinafter referred as the UN Convention on the Rights of the Child)¹⁰ and how they should interpret its basic principles in the cases of unaccompanied minors. Following the experiences of the inquiry of the Commissioner for Fundamental Rights, the second part of the paper introduces how the above-mentioned principles are implemented by the authorities in the cases of unaccompanied minors in Hungary.¹¹

According to the results of the Ombudsman's inquiries, the fundamental rights of the unaccompanied minors essentially prevail in Hungary. Possible problems originated from the anomalies associated with fundamental right can be caused by the national legal perception regarding the unaccompanied minors which prioritizes the prevention and management of illegal migration instead of taking into account the best interest of the child. For example, the legal provisions regarding the child protection system, and provisions aiding the support of victims, as well

¹¹See the reports of the CFR with the following numbers: AJB 7120/2009, AJB 733/2012, AJB 2731/2012. All these reports are available in Hungarian on the website of the Commissioner for Fundamental Rights: www.ajbh.hu.

¹²See joint report of the CFR with the number: AJB 2692/2010 and AJB 4196/2010.

¹⁰The Convention on the Rights of the Child adopted in New York on 20th November, 1989. Ratified by the Hungarian Act LXIV of 1991. ((hereinafter the UN Convention on the Rights of the Child)

¹¹See. Article 18 (part 1) of the Act CXI of 2011 on the Commissioner for Fundamental Rights.

as the identification and protection of the victims of human trafficking treat the unaccompanied minors firstly as foreigners based on their legal alien status, and secondly as children whom are torn from their family and being in a crisis situation. The legislation defining the scope and operation of the national child protection and the system itself is modelled primarily to the needs of children with Hungarian citizenship whom are separated from their families; therefore, these legal provisions ignore the special needs of the unaccompanied minors. For instance, there is no regulation regarding any requirements of special knowledge for professionals dealing with child protection how to treat non-Hungarian speaker unaccompanied minors whom have been raised in a different cultural background; or there is no regulation regarding the appointment of one trustee whom may be appointed as a representative of the maximum number of unaccompanied minors; furthermore there is no financial coverage to employ any interpreter in children's homes where the non-Hungarian speaker minors are placed, etc.

The inquiries of the Commissioner for Fundamental Rights prove that the national legal provisions on the protection of the fundamental rights of unaccompanied minors, as well as the welfare system have further perspectives in the future.

The Ombudsman carried out an investigation on the shortcomings in the asylum regulation related to unaccompanied minors. In 2012, the number of foreign children entering Hungary illegally unaccompanied by parents or adults significantly increased. The ombudsman suggests clarification of the laws setting out the work of police and the immigration authority so that the children's rights of minors regardless of their citizenship can be enforced. The problem described in the ombudsman's report is also addressed by the European Union.

Police caught 700 unaccompanied minors only between 1 January 2012 and 30 September 2012 who had entered the country, crossing the border illegally, without their parents or other accompanying adults. Among them, there were some children under 14 as well. Several young people were sent back to Serbia, where they had come from. Others were, though, accommodated in the designated children's homes; however, each two out of three children soon disappeared without a trace. Nothing has been known about them since then.

The ombudsman inquired the case of those twelve Afghan children between the ages of five and fifteen *ex officio* who were caught by police last September in the region of Rösztke at the green border. The inquiry pointed out the shortcomings of the legislation and the Commissioner proposed their correction. For example, expertise has to be requested in case there is some doubt about the age of the minor arriving without documents. The age is determined by a police doctor. Consent of the legal representative or the representative *ad litem* is set out in one of the Acts governing the situation, however, in the other one, it is not set out. Pursuant to the Act on the Admission and Right of Residence of Third-Country Nationals, the immigration authority may expel those from the country who have crossed the border illegally or those who do not fulfil the conditions for the residence here. For minors, this is only possible if in their country of origin or host country, family reunion and/or state care or other institutional care is duly ensured. No provision as to how the immigration authority is obliged to verify the existence of the condition was set out in the laws in force at the time of the inquiry.

The ombudsman also pointed out that pursuant to the UN Convention on the Right of the Child being in force also in Hungary since 1991, a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the State. This is incompatible with that children's homes designated for temporary accommodation in Hungary were not willing to admit one third of the unaccompanied minors of the inquiry with various reasons detailed in the ombudsman's report in spite of free capacity. According to the police officers interviewed in the course of the inquiry, it is not rare that minors handed over to the authorities of neighbouring Serbia earlier are caught again while crossing the border illegally. An educator of a children's home also told the ombudsman's colleagues that several of the returning unaccompanied minors said that the paid human smuggler offered to attempt to get them over through the green border three times in case of a failure. Although, the unaccompanied minors illegally crossing the border said without exception that they had got to Hungary by means of human smugglers' contribution, no criminal proceeding was launched for either human smuggling or human trafficking or any other crimes. It is evident

that the children's vulnerable situation and their resulting grievances might be connected to crimes. However, as the ombudsman pointed out, immigration authorities are not obliged to notify about this the authority responsible for victim assistance by the legislation in force. The Commissioner asked the National Chief of Police, the Minister of Human Resources and the Minister of Public Administration and Justice for measures within their competence, amendment of laws and their supplementation.

Asylum seekers who are minors are now placed in the children's centre of Fót instead of a refugee camp. This is one of the results of the previous proposals of Ombudsman in 2012. This inquiry of the Commissioner, however, uncovered further problems. Before the Ombudsman acted in the matter, unaccompanied minors seeking asylum had been placed in the accommodation centre of Bicske, where the conditions were not really adequate for providing education and getting to know the country. Following the initiative of the Commissioner, the minister for social affairs and the minister for public administration and justice set up, by amending the relevant Act, the home of unaccompanied minors in Károlyi István Children's Centre in Fót. The life circumstances of alien minors in respect of whom asylum proceedings are pending, who are recognised as refugees or who are in aftercare, are considerably better than they were in Bicske; this has also been confirmed by young persons who have been living there for a longer period of time.

