

# REPORT

ON THE ACTIVITIES OF  
THE COMMISSIONER FOR FUNDAMENTAL RIGHTS  
AND HIS DEPUTIES

2015

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## ***Lectori salutem***

Under Article 30(1)-(2) of the Fundamental Law, the Commissioner for Fundamental Rights shall perform fundamental rights protection activities, shall inquire into any violations related to fundamental rights that come to his or her knowledge, or have such violations inquired into, and shall initiate general or specific measures to remedy them. The Ombudsman Act declares that anyone may turn to the Commissioner for Fundamental Rights if, in his or her judgement, the activity or omission of some authority or public service organ infringes a fundamental right of the person submitting the petition. By “anybody” we indeed mean everybody, be it a Hungarian or foreign (stateless) individual or legal entity or some other organisation, that is, literally anybody.



the plenary assembly.

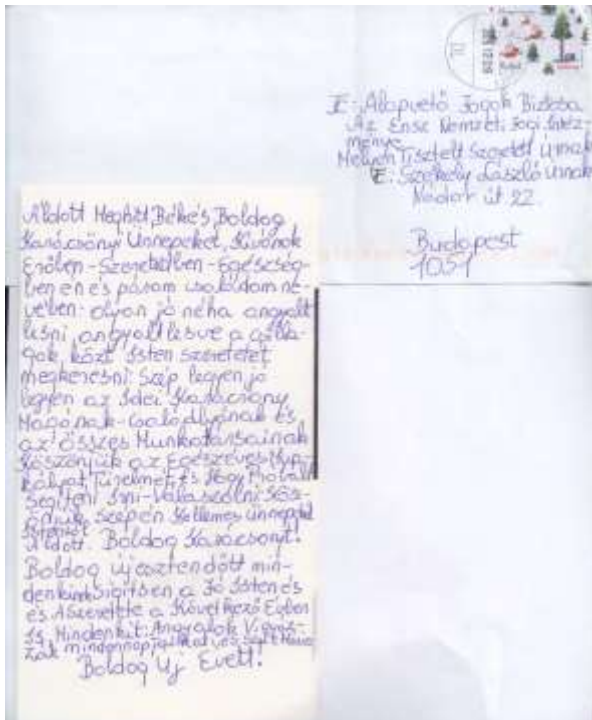
Turning to the chapter of the Report containing statistical data, the Honourable Reader can see that altogether 8,240 complaints were submitted to the Office in the year under review. This, on the one hand, is a regretful fact, as over eight thousand of our fellow citizens felt that their fundamental rights have been violated, on the other hand I greet it as this high number still expresses the trust of the public seeking their right towards the operation of the Commissioner and his Office. Without such a positive trust index, the operation of the Commissioner would essentially lose its meaning; it is of public knowledge that, in the arsenal of the Ombudsman’s tools, the opportunity of turning to the public has true significance only if the Commissioner and his deputies (and, of course, the whole office) are surrounded by the atmosphere of public trust.

As far as I am concerned, in addition to the inquiries submitted by the public, I consider a component of this aura of trust the happy fact that the Honourable Parliament puts again the discussion of the Report on its agenda with annual regularity, carries out its general and detailed debate, and then passes a decision on its authorization (last year with a convincing majority). I find of outstanding importance the opportunity that, together with the Deputy-Commissioners, we can present our stance before the competent Committees and publicly, before

Having listened to the speeches of the members of Parliament evaluating our activities, we get unbelievably important feedback with regard to the future planning of our work.

I also consider it to be the manifestation of the atmosphere of trust that of the 274 recommendations drafted in the 140 reports prepared last year, the addressees accepted 158 of our initiatives and rejected them in only 36 cases. At the time of the closure of the data of the report, negotiations are still underway in 80 cases, thus the number of cases with favourable reception may even increase.

And as the train of thought of the present salutation unwillingly revolved around trust, let me share with You, Honourable Readers, one of perhaps the most tangible proofs of this trust that I and my colleagues came across in the year 2015. I do not know what methods pollsters use to measure indices of acceptance and satisfaction of different institutions but the “popularity index” that I would like to share with you tells and means more to my colleagues and me.



The (facsimile) Christmas and New Year's greeting card shown below was delivered from a small settlement, a couple of days before Christmas, addressed to me but in fact meant for the whole Office. As you can probably guess, the senders were clients of the Office last year, in a case that was of outstanding importance for them existentially, a case in which my colleagues and I managed to provide effective help, several months before. Please read it with an open heart, the same way we did!

Well – finally – I wish on all my fellow humans working and practising their profession in the interest of the public, that they get a lot of such and similar greetings from those in whose interest they work and then “looking for angels among the stars”, we will most certainly find “God’s love”.

László Székely

# 1

## Our International Relations

### 1.1

#### *UN National Human Rights Institution*

At its December 2015 meeting, the Accreditation Sub-Committee of the International Coordinating Committee of National Human Rights Institutions granted the institution of the Commissioner for Fundamental Rights the highest level and prestige Status A, recognising the conformity of the Office with the requirements included in the 1993 Paris Principles of the UN.

The task of a national human rights institution established by a particular state is to promote the integration of international human rights standards at national level, together with the monitoring and support of procedures related thereto. During its activity, the institution cooperates with Hungarian and international institutions providing human rights protection, and with its opinions, professional materials and by offering opportunities for consultation, it helps the work of international organisations and experts.

During 2015, the Commissioner for Fundamental Rights and his deputies issued several opinions, which they also forwarded to different human rights institutions of the UN. The opinions sent to the Human Rights Council of the UN in minority and segregation issues, giving information to the organisations established by international treaties, the Committee on the Elimination of Discrimination against Women (CEDAW), in connection with the situation of Roma women, as well as sending professional materials to John Knox, UN special rapporteur, on the activity of the Office regarding the right to healthy environment are to be highlighted separately.

As a National Human Rights Institution, the Commissioner for Fundamental Rights has the opportunity to participate in the complete procedure of the second Universal Periodic Review (UPR) of Hungary, within the framework of which he had the opportunity to submit his own report. UPR provides a unique opportunity for the regular human rights supervision of all 193 UN member states. A principle of the universal periodic review – which is the significant innovation of the Human Rights Council – is equal treatment towards every country. UPR also allows every state the opportunity to review, at regular intervals, what steps it has taken so far in the area of human rights, what challenges it faces in the future, and what possibilities it has for development. UPR is a tested human rights practice all over the world; at present, there is no other control mechanism of a similar nature. UPR evaluates to what extent a given state respected, during a given period, its human rights obligations specified in the UN Charter, the Universal Declaration of Human Rights and other human rights documents ratified by the state in question, as well as international humanitarian law. Furthermore, the supervisory report also examines the voluntary offerings and undertakings of obligations that the state made earlier (e.g. the national human rights policies and/or programmes executed). In September 2015, the Commissioner for Fundamental Rights submitted a parallel report for the second Universal Periodic Review (UPR) of Hungary.

The 28<sup>th</sup> annual meeting of the UN National Human Rights Institutions International Coordinating Committee (NHRI ICC) took place between 11 and 13 March 2015 in Geneva. At the convention, the Office was represented by Deputy-Commissioner Marcel Szabó. At the meeting, participants discussed the role of national institutions in the protection of human rights and their possibilities to prevent infringements of rights.

The Ombudsman for Future Generations Marcel Szabó attended the Water Network Meeting of NHRIs in Denmark, which, by re-interpreting the right to water through a human rights approach, may call the attention of institutions serving the protection of fundamental human rights to the problems related to the right to water.

The Ombudsman for the Rights of National Minorities Elisabeth Sándor-Szalay attended the event in Warsaw where the role of the national human rights institutions of Organisation for Security and Co-operation in Europe (OSCE) related to the protection of human rights was in the limelight. The Office was also represented at the seminar on institutions for the protection of rights, organised in Warsaw by the Office for Democratic Institutions and Human Rights (ODIHR), one of the institutions of OSCE, which focuses on analysing human rights aspects of security.

In 2015, the leaders and colleagues of the Office also undertook an active role at regional level, participating in the activities of the European Network of National Human Rights Institutions (ENNHRI). The Office undertook professional consultation roles in several professional work groups of ENNHRI – among them in the work of the Work Group dealing with the Convention on the Rights of Persons with Disabilities (CRPD).



In the project brought to life by the European Network of National Human Rights Institutions (ENNHRI), financed by the European Commission, dealing with the “Enforcement of the Human Rights of Individuals Receiving Elderly Care” (briefly: the “Elderly Affairs Project”), Hungary is represented by the Office of the Commissioner for Fundamental Rights as an active member, cooperating as a pilot state, which can participate in the large-scale European project work through its earlier elderly affairs investigations. Close to 20 countries from all over Europe (from Serbia to Northern Ireland) participate in the two and a half year long project work, having a definite topic. The aim of the project is the European-level monitoring of elderly services, revealing experiences, problems and good practices, bringing them to a European level, and within the framework of that, as a summary of the project work, the participants plan to draft a common recommendation, a package of suggestions, to be also submitted to the European Commission.

## 1.2.

### *Visits of Delegations, Events*

The Commissioner for Fundamental Rights, his deputies and colleagues received several foreign delegations in 2015 as well, and conducted meetings with the leaders and colleagues of several international organisations. The Office also hosted the representatives of several international organisations with representation in Hungary, the colleagues of foreign sister institutions and NGO-s, as well as student groups from foreign universities.

#### ***European Region***

On 19 January 2015, Ombudsman for the Rights of National Minorities Elisabeth Sándor-Szalay met Hartmut Koschyk, the Commissioner of the Federal Republic of Germany for Matters Related to Ethnic German Re-settlers and National Minorities. The meeting was also attended by Ritter Imre, German national minority representative. The main topic of the meeting was the Hungarian election system.

On 17 April 2015, the delegation of the Venice Commission visited the Office. The delegation – commission members Michael Frenco and Nikos K. Alivizatos, expert Eve Salomon and Grigory Dikov, member of the secretariat of the Venice Commission – was received by Ombudsman László Székely.

One of the most important events with international aspects in the year 2015 was the meeting of the ombudsmen of the Visegrád Four, organised by the Office between 30 September and 2 October 2015, in Visegrád. The focus of the two and a half day-long event was the situation of groups requiring priority protection. Within the framework of the three sessions, the participants reviewed the different aspects of the preservation of our natural and cultural heritage, the legal protection of national minorities, as well as the protection of future generations. A separate session was devoted to the situation of the disabled, the homeless, detainees, refugees and asylum seekers. At the end of the meeting, the ombudsmen of the V4 states issued a joint opinion on the management of the refugee crisis.

## 2

# Evaluation of the situation of constitutional rights

### 2.1

#### *Areas of investigation highlighted by the act*

In harmony with the prevailing directions and spirit of the Ombudsman Act, the Commissioner for Fundamental Rights paid continuous and heightened attention to the priority areas of investigation in 2015 as well. Below, we give an analytic presentation of the most important Ombudsman investigations and tendencies affecting the protection and enforcement of the rights of children, the disabled and most vulnerable groups, which are thus also expected to meet international interest.

#### **Protection of children's rights**

Article XVI of the Fundamental Law records that every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development, though without listing the addressees included in earlier constitutional provisions (family, state, society). Instead of the earlier indication originating from the Child Protection Act, regulating the Ombudsman's tasks related to children's rights in a rather laconic manner, with priority or less intensively, depending on the individual priorities of the Commissioners, the protection of children's rights has also become the obligation of the Commissioner for Fundamental Rights with number one priority. In the Ombudsman's traditional arsenal of tools, the Commissioner investigates the infringements affecting the constitutional rights of children he learns about, and he may initiate general or individual measures in the interest of remedying them. Using the public domain – as “the strongest weapon” of the Ombudsman's institution – traditionally gets more emphasis as proactive means of legal defence in the area of the protection of children's rights.

1 The Commissioner investigated the operation of the Szigetvár Special Children's Home on the basis of a citizen's report, according to which the child-care workers in the children's home work without qualifications and experience, and male child-care workers physically abused the children accommodated. The Commissioner appointed the leader of the guardianship department of the government office to check the operation of the children's home. The on-site investigation of the guardianship department revealed that the number of those employed in professional positions indeed does not meet the requirements of legal regulations, the colleagues do not have the opportunity to participate in supervision. In addition to this, the establishment of a security quarantine does not meet the requirements of legal regulations, compulsory education performed via private pupil tutoring legal relationships does not result in the actual completion of studies, and finally, there are few pieces of outdoor sports equipment for useful free-time activities. Based on the foregoing, the maintainer of the institution was called upon to eliminate the shortcomings. The abuse of children could not be excluded according to the investigation either. Therefore, the Commissioner established the direct risk of infringement related to the rights of the children concerning human dignity, care and protection. The investigation of the government office also proved that the qualifications of five colleagues in the children's home did not meet the requirements set out in legal regulations, the position of the expert in charge of developmental training is vacant, four of the colleagues – among them the manager – have been working in the institution for less than a year. Based on the response received, following the investigation, the leader of the guardianship department took the measures necessary for the elimination of the problematic practice revealed in the concrete case and the shortcomings noticed. Therefore, the Commissioner – in agreement with the measures on the whole – did not find it justified that further recommendations be drafted with regard to the children's home examined. At the same time, in order to eliminate system-level shortcomings, the Commissioner recommended the Minister of Human Resources to ensure, by completing legal regulations, that only workers having participated in preparatory training for special care tasks be allowed to be employed in special groups, while the ones already employed be obligated to participate in such further training. Theoretically, the Minister agreed with the recommendation, however, in practice – due to fluctuation and lack of experts – he found the participation of such workers in a training course before taking their positions impossible to accomplish. Contrary to this, the Minister found it feasible to require in the form of a legal regulation that the colleagues working in this area finish such preparatory training within a definite period of time.

2 The Commissioner *ex officio* examined the situation of children placed under child-care protection in Germany but being brought up in Hungary. As, according to media reports, several children put under state care in Germany have been brought to Baranya County and placed with

“foster parents” who had neither special qualifications nor language knowledge. According to the reports, the children placed in a foreign language environment and severely at risk did not receive appropriate education and care. In the interest of the successful execution of the investigation, the Commissioner sought out the Minister of Human Resources and the Government Commissioner of the County Government Office. The report records that, under Article 56 of Regulation 2201/2003/EC of the Council of the European Union (Regulation), children from the member states of the European Union can be placed under care in a foster family in Hungary lawfully, and the receiving state does not have any licensing or checking obligation. The authorities were not aware of the children – whose placement with Hungarian foster parents is not in conformity with Article 56 of the Regulation – and they did not receive indications of the endangerment of the children, thus they were unable to take measures. Therefore, no improprieties related to fundamental rights could be established with regard to the authorities investigated. Based on the decision of the foreign authority, however, the children with non-Hungarian citizenship being brought up by foster parents in Hungary may establish student legal relationships and may attend Hungarian public education institutions as students. They may receive health and medical care, that is, they may meet members of the child protection signalling system. They may become victims, commit minor offences or criminal acts, that is, they may end up in an endangered situation. In the interest of the prevention and termination of the endangerment of children, the Child Protection Act sets out a signalling and cooperation obligation for the members of the signalling system (e.g. health and public education institutions, the police). Consequently, with his report, the Commissioner aimed to target the attention of the members of the child protection signalling system to the fact that if they learn about the endangerment of a child – regardless of the citizenship of the child or the legal title of his stay in Hungary – they are obligated to satisfy their signalling obligation. In the Commissioner’s opinion, it would help the satisfaction of the signalling obligation if the authorities and service providers obligated and destined to protect the children, were aware of the children of non-Hungarian citizenship placed under foster parent care in their area of competence by a foreign authority. Therefore, the Commissioner asked the head of the Ministry to make sure that the guardianship and justice head departments of all the government offices get acquainted with the contents of the report, furthermore, that he send its official German translation to the German central authority as well. He also requested the Minister to consider that the Hungarian Central Authority should also inform the guardianship and justice head departments of the Budapest and county government offices about the declaration of assent on the placement of children with foreign citizenship under Hungarian foster parent care. The Minister’s response in connection with the report has not yet been received by the time of the completion of the report.

**3** The Commissioner has learned that many of the children residing in Hungary with foreign individuals, primarily of Romanian citizenship, working in Hungary, do not attend school. Their parents argue that they fall under the rules of the educational system of their country, and that the children are private pupils. However, experience shows that the children in the families in question do not satisfy their compulsory education either in Hungary or in the country of their citizenship. The Ombudsman pointed out that under the Convention on the Rights of the Child, the signatory states – thus Hungary as well – recognise children’s rights to education and, in the interest of practicing this right in a gradual manner, based on equal opportunities, make basic-level education compulsory and free for all. With view to this, he emphasised that children of non-Hungarian citizenship residing in Hungary may use kindergarten education, youth-hostel services, pedagogical special services, as well as school education and care during the years affected by compulsory education obligation, under the same terms and conditions as Hungarian citizens. In connection with this, the Commissioner called attention to the following impropriety: at present, there is a multi-level coherence disorder in connection with tying the commencement of the Hungarian education of children of non-Hungarian citizenship exclusively to the parent’s “residence permit”. The requirements of the National Public Education Act are not in harmony with the directions of the branch acts, moreover, the act itself does not use these concepts consistently. The Commissioner emphasised that the schools’ practice that on several occasions they refuse to take children of non-Hungarian citizenship “residing” in their district of admission, that is, children with a place of residence, temporary domicile and accommodation there, seems problematic. According to the report, the acceptable practice would be to secure the minor’s admission merely based on the fact that the child lives in the school’s district of admission. The Ombudsman revealed that the domestic regulations do not fully secure either compulsory schooling or its free status for children of non-Hungarian citizenship as they tie both compulsory education and its free status to the parent’s residence permit exceeding ninety days, as well as the submission of the application for recognition. The Commissioner pointed out that the regulation that requires at the school admission application the statement of the minor of non-Hungarian citizenship on who provides

his or her parental supervision and who secures the conditions necessary for his or her schooling is also problematic.

The investigation revealed that most of the schools are not familiar with the guidelines issued concerning kindergarten education, school education and training of children of non-Hungarian citizenship, neither with the professional guidance included in them. Furthermore – due to lack of personal and material conditions – only a few schools provide students of non-Hungarian citizenship intercultural programmes or other programmes of similar contents or help their integration separately. The Commissioner also called attention to the fact that it causes improprieties in connection with the right to education of children of non-Hungarian citizenship residing in Hungary and Hungarian children residing abroad that the procedure regarding compulsory education is tied merely to reporting as it makes it impossible to secure the enforcement of the right. He also emphasised that children and their families are entitled to use the full circle of child welfare services, since, from among the already vulnerable group of children of non-Hungarian citizenship residing in Hungary, often not speaking or not sufficiently knowing Hungarian, the children whose parents' residential legal status is unclear are in the most defenceless situation.