The new inquiry of the Ombudsman has also highlighted some problems. Among others, the report mentions the fact that in the centre there is no isolation ward where newly arriving youths suffering from infectious diseases or from parasites could be treated and cared for. This presents a danger to the right to physical and mental health, as laid down in the Basic Law. Both the teachers of the school providing education for these alien children and the staff of the centre have reported that almost all minors have been gravely affected by the shocks suffered during their journey to Hungary. In psychology one says that they are suffering from 'posttraumatic stress disorder' (PTSD), which may result in a sudden loss of weight without any apparent cause, in chronic headaches or unexpected and uncontrollable outbursts of anger. The psychologists and the pedagogical support staff working in the children's centre are unable to properly attend to these problems since their time and energy

is taken up by caring for the inmates of the special children's home also situated in Fót.

The inquiry of the Ombudsman has revealed the fact that not only the youths living there but also the staff caring for them are in need of professional support. Indeed, after some time children open up and begin developing confidence in and emotional ties towards the grown-ups caring for them; consequently they tell them about all the horrible things they went through and this is very taxing even for the teachers and educators, who, left to themselves, are unable to cope with this emotional burden.

Enforcement Procedures and Evictions

by

ADRIENN DEZSŐ – ZOLTÁN JUHÁSZ

The study – based on the Ombudsman’s practice – discusses the issue of enforcement procedures focusing on two main problems – access to justice and loss of residential real estate – and parallel with this examines the vulnerable situation of children in enforcement proceedings.

After the clarification of basic frameworks and main questions important as for the sociology of law approach, the study touches upon the functions of law, the aims and features of enforcement procedures and after a brief overview of institutional history and international practice it discusses the chances of access to justice in enforcement procedures pursuant to the Hungarian ombudsman practice.

Pertaining to a particularly vulnerable group may facilitate loss of residential real estate which makes more unlikely to get access to justice, and when a person thus becomes homeless, he will become member of a particularly vulnerable group which will have overall effects on his future life and chances of bringing to justice the enforcement of his rights and interests. The results of each project and the reports has been analysed and categorised in the study in accordance with the above mentioned.

The study gave high priority to the problem arising from the costs of enforcement procedures basically determining the possibilities of access to justice, to institutional and structural issues that have effect on access to these procedures and to the possibility of enforcing rights and legal interests. Another important topic is the situation of children in enforcement procedures and the loss of housing real estates.

The study concludes that *socially sensitive, vulnerable groups (those in structural need) are even more vulnerable in enforcement procedures*. Poverty, childhood are considered to be particularly disadvantageous situations since equal opportunity to access to justice is infringed and (access to procedures and institutions) and the chances to enforcement of rights

and access to adequate information relevant to the enforcement of rights and interests are very poor, as well.

Real estate auctions, the loss of residential real estate or the loss of a shelter might lead to become member of the homeless society as the result of a judicial procedure. Social consequences of this process must be dealt with to support social integration. In the course of the regulation of enforcement procedures, malfunctioning of the system should be avoided in order to prevent negative effects facilitating loss of housing property and homelessness.

On the basis of the incoming complaints to the ombudsman, the signals of the representatives of the jurist profession and the recent press releases, the Commissioner carried out a comprehensive inquiry into the Hungarian judicial enforcement system in the first semester of the year 2013.

The Hungarian ombudsmen continuously inquired into the complaints concerning the cases of judicial enforcement in the past period longer than a decade, within the framework of the legislation defining their competence, they started proceedings *ex officio* as well. As a consequence of these, a proposal was made for a comprehensive review of the judicial enforcement system; however, this has not been accomplished so far.

In 2011 Commissioner Szabó concluded for example that the fees of the independent court bailiffs may be disproportionately high compared to the value of the case according to the provisions of the existing decree which may influence the success of the enforcement proceedings in themselves. For a debt of 10 million HUF, where there are two debtors, the fee of the bailiff is even more than one and a half million HUF in case of a successful enforcement, and the amount does not contain the expenses yet. The debtor will rather be interested in losing his or her assets than in paying his or her original debt significantly increased by the expenses of the enforcement. A further recognition is that the independent judicial bailiffs' fee calculation practice consisting of a number of items is not uniform and may be followed with difficulties by both the claimant and the debtor. The ombudsman asked the Minister of Administration and Justice to review the bailiffs' fee system in force, especially the enforcement proceedings launched against joint and several debtors and the extent of the commission that the bailiff is entitled to. In 2012 the Commissioner came to the conclusion that though the fee of the le-

gal advisor, lawyer or notary acting in the enforcement proceeding was amended; the independent judicial bailiff's fee remained unchanged. On his repeated initiative, the Commissioner has not received any answer from the Minister of Administration and Justice. The Commissioner also noted that his office regularly receives complaints because of the shortness of the customers' service hours of the bailiffs, the bailiffs are hard to reach, the clients cannot inspect the documents, they receive answer for the petitions from the bailiffs only after long time. Currently the Ombudsman's Office inquires into several complaints in relation to the enforcement proceeding. In view of the above mentioned, the Commissioner for Fundamental Rights decided to start another comprehensive inquiry.

Year	New cases	Completed cases
2011	161 625	178 563
2002	164 544	166 079
2003	170 873	181 070
2011	434 037	-
2012	478 000	-

Enforcement procedures

In 2012 there were 2800 real estate auctions and other informations are not available.

The Ombudsman found deficiencies in the legal rule and proposed amendments regarding the regulation of enforcement in June 2013. The deadlines for certain enforcement procedures should be set by the law. It should be made possible to establish the assessed value of real properties on the basis of their true market value. The efficiency and effectiveness of enforcement, and the remuneration and interest of bailiffs should be intertwined. The Commissioner repeatedly and vainly asked for the amendment of the legal terms of enforcement in the past, has proposed changes in his two new reports. In the course of his comprehensive review of the enforcement system, the Ombudsman has pointed out deficiencies infringing the right to a fair procedure, the right to property and the requirement of legal certainty. For instance, the deadlines for the enforcement proceedings, as well as the fact that the bailiff should be informed in due time of the launch of the

liquidation are not regulated. The Ombudsman has also pointed out that there is no relationship between the bailiffs' remuneration, interest and the efficiency and effectiveness of the proceedings. The Commissioner has repeatedly requested the competent minister to amend the decree on the remuneration of bailiffs; however, this has not taken place up till now. The Ombudsman has also indicated that the deadline for paying the recovered amount to the party seeking enforcement is not stipulated by law. It is a source of problem that the interest on the amount on the deposit account is the due of the bailiff and not the party seeking enforcement, in whose interest the bailiff acts. The Commissioner has requested the Minister of Public Administration and Justice to amend the relevant legal regulations. His proposals include, for example, accelerating the process of vehicle confiscation, thus preventing the debtor from disposing of the vehicle before impounding. Furthermore, the rules for the value assessment of real estates (including the time after which the value estimation may be modified) should be revised in order to make possible the establishment of the appropriate market value. The Commissioner considers it problematic that the inspection of the real estate is not clearly regulated in the case of an e-auction sale of the property; therefore he calls for a solution which does not unnecessarily burden the bidders, the debtors and the owners. The Ombudsman has also pointed out that, in case execution is levied on residential properties, the interests of children should be taken into consideration to a greater extent and he also suggests to reconsider through what kind of institutional arrangements, new and amended legal provisions it can be achieved.

Also in June 2013 the Ombudsman published a report on the communication between bailiffs and clients and on the problems of handling complaints by the Bailiffs Association. The legal regulation of the communication between the bailiff and the participants of the proceeding and, as a consequence, the practice of the judicial enforcement based on the legal rules are deficient and inaccurate. In the course of his project investigating enforcement, The Ombudsman has established that the judicial oversight control over the Bailiffs Association is not efficient enough, the method of handling complaints is not suitable. The Commissioner has asked the competent Minister for amending the legal rule. According to the Ombudsman's report, the con-

stitutional requirements are not met by the legal regulation of the bailiffs' the client service and communication, and, except for the information technology equipment, there are no serious personnel and infrastructural requirements set out in the legal rules concerning the establishment of a bailiff's office. It is not clarified how to understand the provision stipulating that "the office of the bailiff shall be established in a way that it is suitable for receiving clients, too." The debtor and the person requesting enforcement often do not know the law, consequently it would be necessary to ensure the possibility of personal and telephone communication by precisely prescribing the appropriate infrastructural requirements. The possibility, frequency and duration of personal customer service hours set out in the legal rule should be extended. For example, the proposal of the Hungarian Banking Association could be considered; according to this, a uniform client service regime, separate client service and availability hours should be introduced. The new rules on the electronically certified public records of enforcement cases, on issuing certificates and extending the possibilities of getting information for those requesting enforcement are, definitely, a positive sign; however, they do not offer a complete solution for the problems detailed above – concluded the Ombudsman in his report.

In another report, the Ombudsman has established, based on the inquiry into the submitted complaints, that the requirement of legal certainty and due process are infringed by the absence of a "Code of Conduct and Handling Complaints" of the Association of Hungarian Judicial Bailiffs. The judicial oversight control of judicial bailiffs is minimal, substantive sanctions are very rarely applied by the Association against bailiffs violating the rules. Disciplinary action may only be launched if a complaint has been filed by the Minister, the court or the President of the Association. A complaint filed by a person requesting enforcement does not form a basis for launching disciplinary action. No detailed justification is given by the Association on the outcome of its investigations, at most a reference to a legal rule. In addition, there is no remedy against the letter rejecting the complaint, either. Considering all this, the Ombudsman has concluded that the requirements of the rule of law declared in the Basic Law, for example the right to legal remedy, legal certainty and due process, are infringed. In order to solve the problems revealed in the course

of his inquiry, the Commissioner for Fundamental Rights turned to the Minister of Administration and Justice.

The Ombudsman organized *in June 2013 in his Office a workshop dedicated* to these above mentioned issues, where representatives of the Hungarian Banking Association, the Ministry of Public Administration and Justice, the Curia, the Association of Hungarian Judicial Bailiffs, the Hungarian Bar Association attended. Among the participants an intensive debate were unfold, but all the attendants agreed the unified comprehensive court practice is missing.

People in the Snow

Challenges for the Disaster Management

by

BARNABÁS HAJAS – GÁBOR KURUNCZI

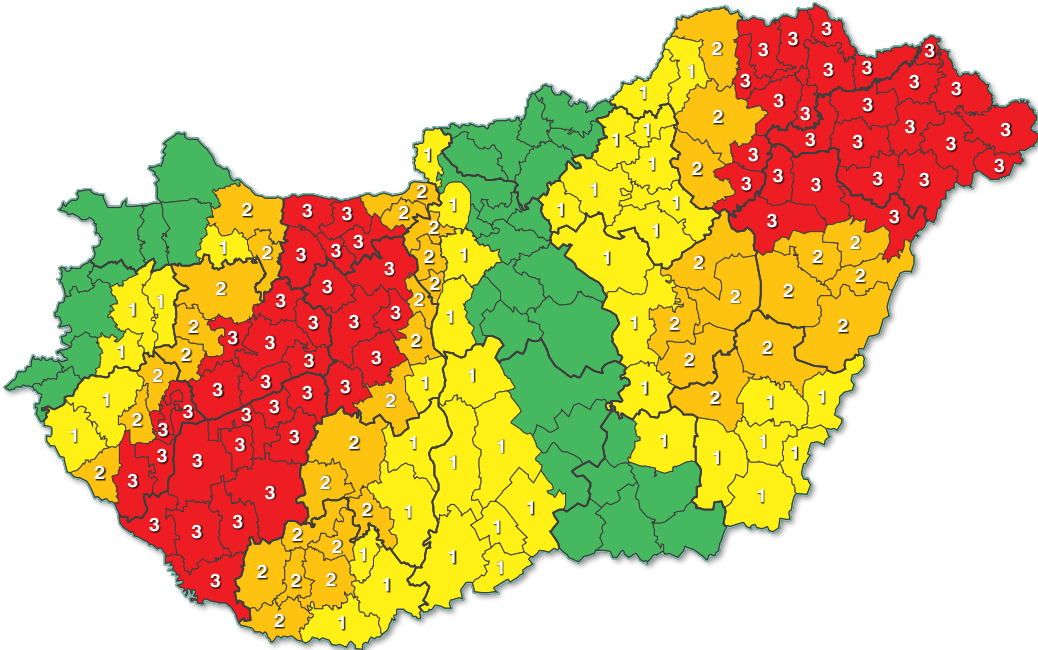
A number of extreme weather events occurred in Hungary in the first quarter of 2013, which posed unprecedented challenges to citizens and disaster management agencies. First, a large amount of snow fell in a short period of time, and an additional storm in March caused further disruption. They resulted that a group of people – affected by the disasters – became a protected social group in the areas influenced by the extreme weather events.