In the interest of remedying the improprieties, the Ombudsman turned to the Minister of Human Resources with several legislative initiatives and recommendations, and also asked for the measures of the Chair of KLIK (Kleibelsberg Institution Maintenance Centre). In her response to the report, the Chair of KLIK presented that, in line with the recommendation, she called upon educational district directors to get acquainted with the report, and to take the necessary measures in connection with the education and training of students of non-Hungarian citizenship. The Commissioner accepted the measures taken in connection with the subject. In his response, the State Secretary of Public Education emphasized that he agrees with most of the statements and recommendations, and finds that a wide-circle negotiation would be necessary with the participation of the ministry of national economy, foreign affairs, the interior and justice. The State Secretary made a promise to try to resolve via legislation the indicated coherence disorder of the regulation concerning commencement of the compulsory Hungarian education of children of non-Hungarian citizenship. However, he finds it impossible to accomplish that legal regulations secure free access to education for all the students of foreign citizenship residing in Hungary without setting extra conditions, furthermore, they find that it is sufficient to merely report satisfaction of compulsory education abroad. Based on the Commissioner's rejoinder, a comprehensive professional consultation started with the Ministry, which is still underway.

**4** The Commissioner also reviewed the practice related to the establishment and operation of child interview rooms. Based on the responses given to the inquiries, through the increase of the number of child interview rooms, and their more frequent use, the consideration of children participating in procedures and the success of such procedures has improved significantly. The individual hearings can be conducted more efficiently in a child-friendly environment, which has a positive effect on the outcome of the investigation. However, the humane and empathic attitude of the members of the investigative authority and the investigative judge is also indispensable for the achievement of this.

In the Commissioner's opinion, in the interest of the enforcement of children's rights, the state is to secure on the merits that child interview rooms are at disposal, accessible and availability so that they can indeed serve their fundamental law function. For a child in an already stressful situation, the establishment of the child-friendly environment is not some privilege but a guarantee they are automatically entitled to. He remarked that it is not the existence of a child interview room that is decisive by itself but its usability and suitability for the intended purpose. However, in spite of the improvements, several functional shortcomings can be certified with regard to the accessibility of police child interview rooms in several counties; in addition to that, several counties also lack experience. According to the Commissioner, certain dysfunctional solutions and shortcomings of the operation of child interview rooms are able to cause improprieties related to the fundamental rights of the children in question. The Commissioner finds the ever wider use of voice, picture and video recordings, prepared in addition to the written minutes prepared on the hearing of children, justified. This way every element of the procedural act can be recorded, thus the child does not have to appear for interviews before the authority several times. The Commissioner established that at present, the shortcomings revealed may prevent this, therefore, he found that improvement of the operative conditions of child interview rooms, as well as continuous developments in line with the resources are indispensable. The Commissioner emphasised that the experts' procedure cannot be substituted by any material means. He pointed out that continuous training and further training of the members of the investigative authority is a key issue. Within its framework of central training, the National Police Headquarters already ordered the above, and made the material of the lectures accessible on the police intranet webpage.

The Commissioner requested the Chief of National Police to examine the use and accessibility of all the child interview rooms operating in the counties and the capital, and take all the necessary measures so that the number, the technical accessibility and equipment of these rooms serve the achievement of the desired goal, that is, the considerate hearing of children involved in the procedures and the success of such procedures. The Chief of National Police agreed with the recommendations with regard to the fact that the basic condition to the enforcement of the child's prime interest is that there are child interview rooms at disposal, and access to them is provided. He indicated that at present they have 27 child interview rooms, thus full-circle application requires that the number of these rooms be significantly increased at the county-level police headquarters and local police departments as well. At the same time, the establishment and equipping of the rooms poses such costs that requires a budgetary amount earmarked for this. In his response, he also presented that the mentors appointed by the regional investigative authorities based on the directions of the National Police Headquarters, who have participated in mentor training, regularly hold trainings and workshops among the professional staff. The next central further training of the mentors is planned to be held in the first part of 2016.

5 For the follow-up of the results of an earlier investigation, the Ombudsman *ex officio* launched a comprehensive inquiry for the monitoring of the situation of the law-awareness raising activities meant to provide the introduction of the general and special fundamental rights of children, especially children with disabilities and belonging to different national minorities. The basic aim of the wide spectrum, comprehensive examination was to reveal and analyse the changes that have taken place in the six-year period since the publication of the previous report in domestic education concerning children's rights, in their broad sense, and human rights. The basic pillar of the report was that Article 29 of the Convention made the increase of children's law-awareness a priority task, and a goal of education to impress human rights on their mind, and to respect the principles accepted in the UN Charter. Upon the evaluation of the country report submitted by Hungary in 2003, the Committee on the Rights of the Child recommended our country to integrate as a compulsory element of the school material the teaching of human rights, and to organise informational campaigns on children's rights. As a starting point, in his report, the Ombudsman established that the legal framework secure the education of human rights, with special respect to children's rights as the National Curriculum (NAT) and the framework curricula offer wide possibilities for law-awareness activities within institutional education and training. Thus the direction of the investigation focused on the training and graduation requirements of institutes of higher education, and law-awareness education manifested in the practice of educational institutions.

Based on the details revealed by the report, upholding the statements included in the earlier Ombudsman's report, the Commissioner established that an increasing number of measures serving the development of children's law-awareness can be found in the trainings of institutes of higher education. There are several welcome examples of NGO- or state-organised programmes that actively involve, teach and sensitise children in the direction of fundamental human rights and values (e.g. tolerance, solidarity). In spite of this, the true contents and sense of these rights is introduced in the everyday practice of average institutions of public education only in a contingent form. It still depends on a fortunate life situation or the active role-taking of a committed teacher, director or some other individual dedicated towards this area whether children recognise at all that their rights have been violated, for instance, that they are negatively discriminated against, and whether they also know who they can turn to for help. Based on the foregoing, the Commissioner addressed the Minister of Human Resources to request that he consider the establishment of a unified strategy meant to increase law-awareness, constituted by measures that are suitable for the introduction of children's rights, the rights of individuals with disabilities, and individuals belonging to different national minorities to actually appear in the daily education of children from the youngest age, and allow a conduct of law-awareness to be established in the students based thereon. Furthermore, he also asked the Minister to promote that compulsory studies of children's rights, the rights of individuals with disabilities and individuals belonging to different national minorities be introduced into the higher educational training of experts dealing with children. In his response given to the report, the State Secretary informed the Commissioner in detail about the requirements of the National Curriculum and the national basic programme of kindergarten education, and the guidelines of national minority kindergarten and school education meant to secure law-awareness of children. The State Secretary accepted the Ombudsman's recommendation in part. In his rejoinder, the Commissioner did not dispute the role of present curricula, programmes and guidelines, however, he repeatedly emphasised that he finds the development of a strategy increasing the knowledge and awareness of law indispensably necessary. He also pointed out that it is necessary to introduce studies dealing with children's rights, the rights of

individuals with disabilities and individuals belonging to different national minorities in the institutions providing the higher education of experts getting in contact with children.

The basic task of the Commissioner for Fundamental Rights is to promote the enforcement and protection of human rights; during the course of this, he has to perform activities which shape social consciousness and edify, furthermore, he has to cooperate with all organisations and national institutions whose purpose is to promote the protection of fundamental rights. In the area of protecting children's rights, shaping general law-awareness, informational and coordinating tasks gain extra meaning: during his activity, since the Commissioner has to be able to address all those involved, primarily children – at the earliest age possible – just as well as the parents, schools and teachers, professional and civilian actors of the legal protection scene, as well as institutes of higher education training teachers and other experts dealing with children's rights and child protection. The thematic workshop discussion entitled "JOG – OK. Knowledge of the law. Awareness of the law. Enforcement of rights in the area of children's rights in the digital world and beyond", held with the involvement of strategic civil partners, took place on 7 May 2015. The Commissioner announced at the event that he is going to initiate that the leaders of constitutional institutions dealing with the protection of fundamental rights appoint contact-coordinating leader colleagues whose task will be to promote programmes addressing children and youngsters belonging to the profile of the institution in question, and activities which help develop knowledge and awareness of the law, as well as cooperation. He suggested that a "JOG-OK" work group be formed from these colleagues that, in addition to continuous liaising, could exchange experience at least once a year, in the Office. Following this, on 21 October 2015, the festive statutory session of JOG-OK work group took place in the Office of the Commissioner for Fundamental Rights. Representatives of all the state institutions invited and NGOs key to international cooperation attended the session. In their comments, the participants presented their recent activities performed in their own areas, related to the law-awareness of children and youngsters, as well as their plans for the coming year. The conference entitled "Brave School World? – Children's rights in the world of school" took place in the Office of the Commissioner for Fundamental Rights on 26 November 2015, which put *the relationship between education and the protection of children's rights in the limelight. The event was organised by the Office of the Commissioner for Fundamental Rights in cooperation with the Hungarian National Committee for UNICEF Foundation and Flemish Representation.*

### **Protection of the fundamental rights of the disabled**

The freshness of the science of disability affairs, its paradigms born one after the other representing new scientific and universal attitudes, its complexity, multidisciplinary, and renewed methodology justifies more intensive work from every player dealing with the situation. Rethinking the image of disabled people is the immanent interest of the Ombudsman thinking in a rule of law structure, democratic theoretical space, committed to the protection of rights. Following the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD), the obligations of state administration are increasingly serious. In recent years, almost all disability groups appeared on the Commissioner's radar screen and, either based on a project with a specific theme or a concrete individual complaint, the Office monitored this close to one million strong social group (calculated with their families) in the widest spectrum, from education to the support system. Within the circle of individuals living with disabilities, children living with disabilities and psychiatric patients classified as individuals living with psycho-social disabilities constitute a special area.

1 Last year, the Ombudsman received several complaint submissions in which parents found it grievous that – due to the lack of experts – their children with unique educational needs who could be educated and trained in an integrated manner were not getting the development recommended by the educational consultant or the board of experts. The Commissioner launched an *ex officio* investigation and, in his report, criticised that the expert opinions do not meet the content requirements set forth in legal regulations. He remarked that in case they keep the deadlines of expert procedures specified by legal regulations, the procedure takes at least two months, which prevents the children from receiving appropriate special treatment as soon as possible. The facts the Commissioner acquired during the investigation show that the procrastination of the already lengthy procedural deadlines is caused by the lack of experts of pedagogical services. The psycho-diagnostic, pedagogical diagnostic preparedness of expert committees with regard to autism spectrum disorder is not always satisfactory. The report presents that the list of institutions at the disposal of the board of experts is not complete, and the designated institution often cannot offer the conditions necessary for the special educational needs of the child. There is a lack of experts or other material means.

Often, leaders of institutions designated for the development of children with special educational needs also quote the shortage of space or the lack of experts when they do not secure care for the children sent to them, or do not secure it according to the directions of the expert opinion. The ½–1 year absence of developmental care causes significant decline in the health and development status of certain children. In practise, development sessions of students are organised during school lessons. This, however, causes disadvantages in mastering the material in the curriculum, making up for the material missed puts further burdens on the child, and instead of receiving special treatment, his handicapped situation deteriorates further and falls behind in his studies. The integrated kindergarten care of children with special educational needs is included in the tasks of local governments; however, if they are unable to perform this completely, the state chips in through the network of travelling teachers of handicapped children. However, the network has operative problems, while this task increases the burden on the pedagogical special service system already struggling with a shortage of experts. Thus the development of all entitled children still cannot be fully secured. There is a shortage of experts in the area of speech therapy as well as kindergarten and school psychology treatment, and the material regarding integration and education of students with autism is not present in a satisfactory manner in the training of junior and senior primary school teachers. Together with his recommendations, the Commissioner sent his observations to the Minister of Human Resources and the Chair of KLIK.

According to the response of the Chair of KLIK, she forwarded the requested measures to the school district directors by mail. Furthermore, she pointed out that they will do their best to significantly improve in the future the care given to children with special educational needs in institutions of public education. In his response, the state secretary of public administration presented that at its next session – expected to be held in February - the National Council for Disability Affairs will discuss the report under an independent point on the agenda. With respect to the measures included in the report, based on the stance taken by the public education branch, we were informed about the following: both the system of pedagogical special service institutions and the system of institutions teaching handicapped children are struggling with severe shortage of experts. Although the rules on the obligatory employment of teachers of handicapped children and conductors have been in effect for 22 years, due to the lack of the maintainer's uniform control, the high number of different maintainers did not abide by these fully, and also employed individuals without teaching qualifications for handicapped children in positions that could have been filled only by teachers of handicapped children. As so, the area did not indicate the shortage of experts, training institutions did not train more experts, or qualified trainers for themselves either. It was through the entry of KLIK that the above indicated problems were revealed through uniform and correct interpretation of the law. Thus at present there are not enough teachers of handicapped children or conductors at disposal as required by the provisions of legal regulations. Therefore, the Ministry requested the Chair of KLIK to carry out a survey on this topic, and ELTE Bárczi Gusztáv Faculty of Special Education to provide their research results. In addition to this, they requested written information and then attended personal negotiations with the integration of the five training institutions and the Office of the State Secretary for Higher Education, in the interest of potentially raising training quotas. A negotiation was launched with the KLIK representative about the possibilities of extending Klebelsberg Scholarship to special education teachers and conductors. According to the information provided by the State Secretary, when amending the minister's regulation on the operation of pedagogical special service institutions, they will make sure that procedural deadlines are cut shorter. The Commissioner accepted the report on the measures.

**2** The fact that the amount of support disabled persons get to make their homes accessible has been the same for twelve years poses a severe problem. Under a government regulation, the disabled person can receive this just once. The credit institution making payment of the amount may charge a fee for the judgement of the entitlement, while the same institution gets reimbursed by the state. The reason the Commissioner turned to the Minister of National Economy was that, in his opinion, this acute situation violates one's right to human dignity, the requirement of equal treatment and does not satisfy the state obligation with regard to the priority protection of persons with disabilities, also recorded in international treaties.

The debate on the use of ATM machines by the visually handicapped has been going on for a long time; the UN Committee on the Rights of Persons with Disabilities passed its recommendation on how to make the services of financial institutions accessible to the visually handicapped two years ago. The Commissioner revealed that there are plans, there is no legal regulation and several other requirements have not been satisfied either. The essential requirements with regard to services of financial institutions are the following: they are to secure that the visually handicapped have free access to the services of ATM machines. They are to define minimum requirements for the

establishment of the access of those with disabilities to ATMs under private ownership, and create the framework of enforceable legal regulations tied to deadlines. The newly acquired ATMs and other banking services are to be fully accessible to individuals with disabilities. Judges and other court clerks are to get regular training on the contents of CRPD and its facultative protocols so that, in the cases that come before them, they can make an educated decision related to disabilities. They are to harmonise the legal regulations and sentencing practice with the requirements that the signatory countries of the Convention accepted. These were the recommendations of the competent UN committee to the Hungarian Government.

The Ministry initiated cooperation with the Banking Association and the Hungarian Federation of the Blind and Partially Sighted, however, the information sent to the Commissioner does not mention other interest representation organisations. However, it quotes that back in 2011, the Chair of the Hungarian Financial Supervisory Authority published their recommendation directing that, during their banking services, the financial organisations have to pay special attention to consumers who can represent their interests only in a restricted manner, among them those living with disabilities. With respect to this, the Commissioner called attention to the fact that the Chair's recommendation neither in its form nor its contents can be considered the execution of the decision of the UN Committee. The preparatory measures do not substitute the enforceable criteria of a legal regulation tied to deadlines, the necessary partial measures and minimum requirements. However, it is a positive element that the trainings are underway, and hopefully the interest representation organisations offering sensitising trainings and individuals living with disabilities will also be integrated in these. Thus, the Commissioner already sees initiatives; however, the lack of definition of the framework of legal regulations and minimum requirements violates the rights of those affected and the obligations of the state recorded in the Convention. Therefore, the Commissioner turned to the Minister of Human Resources with his findings.

The State Secretary informed the Commissioner that, according to the recommended measure, in the interest of the development of the legal regulatory environment of access to banking services, in its letter dated 17 April 2015, he requested information from the Ministry of National Economy and asked what regulatory possibilities does he find in order to satisfy the obligation included in the recommendation of the Committee. Furthermore, parallel with this inquiry, he requested information from Magyar Nemzeti Bank (the Hungarian National Bank) and OTP Bank Nyrt. on what further measures they had taken during the period since their earlier information in order to improve the access of persons with disabilities to banking services, and to execute the recommendations worded, and on what measures they are planning in the future.

The information also dwelled on the fact that on 7 April 2015, the Parliament accepted the National Disability Programme for the years 2015–2025 (NDP). Point 12 of NDP is on access, which records that the complex clearing of obstacles also includes service organisation steps securing genuine access, and it also mentions the establishment of a flexible regulatory environment covering the wide spectrum of access, at the same time allowing for adaptation to individual circumstances as an indispensable task. At its session held on 5 May 2015, the National Disability Council (NDC) discussed the report, the members of the Council agreed with the contents of the report and supported that the Government consider and accept the recommendations included in the report. At the same session, the members of NDC discussed the NDP Action Plan for the years 2015–2018, and supported its contents. The Action Plan records that the framework of legal regulations concerning access to financial institute services offering equal opportunities and safe access must be developed. Furthermore, it indicates that the 7 July 2015 issue of *Magyar Közlöny* published the Government Decision on the payment of damages and cost reimbursement in line with the recommendation of the UN Committee of the Rights of Persons with Disabilities passed in individual cases. The legal representatives acting in the case were personally informed about the contents of the decision, and the financial preparation of payment was also started. The Commissioner accepted the measures.

**3** In the area of legal protection, monitoring living-in institutions is one of the most important tasks of the Office; the Commissioners have been investigating the circumstances of the placement, caring and treatment, and development of disabled people, moreover, that of children, in closed institutions, from the very beginning. Several of the inmates of the Szentgotthárd Home for Psychiatric Patients, with their names concealed and requesting that their particulars be handled in a closed manner, submitted a complaint to the Commissioner criticising some elements of the operation of the Institution. In their submission, they found the work of the employees of the institution injurious, and they worded severe problems in connection with several elements of institutional life. They criticised mostly the practice of the administration of medicine, the order of cleaning, the quality and quantity of meals, the money management practice of the Institution, and the limited nature of their opportunities to exercise their rights. The Ombudsman has monitored on several occasions and from several



aspects the institution in question, housing a high number of inmates, an institution of strategic significance to the branch of activity, as well. However, as the suspicion of some impropriety affecting the fundamental rights of the people receiving care emerged, the Commissioner launched an investigation.

The report records that the efforts and challenges contained within the complexity of the internal life of a living-in institution providing for psychiatric patients are not questioned, however, even in such cases, instead of the punishments of punitive nature used for regulation of conduct, the application of solutions of preventive nature, and an increased emphasis on safety and attention is necessary. In his report, the Commissioner admits that situations in which the application of isolation also becomes necessary cannot be excluded, however, in the interest of the lawful handling of such cases, the development and strict enforcement of a detailed procedural order, that is far more precise and substantial than the institutional protocol in effect at the moment, is needed. The investigation confirmed that both the number of individuals under guardianship per guardian, and the lack of specialist employees having become permanent in the individual shifts prevents not only high level and safe institutional care and treatment but is also expressly dangerous with regard to the special care needs of the inmates. In the opinion of the Ombudsman, a review of the legal regulations on securing the financing of general and special needs of inmates placed in living-in specialised social institutions has become not only timely but urgently justified as well. With respect to the restriction of the possibilities of the supplementation of the income of inmates placed permanently in living-in specialised social institutions, in the report, the Commissioner also called attention to the fact that there is a significant difference between the incomes that can be achieved within the framework of individual forms of employment, which is to be reviewed from the aspect of fundamental rights and also with regard to aims of rehabilitation and re-integration.