During the past years, several situations arose, which were examined by the Ombudsman and where he examined both the fundamental rights of the parties concerned and the activities of the disaster management agencies. Such were the Ombudsman's investigation concerning the storm on 20 August 2006, or the comprehensive disaster management project in 2011 which included the Devecser-Kolontár sludge disaster testing. However, in the beginning of 2013, the heavy snowfall – proved to be a new element in the list of disasters – was totally different from the previous ones hence again caused disruptions. Because of its novelty, this type of disaster raised new problems compared to the previous management projects and an even greater number of citizens were affected. Therefore, the Ombudsman paid special attention to this investigation.

A key element in the management of the weather events in January was developing some kind of a “best practice”. The ombudsman's reports (AJB-474/2013., AJB-662/2013.) drew attention to the necessity of a planned scheme in similar situations on the expected organizations' side. Report AJB-662/2013. of the Commissioner concluded that any emergency situation can be treated quickly and effectively with proper management and the coordinated use of human and material resources. Nevertheless, report AJB-474/2013. explored a number of shortcomings.

	03.14. 4 pm	03.15. midnight	03.15. 6 am	03.15. noon	03.15. 6 pm	03.16. midnight	03.16. 8 am	03.16. 11 am	03.16. 4 pm	03.16. 5 pm	03.16. 10 pm
isolated settlements	14	40	68	71	56	48	38	31	5	0	0
people living in isolated settlements	12680	38519	71692	78220	51599	44748	31338	29314	2292	0	0
impassable roads	38	68	92	120	103	80	68	57	29	26	5
impassable road sections	50	101	97	93	101	65	55	43	27	28	15
persons involved in task assignment	1157	1654	2015	3117	3633	3972	4169	4967	5222	6637	9660
technical devices	410	594	754	1128	1211	1425	1524	1570	2555	3005	3499
settlements affected by electricity supply disorder	26	89	135	126	112	97	102	93	74	74	75
people affected in power cuts	259982	308686	318432	289779	280654	255223	269724	248452	178793	192526	183609
rescued people	430	3722	8472	13419	13862	14378	14414	14472	14537	14742	14742
rescued vehicles	85	702	1543	3405	3407	3603	3668	3720	3914	3951	4144

Neither the Municipality of Budapest nor Metropolitan Public Domain Maintenance Company (FKF Zrt.) handled the extreme conditions properly, although it should also be mentioned that the mistakes revealed were not serious. In its reply, FKF Zrt. assured the Ombudsman that the necessary measures had been taken to overcome the mistakes. Regarding the activities of the Budapest Transport Centre (BKK), the Commissioner primarily emphasized the obligation to guarantee the safety of transport, pointing to the condition of the tires on buses and trolley buses. In their response, BKK stressed that all their vehicles were equipped with four weather tires and so they meet the relevant traffic safety requirements. As a short summary, we can conclude that the reports compiled on the January events contributed to the development of a “good practice” and the prevention of similar future events.



Weather warning (issued: 14 March 2013 22:41)

The investigation on the disaster in March also highlighted a number of shortcomings. These were primarily communication errors (both towards the public and among the disaster management agencies), shortcomings in the transport system as well as the need to raise the level of

the information flow to the public and the effectiveness of preparation and alerting the citizens in emergency.

In his report, the Commissioner drafted recommendations, aiming at the following persons and areas. He asked the Minister of Interior to look into the issue of emergency lanes and the internal communication of the agencies concerned, and also asked the Minister of National Development to look into the possibility of planting a strip of protective forests and to analyze the possible path of the development of the railway and expressway networks. The Ombudsman suggested that the Director General (of the National Directorate General for Disaster Management) and the Chief of Police take the necessary measures in order to be able to inform the public in a more efficient way. Every organization involved agreed on the initiatives and informed the Commissioner of the actions taken and measures planned. It should also be mentioned that the National Directorate General for Disaster Management has already set up its own Facebook page, which was used to inform the public of the upcoming flood in June 2013.

The experience proved that – due to the ombudsman’s activities and recommendations – the work of the disaster management agencies have become more effective and efficient and by this, it contributed to the protection of the citizens and their fundamental rights.

Relevant agencies/individuals	Number of persons involved	Instruments involved
Professional/municipal/voluntary firemen and rescue organizations	4303 professionals 927 from the municipalities 270 volunteers	274 technical vehicles
Army	n/a	<ul style="list-style-type: none"> – 1 caterpillar PTSZ fighting vehicle – 1 vehicle for rescuing trucks – 1 sliding block truck – 2 trucks
Standby force of the police	29+688	<ul style="list-style-type: none"> – 121 vehicles – 1 BTR-80 fighting transport vehicle – 1 KRAZ truck – 1 MI-2 helicopter – 1343 liters of fuel (119 of which was for the civil population) – 1398 liters of gasoline (1088 of which was for the civil population)

Hungarian Ambulance Service	2133	498 case car (in 4853 cases)
Police	9660	n/a
Counter Terrorism Centre	1+25	<ul style="list-style-type: none"> - 14 4wd vehicles - 2 BTR-80 fighting transport vehicles - 1 sliding block truck equipped with a snow plough
Other (staff of transport services and power companies, staff of public administration, civil guards, charity organizations, civil population)	6500	-

The Ombudsman carried out an ex officio investigation concerning extreme snow. In his report was founded that early warning efforts and information provided to the population by the official bodies in the course of events were insufficient. The flow of information in conventional media was not quick enough, it did not reach the population as needed – stated the Commissioner after he had requested and received written briefings from the authorities in charge. He also emphasized that, given the fast development of social media (Facebook, Twitter, blogs) and smart phone applications, disaster management bodies cannot rely exclusively on conventional media and conventional means of communication in preparing and informing the population in crisis situations. The adequate use of the new communication channels would have been more suitable for informing the population, it could have helped, at least partially, preventing the crisis or mitigating its consequences and, ultimately, preventing some anomalies, related to the fundamental rights of a large group of citizens, from happening. The Commissioner drew the attention of the competent bodies (National Directorate General for Disaster Management, National Police Headquarters) to the fact that there were some glitches in their internal communications making the coordinated management of rescue operations more difficult.

Investigating the interruptions in traffic, the Ombudsman concluded that rescue operations on the nation’s motorways had been significantly hindered, beside the blizzards and the series of accidents, by the motorists’ failure to free up rescue lanes as stipulated by

the Highway Code for such situations. In his report the Ombudsman also stressed that the problems on Motorway M1 could have been mitigated if the State Motorway Management Company had duly informed the motorists, upon entering or on roadside notice boards, of the motorway's actual serviceableness.

Public transportation disorders plagued mainly the railway service. In this context the Ombudsman pointed out that MÁV (Hungarian State Railways) had not adequately complied with its obligation to duly inform its passengers, had not been duly prepared to handle the delays, provide its passengers with food and water and refund the tickets.

The Commissioner requested the Minister of Interior to review the experiences of the concerned bodies' on-the-spot and deployment/management communication, and the possibility and probable methods of involving voluntary associations and individuals well-versed in social media communication in the crisis communication activities of their subordinate organizations. He also proposed to the Minister of Interior to consider, together with the Minister for National Development, the possibility of planting protective forests alongside the motorway network, and he requested the Minister for National Development to work on the possibility of a combined system of transporting goods (by railway and road). The Ombudsman suggested that the Director General of the National Directorate for Disaster Management should review the efficiency of the current system of alerting the population and pay bigger attention to preparing the people for crisis situations caused by extreme weather conditions.

Authors

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Projects and Publications of Dr. Máté Szabó, Commissioner for Fundamental Rights

Project on the Right to Assembly

ÁJOB Project-books 2009/1

Staff member responsible for the project: Dr. Barnabás Hajas

The right to assembly is partly a prioritized basic right to communication and partly the problem of protests and demonstrations is an important indicator of the stability of democracy. Due to the fact that after 2006 the issue acquired special significance in Hungary and it was in the focus of several ombudsmen in Europe as well, in 2008 the Parliamentary Commissioner, on the request of Hungarian President László Sólyom paid particular attention to the realization of the right to peaceful assembly as well as to issues related to this right within the framework of the autonomous project on basic rights.

In the framework of this project he investigated among others how the law enforcement organs, in this case the police handle reports and how far their measures taken during events, as well as police practice related to ensuring the right to assembly, together with the elements of legal safeguards of legal regulations meet the requirements set by the Constitution, and whether the realization of basic rights is assured.

The Commissioner and his colleagues participated in several events held in public places that fell characteristically under the validity of Act III of 1989 on the Right to Assembly or were closely related to it. The Commissioner has so far summarized the experiences of on-the-spot investigations into the realization of the right to assembly, acquired in 41 events, in five comprehensive reports. In his reports the Commissioner has drawn up a complex map of problems related to the right to assembly and made several recommendations to law makers and the police, assisted the training of police officers on the right to assembly and participated in European scientific researches, as well.

The project was sponsored by: Public Foundation for Patients' Rights and Children's Rights (Betegjogi, Ellátottjogi és Gyermekjogi Közalapítvány), Csányi Foundation, Ministry of Justice and Law Enforcement, Hungarian House of Photography, Association of Hungarian Photographers, National Police Department, Ministry of Labor and Social Policy

„Human dignity — without barriers“

Project on the enhancement of the rights of homeless persons

ÁJOB Project-books 2009/2

Staff member responsible for the project: Dr. Beáta Borza

The project attempted to explore the problems of becoming homeless, of homeless existence and of the ways out from the angle of basic rights and it also tried to encourage a debate by society and the profession related to homelessness. The enhancement of the rights of homeless persons raises several social and legal questions.

There are typical situations of life (e.g. divorce) among the numerous causes of homelessness from where there is a straight road to poverty and hopelessness: the elderly, the young leaving state foster care, the mentally ill or just patients who 'were sent home' because the hospitals were 'cut to smaller size' or locked down, are considered to be the most vulnerable groups in this sense. We have paid particular attention to loans and to the development of the so-called dept trap. In addition we also dealt with the opportunities of people released from penitentiary facilities, with the contradictions of the national housing situation and the anomalies of the automatism of judiciary foreclosures. There are a growing number of young, uneducated people among those living in the streets who have no chance of finding a job and who are consequently in an almost totally hopeless situation.

The project was sponsored by: Public Foundation for Patients' Rights and Children's Rights (Betegjogi, Ellátottjogi és Gyermekjogi Közalapítvány), Csányi Foundation, Ministry of Justice and Law Enforcement, Hungarian House of Photography, Association of Hungarian Photographers, National Police Department, Ministry of Labor and Social Affairs

Project on children's rights — Rights-awareness raising

ÁJOB project-books 2009/3

Staff member responsible for the project: Dr. Orsolya Ágota Kovács

In most European countries there are independent special ombudsman institutions for the protection of children's rights. In Hungary however, there is no special ombudsman for the protection of children's rights therefore the commissioner for fundamental rights acts as one on the basis of the Child Protection Act. Besides handling complaints lodged by children or related to them as a high priority issue, since 2008 the ombudsman had been putting emphasize on the proactive protection of children's rights launching annual projects focusing on the topic. The first project focused on raising rights-awareness among children following a survey on rights consciousness of children carried out by the European Commission where Hungary was ranked among the worst countries in Europe. In accordance with the ombudsman's basic principle, today's children will become the adult citizens of the society of the future, and whatever is the legal knowledge of children, their ability to assert their rights and interests today the same would be those of adults. The long-term aim of the project on children's rights was to improve the realisation and implementation of children's rights, to better assert children's interests and consequently to improve the social situation of children. Therefore the primary target group of the project on children's rights was that of children.