The Ombudsman requested the Minister to initiate the review and supervision of the legal regulatory environment securing the financing of the general and special needs of inmates placed in living-in specialised social institutions. He requested the government office to investigate the situation related to providing guardianship for the inmates, and take the measures found necessary in the interest of the optimisation of the number of individuals under guardianship per guardian. He requested the director to take measures in the interest of eliminating sanctioning practices violating human dignity, applied on the basis of custom in order to regulate behaviour, to complete and supplement the directions on the restrictive measures of the Rules and Regulations. In the wake of the request, the reconsideration and revision of the internal regulations has taken place, and the county government office has taken concrete measures to solve the problems originating from the shortage of guardians. In his response, the State Secretary emphasised that the improprieties worded cannot be traced back to the lack of legal regulations, therefore, the legal regulations necessary for the enforcement of inmates' rights do not require modification in his opinion. At the same time, he informed the Commissioner that there are professional discussions underway in the area of the organisation of care better dovetailing with service needs, and also that the recommendation on the reorganisation of the financing of living-in institutions can be published in the act on the 2017 central budget of Hungary. In the interest of the enforcement of rights of sick individuals living in a closed institutional structure, the Ombudsman accepted the response of the State Secretary in part, upholding his recommendation recorded in the report.

### **Protection of the rights of most vulnerable social groups**

The Ombudsman Act expects the Commissioner in office to pay special attention to the every social group in need and in danger, putting special emphasis on the protection of people with disabilities. The quality, complexity and depth of neediness is clear from this year's investigations just like the investigations of previous years, with dire material existence and its consequences appearing in the case of almost all social groups.

The social groups falling in this circle, already emphasised in previous years, can be classified to be at risk for different reasons (e.g. their existential situation, age, medical and mental status), however, due to this situation, they are also defenceless against all state and public authority interventions. At the same time, in their case, it may have severe and direct consequences if the state – through one of its institutions – does not satisfy some of its constitutional tasks, does not satisfy its obligations related to the establishment and maintenance of the special regulation and practice helping people in need or does not satisfy them appropriately. Be it some, even unjustified, public authority intervention or the failure to perform some state task or obligation, the ability of those affected to enforce their rights or interest is slim. From the very beginning, the Parliamentary Commissioners made it clear that it bears no significance from the aspect of legal protection and equal

dignity whether those involved have only themselves to blame or if they ended up in their defenceless situation through no fault of their own.

## Protection of the rights of the homeless and other individuals in existential need

The issue of homelessness, the circumstances and quality of life of those without a roof, required several investigations from the Commissioner of fundamental rights during this reporting period as well. The homeless are extremely defenceless people living at the margins of society, for whom increased state protection is of vital importance. However, the state has to keep balance between increased intervention – involving the least possible restriction of fundamental rights –, the alternative, showing the way out, and prevention. The objective obligation of the state to protect lives only offers the direct possibility to restrict the right to self-determination of the homeless people in direct danger to life, to the extent justified by the danger. The Commissioner for Fundamental Rights has emphasised several times recently that state endeavours targeting quick and simple “elimination” of homelessness, “getting rid of” the homeless, and “making order” question the operation of rule of law mechanisms as they announce to fight not against the problem but the “problematic individuals”. The homeless constitute a weak layer with hardly any ability to enforce their rights, which is extremely defenceless against any restriction of rights. Several problems related to the everyday existence and medical care of homeless individuals surfaced in the year under review as well, while a significant investigation covered the winter crisis period. The complaints typically criticised the order of admission of shelters and the restricted service capacity of day shelters. In these cases, following a short discussion with the leaders of the institutions, the cases could be closed upon informing the complainant in detail. The Commissioner considered the possibilities of the Ombudsman’s means in the fundamental law interpretation of homelessness, according to the right to human dignity, the relative respect of social security minimum and the rule of law requirements of the norm system.

In the cold of winter, protection of homeless people’s life and health requires increased attention from the maintainers and those working in the wider homeless service system. The Commissioner for Fundamental Rights – just like in the past five years – *ex officio* launched an investigation in 2015, in which it surveyed the services provided to the homeless and the situation of the homeless in the capital during the winter crisis period. The colleagues of the Commissioner visited underground stations, railway stations and significant homeless shelters also offering crisis care. The investigation also covered how, especially in the wake of the decisions of the Curia, the legal background in connection with habitual life in public areas and sanctioning conduct related to that fared. The basic experience of the investigation was that in Budapest the network of institutions of homeless care was fully established and able to operate continuously, while, as the result of professional cooperation, there were noticeably fewer conflict situations related to the individuals living in the streets. However, the Commissioner maintains that the extent of obligations undertaken cannot be decreased only because street homelessness is less visible, and the winter of 2014/15 was milder than average. It is a step forward that grant resources became accessible in time, and it poses no serious administrative and budgetary problem if a homeless person endeavours to use several day shelters a day. The Commissioner emphasised that the medical care function of halfway homes and day shelters also offering a convalescent function should be more clearly enforceable. According to the Ombudsman, organising and financing the placement and care of homeless people fighting psychiatric and addictological problems is also a priority task. Aiming clarification of institutional profiles and calculability, the Commissioner recommended that they determine the circle of services to be offered in the individual types of institutions as well as verifiable professional-legal minimum standards.

The investigation revealed that there remained shortcomings and issues to be completed in connection with the application of the records system of the Central Electronic Records and Service Users (KENYSZI). The lack of uniformity in performing the reporting, the impenetrable and uncontrollable jurisdictional practice of data requests may make the organisation of services uncertain. Based on the records system, the professional care of a homeless person placed in a halfway home, attending psychiatric consultation but requiring further therapy and day hospital care is almost impossible to execute. The lack of elements of guarantee necessary for the clear, consistent and certified operation of the records system in homeless care endangers securing the necessary funding for the services. Legal regulations define the types of institutions offering basic services for the homeless precisely but in a laconic manner: according to the Commissioner, harmony between the special needs of homeless people fighting complex problems and provision of an adequate professional level should be established with more detailed competency definitions.

With view to the foregoing, in his report the Ombudsman initiated before the Minister of Human Resources that the records system and legal regulatory environment of KENYSZI should be reviewed, and also that the Ministry survey how the institutional care provided in parallel to homeless with special medical and social care needs could be financed. Furthermore, he also requested the

Minister to initiate that the halfway home legal regulatory and financing background of convalescent places be clarified. In his response given to the report, the State Secretary informed the Commissioner that the recommendation on one part of the modification in question is before Parliament, the professional concept aimed at the comprehensive development and reorganisation of the institutional system of homeless care is being prepared on the basis of the widest possible professional consultation, and the suggestions affecting legislation are expected to be submitted to legislation during the next session. The Commissioner accepted the response and continued to agree with the necessity to reconsider professional questions aimed at increasing the efficiency of homeless care and the related legal regulatory environment, stating that he will pay increased attention to the professional consultation and drafting of the concept, promoting these by consistent representation and emphasis of aspects of fundamental rights.

### **Protecting patients' rights**

The Commissioner has been continuously monitoring the issues of medical care and the enforcement of the rights of defenceless patients for several years, examining the change in structure taking place in health care, the anomalies present in the operation of the general practitioner system, and the domestic situation of psychiatric care.

In October 2014, several internet portals reported that a 400-gram baby born during the 21<sup>st</sup> week of the pregnancy died in Bajcsy-Zsilinszky Hospital of the capital, however, in spite of repeated requests, the hospital failed to issue the documents related to the death even months later. In the wake of electronic press reports, the Commissioner launched an *ex officio* investigation in connection with the procedures and practice of the Institution. In his response to the Commissioner's inquiry, the leader of the Institution informed him that the mother was admitted by the Maternity and Gynaecology Department of the Institution in the 21<sup>st</sup> week of her pregnancy with symptoms of a miscarriage. In spite of the treatment, the 21-week old foetus was born, showed vital signs, however, due to its immaturity, its resuscitation was later attempted without success. The event was documented at the Maternity and Gynaecology Department of the Institution as birth both in the case history and in the final results; however, in spite of legal regulatory requirements, the perinatal coroner's certificate – according to the information of the general director, due to an administrative error – was not filled in and, instead of autopsy, the Pathology Department was requested to perform exclusively biopsy. The investigation revealed that the Institution – even though it indicated the event as a birth both in the case history and the final report – treated the new-born baby as an aborted foetus, and followed the order of procedure to be applied in these cases. The failure led to a series of serious consequences to be evaluated from the aspect of fundamental rights as well: the coroner's inquest was not performed, no perinatal coroner's certificate was issued, instead of an obligatory autopsy only a biopsy was performed. The circumstances of the burial of dead new-born babies are also different from the burial circumstances of aborted fetuses: taking care of the burial of dead new-born babies is the obligation of the parent. In lieu of the issuance of the perinatal coroner's certificate, official statistics could not be kept in connection with the death of the new-born baby. The report called attention to the fact that perinatal death causes multiple loss and frustration to the parents, which results in the special nature of grieving following it. Perinatal death severely traumatises the parents, often launching pathologic grieving. The hospital's failure also interferes with the natural procedure of grieving. The subsequent establishment of death is possible only before the court, within the framework of a non-litigious procedure. The death of the new-born baby, its officially not closed status dragging on for long months does not allow for the natural progress of grieving, tearing open painful memories. According to the Central Vital Records, the deceased new-born baby did not have a death certificate as of 19 March 2015.

During the procedure, in connection with the case, the Commissioner also examined the provisions of the hospital's regulations related to the treatment of deceased individuals. As a result of this, he found that the directions of the regulations are in conformity with the provisions of guiding legal regulations. Therefore, as the Commissioner did not learn about other, similar cases taking place in the hospital, the events cannot be considered to constitute a system-level problem; this was an occasional failure. The investigation established that in connection with the death of the new-born baby and its judgement, the Institution did not act according to the directions of prevailing legal regulations or its own regulations, and thus, with its failure originating therefrom, it caused improprieties related to the mother's right to a fair procedure, her right to human dignity, and her right to reverence originating therefrom. In the interest of the prevention of the occurrence of improprieties revealed in the report, the Commissioner requested the general director of the hospital to take the necessary measures so that no such and similar failures resulting in serious consequences could

occur. In his response given to the report, the general director of the hospital informed the Commissioner that their institution admitted its responsibility in connection with the concrete case forming the basis of the inquiry already during the course of the investigation. They have taken the necessary measures in the interest of avoiding similar cases in the future; furthermore, they will give the family in question all the help so that the death certificate of the deceased child be issued. In connection with the case, the colleague making the mistake was reprimanded in writing. The fact of the child's death can be established exclusively in a non-litigious court procedure; the hospital offered the family all necessary help with the procedure, including the reimbursement of any expense incurred during the execution of the procedure, and securing legal representation. The family accepted the help offered by the hospital, and prompt measures were taken to launch the procedure. With its order dated 4 March 2015, the court established the fact of the death of the new-born baby, thus the self-government was able to issue the child's death certificate.

### **Elderly affairs**

In 2015, the Commissioner examined and analysed the situation of the elderly, the social, legal and sociological aspect of old age – by taking into account the restrictions of the Ombudsman's powers – within a special framework but still from the aspect of constitutional rights. After the fundamental right problems in question are revealed, if necessary, the Office initiates that the situation in question, which is criticised, be remedied, or simply voices the dilemmas that burden everyday life. All this so that old people and the next of kin living with them and/or experts looking after them may have the possibly most complete awareness and knowledge of their rights.

In the Elderly Affairs Project brought into life by the European Network of National Human Rights Institutions (ENNHRI), financed by the European Commission, Hungary is represented by the Office of the Commissioner for Fundamental Rights. This constitutes active experimental membership: the Commissioner and his colleagues cooperate in this large-scale European project work in a so-called "pilot member" role, which is thanks to the experiences of the Office related to its earlier elderly affairs investigations. Close to 20 countries from Europe participate in the two and a half year long project work with a definite topic. The aim of the project is the European-level monitoring of elderly services, revealing experiences, problems and good practices and elevating them to a European level, and within the framework of that, as the summary of the project work, the participants draft a common recommendation, a package of suggestions, also to be submitted to the European Commission. Active participation in the European project is an undertaking of high prestige, while it is also a lawful obligation for the Hungarian Ombudsman by virtue of the Ombudsman Act, considering that the individuals receiving care within elderly services, as a group of people in need. During the course of project work, the Commissioner's colleagues execute investigations in several living-in institutions; in addition to that, with the help of experts, they get a picture with regard to the issues affecting the social security, legal and public security, as well as medical provisions of the elderly people living in their institutions. As a substantial part of the project work, in the fall of 2015, the Commissioner for Fundamental Rights, cooperating with the Methodology Centre of the Pesti Út Old People's Home of the Self-Government of the Capital and also giving publicity to the annual national professional conference of the institution, organised a joint project-opening professional programme by drafting the Hungarian situation of institutional elderly care, on the topic of the domestic enforcement of the fundamental rights of elderly people and its manifestation in the European project. Then, under the title "The Dignity of Old Age – Reality and visions in living-in institutional care and beyond", a national congress was organised in the Korczak Hall of the Office for Fundamental Rights on 10 November 2015. The aim of the meeting was to analyse the situation of the domestic scientific and social profession dealing with elderly people and old age, and to draft the questions, needs, plans and possibilities.

### **Protecting the rights of municipal public workers**

In December 2013, the new model of municipal public work, the so-called "Winter municipal public work" was launched, trying, on the one hand, to generate employment related to value-creating and income-generating work that can be performed in winter, while endeavouring on the other hand, through participation in the training program, to establish the opportunity for municipal public workers to catch up, to increase their chances to find employment in the primary labour market. In connection with the realisation of the program, however, the Ombudsman received several complaints from all over the country. Among others, the complaints criticised the selection procedure for municipal public work and training, admission, the lack of appropriate information, the positions offered, the humiliating

circumstances of work, the lack of labour protection devices necessary for the execution of work, and the quality of training. During his activity, the Commissioner pays outstanding attention to the protection of the rights of social groups at risk, while in the Hungarian municipal public work model, we find a legal relationship complete with special official elements, not based on equality, where the municipal public worker is in a defenceless situation; in the spirit of this, due to the misgivings indicated, several targeted, thematic investigations were carried out on the area in the year in question.

1 As the result of the *investigation*, the Commissioner established that in the summer of 2013, the job centres of the government offices and the labour affiliates of the district offices surveyed the task and staff requirements of local self-governments and other employers, preparing for the winter municipal public work. However, they had no precise knowledge on the concrete programmes to be realised and their planned number of participants. The government regulation, in which the Government set a deadline of 15 September asking the ministers to plan the execution of the trainings in order to prepare the training programme completing municipal public work, as well as to develop the executive system of the programme, was published on 1 August 2013. Preparation for the trainings, appointment of the training bodies, the announcement of the tenders for the development of the teaching material, and the organisation of securing the material and personal conditions was started in October. The financial coverage necessary for these has been at disposal only since 28 November 2013 with temporary municipal public work having been launched in the meanwhile, on 1 November 2013. The launch of the training itself only took place on 1 December 2013. In addition to central bodies, the launch of the programme put several tasks on the local job centre affiliates as well. They had to select the 200,000 strong municipal public workers, mediate them and send them for medical fitness examination, to liaise with the municipal public employers and last but not least to secure that close to half of the job-seekers participating in municipal public work also participate in some kind of – basic competence, NTL or other – training as well.

According to the Commissioner, it would increase the success of the consecutive municipal public work programmes if they operated in a plannable and calculable manner. It would pose higher safety and calculability if there were introductions on what municipal public work programmes are to take place, from what date, with what number of participants and for what period well before the expiration of the programmes. It would make the work load of the job centres more balanced, if they knew in advance what size municipal public work programmes were to be launched and when. All this would also facilitate that those in need get appropriate information and plannable work opportunities. The situation in which the necessary teaching material or equipment was not always at disposal at the beginning of the trainings, on occasion the venue of the training was not secured either, often the individuals participating in the training were not transported to the training place either occurred because of the lack of preparation time.

In connection with the selection for municipal public work and training, the Commissioner emphasised that this decision not only creates job opportunities but, on many occasions, it also has an increasingly serious effect on access to social services for job-seekers. Thus during mediation, the job centre affiliates had to pay attention to the levels of priority set by the legal regulations and, if possible, it is primarily the employees in some handicapped situation that they have to get involved in municipal public work on the basis of these objective aspects of classification. On several occasions, the complaints received by the Commissioner indicated that the selection in fact takes place not on the basis of these objective aspects but by keeping in mind the economic or other interests of those participating in mediation or the municipal public employer. In the interest of making objective decisions purely on the basis of neediness, the Commissioner emphasised that the constitutional rule of law requirements are not compatible with the incalculable situation that, during selection for municipal public employment, there is no procedural order that would secure that the labour affiliates satisfy their mediation tasks by taking into account the aspects of priority included in the legal regulations.

In connection with the trainings, the Commissioner established that it is necessary to prepare preliminary impact studies before they are launched, to survey local labour-market needs with appropriate detail. It would be necessary to widen the training possibilities, as well, and, in place of the present provision of practical knowledge, serving the needs of municipal public employers far more, and to take into consideration the primary labour-market possibilities manifested locally. Instead of the self-serving re-creation of municipal public work, training of this nature would indeed help movement and stepping forward from municipal public workers' existence, as the first step into the world of employment. In connection with labour safety and the right of municipal public workers to safe work, the Commissioner was happy to establish that the necessary basic equipment (e.g. work clothes) were essentially at disposal at the launch of the programme. The problem is caused by the fact that

municipal public employers do not put sufficient emphasis on the introduction of the requirements of the manuals of machinery used by the municipal public workers, and on checking the appropriate and regular use of labour safety devices.

The Commissioner asked the Minister of the Interior to secure that, during the preliminary planning of municipal public employment programmes to be realised later, the time necessary for planning the programme and preparing for it be provided on every occasion. When organising the trainings, attention should be paid to surveying and taking into consideration the local labour market needs in advance, and call the attention of the job centre directors to always give preference primarily to the interests and training needs of job-seekers in need, and not the desires of municipal public employers when making their selection for the municipal public employment programmes. At the same time, in the interest of preserving the requirement of safe execution of work, he requested the Minister of the Interior to promote the audit tasks of labour special administrative bodies, by securing the necessary material and human resources. The Minister of the Interior accepted the contents of the report, and at the same time informed the Commissioner that, during the planning of municipal public employment programmes for the next year, significantly more time was devoted to the preparation of municipal public employers, during the preparation of the trainings – negotiating with municipal public employers and the participants of the competitive sphere – they surveyed the labour market training needs and put more emphasis on the organisation of state-recognised NTL specialisations. The Minister of the Interior emphasised that during future selection, labour bodies will act by taking into consideration legal regulations to a greater extent. In connection with checking whether labour safety regulations are abided by, he informed the Commissioner that he has established cooperation with the Labour Safety and Labour Directorate of the National Labour Office, with jurisdiction, so that the appropriate informative materials are prepared for municipal public employers on potential labour safety risks and the rules on labour safety.

**2** The basis of the Ombudsman's investigation was the submission in which the complainant participating in municipal public work found it grievous that he had applied for a job advertisement – posted on the primary labour market – the condition of which was that the applicant have a document issued by the job centre, certifying his long-term job-seeker status. As during their employment, municipal public workers do not qualify as job-seekers – their job-seeker registration being suspended during this period – the job centre could not issue him the mediation sheet. In addition to this, the complainant also found it grievous that, as the time spent as a municipal public worker is not calculated in the job-seeker's period necessary for the certification of long-term job-seeker's status, the job centre – with the termination of the municipal public worker's legal relationship through a notice – would not have been able to issue a certificate to him, and thus he was not accepted for the job. In connection with the work obligation related to mediation for municipal public work, the Commissioner examined the regulation of cooperation with the job centres and also the legal consequences of abiding by and violating the cooperation obligation. As the condition of using allowances promoting employment, the labour authority registers job-seekers. Only those can be registered as job-seekers who meet the conditions set by legal regulations, and undertake the obligation to cooperate with the employment body. When calculating the period of cooperation, the term of moneymaking activities pursued during the period of cooperation is also to be taken into account. However, if the applicant participates in municipal public work, that does not qualify as moneymaking activity, that is, this period cannot be calculated into the one year, sometimes three month cooperation period necessary for the entitlement to social provisions.

The Ombudsman emphasised that the performance of the one year cooperation period set as the condition of social provisions may pose difficulties for those individuals who received municipal public work opportunities as job-seekers before the expiration of the one-year period, and performed that. However, this is not a simple administrative problem as its consequences are more serious: for the individuals among characteristically difficult circumstances the acquisition of entitlement to social provisions is prolonged by the time spent in municipal public employment, and this may mean months without provisions after the expiration of their municipal public employment contract. In his report, the Commissioner established that the shortcoming that time spent in municipal public employment does not constitute cooperation with a state employment body causes an impropriety related to legal security, as well as one connected with the right of municipal public workers to social security. He requested the Minister of Human Resources to initiate the modification of the Social Act under which the time spent in municipal public employment constitutes cooperation time spent with the state employment body. In his response, the State Secretary agreed with the Commissioner that, at the time of the establishment of services, the present legal regulation may lead to inequity. To eliminate this, he supports the change of the prevailing regulation, at the same time – in his opinion – the solution of the problem does not require the amendment of the act, it is sufficient to amend the government

regulation on applying for monetary and in kind social provisions. Therefore, the State Secretary initiated negotiations with the other two ministries involved, who also assured the Commissioner of their support.



## **Protection of the rights of individuals in confinement**

One of the most debated circles of social groups at risk is the individuals living in confinement in penitentiary institutions. However, it is exactly because of the circumstances and nature of confinement that it is necessary to classify several thousand individuals serving their time as belonging to the group of defenceless persons. You can read about the most important investigations dealing with the rights of individuals in confinement and the problems affecting the world of prisons below. The Commissioner – also with view to the tasks to be performed within his special jurisdiction as OPCAT national preventive mechanism – made efforts to investigate all the complaints and signals received from individuals in confinement during the present reporting period if his investigative jurisdiction existed in the case. The submissions of complainants in confinement can be classified characteristically in four larger categories: many continued to criticise the size of the cells, as well as crowdedness, complained about the ban to use the MinDig-TV card, found the high telephone rates injurious, and voiced criticism in connection with the judgement of their petitions for transfer.

## **Protection of the rights of refugees**

Taking in foreigners escaping from persecution is a practice that civilised societies have applied from early times. The Fundamental Law records that Hungary shall, upon request, grant asylum to non-Hungarian citizens being persecuted or having a well-founded fear of persecution in their native country or in the country of their usual residence for reasons of race, nationality, membership of a particular social group, religious or political belief, if they do not receive protection from their country of origin or from any other country. In the Commissioners' practice both refugees and asylum seekers, as well as foreigners or stateless individuals not requesting asylum but leaving their country due to some pressure – regardless of their legal status – are unquestionably to be considered members of a group to be protected. All this is based on the fact that these are individuals who, after a longer period of escape, end up in a country, culture and linguistic environment alien to them. Increased state protection and the Ombudsman's attention is especially important when children or whole families end up in this severely defenceless situation.

Naturally, the most dominant human rights crisis of the year in question, the extraordinary situation caused by mass migration, and the reactions of public powers could not escape the attention of the Commissioner either. On 11 September 2015, the Commissioner issued a communiqué in which he made it clear that humanitarian aspects come first in the crisis situation, and the refugee crisis is to be handled with the requirements taken into consideration. The unprecedentedly severe situation caused by mass migration called for a responsible solution in conformity with human rights requirements. The Commissioner indicated that he will examine the concrete developments of the question according to his sphere of authority, and personally gathered information on the circumstances. The Office, as the national human rights institution of the UN, continuously followed the measures related to the management of the humanitarian crisis situation, and emphasised that the management of the humanitarian problem has priority at the given moment. The debate in connection with the mid- and long-term management of the refugee issue is legitimate and important, however, even among the efforts looking for solutions, one has to see the human in the refugee. In his communiqué, the Commissioner reminded that there is an increasing number of children among the refugees arriving at the Hungarian border, and, under the directions of Hungarian and international law, they require special attention and care.

The Ombudsman emphasised that in this extraordinary situation not experienced before, it is necessary that the authorities provide clear and unambiguous information, and inform those affected and the public in a trustworthy manner. The management of the situation is expected to put a heavy burden on the country for a long time to come, therefore, it is worth building on the professional help and advice of international human rights institutions, such as the UN, UNICEF and the United Nations High Commissioner for Refugees (UNHCR). The Commissioner indicated that he himself is ready to cooperate in this task. In addition to this, the Commissioner agreed with the call of UNHCR, according to which all humanitarian organisations are to be allowed to continuously offer help to refugees at the collection points of the border, to improve on-site coordination, the conditions of admission and communication with the refugees. Well-informed people are more cooperative even in critical situations. The Ombudsman also called attention to the fact that anybody speaking publicly in the case should do it responsibly. The Commissioner said thanks to all Hungarian and foreign private individuals, civilian and church organisations who helped the refugees voluntarily, with their donations, work, institutional and personal undertakings. Finally, he also reminded that the policemen and the

members of authorities who, having met the refugees in person, make effort to find solutions to their increasing problems in the worsening situation, also deserve recognition and respect.

Initiated by the Commissioner, on 2 October 2015, the “Visegrád Ombudsmen”, that is, the Czech, Polish, Hungarian and Slovak Commissioners for fundamental rights accepted a common declaration entitled “People first”.

### **Ombudsman’s role-taking in the protection of the rights of LGBTI individuals**

The Commissioner greeted the jubilee International Day against Homophobia with a separate communiqué, in which he called attention to the fact that in 2015 it has been 25 years since on 17 May 1990, the World Health Organisation struck off homosexuality from the list of mental diseases. The International Day against Homophobia reminds us that the ban on the discrimination of sexual minorities is related to human dignity. Several Hungarian and international documents, thus the Yogyakarta principles, guiding among international human rights standards also point out that sexual preference and sexual identity are integral parts of the dignity and human character of every human being, and it cannot form the basis of negative discrimination or abuse. The unconditional respect of the right to equal dignity is a basic condition to the establishment of a tolerant and receptive society. However, the thematic research of the Fundamental Rights Agency of the EU attest that sexual minorities often suffer discrimination, verbal or physical atrocities. As the result of hiding, lesbian, gay, bisexual, transgender and intersexual (LGBTI) people often fail to turn to state institutions in the interest of remedying the injuries suffered by them. The Commissioner emphasised that in a rule of law state, it is the outstanding task of every state body to establish a safe and receptive environment for the individuals living in its territory, regardless of their sexual preference, sexual identity or other protected features. Further efforts are needed to transform the principles declared 25 years ago into everyday realities, so the sexual minorities could live in Europe, Hungary and their closer environment indeed as individuals with equal dignity.

## **2.2**

### ***Further investigations revealing the enforcement of fundamental rights***

In addition to the areas of examination prioritised by the Ombudsman Act, in 2015 the Commissioner launched investigations in several individual cases, also with comprehensive nature, based on a concrete complaint, as well as *ex officio*. Organised around three large thematic areas of fundamental rights, below you can read about the reports and investigations most outstanding from the aspect of international interest.

#### **Right to life and human dignity**

According to the Fundamental Law, human dignity shall be inviolable. Every human being shall have the right to life and human dignity. According to the Constitutional Court, nobody can be arbitrarily deprived of his right to human dignity, dignity being a quality that automatically goes with human life, that is indivisible and unrestrictable, and therefore equal with regard to every person. The right to human dignity has two functions. It expresses the “untouchable essence” of humans, that is, the personal autonomy, the internal core of self-determination that essentially differentiates humans from legal entities. The right to dignity secures that no legal difference can be made between the value of human lives. The right to human dignity can be considered one formulation of general personality rights. General personality rights are “mother rights”, subsidiary fundamental rights that both the Constitutional Court and courts always call up to protect the autonomy of the individual if none of the concrete, specific constitutional fundamental rights can be used for the facts of the case in question. Everybody is entitled to the right to human dignity, the Commissioner for Fundamental Rights guards its unconditional enforcement according to the traditions of the Ombudsman’s institution. The other function of the right to dignity is to secure equality. The fundamental right of equal dignity justifies and fills with contents the right to discrimination-free treatment. The Fundamental Law declares that Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status. According to the Constitutional Court, discrimination ban does not mean that any discrimination, even discrimination aimed at greater social equality is eventually forbidden. Discrimination ban means that the law has to treat everybody

equal, as individuals with equal dignity, that is, the fundamental right of human dignity cannot be violated.

1 The Commissioner examined the fundamental right aspect of registered common-law relationships and in relation to that examined the right to a name. In addition to this, the case also touched upon the fundamental right related to human dignity. Representing the complainant, a civil organisation turned to the Commissioner requesting to initiate the review of the act on registered partnerships before the Constitutional Court. Under this direction, the provisions on the names held by spouses cannot be applied to registered partners. The submitter presented that: in addition to this provision violating the right to human dignity and the requirement of equal treatment at a theoretical level, it also causes serious disadvantages in his private life. The submitter established a registered partnership in Germany, with a German citizen; with regard to the name they hold they decided to connect the family names of the two of them with a hyphen. Upon the establishment of the registered partnership, he and his partner had a common place of residence in Germany. Following this, the complainant acquired German citizenship, and has dual citizenship at the moment. He criticised that the Hungarian authorities do not recognise his new family name, therefore, his Hungarian passport had to be issued to his birth name originally entered in the register.

Based on the response of the minister in charge of justice, the regulation criticised and the related earlier constitutional court and European human rights practice, the Commissioner informed the submitter that in the present constitutional environment, he does not find the launch of a constitutional court procedure sufficiently well-founded as, in his judgement, the regulation stays within the constitutional framework presently guiding. He quoted the contents of the constitutional court decision guiding in this area: the claim concerning recognition and protection of the long-term relationship of same-sex individuals – as they cannot get married – can be deduced from the right to human dignity and the right to self-determination originating from that, the general freedom to act, and the right to the free manifestation of personality. That is, while the protection of marriage derives expressly from provisions of the fundamental law, legislators have to secure recognition for the partnerships of same-sex couples on the basis of the right to human dignity. Following this, the procedure was continued based on the submitter's question, with regard to the concrete entitlement to hold a name.

The Commissioner established that, based on international private law regulations in effect, the law of the state where the parties' last common residence was, in this case German law, is to be applied to the establishment and validity, as well as the legal effects of the applicant's registered partnership, including the aspect of the name held. The obstacle to the enforcement of this direction is that the regulation of registration in connection with the name held by a registered partner only allows the entry of the birth first and family names. The registration of the complainant's registered partnership name obtained under German law as a registered partnership common name is not possible in spite of the fact that it would derive from the international private law regulation. The Commissioner established: international private law and the registration rules are not in harmony. The collision between the legal regulations makes it impossible to find one's way among the legal regulations both for citizens and for dispensers of justice, furthermore, it does not allow dispensers of justice to establish a law-abiding practice. Due to the shortcomings and contradictions of the regulation, the submitter was unable to enforce his right secured under the international private law regulations to have his name registered in Hungary. As the result of the regulation, the complainant is forced to hold two different names in the two countries of his citizenship. The fact that through the name-change procedure the complainant will be able to "unify" his name may neutralise the effects of this impropriety though it will essentially not remedy that. The Commissioner requested the Minister of the Interior to take measures so that the regulation of registration in connection with the names held by registered partners fully satisfy the requirements of international private law regulations, by taking into consideration the aspects contained in the report. He emphasised that he finds it important that, following the modification of the legal regulation, the registry data of the complainant are appropriately modified as well.

However, neither the Minister of the Interior, nor the Minister of Justice agreed with the statements made in the report. According to the common stance of the two ministries, if the registration act was amended to harmonise the regulation of registration with international private law regulation, that would result in the discrimination of registered partnerships established abroad and in Hungary from the aspect of the right to the name held, which would violate the requirement of equal treatment. The Commissioner, maintaining his stance, pointed out that the infringement of equal treatment can emerge only in connection with individuals or groups in comparable situations. International private law regulations require the application of the law of the foreign state according to the common place of residence with regard to the circle of cases where the individuals establishing a

registered partnership do not have common personal law, however, they had a common place of residence in the territory of a foreign state under the personal law of one of them. The special nature of this circle of cases points beyond the issue of the state in which the registered partnership was established, while the circle of subjects and the difference in personal circumstances would provide sufficient reason for the different regulations, thus the infringement of equal treatment would not occur. Furthermore, in his response, the Commissioner pointed out that the arguments in the minister's response do not offer a solution to the collision between the directions of international private law and the provisions of the registration act, which, under the rules in effect, still prevails.

The relatives' right to reverence and the obligation of the bodies and service providers acting after death to honour this during their procedures comes from the right to human dignity. The right to reverence – though it does not belong to the general personal rights protecting persons alive – bans the retroactive denial of the dignity of the deceased person. The right to reverence is in close connection with the right to human dignity, it is a special sub-license to be deduced therefrom. In part, the right to reverence includes a claim for protection related to the one-time existence of the right to dignity, to which the deceased person is entitled on the basis of belonging to the human race, and which secures the protection of the moral, personal and social judgement the deceased person acquired during his life. In the event of the violation of the memory and good reputation of the deceased person, the right to reverence, which can be deduced from the right to dignity every person is entitled to, means the right of the relatives and the person who inherits under the last will and testament of the deceased person. Thus, the right to reverence is enforced as part of the right to human dignity, and represents the partial survival of the right to human dignity after death.

2 In one of the cases, the submitter found it grievous that, based on the regulations in force, in the event of the cremation of the deceased person, the party with the burial obligation has no deadline to have the ashes buried, placed or dispersed, and this solution violates the right to reverence of the relatives other than the party with the burial obligation. If the deceased person is cremated, there is no legal possibility to enforce the actual burial of the ashes. According to the report, it contributes to the solution of the problem that the burial act directs that, upon the release of the ashes, the party with the burial obligation has to undertake in a declaration that he will secure that the next of kin can freely practice their right to reverence, and that he will store the urn according to the reverence requirements. The Ombudsman called attention to the fact such sensitive life situations are hard to manage with direct legal devices, the requirement of the declaration being an appropriate solution at a theoretical level: it cannot be considered improper from the aspect of the right to reverence that at present the act does not obligate the party with the burial obligation, by setting an itemised deadline, to finally intern or disperse the ashes. However, it is problematic that while the Civil Code secures legal protection by the court for the next of kin and the person inheriting under a last will and testament in the event the right to reverence is violated, the funeral act secures the practice of the right to reverence in the form of visiting the urn in a narrower sense, only for the next of kin. In the Ombudsman's opinion, the person who has the right to enforce his claims related to his right to reverence before a civil court as deriving from the institutional protection obligation, must also be secured the right to pay respect in the private territory of the party with the burial obligation by other acts as well, in harmony with the former. Accordingly, the report comes to the conclusion that the burial act creates a contradictory situation. For instance, the declaration does not secure rights for the partner or registered partner of the deceased to visit the urn containing the ashes as this depends on the discretion of the party burying the deceased – for example, the child of the deceased from another relationship. Based on the foregoing, the Commissioner for Fundamental Rights established that it is not in harmony with the requirement of legal security and causes improprieties in connection with the right to reverence that the direction of the burial act in effect defines the group for which practising the right to reverence is automatically secured – based on the declaration of the burying party – through visiting the urn containing the ashes of the deceased narrower than the rules of the Civil Code. The Commissioner asked the Minister of the Interior to review the present legal situation and consider the amendment of the act, in conformity with the directions of the Civil Code, in order to extend the guarantees of practising the right to reverence indicated in the declaration of the burying party. The Minister of the Interior agreed, on the whole, with the contents of the report and indicated that he will initiate the amendment of the burial act in the wake of this.

### **Social rights – right to social security, health and education**

In addition to the heightened protection of equal dignity and freedom rights, the ombudsmen of a democratic rule of law state cannot disregard the enforcement of fundamental social rights, and the role-taking of the state in this sphere either. Economic, social and cultural rights – shortly and more

simply: social rights – are fundamental rights with such unique structure that require from the state expressly active social role-taking, public services, and the maintenance and operation of different institutions, and through that the redistribution of the goods produced by society. A unique feature of social rights is that the state may set the extent and level of the services embodied by them according to its load-bearing capacity, and their enforceability appears only in exceptional cases. It is historical experience that, without the recognition and protection of social rights, the economic order behind the freedom rights may create such social inequalities and tensions that may endanger the entirety of the fundamental rights system. According to the Ombudsman's practice, by securing social rights, the state is primarily obligated to keep the particular existing level of defence, however, in justified cases and under justified conditions, by creating necessary balance, it may also form this level. Behind social rights often identified with state goals – especially during securing access to certain indispensable basic services – often lie the most basic constitutional values, the protection of human life, dignity and health, or the requirement of securing equal treatment.

The fundamental right measure different from that applied to freedom rights requires an interpretation of legal protection roles from the Ombudsman that diverges from typical. In the sphere of social rights, the Commissioner raises his voice against the unexpected drop of the level of protection not allowing preparation or constitutionally unjustified decrease, in the interest of the protection of the rights of defenceless social groups. In the Commissioner's practice, when investigating individual complaints, the independent infringement of the right to social security, health and education is exceptional. The indirect infringement of these rights occurs more frequently as public powers disregard the basic procedural guarantees and rule of law principles.

In connection with the year 2015, we can quote the tendency that quite a few of the submissions were directly or indirectly related to the social situation or the health status of the complainants, and the care system, however, due to the lack of the sphere of authority, most of them could not be investigated. The complaints continue to speak about long-term impoverishment, and the recreation of defencelessness in a different dimension, while the narrowing system of devices of social politics is unable to provide genuine, long-term help for the improvement of the problems of those living in deep poverty, permanently under the subsistence level. The most needy still do not have access to help and support, or have access only incidentally. On the basis of practice, it is hard to define what constitutes a complaint of social nature; a major part of the submitters do not criticize concrete official procedures but turn to the Commissioner as a "last resort", due to their life conditions becoming gradually impossible and to the lack of their individual opportunities to act. The Commissioner is not at disposal of material support or help that he could grant to people in severe need turning to him. When turning down the social submissions for the lack of authority, the only possibility the Ombudsman has is, upon providing detailed information on the legal regulations, to recommend to those turning to him social institutions and helping organisations that may support and help families in poverty.