The investigations concentrated mainly on the issue of basic child welfare services, the operation of the signalization system of child protection, the interrelationships between the assertion of children's rights and the responsibility of the media and the conditions experienced in the juvenile detention institutions. One of the most significant elements of establishing direct contact with children and raising their awareness was the creation of the *homepage for children* (www.gyermekjogok.obh.hu). The aim of the homepage is that the Commissioner may address the primary stakeholders in the virtual space favoured by them and may give them information on the constitutional and children's rights, on the Ombudsman's activities and investigations, on the possibilities of legal protection ensured by him and about important issues related to children. The homepage is primarily addressed to children in their own language, but according to feedback there have also been many adult visitors to it.

The project was sponsored by: Public Foundation for Patients' Rights and Children's Rights (Betegjogi, Ellátottjogi és Gyermekjogi Közalapítvány), Csányi Foundation, Ministry of Justice and Law Enforcement, Hungarian House of Photography, Association of Hungarian Photographers, National Police Department, Ministry of Labor and Social Affairs

Project on children's rights — Protection against violence

ÁJOB Project-books 2010/1

Staff member responsible for the project: Dr. Orsolya Ágota Kovács

In 2009 the central topic of the children's rights project was children and violence, namely how in practice the legal regulation of the protection of children against physical and psychological violence is implemented. The commissioner investigated special children's homes, the operation of the child protection signalization system, the basic child welfare provision, the situation of children taken into protection because of the commission of a minor offence or crime and also the problem of violence in schools. The ombudsman stated that prevention is of outstanding importance to eliminate violence against children. In 2006 the Council of Europe launched a new program entitled "Building a Europe for and with children". One of the main objectives of the program was eliminating all forms of violence against children. This objective was also addressed in a global campaign ("Your hands should nurture not punish-Raise your hands against smacking!") against corporal punishment of children by campaigning for its total abolition and by promoting positive, non-violence parenting in member states. In the framework of the project the commissioner has also conducted a comprehensive investigation, in cooperation with the commissioner for educational rights concerning violence in schools.

The project was sponsored by: Ministry of Labor and Social Policy

„Differently with Dignity” – Project on the Rights of People Living with Disabilities

ÁJOB Project-books 2010/2

Staff member responsible for the project: Dr. Beáta Borza

Co-editor: Dr. Ágnes Lux

In 2009 the commissioner carried out a comprehensive investigation concerning the social and legal environment of people living with disabili-

ties in Hungary. The basic thesis of the project was that no one can suffer any deficiency mainly because he/she lives with some kind of physical, communications or mental disability. The clumsiness of healthcare and social provision for people living with disabilities is commonly known together with contradictions in their employment and training. The main goal was to encourage a paradigm shift, global change of social attitude concerning their acceptance and inclusion.

We conducted several inquiries into the possible obstacles to participation in public life of persons living with disabilities, like problems related to the right to vote, challenges in daily and family life, forced mechanisms of guardianship that limits or bars legal capacity and the anomalies in the operation of residential mental health facilities, like psychiatric care institutions.

Other issues, like disability allowance, car parking difficulties, accessibility of public buildings and places, the hard difficulties of getting a job and the family life of adults and children living with disabilities raise several basic rights related questions and require attention.

The project was sponsored by: Ministry of Labor and Social Policy

Project on Transport – Right to free movement and transport

ÁJOB Project-books 2010/3

Staff members responsible for the project: Dr. Zsolt Halász, Dr. Ágnes Lux

In early 2009 we launched the project dealing with the basic rights issues of transport with the argument that it touched upon not a single but several basic constitutional rights and requirements. Tasks related to transport presume a significant role by the state and local governments, which make indispensable also the investigation into state provided services.

An approach to transport from the angle of basic rights is also important because every citizen participates in it in some form. It is not decisive whether the right to free movement in itself is realized but that how other basic rights are realized during movement and travel by transport. In the framework of this project we have conducted several investigations and made several reports mainly on interactions between individual and public transport; parking, surcharge, the practice of allowing cars, toll fees and objective responsibility on highways, zero tolerance applied against drunk drivers, taxation and registry of vehicles, accident preven-

tion and police procedures, or the practice of checking tickets in public transport. In the framework of the project we organized two workshops: the first workshop discussed individual transport and the characteristics of interference by the authority in the nature of public administration, recording and controlling activities the second focused on fundamental rights related dilemmas in public transport.

The project was sponsored by: Hungarian Autoclub, Association of Hungarian Insurance Companies, National Police Department

Project on the right to strike

ÁJOB Project-books 2010/4

Staff member responsible for the project: Dr. Adrienne Zemplényi

The strikes of the past years affecting large crowds and the broad professional and social debates related to them have shown that the rules of a legal exercise of strike have not yet been adequately elaborated in the Hungarian legal system. In 2008 the commissioner launched a new project focusing on the enforcement of the right to strike provided for by the Constitution.

Investigations were conducted in branches specifically ‘mentioned’ by the Act on Strike, most affecting the population, namely in branches where in theory strike could be exercised only in a way which would not hinder the performance of still sufficient services. Such is public transport, and railways as well as the organizations of public transport in the capital city (Budapest Transport Company - BKV), railway transport (Hungarian Railway - MÁV), further on education, energy supply and healthcare.