1 In connection with the investigation of a submission, the Commissioner established that, in its local social regulation, as compared to the legal provisions, Nógrádmegyer self-government narrowed down the circle of those entitled to services by restricting it to those with a permanent place of residence in the settlement. The complainant recorded that he and his partner habitually live in Nógrádmegyer, however, they collect recyclable waste going from settlement to settlement, thus they may be away for longer periods of time. His partner has lost ownership of her residential house, thus the legal title of their residence ceased to exist and they may even become homeless. They live on state provisions in the amount of HUF 22,800, both requiring medical treatment. In his submission, he complained to the Ombudsman that, due to the local social regulation tying entitlement to permanent residence, they do not get help from the self-government of the settlement. The report records that, even after the 2015 reorganisation of the social administrative system, self-governments cannot leave individuals in need turning to them without help and assistance quoting the lack of a place of residence. The investigation revealed that the scope of the local social regulation does not extend to those in need residing habitually but without a permanent place of residence in the settlement, thus to the homeless and those whose life or physical fitness is in direct danger. In the Commissioner's opinion, all this may result in support not getting to those in need, belonging to the circle entitled to compulsory social services or state provisions, as the acting self-government body turns down the application without examining the conditions on the merits. The Commissioner for Fundamental Rights emphasised that as long as there are people in need living in the settlement – even under a temporary legal title – the obligation of the self-government to provide for them extends to them as homeless people residing in the settlement habitually. In matters of the homeless, competence belongs to the social body whose area of competence the person in question indicated as his temporary domicile in his statement when requesting the service or provision. The self-government restricted the force of the

local social regulation to those with a permanent place of residence in the settlement. The Ombudsman emphasised: it is worrisome that, based on this, the person who lives in the territory of the self-government habitually but has no permanent place of residence either there or in any other settlement may automatically – regardless of satisfying any further conditions – be excluded from the system of social services, becoming essentially invisible to the system. The report records that the state is obligated to provide for the elimination of emergency situations directly endangering human life in all cases, thus it must help those who cannot establish the basic conditions of human life using their own resources. According to the Ombudsman, the individual self-governments have the opportunity to require a contact address from the individuals living in the settlement habitually but not having a valid residential address as the precondition of provisions. The Commissioner established that the self-government restricted the personal scope of the regulation to the circle of its permanent residents in contradiction with the directions of the social act, and thus violated the right of those affected to social security. The Commissioner called upon the self-government to modify the regulation in harmony with the guiding directions of the social act. The mayor informed the Commissioner that the body of representatives of the self-government annulled the regulation found injurious within the deadline specified, thus the personal scope of the local social regulation is thus in harmony with the act. Upon the Commissioner's recommendation, the self-government has annulled the regulation in violation of the right to social security.

**2** It was from media reports that the Commissioner learned about the announcement of the Drug Prevention Foundation according to which it was forced to end its needle swap programme operated in its Hollán Ernő Street office since 1995. According to their relation, due to the neighbours' complaints, the Self-Government of District XIII banned that they conduct needle-swap at this location, and called upon them to move. They pointed out that, due to the Józsefváros needle swap programme terminated in 2014, the traffic in the district doubled and, in their opinion, they might have temporarily disturbed the local residents more intensively. By taking into consideration the realisation of the establishments and measures set out in earlier Report No. JB-1131/2013, in the interest of getting acquainted with the background and consequences of the proceedings of the self-government, furthermore, because of the danger of an epidemic emerging and existing in the capital due to the termination of the needle-swap programmes, the Commissioner *ex officio* launched a comprehensive investigation. In his report, the Ombudsman observed that the lack of the acceptance of the special policy programme required by the National Anti-Drug Strategy accepted by the Parliament in 2013, by the Government in 2014 and 2015, violates the rule of law principle; furthermore, the emerging situation causes improprieties in connection with the right to health and human dignity. According to the Commissioner, the proposal prepared by the ministries would by far be suitable to serve as the basis of system-level state action in the emerging situation at the earliest possible time.

The Commissioner emphasised: it is a step forward that the institution maintained by the Municipal Self-Government, also executing methodological activities, participated in the open tender announced specifically for securing the operative conditions of the Drug Discussion Forums. In the event of a successful application, it becomes possible that the DDF of the Capital is reorganised and may operate in the fall of 2015. In the event of the positive judgement of the tender, the promotion of the uniform professional activities of the district DDFs and the execution of coordination tasks may become a part of the activities of the DDF of the Capital. The Ombudsman maintained that the dragging of the establishment of the DDF of the Capital for years resulted in a problematic situation from the aspect of fundamental rights. However, as definite steps were taken in the interest of the re-launch of the DDF of the Capital, he did not endeavour to draft a further measure at the moment. The report emphasises that, upon the commencement of the operation of the DDF of the Capital on the merits – following the earlier example – a separate work group should be formed in the area of low-threshold services, which would be able to oversee the situation of the operation and accessibility of these services, especially that of needle swap programmes, at a more global, that is, municipal level. Through the positive experience and in harmony with the Strategy, it is also significant that every district of the capital should have an operating drug discussion forum, while admitting that it is indeed not a directly obligatory local self-government task. All this, and the lack of full coverage is suitable for a situation problematic from the aspect of fundamental rights to emerge, which carries the direct of the infringement of rights to occur.

In connection with the termination of the Angyalföld needle swap programme, the investigation revealed that the existence of a cooperation agreement between the Foundation and the self-government could not be certified (it is not the one that was cancelled) but the outstanding legal relationship was constituted by a rental agreement, therefore, lacking jurisdiction, the Commissioner is not able to make statements in connection with the lawfulness of the termination of the civil-law legal

relationship. However, the Ombudsman remarked that, all these considered, it does not seem probable that during the past eleven years the self-government had no knowledge of the Foundation operating a needle-swap program at the Hollán Ernő Street location. The report records that the concrete situation, without the legal judgement of the lawfulness of the termination of the District XIII needle swap programme, the fact that the termination of a further municipal district needle swap programme, that is, an already existing service, can be evaluated as the recent stop of a process due to which a system destined to provide low-threshold services for addicts and, through that, to execute preventive tasks in the area of epidemics, is less and less fit for the execution of the constitutional minimum of obligations encumbering the state. According to the report, not having the data at disposal, the “domino effect” of the programmes cannot be certified beyond doubt, but it cannot be refuted either, namely, that the change in the public judgement of the District XIII needle swap programme, thus directly the step taken by the self-government, was due to the increase in traffic following the earlier termination of the District VIII needle swap programme. According to the Ombudsman, the danger of this tendency alone deserves increased attention from the legislators. As, based on the following, the termination of the individual municipal needle swap programmes may give reason for serious misgivings.

On the whole, the Commissioner established that, based on the above data and experience, as well as professional stances, the significant step backwards related to the accessibility and coverage of the needle swap programmes in the municipal districts causes improprieties related to the rights of the local population to health, the right of the affected clients to equal dignity, and the rule of law principle, as it causes the direct and serious danger of infringement. The needle-swap programmes can be effective not only in the prevention of contagious diseases but, as the first step of the provision system, they get treatment to addicts, decrease street drug use and, in the case of mutual and appropriate cooperation with the self-government, they may contribute to securing a healthy environment. The Commissioner repeatedly confirmed his opinion that the needle-swap programme is a socio-political measure based on professional evidence. It does not promote drug use and does not prevent the success of quitting. On the contrary, it has an important role in contributing to getting drug users to treatment, and in the long run it decreases the occurrence of illegal substance use. By securing and supporting the operation of the needle-swap program, the state honours the right to self-determination of those affected, without leaving them completely alone in the meanwhile in this defenceless situation. According to the report, it is exactly because of the dealers’ activity that the drug problem is inseparable from crime, and the lack of needle swapping indirectly increases the danger of crime. It is characteristic experience that needle swaps decrease the changes of drug consumption tied to crime as the programmes cannot operate without social work, and the needle-swap program indirectly contributes to the increase of public security and social peace.

The Commissioner requested the Government to accept as soon as possible the special policy programme for the years 2015 (and 2016) on the basis of the directions of the Parliamentary resolution on the National Anti-Drug Strategy. He requested the mayor of District XIII to examine the possibility of a location where the mobile hazard-cutting service which would replace the needle-swap programme terminated, could be continued in the district without the unjustified disturbance of local residents. He initiated the mayor of the capital to secure the necessary resources and support for the earliest erection and commencement of the operation of the DDF of the Capital, and within the framework of that, to pay increased attention to the coordination related to the situation of low-threshold services and needle-swap programmes. Finally, in harmony with the goals of the National Anti-Drug Strategy, in the interest of the establishment of cooperation in the DDF of the Capital, the Commissioner asked the body of representatives of five districts of the capital to consider the establishment and operation of a drug discussion forum as an institutionalised forum in the district, in cooperation with non-governmental and church organisations active in the capital.

**3** Based on a complaint, the Commissioner investigated the regulation in connection with the standby and on-duty order of pharmacies. In his report, he reminded of the coexistence of two circumstances: a pharmacist’s work is a profession requiring high level of professional knowledge, similar to that of medical doctors, while the operation of pharmacies is also a profit-oriented business enterprise since they were privatised. Therefore, the pharmacist operating the pharmacy is entitled to the freedom of enterprising, however, the state is to secure that the right of its citizens to physical and mental health is enforced as well. Being provided with medicine is an important content element of the right to health, thus securing access to medicine continues to belong clearly to the circle of responsibility of the state. According to the report, it comes from the foregoing that it would cause the infringement of the right to health if medicine could be purchased only during traditional opening hours. Coming from the constitutional obligation of securing the provision of medicine, those who operate pharmacies can be obligated to do standby and on-duty service. However, obligation also

means a restriction of the freedom of enterprising, and such restriction cannot be ordered in a regulation only in an act – as the Commissioner established. The technical sub-rules of the restriction set out by law can be defined at the level of regulations.

The report came to the conclusion that the present regulation on the obligation to provide on-duty and standby medicine is not clear and is not in conformity with the act-level requirements. The lack of guarantee affecting the legal basis and concept use of the present regulation violate the rule of law principle. The Commissioner finds it problematic that, in addition to all this, the Minister of Health interpreted the authorisation too widely, thus overstepping that. The report records that the system of criteria concerning the appointment to keep open is one-sided, it does not allow for the different load-bearing capacities and interests of pharmacies offering on-duty services to be taken into consideration, at present, the regulation depends on the consideration of the competent chief pharmacist, which leads to the emergence of different practices by area. The Commissioner treated separately the fact that the designated pharmacies are obligated to offer the on-duty services free of charge, which brings up the issue of the proportionality of the restriction. The Commissioner also quoted that defining the concrete method and measure of compensation belongs to the special policy discretion of the legislator. From a constitutional standpoint, the issue is whether the compensation is suitable to serve as general compensation for the execution of the task. The investigation revealed that the present solution for compensation is characterised by eventuality and lack of clarity. According to the Ombudsman, it should be clear which fees and allowances serve the compensation of on-duty and standby services in a targeted manner. The Commissioner requested the Minister of Health to review as soon as possible the problematic directions of the regulation in cooperation with the Hungarian Chamber of Pharmacists.

In his response, the minister informed the Commissioner that he also considers it necessary to review and complete the on-duty regulation of pharmacies, and to clarify the issue. He indicated that in the first part of 2015, through inquiries related to the reconsideration of the system of on-duty services of pharmacies, with the participation of representatives of professional organisations, the National Institute of Pharmacy and Nutrition, and the National Health Insurance Fund, the state secretary of health launched the negotiations in order to review the regulation of on-duty services of pharmacies. According to his information, the goal is that the change of the regulation be based on the consensus between those affected. The necessary legislative tasks are expected to be executed in the legislative session of the fall of 2015. As the negotiations also affect the issue of resources necessary for financing the on-duty services, it might be necessary to establish a complex system completing the state resources, and also taking into consideration price margin revenue and the assent of pharmacists.

Under Article XI of the Fundamental Law, every Hungarian citizen shall have the right to education, and Hungary shall ensure this right by extending and generalising public education, by providing free and compulsory primary education, free and generally accessible secondary education, and higher education accessible to everyone according to his or her abilities, and by providing financial support as provided for by an Act to those receiving education. The Fundamental Law directs about the right to culture independently but together with the right to education, as education can be considered a classic area of culture. When investigating the cases affecting education, the Commissioner has to pay attention to the fact that, in connection with the procedures and activities of the individual educational institutions, in most of the cases coming before him, it is not the right to participating in education or higher education that is infringed, but typically other fundamental rights or requirements related to the rule of law principle. It cannot be disregarded either that the most important players of public education and higher education are children and young adults, in whose case the enforcement of fundamental rights has a special significance. Based on the study of the Ombudsman's practice, the year in question can be considered the "year of education" not only because of the number of submissions, reports and investigations but also their comprehensive nature and significance.

4 In his *report* issued on the investigation of the complaints criticising the procedure of ordering school textbooks, the Commissioner established the problematic over-writing of legal regulations and rule of law guarantees. The Ombudsman pointed out that – though in a restricted manner - the public education act secures the teacher's freedom to choose textbooks, the framework of which is set by the local curriculum and the opinion of the professional work community; with these taken into consideration, the textbooks can be chosen freely from the list of textbooks. Textbooks can be put on the list of textbooks in a number specified in the act on textbook provision, following the official procedure specified. The investigation revealed that in 2014, even this restricted freedom to choose textbooks was impossible to enforce in state-maintained schools. The "List of recommended publications", under the joint names of KLIK and the state secretary in charge of public education



further narrowed, using economic reasons, the selection of textbooks in all years, while it paid no attention to either the ascending system or the educational-training work executed on the basis of the local curriculum. As a result, the Ombudsman's investigation demonstrated that in the case of a significant percentage of the students, the preparation procedure they were involved in on the basis of the ascending system, commenced according to the local curriculum, had to be modified. In the opinion of the Commissioner for Fundamental Rights, the demand to simplify based on merely material considerations is unacceptable in a rule of law state, and the directions of legal regulations cannot be overstepped or disregarded with reference to this. The report pointed out that, based on its character, the common maintainer-ministry "ordinance" does not have mandatory force, therefore, it excluded the selection of some of the textbooks which had textbook authorisation without reason in the years not affected by the gradual introduction of the National Curriculum. The ordinance prevented and made more difficult that the directions required by the legal regulation be enforced. Serious disorders in the preparation were also due to the fact that the new regulation came into force only two weeks before the closure of the preparatory phase of textbook ordering. Disregarding the preparation time requirement violated the rule of law requirement – as the Ombudsman established. The Commissioner for Fundamental Rights sent his recommendations to the maintainer and the ministry in charge of public education.

5 The Commissioner revealed improprieties in connection with the delayed passing of the decision concerning structure of professions, announced in the spring of 2015 and its disadvantageous consequences on the students applying for special training,. He recorded that the Government announced its regulation on school-system special training with regard to academic years 2015/2016 by significantly exceeding the deadline set by law, instead of 31 July 2014, on 10 February 2015, which then came into force on 11 February 2015. The Commissioner revealed improprieties also in connection with the delayed acceptance of the decision concerning structure of professions for academic year 2016/2017. The Ombudsman pointed out that the announcement of the legal regulation is the closing element of the legislative procedure, and those affected learn its contents through announcement; furthermore, the application of the legal regulation also requires that it come into effect. With view to this, he does not find acceptable the minister's quotation claiming that those affected had already been familiar with the draft legal regulation. Passing the decision on the structure of professions in time is especially important because this decision is the foundation of the areas of study to be launched in training schools the following academic year, therefore, the delay led to severe uncertainty in the secondary school admission procedure, both for the secondary technical schools, obligated to announce their areas of study, and the students, their parents and families, applying to the areas of study already announced and then later cancelled. It is no excuse for the system-level error that the legislator corrected certain rules of secondary-level application proceedings and the provisions defining its deadlines in the meanwhile, which allowed another 10 days for the children and their parents to reconsider their earlier application for admission submitted to an area of study cancelled, and choose another area of study instead. Due to the foreseeable consequences of the decision on the structure of professions on secondary-school admissions, more efficient cooperation is expected from the ministries, especially as the circle of those most affected by the regulation is constituted by children. The report emphasised that securing free secondary-level education that is accessible to all requires that, when it changes the rules related thereto, the state provides the children and the families the time necessary to prepare for such change. For the parents to be able to satisfy their constitutional educational obligation in a responsible and well-founded manner, it is necessary to have enough time and information at their disposal. The Commissioner turned to the Minister of National Economy and called his attention to the importance of abiding by the deadlines of legal regulations with regard to the issuance of decisions concerning structure of professions.

6 From the fall of 2013, the Commissioner launched an investigation on the necessity of correcting the teachers' career model and classification system on the basis of several individual and collective complaints. The submissions received from teachers and teachers' representative organisations called attention to general and concrete misgivings and shortcomings in connection with the government decree on the execution of the teachers' promotion system, as well as problems interpreting the legal regulation. The complainants found grievous the "loss" of their earlier bonuses, the decrease of their remuneration, the method of introduction of the career model, the lack of professional preparation, the uncertain situation of those about to retire, uniform and immediate de-classification, and the number of obstacles to their promotion justified by their professional background. In the wake of the submissions, due to certain elements of the regulation of the government decree on the establishment of the teachers' career model and the operation of the classification system, the insufficiently clarified legal system and practise of legal interpretation, the suspicion of improprieties regarding the rule of law principle and the requirement of legal security

emerged; therefore, the Commissioner for Fundamental Rights launched a comprehensive investigation in the case, within the framework of which it asked for the stance of the state secretary in charge of public education. The Commissioner's comprehensive investigation revealed several legislative and jurisdictional problems, as well as problems concerning interpretation of legal regulations in connection with the operation of the system; the report pointed out with a theoretical approach that the remuneration and quality of life of teachers and those assisting in the educational-training work impacts the quality of the entire public education system. Stability and calculability in the promotion and classification of teachers are in the interest of society, as a whole. The establishment of teachers' career model and classification system is basically a specialized policy issue belonging to the sphere of authority of the ministry in charge of public education. According to the report, from the aspect of constitutionality, it does not by itself pose misgivings that the legislator chose the solution that the teacher classification system affected not only those newly entering but all the teachers of the profession: they were all classified into the basic – Teacher I - category uniformly. However, the system results in increased responsibility: it is fair expectation that teachers with serious experience, doing excellent professional work for a long time, are soon moved to a class in harmony with their qualification and practice, and given the moral and material appreciation accordingly.