In the course of his inquiries, the commissioner had also suggested that instead of the total an on strikes of employees in professional service a more flexible mechanism could be evolved which would allow even this group of employees to avail themselves of the opportunity to exercise their right to strike within certain limitations and with the inclusion of proper safeguards.

The Commissioner submitted a petition to the Constitutional Court challenging the deficiencies of the 1989 Act on Strike however the Court has rejected the petition.

The project was sponsored by: Ministry of Labor and Social Policy

Project on Children's rights — Children in care

ÁJOB Project-books 2011/1

Staff member responsible for the project: Dr. Orsolya Ágota Kovács

Editor: Dr. Ágnes Lux

In 2010 the Commissioner placed the role of the family into the focus of ensuring children's rights such as: children's rights to upbringing in the family and the role of the state in promoting it (by assistance), as well as the operation of the state system of provisions substituting families, and, further on, the issue of adoption in this context. In the framework of the project special attention was paid to the operation of the guardianship office, foster parent, family allowance, transfer to an institute. The Ombudsman, based on the experiences of previous investigations, wished to survey and investigate the implementation of the double-sided obligations undertaken by the state, the regulations and legal practice related to the right to be brought up in the family, to ensuring family support and provisions substituting the family from the angle of children's rights. These phenomena present serious problem not only in Hungary but in Europe, as well.

Special reports had been prepared on the results of the investigation into the maintenance of contacts between siblings brought up in special care; carried out in special children's home; about education and competences of foster parents; about unaccompanied minors' rights and their repatriation; about children's homes for 0-3 years old children; about day-care; about abuses and about the signalization system.

The project was sponsored by: Ministry for National Resources

Ageing with Dignity: Human Rights of Elderly People

ÁJOB Project-books 2011/2

Staff member responsible for the project: Dr. Beáta Borza

This year, the situation of older persons was examined in the aspect of the basic constitutional rights; in regard that the elderly, their relatives and persons who take care of them would know more on their fundamental rights. Most complaints received during the past years were related particularly to the *social, legal and public security* of elderly people living in residential institutions or in their own homes, and further on to the areas of *healthcare, disability, employment and victimisation*. Naturally, the issue of *pension* could not be avoided either, though we could inves-

tigate only conditions of allocation, the legal conditions of entitlement and other points of the conditions of need. We could not analyse the sum of old-age pension or the economic considerations of pension policy in respect of individual cases. We could survey all this with the help of basic constitutional rights arguments and with all the tools available to the Ombudsman. We called the attention to the fact that according to domestic researches every fourth Hungarian would be above sixty in ten years' time, and Europe is not in a better position either.

The project was sponsored by: Ministry of Labour and Social Policy

Financial Law Project

ÁJOB Project-books 2011/3

Staff member responsible for the project: Dr. Zsolt Halász

Editor: Dr. Barnabás Hajas

The economic and financial crisis in Hungary has also brought the absurdities of the real estate lending to the focus of attention, which have been only refined subsequently by government measures and assistance to protect the rights of the citizens. The complainants often complained regarding the procedures of various financial services, in particular the practice of unilateral contract modification, the increase of financial services fees, its costs, and the significant increase of the monthly instalments. Several complaints were received from the public regarding the implementation of debts procedures as well. In addition, a growth could be seen in the number of complaints touching the procedures of tax authorities. This conclusion could have been drawn from the tone and stories of the complaints in the context of economic crisis. Therefore, in 2010, the Commissioner had started a project on the financial law issues in the aspect of citizens affected by the global financial and economic crisis. Legal examination of the realization of fundamental rights were taken within the project

The project focused on two main themes: firstly, on the activities of those financial services and insurances which are considered as public service; on the other hand, the examination focused on the various procedures of the tax authorities in regard the implementation of fundamental rights.

The project was sponsored by: The Hungarian Banking Association, The Hungarian Development Bank, The National Bank of Hungary

Children's Rights Project- Project on Child Healthcare

AJB Project-books 2012/1

Staff member responsible for the project: Dr. Agnes Lux

In 2011, the ombudsman concentrated on the health of the children. According to the constitutional right to health and to the Art.24 of the UN Convention on the Rights of the Child (UN CRC), every child has the right to mental and physical health on the highest degree. For children's health and well-being, it is essential to make the healthcare accessible for children, to create a child-friendly healthcare system; to promote a comprehensive education regarding family life within the context of school health programs ("positive parenthood education"), to start education on self-awareness and conflict-management; and the implementation of different development programs is also essential.

Reports were made on the following special issues: drug and alcohol abuse among the younger generations; sexual exploitation and other forms of violence and child abuse; child prostitution; school meals; access to sport and physical education; missing children; health care in youth detention centres; child psychiatry; health care of disabled children; access to health services in childcare institutions; school doctors and dentists, school-psychologists.

The project was sponsored by: Ministry of National Resources, Open Society Institute (OSI)

Patient's Rights Project - "Healthy Dignity" Project

AJB Project-books 2012/2

Staff member responsible for the project: Dr. Beáta Borza

The Ombudsman launched a comprehensive project on the issues of right to health and on the functioning of the healthcare system. The project referred to the findings of the former ombudsman practices relating to the patients' rights and to the European and international standards and requirements as well. Priority themes of the project were the followings: the right to self-determination in the healthcare system, the right to mental and physical health on the highest degree, the provision of the rights above as tasks and obligations of the state; the access to healthcare; furthermore the model of the social security system and the Hungarian healthcare system. With a particular emphasis, the program dealt with

the special legal and patient problems of homeless people, the persons living with disability, and the elderly. The research work on the conditions of patients in psychiatric institutions received a special importance within the framework of the project. We also explored the anomalies of practice of law related to basic medical care, as well as the school medical examination practices, and the financing issues of healthcare of extreme sports athletes.

The project is supported by: Open Society Institute (OSI), the Ministry of National Resources

Disaster Management Project

AJB Project-books 2012/3

Staff member responsible for the project: Dr. Barnabás Hajas

Unfortunately, in 2010 a series of natural and industrial disasters came upon the country. The fifteen years of experience of the ombudsmen as well as the experience of the year 2010 made it clear that it is necessary to make a complex assessment of state tasks related to disaster management and to examine from a fundamental rights protection point of view the cooperation of state organs in the event of disaster situations.