The report records that no fundamental right impropriety can be established in connection with the withdrawal of non-guaranteed elements of payment, such as the decrease or withdrawal of bonuses. According to the Commissioner, it might be justified to review whether real compensation took place everywhere. From the aspect of legal security, the fact that the special conditions of the acquisition of teachers' degrees are not recorded in the government decree but can be modified by the minister at his discretion, at any time constitutes an impropriety, as the lack of guarantees results in uncertainty recurring every year; therefore, the Ombudsman initiated the modification of the decree. Furthermore, according to the Commissioner, it leads to misgivings if neither the government decree nor other legal regulations contain clear rules on the professional further training necessary for the classification board membership. At the same time, in its guidelines, the Office of Education – in response to the great number of applications – set further requirements to the applicant beyond the conditions set in the decree; therefore, the Commissioner initiated that the minister secure that the guidelines are in harmony with the conditions in the government decree, and do not set extra narrowing criteria pointing beyond those. The Commissioner initiated that further training be compulsory for all the members of the classification board, the leader of the institution and the person authorised by him or her. The investigation revealed that, in spite of the efforts of the ministry, the government decree does not contain rules that would effectively guarantee the protection of teachers nearing retirement. The Ombudsman asked the minister to examine the possibility of modification.

In the wake of the report, the state secretary in charge of public education informed the Commissioner that, by taking into account the statements of the report, he will initiate the modification of the regulation on the teachers' career model in several points: the modification clarifies and details the procedure of classification, presents in detail the cases in which the classification examination and the classification procedure are unsuccessful. The aid issued by the Office of Education entitled Guidelines for the Teachers' Classification System has also been modified according to the contents of the report; the state secretary took measures so that during the application for classification in 2015, teachers who have been in the profession for a long time get preferential treatment, and the same practice is endeavoured to be followed in 2016.

### **The enforcement of rule of law requirements and fair proceedings**

Under Article B) (1) of the Fundamental Law, Hungary shall be an independent, democratic rule-of-law state. This theoretical declaration is one of the cornerstones of the legal system; it is a general basic value that affects the entire legal system. The "character defining" task of the Commissioner for Fundamental Rights is to examine the administrative bodies and authorities. Since the operation of authorities is determined by law, it is no coincidence that rule of law became one of the most often quoted fundamental law principles during the improprieties related to the operation of authorities. Rule of law is the operating principle of the state, and it means that public power is tied to law, that is, the state can do only what it is expressly allowed to do by law. Legislation itself is also tied to law: laws can be created only in a fixed form, and only by respecting higher legal regulations – eventually within the framework of the Fundamental Law. Rule of law eventually means that it is not the occasional decision, tyranny or will of the power that is enforced, but law rules: the power can enforce its will only on the base provided by legal regulations, by honouring the rules.

In the year 2015, the reports of the Commissioner for Fundamental Rights in connection with the rule of law can be grouped around four topics: organisational, structural issues, the enforcement of

the requirements of fair proceedings, cases related to official records, and the enforcement of legal security in issues of financial nature. Below we introduce the summarising conclusions of the Commissioner's reports in connection with rule of law along this theme.

**1** The Commissioner investigated the regulation of the chimneysweep industry public services in relation to rule of law. The complainants turning to the Ombudsman criticised the compulsory chimneysweep industry public services with regard to individual chimneys, and the activity and procedure of companies executing public services. They emphasised that the service provider does not check or clean the chimneys, often obligates the owners to execute superfluous work, against which there is no legal remedy. In addition to this, the complainants found the records kept on spare and unused chimneys and the billing of service fee based thereon injurious. Several of them found it grievous that the public service provider does not accept unused chimneys qualified as such. However, the chimneysweep industry activity is a business activity, and the service provider may claim reimbursement for the work executed. Having evaluated the service provider's procedures, the Commissioner established that the regulation does not secure the public service provider rights that would stretch beyond the business activity, and does not grant the service provider official sphere of authority, as it is the fire protection and construction authorities that are entitled to that. In his report, the Ombudsman emphasised: the condition endangering the safety of life or property, that is, the risk of carbon- monoxide poisoning and fire hazard may emerge only in the case of operating heating devices, thus the limitation of the owners' power of disposing is justified only then. In his report, the Ombudsman pointed out that the precise, lifelike definition of combustion product conducts is indispensable as this forms the legal basis of the service, the records, the scheduling of line-work and the establishment of fees. It is especially important to separate combustion product conducts serving the purpose of spare heating and unused combustion product conducts, and to give a precise definition of their concept according to their function, in the interest of the resolution of anomalies manifested in the complaints and revealed through the investigations. When rewording the definitions, the fundamental right aspects cannot be disregarded, especially that upon the restriction of the owner's power of disposing, the aspect of the examination of constitutionality is the necessity of the enforcement of another fundamental right, value or goal, the interest tied to life, health and bodily integrity, which can be evaluated only with regard to the combustion product conduct of an operating heating device. According to present regulation, in the case of non-operating, unused combustion product conducts, no other protectable fundamental right value might emerge that would provide the basis for the restriction of the owner's power of disposing. From the comparison of legal regulations, the Ombudsman established that the different, sometimes contradictory regulatory elements in the case of spare chimneys and unused chimneys may give the service provider in a monopolistic situation basis for using law in an arbitrary manner.

**2** From among the complaints on financial subject matters, as far as their content is concerned, most were related to foreign currency loans. The Ombudsman pointed out that the Forint currency-change act essentially aimed to facilitate the stability of the country's financial mediation system by eliminating the exchange rate risk in private mortgage loan agreements, one-sidedly encumbering the debtors. The protection of debtors makes state intervention constitutionally certifiable. The Commissioner emphasised that it is an indispensable condition to the requirement of fair proceedings that those affected can actually get information on what conduct the legal regulations obligate them to manifest, and what rights and allowances they are entitled to. As, in connection with the Forint currency-change, the clients can find out about their rights and obligations only through the interpretation of several complicated legal definitions, the Ombudsman requested the Chair of the Hungarian National Bank to help consumers with information bulletins. The Ombudsman reminded that between 2008 and 2013, he pointed out in three of his reports that the soonest possible introduction of the institution of bankruptcy protection is necessary so that it provides protection on the merits for natural person debtors who have become insolvent. He also emphasised that private bankruptcy cannot substitute for the other, presently regulated and applied solutions, aimed at the settlement of the situation of debtors in trouble (fixed beneficial exchange rate, early repayment, legal help, rescheduling, eased payment and Forint currency-change); the same way – because of their different designation – these do not replace the rules on the bankruptcy protection of private individuals. At the same time, he also emphasised that helping debtors in trouble requires complex solutions – though of different extent and manner – based on the cooperation of the state, financial service providers and society.

## 2.3

### *On the Commissioner's sphere of authority initiating norm control*

In 2015, similar to the practice of previous years, the Commissioner for Fundamental Rights enforced his power to initiate norm control.

#### **Constitutional court submissions handed in this year**

Based on the submission of a civil organisation, the Commissioner for Fundamental Rights initiated the constitutional court review of the legal regulations on preliminary arrest. The submitter requested the examination of the direction of the criminal procedures act that makes an exception from the objective top limit of preliminary arrest in case there is a procedure underway against the defendant for some criminal act punishable with imprisonment of up to fifteen years or life in prison. In this case, instead of the earlier four-year period, preliminary arrest may be executed for an indefinite period of time.

The starting point of the Ombudsman's motion is the presumption of innocence declared in Article XXVIII(2) of the Fundamental Law. Coming from the *presumption of innocence*, the institution of preliminary arrest stays within the framework of the Fundamental Law if *it preserves its "preliminary" nature both in its function and term, and does not assume the role of punishment by imprisonment*, that is, it does not work as preliminary punishment.

Under Article B) (1) of the Fundamental Law, Hungary shall be an independent, democratic rule-of-law state. It is self-evident that the rule of law state also steps up against the perpetrators of criminal acts, and makes efforts to call them responsible. However, it has to establish in this respect an order of procedure that takes into consideration not only the aspects of efficiency but also enforces the suspect's right, through which it eventually serves fair and just dispensation of justice. The weight of the act in the indictment alone *does not justify that the rule of law guarantees* related to preliminary arrest *are taken away*. It comes from the rule of law principle that *the state cannot transfer the risk of the lack of success of the criminal procedure to the suspect*. The possibility of the maintenance of preliminary arrest for an indefinite period of time transfers this lack of success manifested in the prolongation of the procedure to the suspect, therefore, *it is in violation of the rule of law clause of the Fundamental Law*.

Furthermore, preliminary arrest maintained for an indefinite period of time violates the right to liberty and security of the person, recorded in Article IV(1) of the Fundamental Law. Even though the restriction of this right within the framework of criminal law proceedings has a legitimate aim and is necessary, after the lapse of a certain period of time, it is surely not proportionate with the conceptually irreversible, essentially subsequently irremediable restriction of personal freedom. In his submission, the Ombudsman also quoted the case law of the European Court of Human Rights. With view to the foregoing, the *Ombudsman initiated at the Constitutional Court that the related direction of the criminal procedures act be annulled*.

In another case, the Ombudsman requested the Constitutional Court to annul a self-government regulation restricting the freedom to enterprise in connection with the restriction of passenger taxi services.

It was first in 2015 that the Commissioner for Fundamental Rights initiated that the Constitutional Court interpret certain directions of the Fundamental Law: he worded questions to the Constitutional Court in connection with the so-called quota decision of the European Union.

In his report, the Commissioner for Fundamental Rights also indicated: in certain cases, the fact that a legal regulation is in contradiction with the fundamental law comes exclusively from its shortcomings, and, logically, these shortcomings cannot be remedied through the annulment of a particular direction. Therefore, he recommended that the Parliament consider allowing the Commissioner for Fundamental Rights to initiate investigations of the infringement of the Fundamental Law manifested in omissions, as well.

#### **Initiating norm control procedures before the Curia**

Since 1 January 2013, the act on the Commissioner for Fundamental Rights directs that in the event that, during his investigation, the Commissioner for Fundamental Rights observes that some impropriety related to fundamental rights is caused by a self-government regulation being in violation of some other legal regulation, he may initiate at the Curia that the conflict between the self-government regulation and the other legal regulation be reviewed. In 2015, the Commissioner initiated review by the Curia regarding seven self-government regulations concerning taxation and one concerning noise-protection. The Curia entertained the vast majority of the motions and annulled the provisions of the self-government regulations attacked.

## 2.4

### *Activity related to legislation*

The Commissioner for Fundamental Rights takes part in the development of norm texts only in exceptional cases, however, with the wording of legislative recommendations and giving his opinion on draft legal regulations, he can influence the preparation of legal regulations on the merits.

According to the legislative act, the party preparing the legal regulation is obligated to secure that in case the draft affects the legal standing or sphere of tasks of a particular organisation, the affected party can enforce its right to provide an opinion. In 2015, the Commissioner for Fundamental Rights provided his opinion on 257 draft legal regulations, and within that, he formed his opinion on two motions acting *ex officio*. One can observe that the ministries sent several of the motions to the Commissioner for Fundamental Rights, however, they did not fully satisfy their obligation to ask for an opinion. On occasion, they did not ask for the Ombudsman's opinion on draft legal regulations important from the aspect of fundamental rights, and they provided the motion with characteristically very short deadlines.

The Commissioner provided his opinion *ex officio* on two motions that, in spite of their fundamental law relevance, were not sent to him. In connection with the motion on the modification of the registration procedure, he indicated that the Hungarian regulation on the names held by registered partners with regard to registered partnerships established abroad must be in full conformity with the requirements of international private law regulations. During the preparation of legal regulations in connection with the legal situation of asylum seekers, he called the submitter's attention to the fact that, based on international, European Union and Hungarian asylum regulations, people arriving in Hungary are entitled to seeking asylum, and to its judgement on the merits to take place. The relevant material and procedural rules are to secure this even if the person in question did not cross the state border at the designated border crossing.

The Ombudsman worded an opinion on the merits in close to one third of the motions. The opinion of the Commissioner for Fundamental Rights presented during the preparation of legal regulations has no binding force but it may help the success of codification work and the elimination of shortcomings and contradictions. About half of the observations on the merit – just like in the previous year – were connected to children's rights, environmental or national minority right regulations.

In 2015, the Ombudsman issued 140 reports, in over one third of those, 50 cases, he initiated the modification of some legal regulation or the review of the legal environment in general. Grouped according to the level of the source of law and taking into account that he may have recommended the modification of several legal regulations or several provisions of a legal regulation in one report, the Commissioner initiated the modification of an act in 16 cases and the modification of a regulation in 28 cases, while in 12 cases he recommended general review not with respect to a concrete legal norm, but to a certain regulation.

In his report, the Ombudsman indicated that the ministries preparing the legal norms have to pay more attention to giving a response on the merits to the legislative recommendations addressed to them.

## 2.5

### *Activity related to the protection of whistle-blowers*

The Ombudsman Act and the Act on Complaints and Public Interest Disclosures define different tasks for the Commissioner in connection with the management of public interest disclosures. Through his Office, the Ombudsman provides for the operation of the electronic system serving the purposes of making and recording public interest disclosures. In addition to this, the person making the public interest disclosure may file a submission with the Commissioner if the acting body did not fully examine his disclosure, he does not agree with the result of the investigation, or if his disclosure was found unsubstantial. The Commissioner may investigate the practice of acting bodies examining public interest disclosures *ex officio*, as well.

#### **Operation of the electronic system handling public interest disclosures**

Public interest disclosures can be made in person at the customer services, or through the electronic system. Electronic submission is possible through the webpage of the office of the Commissioner for Fundamental Rights, using the designated form. The discloser may request that his submission be treated in an anonymous manner. In this case, the acting body may get acquainted only with the

excerpted version of the public interest disclosure, and any data that would reveal the identity of the discloser are removed. Thus he may not suffer disadvantages because of his disclosure.

The Commissioner makes the disclosure accessible to the body with sphere of authority for investigation in the electronic system, and the rest of their communication is also done electronically. The acting bodies record the information on their measures taken during their investigation in the electronic system. The discloser may follow the investigation of his disclosure on the webpage; in addition to that, the brief excerpt of the disclosure, without personal and individual institutional data, is accessible to everybody.

In 2015, 358 public interest disclosures were received, of which 346 came through the electronic system, while the rest were presented in person. 80% of the disclosers asked that their submissions be treated anonymously. The subject of the disclosures is really varied, there were consumer protection, environmental, and traffic cases, as well as disclosures criticising the procedure of the police, tax fraud, public procurement procedures and cases of corruption. The five most frequently addressed acting bodies were: the Ministry of Human Resources, the Government Office of the Capital Budapest, the Ministry of National Economy, the National Tax and Customs Administration, and Pest County Government Office.

52% of the submissions were substantial. In these cases, the acting bodies took care of remedying the situation in question in order to protect the social interest which was endangered.

### **Reviewing the management of public interest disclosures**

Based on the complaints submitted by whistle-blowers, the Commissioner examines *ex officio* the appropriate management of disclosures, as well as the practice of handling public interest disclosures by the acting bodies. During the investigation, the relevant body may be requested to provide information or the submission of the documents of the case, its representatives may be interviewed, and on-site investigation may also take place. If, based on the investigation, the Commissioner finds improprieties, he may make recommendations on the remedy to those involved or their superior body.

In 2015, 40 applications were received for the review of the proceedings of bodies investigating the public interest disclosures. Among others, the acting bodies reviewed were the following: Ministry of Human Resources, the National Tax and Customs Administration, Ministry of National Economy. In 16 of the cases closed no fundamental law impropriety was established. In six cases, the Commissioner established that the procedure of the authority did not fully satisfy the requirements of legal regulations, therefore the right to petition, legal security and the right to the fair management of official matters was violated.

### **The supervisory procedure of national security check-ups**

Under the Act on the National Security Services, with respect to improprieties affecting fundamental rights, the Ombudsman investigates ordering and execution of the supervisory procedure of national security check-ups. The individuals affected by the supervisory procedure may request the execution of the investigation from the Commissioner; furthermore, the practice of national security services on supervisory procedures can also be *ex officio* investigated. In the event of the establishment of a fundamental right impropriety, the Commissioner informs the minister in charge of national security, initiating that the necessary measures be taken. If he does not find the measures appropriate, he informs the National Security Committee of the Parliament thereabout.

## **2.6**

### ***The Ombudsman's OPCAT activity***

In 2015, the Commissioner for Fundamental Rights also acted as part of the national preventive mechanism (hereinafter NPM). The NPM activity was performed by eight individuals - lawyers, teachers and psychologists – within the head department established in the year under review, for the activity of which the Office of the Commissioner for Fundamental Rights did not receive a separate budget. The Civil Consultation Board also works along NPM, and we integrate external experts in the work as well. In 2015, 15 places of confinement were visited. These visits were executed without advance announcement.

Until the closure of the present report, eight reports have been prepared, following the publication of which the Ombudsman conducted professional exchanges of view with the authorities.

In 2015, the Ombudsman paid special attention to children's rights. He investigated with priority physical and sexual abuse, child prostitution and drug use among children in the places of confinement visited.

#### ***Debrecen Guarded Refugee Reception Centre***

At the time of our first visit, in January 2015, there were 65 inmates living in the 182-bed centre for the refugee confinement of married couples and families with small children. Upon one of the recommendations of the Commissioner, the Chief of National Police ordered that the percentage of women among the staff of institutions guarding women and families with small children must reach 30.

#### ***Debrecen House of Therapy***

During the visits, interviews were conducted with altogether 33 individuals, of them 24 inmates. Based on the report, the ministries undertook to initiate the modification of legal regulations in the case of individuals placed under guardianship, on the issue of the use of intrauterine contraceptive devices and tubal sterilisation. Negotiations will be conducted with CRPD taken into consideration.

#### ***Debrecen Reménysugár Children's Home***

The 184-bed home was visited in late January. Based on the experiences gathered there, the Ombudsman initiated the modification of legal regulations in several areas. He worded the necessity of ratifying the convention of the European Council on the protection of children against sexual exploitation and sexual abuse, which took place in 2015. The Commissioner drafted a recommendation for the Minister of the Interior in the interest of the more detailed development of the national strategy for the elimination of child prostitution.

#### ***Merényi Gusztáv Hospital, Psychiatric Department, high-security unit, Budapest***

NPM visited the unit in February 2015. During the course of this, altogether 26 people were interviewed, of these 13 inmates of the high-security unit. In one of the multi-bed wards, a patient was tied to the radiator. The unit was also fighting shortage of staff. The institution was in deplorable state. In September 2015, the Ministry of Human Resources indicated that HUF 40 million was earmarked for infrastructural investment.

#### ***Juvenile Penitentiary Institution, Tököl***

In March, NPM conducted a follow-up investigation in the institution. The circumstances of placement in the detention rooms and the transfer cell were unacceptable. The size of the cells did not reach the legal minimum. According to the complaints, the members of the staff abused the inmates both physically and verbally. The Ombudsman called the commander's attention to the fact that in the case of juveniles, he should use private confinement only as a last resort. Based on the recommendations in the report, the National Commander of Penitentiary Institutions ordered an on-site investigation.

#### ***Central Penitentiary Hospital, Tököl***

NPM visited the institution also caring for new-born babies in April, as did CPT in 2013. The primary aim of the on-site investigation was to follow up on previous visits. In his report, the Commissioner requested the Government to secure the financial resources of the modernisation of the Hospital.

#### ***Platán Home, Kecskemét***

The focus of the visit was the investigation of medicine overuse reported by a civil organisation. To put an end to aggression between inmates, the employees of the institution administered injections, which they did not always document. Based on the guardian's declaration, one of the individuals was placed in the institution in an unlawful manner. The Commissioner requested the amendment of the social act so that the own declaration of partially restricted individuals would be indispensable for their placement.