In the light of the above, the Ombudsman examined in 2011, within the framework of an autonomous fundamental rights project, among others, the following range of subjects: follow-up inquiries of previous comprehensive ombudsman inquiries, so for example on the fire brigades; psychological services provision at the law enforcement organs; cooperation of law enforcement and public administration organs and of local governments during emergencies and thereafter; professional management in the event of disaster situations; direction and organisation of the fire brigade and its communications with the organisation for disaster management and with civil protection; timeliness of intervention of certain emergency services and the existence of technical resources for rapid and expert intervention; practice and legal regulation of the mitigation of damages and of repairs and reconstruction, as well as the procedural guarantees related thereto, and certain questions of the reconstruction by the State in the aftermath of the red sludge catastrophe.

The project is supported by: Open Society Institute (OSI)

Project on Children's Rights- Child-Friendly Justice

AJB Project-books 2013/1

Staff member responsible for the project: Dr. Agnes Lux

In 2012, the Ombudsman focused in his children's rights project, similarly to the Network of European Children's Rights Ombudsmen and to the Ministry of Public administration and Justice, on certain questions of child-friendly justice, conducting comprehensive *ex officio* inquiries into the following: enforcement of international obligations concerning child-friendly justice (e.g.: Council of Europe's Guidelines); victim support mechanisms; children's rights in the (criminal, civil and administrative) justice system; mediation and other alternative conflict-management procedures; special skills of personnel working with children in the justice system; situation of unaccompanied foreign minors; juvenile penitentiary institutions (on-the-spot inquiries in youth detention-centres).

In Hungary, hundreds of thousands of children come into some kind of contact with various authorities and/or official proceedings every year. The current legal regulation is adequate enough to ensure the rights of children which are in the focus of many international conventions (UN CRC, European Convention on Human Rights, revised European Social Charter) and Council of Europe instruments (Guidelines on Justice in matters involving Child Victims and Witnesses of Crime; Guidelines on Child-friendly Justice, European Rules for Juvenile Offenders), so it lays down the rules of representation, information, and hearings, and it also ensures the right to freely express opinions. However, between the written standards referred to above and the practice there is a deep gap.

The project is supported by: Ministry of Public Administration and Justice, Open Society Institute (OSI), Council of Europe.

**Project on a Penitentiary System with a Human Face' –
*Fundamental rights in and outside the institutions'***

AJB Project-books 2013/2

Staff members responsible for the project: Dr. Erika Pajcsicsné-Csóré, Dr. Péter Seres, Dr. Katalin Haraszti

In a state of rule of law, the sentence must fulfil a correctional function as an institution of education and resocialization. There is an increas-

ing number of foreign migrant offenders in Hungary, who has a citizenship elsewhere. There is also an increase in the migration-related crime rate, as well as the number of non-native speaker prisoners is growing. Meanwhile, there is a progress in the global and regional development of criminal justice enforcement, such as it has happened in Europe. The Commissioner for Fundamental Rights contributes to the protection of the legal status of the prisoners by investigations and inspections on the spot, and by the detection of fundamental rights anomalies of the relevant measures.

The Ombudsman started his project on lawyers' situation and on the protection of the rights of lawyers and their clients in 2012. The focus of his comprehensive inquiry is the enforcement of lawyers' and their clients' rights, the practices of bar associations and the constitutional monitoring of the related regulations.

The project is supported by: the Open Society Institute (OSI) and the National Home-affairs Council.

Project on the 'Losers of the Crisis – in the Captivity of the Legal Regulations'

AJB Project-books 2013/3

Staff member responsible for the project: Dr. Katalin Szajbély

In a crisis situation, the continued deterioration of economic and financial situation negatively affects the whole society, and particularly the vulnerable groups. The shrinking resources weaken the social solidarity: more and more gaps arising between the majority of the society and some groups with weaker lobbying ability (e.g.: the Roma, the homeless people, the unemployed persons, the victims of usury, the persons living in a dangerous environment, the refugees, etc.). The contradiction of legislation and the pitfalls of administrative procedures can justify the project's subtitle: „In the captivity of legal regulations“. Within a rapidly changing environment, the institutions and norms cannot help the adequate and flexible social and personal search for answers and approval. The weakening social cohesion, the prejudiced forms of thought (hate speech), the spread of extremist behaviour and the social-psychological process of scapegoat training can be connected to the concept and the phenomena of the crisis.

The worsening economic conditions and social concerns are answered

often rapidly and in a misguided way, without achieving the targets; or simply legislative and judicial restraint answers are born.

The project is supported by: Open Society Institute (OSI)

The 'Dignity of Labour' Project- The change of employment and labour law

AJB Project-books 2013/4

Staff member responsible for the project: Dr. Adrienne Zemplényi

In the year 2012, the Commissioner for Fundamental Rights started a fundamental rights project called the 'Dignity of Labour'. The project examined the implementation of the right to work and of other fundamental rights in the world of work, such as the right to human dignity, compliance with the requirements of equal treatment and of the rule of law.

During the inquiries, the team paid special attention to the employment opportunities of certain protected groups. The Ombudsman examined the employment of women and mothers (parents) with small children in different alternative forms – like teleworking and part time work – in both the public and the private sector. Employment opportunities for career starters was explored, and the Ombudsman also surveyed what opportunities and assistance are available to homeless people and detained people to help them return to work. Furthermore, the project examined the impact of benefits given to employers employing people with disabilities, and the realisation in practice of integrated employment for these people. The project targeted to analyse the problems concerning fundamental rights in the field of public employment via inquiries pursuant to individual complaints. In this regard, the project aimed at giving a general situation report on the issue.

The project is supported by: Confederation of Hungarian Employers and Industrialists, The Hungarian Industrial Association; Equal Opportunities of Persons with Disabilities Non-Profit Ltd.; Open Society Institute (OSI)