***Zita Special Children's Home, Kaposvár***

At the time of the June visit, the home with 32 authorised beds provided for children with special needs in three boys' groups and one girls' group. NPM evaluated that the relationship of the children and the child minders and attendants was basically good, however, verbal and physical aggression was frequent among the children. The Commissioner made a recommendation concerning the children's deprivation of their personal freedom and the information on changing their place of care.

During the visits conducted in 2015, the requirements specified by OPCAT were fully satisfied, members of the NPM visitors' group had unrestricted access to the places of confinement, the individuals deprived of their personal freedom and the documents.



### 3

## Report of the Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities

### Introduction of the Ombudsman for the Rights of National Minorities

The present, 21<sup>st</sup> century composition of the population of Hungary is determined by the geographical location of the country, historical events dating back centuries, as well as European and world policy, current economic phenomena, and by series of the movement of individuals. The national minorities recognised in Hungary have a special place in this context.

Twenty three years ago, in 1993, under the agreement of the society, thirteen minorities – based on their linguistic, national and ethnic status – constituting close to ten percent of Hungarian population, received in a separate act guarantees for the preservation of their self-identity and the development of their self-organisation.

Twenty years ago, in 1995, also as the sign of them being a state-constituting factor, the Hungarian legislator put the obligation of the highest-level protection of minorities and their rights into the hands of an independent public-law institution, the independent Ombudsman for minorities.

During the past two decades, there have been several steps of changes in the life and situation of the thirteen national minorities, the legal regulatory environment, as well as the nature and operation of the Ombudsman institution appointed for their legal protection.

2015 offered several lessons which emerged during execution of the tasks of the Ombudsman for the Rights of National Minorities: it confirmed my appreciation for the professional work of previous Commissioners for national minorities Jenő Kaltenbach and Ernő Kállai, and the conviction that their activities performed in this position and the results they achieved in the area of the protection of minority rights during their term in office are to be recorded and preserved in the appropriate form. At the same time, the experience of 2015 also reminded me that, in the interest of the efficient execution of tasks, more information should be communicated to the entire Hungarian society on the existence, situation and rights of the thirteen recognised national minorities, as well as on the role and legal protection tasks of the Ombudsman for the Rights of National Minorities, within the existing framework of legal regulations, but using novel devices and methods. My report below for the year 2015 is the summary of this work.

Elisabeth Sándor-Szalay

### The activity of the secretariat of the Ombudsman for the Rights of National Minorities

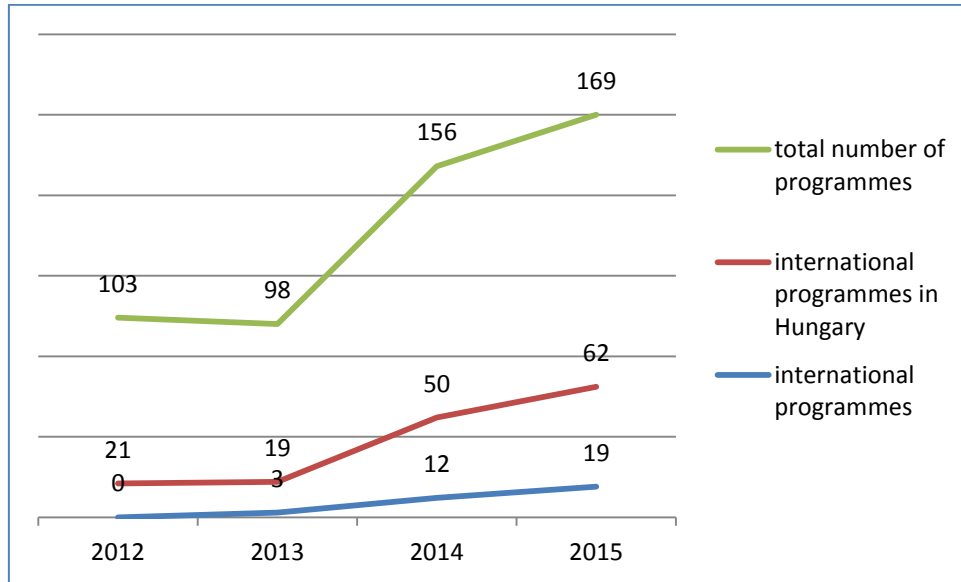
In 2015, we celebrated the 20<sup>th</sup> anniversary of the Hungarian Ombudsman system and the commencement of our work. Back in the early 1990s, at the creation of the minorities act and the Ombudsman act, it became clear that a minority law system unique in Europe is being established and that the defence mechanism meant to safeguard it will be exceptional, as well. The uniqueness and virtues of the minority law system established in 1993 – new devices, new procedures and new institutions, the balance of state and civil role-taking – as well as the minorities' Ombudsman function and institution, emerging as part of the Ombudsman system established in 1995, was a rather honourable output of Hungarian public-law reality and the professional community preparing that. The knowledge and innovative force of the lawyers' generation of the time, their openness and special endeavour to protect the previously defenceless individuals and communities against the power – including the support of the international Ombudsman community – allowed for the kind of development as the result of which the activity of the Ombudsman for national minorities could become an influential element of Hungarian public-law reality.

The Ombudsman's system reorganised in 2012 was also built on this heritage, however, the independent position of the Ombudsman for national minorities ceased to exist. At present, the task of the Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities is to help the execution of the Commissioner's tasks related to national minorities.

Gathering and processing information, serving as the basis of all other activities, is the primary task of the Ombudsman for the Rights of National Minorities. The task of monitoring is rather complex: in connection with this, the Ombudsman for the Rights of National Minorities follows, collects and organises the information, news and studies related to the enforcement of the rights of minorities in

Hungary, and parallel with that, those related to the life of national minority communities, their current situation and public life.

Within the framework of continuous liaising, the Ombudsman for the Rights of National Minorities and her colleagues attended professional forums, conferences and meetings, as well as different cultural events relevant to their activities in 2015 as well. This is well illustrated by the graph below showing the domestic and foreign programmes realised with the cooperation of the secretariat.



*Number and basic types of the programmes of the secretariat (2012–2015)*

It is clear from the foregoing that the institution of the Ombudsman for the Rights of National Minorities has been developing continuously since its establishment on 1 January 2012. A close examination of the proportions of programmes in 2015, clearly illustrate the directions of the work of the Ombudsman for the Rights of National Minorities.

Professional talks	50	30%
Professional forums	41	24%
Conferences	31	18%
Events	28	17%
Foreign programmes	19	11%
Total	169	100%
Of this with international relevance	62	37%

*Number and distribution of the programmes of the secretariat (2015)*

As compared to previous years, the basis of the activity monitoring and evaluating the situation of national minority communities and checking the enforcement of legal regulations was constituted by the series of discussions, forums and conferences conducted with the members of professional and interest representation organisations, constituting 72% of the domestic programmes. Having in mind the widest possible circle of gathering information, the Ombudsman for the Rights of National Minorities kept in touch with all affected participants of national minority public life, looked for and organised connections with partners in charge of national minority legislation and enforcement of the law. During their meetings, they managed to reveal several individual problems, and the common elements of the conversations also made visible the tendencies which, regardless of nationality and number, affected several communities, however, had earlier remained invisible to the representative bodies. The activity consisting of attending events, which constitutes 17% of the work, is still indispensable in strengthening connections, and the best possible familiarisation with the culture of the individual domestic national minority communities.

In 2015, the Ombudsman for the Rights of National Minorities executed her informative and sensitising tasks characteristically through the “traditional” means of mediation – on-site investigations, papers read at Hungarian and international, professional and scientific public events, lectures dispersing knowledge, interviews (in Hungarian and foreign newspapers and radio programmes, as well).



*DaSein/JelenLét (Presence) Conference*

The unique character of media appearance of the activity of the Ombudsman for the Rights of National Minorities is to be emphasised separately. In Hungary, every national minority has its own, well-established and effectively working media surface – which offers reference points and universal sources of information primarily for the members of the given domestic community. With view to the special needs and possibilities of access of the special target group, instead of “mainstream media”, the Ombudsman for the Rights of National Minorities preferred appearance on domestic and international “alternative” surfaces reaching the national minority communities more intensively in 2015 as well.

Strong media interest followed every one of the conferences and round-table talks hosted and organised by the secretariat of the Ombudsman for the Rights of National Minorities. Through these events, the Ombudsman for the Rights of National Minorities managed to reach the “sectoral” media resources dealing with the actually related topic in addition to the national minority communities.



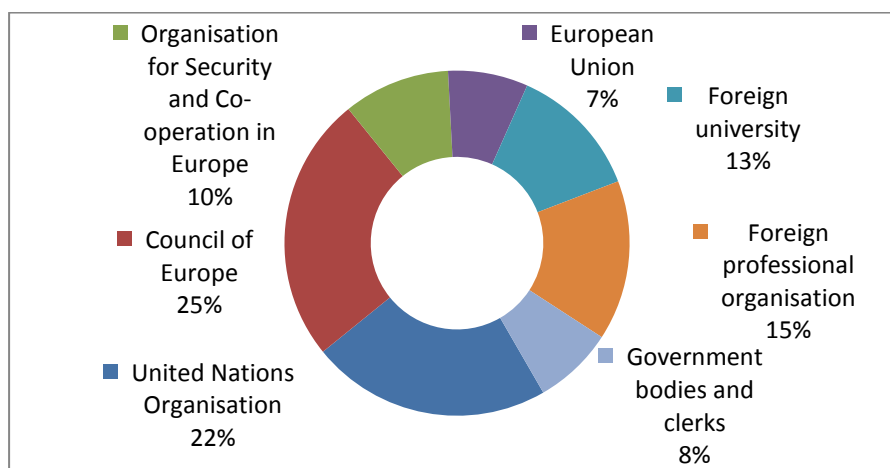
*The conference on the relationship between churches and national minorities*

The Ombudsman for the Rights of National Minorities executed her work in close and harmonious cooperation with the Commissioner for Fundamental Rights in the year 2015 as well. It is to be emphasised that, since 1 January 2015, according to the modified organisational and operational rules of the Office of the Commissioner for Fundamental Rights, there has been a new distribution of work in the area of national minority rights, thus, acting in her transferred sphere of tasks, the Ombudsman for the Rights of National Minorities had more independence to execute her work. In the interest of securing a more effective performance of tasks, the Commissioner for Fundamental Rights

transferred the right of issue of cases related to national minority rights in part to the Ombudsman for the Rights of National Minorities. With the help of this, on several occasions, the Ombudsman for the Rights of National Minorities independently issued calls aiming the elimination of endangerment situations, initiated measures and issued recommendations in the direction of the affected bodies.

In cases that did not allow for independent procedures to be conducted but application of the Ombudsman's devices seemed necessary, the Ombudsman for the Rights of National Minorities performed an initiating, suggesting, "watchdog"-like role.

Continuous communication with international organisations, professional bodies, experts and representative organisations had outstanding importance during the secretariat's work in 2015 as well, which is clearly indicated by the fact that of the 169 programmes of the Ombudsman for the Rights of National Minorities, there were 62 with international relevance, that is, 37% of all events. This form of liaising is not merely the completion of domestic activities: with regard to its complexity and specialised knowledge requirement, it could even be considered an independent portfolio. In 64% of the cases, the activities executed at the secretariat were in connection with the work of international organisations, characteristically within the framework of the expert-level cooperation and negotiations related to the operation and strategical planning of control mechanisms concerning those affected. The remaining 34% of liaising was work related to information servicing and "presenting the values of the domestic system of institutions" also declared by legal regulations. Characteristically this meant personal meetings and series of conference papers and university lectures.



*Distribution of international relations according to partners (2015)*

On the one hand, the Ombudsman for the Rights of National Minorities performs independent international activities in her own area, on the other hand, together with the Commissioner for Fundamental Rights, she steps up at forums where the condition of participation is accreditation as a Status 'A' national human rights institution.

As the representative of the national human rights institution, the Ombudsman for the Rights of National Minorities has participated in the work of the UN Human Rights Committee on two occasions during the year. She sent written comments to the 28<sup>th</sup>, spring session, in which she expressed her consent and support in connection with the report of the UN Minorities Forum accepted in November 2014, the topic of which was the prevention and management of violence and atrocities against minorities. Following this, at the 29<sup>th</sup> session, the Ombudsman for the Rights of National Minorities called the attention of Human Rights Council in a video message to the recommendations made in her report on the joint official check-ups in Miskolc and the measures affecting conditions of accommodation, the English-language resume of which was also received by those in the room.

The Ombudsman for the Rights of National Minorities helped the monitoring work of the international organisation on three other occasions. In March 2015, the United Nations Committee on the Elimination of Discrimination against Women investigated the progress Hungary has made in the execution of the recommendations worded in connection with the previous state report in the following two priority areas: the prevention and management of violence against women and the enforcement of women's right to self-determination concerning reproduction rights, with special respect to handicapped groups like women with disabilities and Roma women. The Ombudsman for the Rights of National Minorities indicated to the Committee that though the mass sterilisation of Roma women is not practiced in Hungary, given their handicapped situation, the chances of them falling victim to sterilisation executed without legal guarantees are greater. Based on the information received, the

Committee condemned Hungary and repeatedly called upon it to implement appropriately the related recommendations.

The Human Rights Committee of the UN prepared the monitoring procedure of Hungary with regard to the execution of the International Covenant on Civil and Political Rights in the fall of 2015, within the framework of which it compiled a series of questions for the government. During the course of this, the Committee took into consideration the statements of the thematic report submitted by the Ombudsman for the Rights of National Minorities, in which she presented the minority protection practice performed by the Ombudsman in the past 6 years, with special emphasis on still topical questions.

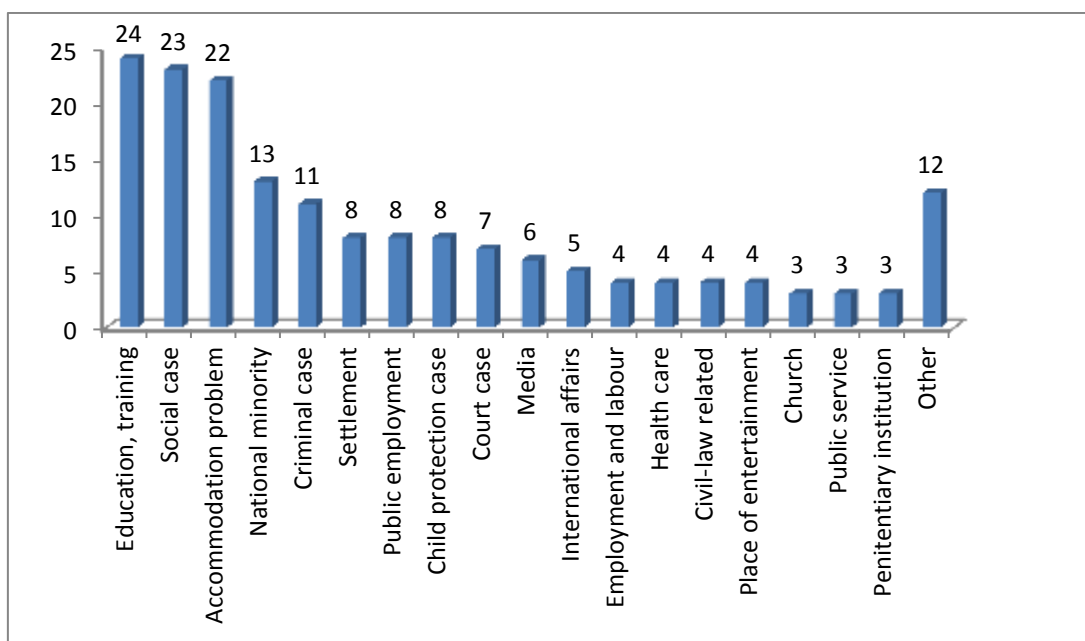
The next step of the monitoring procedure is receiving the government response, following which the Committee will evaluate the execution of the human rights obligations of our country, expected to take place in the first part of 2017.

The Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe visited Hungary in December 2015, after the state report submitted by the government was processed. During the visit, the experts of the Committee met with the representatives of the government, the minorities and civil organisations working in the area both in the capital and the provinces. The Ombudsman for the Rights of National Minorities helped the work of the Committee with her thematic report summarising her work conducted in the field in the past 5 years and the English-language summary of the joint reports issued during recent investigations. The report of the Committee will be finalised in the first part of 2016, following which the government will have the opportunity to respond to the recommendations; the report will become accessible to the public together with the government response.

### **Main characteristic features of minorities rights cases**

The wide spectrum and variety of complaints received by the Commissioner for Fundamental Rights and/or the Ombudsman for the Rights of National Minorities refers to the complexity of the national minority topic and the different problems of national minority communities. Complainants belonging to the Roma nationality most often talk about prejudices present in society, discriminative treatment, as well as severe social and accommodation problems in their submissions, while members of the other national minority community criticised mostly improprieties in connection with national minority cultural and educational rights. Complaints in connection with the activities and operation of national minority self-governments, the difficulties of cooperation between the local self-government and national minority self-governments of the settlement come from both Roma and other national minority communities.

The variety of the topics and types of submissions is presented in the table below.



*The types and topics of the complaints, submissions and ex officio investigations in the year 2015*

Due to the lack of sphere of authority, the Commissioner for Fundamental Rights and the Ombudsman for the Rights of National Minorities could not provide citizens in need with material support in the year 2015 either. In case of complainants and families asking for help for their subsistence or the improvement of their life conditions – with special attention to the protection of children’s rights – they had the opportunity to provide detailed information on the allowances to be acquired under the present regulations, and within the framework of this, call attention to the bodies and institutions that can provide help and assistance to the families affected.

### **Some priority cases from the area of national minority rights**

#### ***Complaints related to the co-decision license and institution maintainer tasks of national minority self-governments***

One of the national minorities’ fundamental rights of outstanding significance is that they can form local and national self-governments. The aim of the operation of national minority self-governments is for the participation of national minority communities in public affairs, and the protection and representation of their interests to become more complete. National minority self-governments have reporting and agreement right in issues that are significant in the life of national minority communities (education, culture, language use, etc.). Several complaints have been received in connection with the operation and financing of national minority self-governments. In addition to the fundamental right to national minority self-governance, several of these cases also affect the issues of educational self-governance of national minorities, with special regard to the restriction of national minority self-governments to agreement upon the appointment of the directors of state-maintained educational institutions serving national minority public education tasks.

#### ***Supporting the educational institutions maintained by the reorganised national minority self-government***

The Act on the Rights of Nationalities, passed in 2011, reintroduced the institution of settlement-level national minority self-governments created indirectly, through reorganisation, the reorganised national minority self-government. Under the regulations in force, the creation of reorganised national minority self-governments is possible only under extremely strict (and thus existing exceptionally, very rarely) conditions. In their joint report, the Commissioner for Fundamental Rights and the Ombudsman for the Rights of National Minorities dealt with the severe financing problems of reorganised national minority self-governments.

#### **The case affecting the regulation on educational segregation, isolation**

In 2015 – just like in previous years – the Commissioner for Fundamental Rights and the Ombudsman for the Rights of National Minorities received several educational complaints that criticised the different forms of manifestation of segregated education. Of the segregated issues, we would highlight the report in which, related to the amendment of the Act on National Public Education, observations of theoretical significance were also made.

One of the points of the amendment of the National Public Education Act, submitted at the end of 2014, allowed the Government to establish in a regulation the special conditions of exceptions from the segregation ban in schools offering education and training committed to certain national minority, religious and ideological values. The Parliament passed the motion by adding that the government decree to be passed subsequently will have to be created on the basis of the authorising regulation, with special respect to the ban on unlawful segregation.

Social debate surrounding the amendment of the act and related to the interpretation of the ban on unlawful segregation, as well as a submission received in the meanwhile, called for the launch of the Ombudsman’s investigation. The joint report of the Commissioner for Fundamental Rights and the Ombudsman for the Rights of National Minorities on the rules of educational segregation was completed in 2015.

#### **Self-government measures affecting segregated residential areas – the “Miskolc case”**

The joint report of the Commissioner for Fundamental Rights and the Ombudsman for the Rights of National Minorities on the joint official controls performed in Miskolc and the measures of the self-government affecting residential conditions, completed in 2015, was one of the most significant cases with national minority relevance of the past year.

In 2014, civil legal aid organisations turned to the Commissioner for Fundamental Rights criticising in their submission the official control practice coordinated by the Security Guards of Miskolc

Self-Government, executed jointly with other authorities and bodies, as well as the local regulation the control is based on.

The controls were executed in Miskolc segregates and ghetto-like streets and districts of low status, densely populated by mostly Roma minorities. Some locations were revisited by the authorities several times, and repeated controls were executed. Usually a larger number of colleagues of different bodies visited the real estate properties in question. During the controls, on occasion, members of the authorities looked into the fridges, the toilets and the bathrooms. According to the complainants, the residents of the districts affected by the control found the mass controls carried out by official persons jointly, on occasion repeatedly, expressly frightening and harassing.

Mass official controls, executed jointly but under various legal titles, brought up the suspicion of improprieties related to several fundamental rights. At the same time, with their report, the Commissioner and the Ombudsman for the Rights of National Minorities called attention to the impossible situation of the residential conditions of people living in the segregates, and its consequences. The Commissioner and the Ombudsman for the Rights of National Minorities submitted a list of recommendations to the bodies affected by the case, especially the Miskolc self-government. In their recommendations, they requested – among others – that joint official controls be terminated and unlawful directions of local regulations be annulled. They also requested that they cooperate with other bodies in the interest of preventing evictions, developing an action plan for the management of the accommodation conditions of families that have become homeless, and participating in the development of programmes on the elimination and prevention of re-emerging of urban segregates.



## 4

# Report of the Deputy Commissioner for Fundamental Rights, Ombudsman for Future Generations

Through several of its Fundamental Law provisions, Hungary is committed to the protection of the interests of future generations: it defined the protection, preservation and maintenance of natural resources and cultural values as a general goal and obligation, and confirmed the right to a healthy environment. In order to facilitate consistent enforcement of these, the Ombudsman for Future Generations monitors the enforcement of the interests of future generations, and calls attention to the danger of the infringement of rights affecting them.

### Long-term thinking

In the spirit of long-term thinking, when reporting on the feasibility of the National Environment Protection Program and the National Sustainable Development Strategy, the Ombudsman for Future Generations emphasised that the directions of the Fundamental Law require the enforcement of the principles of prevention and circumspection. The set of values of the Fundamental Law protecting the environment and cultural heritage in the interest of future generations can become a part of everyday life if it becomes obvious that the activity of state role-players clearly represents this, if harmony can be achieved between economic interests and ecological restrictions, if the prevention of damage caused to our health by environmental load gets priority, and if the evaluation of environmental and natural aspects takes place in time during decision-making.

The Ombudsman for Future Generations called attention several times to the significant source of danger embodied in the deterioration of the condition of the environment or the lack of its reestablishment and its health-deteriorating effect. In 2015, this emerged because due to the lack of damage remedy, the quality of air and noise load. The Ombudsman for Future Generations established that rules regarding air cleanness and noise protection are meant to secure the person's right to a healthy environment, as well as physical and mental health. It is the obligation of the state to create rules that can realise this goal, thus, for instance, the noise protection limits cannot be eased where science has unambiguously demonstrated its health destructive effects.

When examining the prolongation of a damage compensation procedure over decades, he established that in these cases the enforcement of the "polluter pays" principle becomes impossible and, due to the lack of a system of institutions putting prevention in the forefront, the environmental effects and their risks cumulate.

Due to the system-level problems illustrated by several submissions received in similar cases, the Ombudsman for Future Generations recommended that a comprehensive investigation be launched *ex officio*.

In connection with the reorganisation of the environment and nature protection directorate and official system, the Ombudsman for Future Generations pointed out again that the enforcement of rights can be realised only by a stable system of organisations at disposal of the necessary personal, material and financial conditions. Without an impact study executed with regard to fundamental rights and the common heritage of the nation, and securing sufficient preparation time, the reorganisation of public administration may become a source of danger. The reorganisation of the system of organisations and the changes of the public administrative procedure may decrease the level of environment protection already reached, therefore, the new rules may be in violation of the rescission ban. As the Office did not receive the draft legal regulation for reporting, the Ombudsman for Future Generations voiced his misgivings in a letter sent to the Minister of Justice.

The Ombudsman for Future Generations paid special attention in 2015, as well, to promoting professional dialogue to contribute to the strengthening of long-term thinking, the realisation of equity between generations and the requirement of sustainability.

This purpose was served by the workshop discussion entitled "20 years of the act on environment protection", organised by the Ombudsman for Future Generations, introducing the procedure leading to the passing of the legal regulation, and discussing what changes would be necessary to meet its goal better.

Together with Hungarian and international environment protection organisations, the Ombudsman for Future Generations organised round-table talks on Trans-Atlantic free trade agreements and the GM free status of Hungary. These agreements may make the achievements of legal regulations reached in past decades in Hungary and the European Union in the area of



sustainability and environment protection, among them the GM free status recorded in the Fundamental Law, uncertain. The Ombudsman for Future Generations warned that the Hungarian constitution superfluously contains the GM free status if the EU legal regulations, thus even a free trade agreement, overwrite that.

The series of conferences organised with other institutions, discussing the Hungarian tasks of the domestic realisation of the Sustainable Developmental Goals, accepted by the UN General Assembly in 2015, and preparation for the UN Climate Summit, also helped the dialogue focused on environmental issues.

In 2015, the Ombudsman for Future Generations continued the creation of an international network protecting the interest of future generations, based on the independent cooperation of national and regional sustainability institutions. The primary aim of the network is that the competent institutions share their knowledge and experience, the best practice actually realised, as well as promote the establishment of institutions suitable for the protection of the interest of future generations all over the world. The annual meeting of the members of the network takes place in Cardiff, within the framework of the conference entitled "Essential ingredients for a sustainable future: Why do we need independent institutions, and how should they work for the long term?".

Among the key messages of the conference is that at global level, we have to make decisions for the achievement of long-term changes today that take into consideration the interests of future environmental and cultural circumstances for our generations; we have to secure the same successors that we have at our disposal. In the interest of this, it is necessary to establish and connect the democratic institutional structures, as well as the representation of the interest of future generations at the level of the UN. An agreement was reached at the conference that the tasks of the secretariat of the Network will be executed by the secretariat of the Hungarian Ombudsman for Future Generations. For the communication between the members of the Network, the Ombudsman for Future Generations created a webpage under the name "futureroundtable.org".

The Ombudsman for Future Generations spoke at a high-level meeting of the European Parliament, the topic of which was a more efficient protection of the interests of future generations at the level of the European Union. Among the possible institutional solutions, it emerged that the European Ombudsman have a deputy for the Protection of the Interest of Future Generations, or that the European Parliament set up a committee that, during its reporting work, acts in the interest of future generations.

During the talks conducted during her visit in the Office, European Ombudsman Emily O'Reilly also agreed that the institutional representation of the interests of future generations is also necessary at the level of the European Union.

The Ombudsman for Future Generations conducted talks with the Chair of the Inter-Parliamentary Union, who announced during the discussion: he is going to initiate that, following the example of the Hungarian Ombudsman, institutions serving the interests of future generations be established in the member states of the IPU and the institutional structure of the organisation.

### **Protecting the common heritage of the nation**

In December 2014, the Ombudsman for Future Generations announced his national tree planting programme, the aim of which is to celebrate every year the birth of every child of Hungarian citizenship born in the territory of Hungary by planting an indigenous tree, and the trees planted thus be registered and protected at national level. During 2015, the initiative became a uniform concept connected to fundamental rights with several ties, which was accompanied by a social campaign entitled Tree Sibling Programme. The Ombudsman for Future Generations called attention to the initiative on several occasions, and planted trees together with other organisations. The realisation of the concept also needed legislation, which must establish the possibility for the creation of a comprehensive and uniform "tree management" regulation, and the consistent enforcement of the "tree as value" approach.

During the review of the act on the amendment of the regulation concerning territories under the property management of the national park directorates, the Constitutional Court requested the Ombudsman for Future Generations to present his stance, too. In his response, the Ombudsman for Future Generations emphasised the warranty role of the national park directorates in the preservation of natural assets, which originates exclusively from their activities with an environmental protection aim. He emphasised that, based on the unique heritage concept appearing in Article P of the Fundamental Law, the state's obligation does not allow the deterioration of the condition of natural resources. He quoted the obligation of present legislators to prevent that future generations will have to take a forced path and to preserve the conditions necessary for their freedom of decision. The spirit

of justness and solidarity requires the establishment of harmony between the conditions of life of future generations and the economic interests of the present generation.

The UN Water and Health Protocol obligated the signatory parties of the pan-European region to secure “equal opportunities of access to drinking water of appropriate quantity and quality for the entire population, especially the handicapped and the negatively discriminated”. An evaluation sheet entitled “Equal Opportunities” was prepared to survey the situation. Hungary also undertook to fill in the evaluation sheet with the coordination of the National Public Health Centre. As part of the evaluation procedure, the Ombudsman for Future Generations invited the affected state, self-government and non-governmental organisations for professional consultation.

At the consultation, the Ombudsman’s practice examining access to water and sanitation was introduced, emphasising that having the public utility service secured does not necessarily mean that access is secured.

The Ombudsman for Future Generations attended the annual meeting of the National Human Rights Institutions International Coordination Committee of the UN (NHRI ICC) in Geneva. The meeting emphasised the possibilities of the national implementation of feasibility goals, with special respect to the strengthening of democracy through the increase of social participation and transparency. In his comment, the Ombudsman for Future Generations emphasised that, through the enforcement of the right to water, the national human rights institutions can promote the realisation of sustainable development goals through concrete measures as well. Together with the Swiss international non-governmental organisation WaterLex, the Ombudsman for Future Generations organised an accompanying event entitled “Monitoring Sustainable Development Goals and the role of NHRIs”.

The UN designated 2015 the International Year of Soils. With view to this, the Ombudsman for Future Generations started the preparation and scientific foundation of his soil protection report. Soil is one of the most vulnerable renewable natural resources. It has several functions in the performance of which the organisms living in the soil have key importance, thus the preservation of their bio-diversity is the interest of future generations. For the development of his report, the Ombudsman for Future Generations invited the scientists and other experts dealing with soil for consultation.

At the joint event of the Hungarian Academy of Sciences, the Hungarian Soil Science Society and the Office, the Ombudsman for Future Generations emphasised that protection of the soil cannot be narrowed down to the protection of arable land. He also spoke up against unjustified soil coverings. He called attention to the importance of gathering and preserving traditional knowledge, and the preservation and renewing of state and research databases.

The seminar entitled “The legal protection of Natura 2000 areas in the European Union”, was organised together with the Association of Hungarian Public Administrative Judges, in the interest of the protection of biodiversity.

The Ombudsman for Future Generations issued a theoretical report on the preservation of the Vojvodina blind mole rat (*Nannospalax [leucodon] montanosyrmensis*) as this species, endemic in the Carpathian Basin, is on the verge of extinction. The Hungarian stock is the last representative of a species emerging in this area some two million years ago, whose habitat and number has dangerously dwindled. The fate of the species came in the focus of public interest during the construction of the security fence established on the section of the border in question, and (also) thanks to this, implementation took place by taking into consideration the opinion of environment protection experts.

The report establishes the unconditional state obligation originating from the Fundamental Law aimed at saving the critically endangered Vojvodina blind mole rat species; at the same time, acting in his own sphere of tasks and authority, having recognised the responsibility on all of us in this matter, the Ombudsman for Future Generations made recommendations towards government bodies.

## **Complaints related to the protection of the environment**

Under the Ombudsman Act, the Deputy of the Commissioner for Fundamental Rights executing the protection of the interests of future generations cooperates in the Commissioner’s investigations. In 2015, the Commissioner and his deputy executed joint investigations affecting several areas of environmental protection law, the fundamental law background of which is provided primarily by the right to a healthy environment, declared in Article XXI of the Fundamental Law, and the right to physical and mental health, declared in Article XX, but they often quoted the right to fair proceedings and legal remedy, as well as the requirement of legal security originating from the rule of law. Due to the conflict of interest between the residents and the enterprises, they could not disregard the right to enterprising either. The Parliament accepted the National Environment Protection Programme for the period between 2015 and 2020 during the reporting period, the strategic aim of which is the

improvement of the quality of life and the environmental conditions of human life; the protection and sustainable use of natural values and resources, the improvement of resource sparing and efficiency, as well as making the economy greener.

It can be stated that if more attention was paid during the decision-making processes to the environmental impacts caused by development, several environmental conflicts would not even emerge at a later stage.

Similar to previous years, the Office received a high number of complaints related to noise in the year 2015 as well. Every year, the operation of catering places poses severe problems to many. Another recurring problem is noise caused by public-road traffic. The noise complaints related to the operation of sports establishments can be considered somewhat special as sport is the basic means of health development, and the socially useful way of spending one's free time, which plays a significant role in the moral-physical education and personality development of the youth. A significant event of the reporting period was initiating review by the Curia of a regulation on noise protection, accepted by board of representatives of one of the districts of the capital, as well as reporting on the motion on the amendment of the individual noise-protection regulations.

In the area of waste management, the Commissioner and his deputy typically dealt with the size of waste collection bins, the regulation on real estate properties registered as resort facilities, the suspension of services and the difficulties of using the waste management public services caused by the state of public roads.

The importance of harmonization between the land registry and the National Forestry Data Records was emphasised in the Report of 2014 as well. With view to Article P of the Fundamental Law, as well as the preamble and goal of the act on forests, the protection of forests and forest management, the maintenance and protection of forests are outstandingly important public interests, the same as the efficient operation of the state bodies securing them.

The investigations in connection with the procedures of authorities related to illegal well drilling and protection against ambrosia are not without precedent either.

A frequently voiced measure of value of our time is economic growth, which brings along the ever increasing exploitation of nature. The right to a healthy environment secures the protection of long-term interests. Industrial development, the need for further investments is unavoidable; at the same time, environment protection and development goals are to be weighed with the same importance upon decision-making. We need an approach that, as opposed to short-term interest, considers long-term sustainability aspects the starting point and the example to be followed.

## 5 Statistical data

### The statistical data of the Ombudsman's activities

In 2015, citizens filed 8240 submissions with the Commissioner for Fundamental Rights, which is almost 2800 more than the number of submissions received the previous year. This significant increase is due partly to the international campaign that was organised by Amnesty International initiating the review of Hungarian measures in connection with migration. The foreign-language (English, French, German, Spanish) submissions also increased our administrative and translation tasks significantly. 886 cases ran through from the previous year to 2015; we finished a number of cases (5440) close to that of the previous year, but there were still 3686 cases underway at the end of the year.

With view to the fact that the number of staff did not follow the increased labour requirement posed by the new tasks the Commissioner for Fundamental Rights received in the previous years, and sufficient staff had to be provided for these tasks from the already existing staff, in 2015, the number of closed cases unfortunately fell behind the number of cases received in the year under review.

Complaints received	
Complaints received in the year under review	8240
Cases running through from the previous year	886
Cases finished in the year under review	5440
Cases underway at the closure of the year	3686

During the year under review, the number of submissions criticising the proceedings or decision of the authorities constituted the majority of cases received; among these are criminal and public administrative cases and other law-enforcement cases; their number was close to a thousand and a half. Another large group of complaints consisted of civil-law cases in a wider sense, financial institution and public service cases, the number of which was 1067. The group of complaints received in cases of social nature consisted of 893 cases. From among the concrete case types, in 2015, the most outstanding were the submissions in connection with public interest disclosures and motions for review, which generated altogether 353 cases.

In the year under review, the number of cases affecting the issue of environment protection in any way was 179, while there were submissions to the Commissioner and the Ombudsman for the Rights of National Minorities affecting national minority rights in 200 cases.

We had to reject the majority of the submissions – 3065 – filed with the Ombudsman as our investigative possibilities in these cases were excluded or restricted by law. 946 complainants did not criticise the procedure of some authority, 691 clients did not exhaust the possibilities for legal remedy at disposal, and in the case of 778 complaints – in addition to further potential possibilities for legal remedy – we informed those turning to us that the problem indicated did not affect constitutional rights. In many cases, the responses of the bodies sought out on the basis of the submissions clarified the suspicion of improprieties, in 384 cases, with view to the reasons of sphere of authority revealed from the responses received – for instance, that it could not be established from the complaint prior to the investigation whether the legal remedy procedure was still underway – we rejected the complaint. In the case of 141 complaints, in addition to the lack of our sphere of authority, we also established that some other body has sphere of authority for the investigation of the submission, and, by informing the client, we forwarded the complaint to the competent authority.

In the year under review, we conducted investigations in altogether 625 cases, of which we closed 384 cases by providing the complainants with plenty of information but without a report.

Closed complaints	Number	Percentage
Terminated	1352	25,1%
Transferred	141	2,6%
Rejected without investigation	3065	55,4%
Investigated	625	11,6%
Investigation of draft legal regulation	257	5,2%
Total	5440	100,0%

In the case of the 241 independent submissions closed with a report, 140 reports were prepared, in which we made altogether 274 recommendations. Of these, in 158 cases the addressees of the recommendations accepted our initiative, while they rejected them in 36 cases. Upon the closure of the data of the report, there were professional negotiations and exchanges of opinion underway in 80 cases.

### Customer services report

Customer service tasks are performed by two organisational units of the Office. In 2015, the Information Service received 12,773 enquiries from citizens over the telephone. On previously specified appointments, 2129 clients were heard at the Complaint Office, who requested a personal hearing in connection with a concrete complaint. In 2015, clients visited some customer unit of the Office on altogether 14,902 occasions. Of them, 370 still enquired about their data protection case at the Office even though this activity belongs to the sphere of authority of the Hungarian National Authority for Data Protection and Freedom of Information since January 2012. 227 individuals acted for the infringement of national minority rights, while 172 persons turned to the Office in connection with the right to a healthy environment.

TELEPHONE		IN PERSON				TOTAL
Requesting an appointment or information	Related to a submission	Complaint office hearing	Related to a submission	Submission and review of documents	Requesting an appointment or information	
10092	2681	1107	315	234	473	14902
Of the total number of inquiries related to <b>National Minority</b> rights						
227						227
Of the total number of inquiries related to the right to a <b>Healthy Environment</b>						
172						172
Of the total number of inquiries related to <b>Data Protection</b>						
370						370