

2012

REPORT



REPORT  
ON THE ACTIVITIES OF  
THE COMMISSIONER  
FOR FUNDAMENTAL RIGHTS  
OF HUNGARY  
IN THE YEAR  
2012

Report  
on the Activities of  
the Commissioner  
for Fundamental Rights  
of Hungary  
in the Year 2012



Report  
on the Activities of  
the Commissioner  
for Fundamental Rights  
of Hungary  
in the Year 2012

Office of the Commissioner for Fundamental Rights  
2013

All rights reserved

ISSN 1416-9614

Published by:

Office of the Commissioner for Fundamental Rights

1051 Budapest, Nádor u. 22.

Phone: 475-7100, Fax: 269-1615

Internet: [www.ajbh.hu](http://www.ajbh.hu)

Responsible editor: Dr. Máté Szabó

Edited by: Dr. István Perosa

Translation revised by: Dr. Lóránt Csink

The volume was designed by Zsófia Kempfner

# Contents

Introduction	7
<b>1. Ombudspersons in Charge during 2012</b>	<b>13</b>
1.1. Prof. Dr. Máté SZABÓ, Commissioner for Fundamental Rights	13
1.2. Dr. Ernő KÁLLAI, Deputy Commissioner for Fundamental Rights, responsible for the Rights of Nationalities	15
1.3. Dr. Marcel SZABÓ, Deputy Commissioner for Fundamental Rights, responsible for the protection of the interests of future generations	17
1.4. Dr. Sándor FÜLÖP, former Deputy Commissioner for Fundamental Rights, responsible for the protection of the interests of future generations	20
<b>2. Constitutional Changes in 2012 – Introduction of the New Office</b>	<b>22</b>
2.1 Legal Background	22
2.2 Role of the Commissioner	23
2.3. Organizational Structure of the Office (as of December 2012)	26
<b>3. Activities of the Office</b>	<b>27</b>
3.1. Complaints (their types, numbers)	27
3.2. Petitions to the Constitutional Court	35
3.2.1. List of the Petitions to the Constitutional Court	57
3.3. Projects	61
3.3.1. Project on Children’s Rights – Child-Friendly Justice	61
3.3.2. Project on the Penitentiary Institutions of Hungary	67
3.3.3. Project on the Situation of Lawyers	73
3.3.4. The ‘Dignity of Labour’ Project	78
3.3.5. Project on the “Losers of the Crisis – in the Captivity of Legal Provisions”	87
3.4. Ethnic and minority rights in 2012	93
3.5. Protection of the interest of the future generations	102

3.6.	Protection of fundamental rights of the most vulnerable groups	113
3.6.1.	Rights of People Living with Disability	115
3.7.	The Situation of Fundamental Rights	121
3.7.1.	Right of Peaceful Assembly	121
3.7.2.	Rights of Immigrants	124
3.7.3.	Family Law	126
3.7.4.	Right to Health	127
<b>4.</b>	<b>International and Public Relations in 2012</b>	<b>130</b>
4.1.	Our International Relations	130
4.1.1.	Delegations received in 2012	133
4.1.2.	Other International Activities	135
4.2.	Cooperation with Civil Society Organizations	140
4.2.1.	Complaints, proposals of civil organizations submitted to the commissioner for fundamental rights	140
4.2.2.	Meetings, programs, other events; cooperation with the civil sector in the special projects launched by the commissioner for fundamental rights	142
4.2.3.	Civil Consultative Body, Prizes and Recognitions	147
4.3.	Media coverage	148
<b>5.</b>	<b>Appendix</b>	<b>152</b>
5.1.	Re-regulation of the Institution of Ombudsman in Hungary and Europe in the 21st Century	152
5.2.	Project on Children's Rights – Child-Friendly Justice	156
5.3.	Projects on the fundamental rights aspects of the penitentiary system and the rights of foreigners in alien policing and sanctuary detention, and on the rights of lawyers and their clients	159
5.4.	The “Dignity of Labour” Project	164
5.5.	Project on the „Losers of the Crisis – in the Captivity of Legal Provisions”	167

# Introduction

The new Basic Law that entered into force on 1 January 2012 has completely restructured the institution of ombudsman; it has kept, however, its original function: giving an alternative, human rights oriented response to any improprieties related to constitutional rights.<sup>1</sup> The Basic Law professes the unity of rights and obligations. In the process of creating their harmony, the Ombudsman continues to **concentrate on securing the rights**, since the interpretation and enforcement of obligations are the responsibility of the entire state organization, government organs and authorities above all, and not that of independent right protection institutions. Although demonstrating and explaining the significant internal and external changes is a dominant motive throughout this report, it is of major importance to draw your kind attention, even in this introduction, to some substantial factors that cannot be circumvented:

- instead of four independent ombudsmen we now have a **single ombudsman** with two professional deputy commissioners;
- under this single leadership system the **deputies are nominated by the ombudsman, they act as professional advisors** with no independent investigative powers;
- due to the absence of direct involvement, natural and legal persons may not request anymore the Constitutional Court to conduct an ex post law review; **only the commissioner for fundamental rights may initiate the Constitutional Court's procedure of abstract posterior review**, on his/her own behalf, after due deliberation of a given issue;
- the new tasks of the commissioner for fundamental rights include, among others, the preparation of **more thorough statistics** on the

<sup>1</sup>Az új szabályozás keletkezéséről, és formai-tartalmi újdonságairól [*On the origins of the new regulation and its novelties in form and substance*]; Hajas, Barnabás – Szabó, Máté (eds.): ombudsmani intézmények újraszabályozása a 21. században Magyarországon és Európában. [*Re-regulation of the Institution of Ombudsman in Hungary and Europe in the 21st Century – For the contents and English Summary of the Hungarian publication see the Appendix at pp. 152–155*]

complaints concerning human rights, and **acting as the National Human Rights Institution (NHRI).**

Looking back on 2012, one can state that the establishment and development of the organization's internal and external networks, its task- and efficiency-oriented restructuring have resulted in the creation of a balanced, successful and sustainable basis. Naturally, the reconstruction is a long-term process and the task of many future generations.

The success of this new system was confirmed by the opinion polls of 1998, 2008 and 2012, conducted on behalf of the institution by Szonda Ipsos<sup>2</sup> with the same sampling and questionnaire on all three occasions. While in 1998 the still fresh institute of ombudsman operated among high expectations, a decade later some kind of disillusionment was palpable. By the end of 2012, however, this institution had become the most popular among the population and the highest ranking on the list of public trust, owing to both the new regulation and the devoted, dedicated work of the entire organization. Its popularity exceeded that of both the Constitutional Court and the political parties.

It is noteworthy, however, that a forum for complaints cannot blossom but on a soil fertilized by a tide of complaints. Significantly more people turned to the ombudsman in 2012 than before,<sup>3</sup> which reflects both the institution's growing reputation and the contradictory character of the attempts of the government to solve the current economic, social, political and legal crisis. Referring to the effects of the crisis has been a returning element of our annual activity reports recently, and it will probably remain so for a while even after the economic and financial situation of Hungary, together with that of the EU, will have hopefully turned onto the path of sustainable development. The actual and potential effects of the crisis, destitute people, communities and institutions, will unfortunately be living with us for years to come not only in the fields of human rights, constitutionality, economic and financial affairs, but also in the field of mobilizing long-term human resources.

The Basic Law itself and the ever intensifying and, as a result, qualitatively more and more problematic legislative activities of the Parliament<sup>4</sup> have produced a disputable and much disputed amount of political and legal responses to the crises and several ill-conceived attempts at its solution. 2012 became the year of fundamental rights revisions for the reorganized

<sup>2</sup>A major Hungarian public opinion research institute.

<sup>3</sup>The Ombudsman's Office received 5,191 complaints in 2011 and 7,049 in 2012.

<sup>4</sup>The Parliament amended the Basic Law three times and adopted 223 statutes in 2012.

institution of ombudsman since the paradigm shift of the Constitutional Court had drawn the attention of and brought about a series of external and internal reactions by the civil and political society and the public.<sup>5</sup> The public's attention is concentrated, quite naturally, on keen aspects of the ombudsman's work. It was so during last year. On the other hand, petitions submitted by citizens and civil organizations, supported by the commissioner for fundamental rights, and reviewed, accepted or rejected by the Constitutional Court do not and cannot constitute the only or even the most prominent field of the commissioner's activities. The "traditional", classic tasks of the ombudsman, i.e. handling citizens' complaints and ex officio investigating improprieties re-emerged in a new form, too, since one of the major challenges of last year was the protection by the ombudsman of the rights of future generations and environmental rights within the frameworks of his general fundamental rights protection activities.

According to the Transitional Provisions of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter referred to as "CFRA"), the Commissioner for Fundamental Rights is the legal successor of the Parliamentary Commissioner for Civil Rights, the Parliamentary Commissioner for National and Ethnic Minority Rights and the Parliamentary Commissioner for Future Generations. Under Section 45, Subsection (3) "*the Parliamentary Commissioner for National and Ethnic Minority Rights in office shall become the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary; the Parliamentary Commissioner for Future Generations in office shall become the Deputy Commissioner for Fundamental Rights responsible for the protection of the interests of future generations*".

Accordingly, since this Act entered into force, **dr. Ernő Kállai**, former Parliamentary Commissioner for National and Ethnic Minority Rights, has been operating as Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of national minorities living in Hungary, and **dr. Sándor Fülöp**, former Parliamentary Commissioner for Future Generations operated, until his resignation on 1 September 2011, as Deputy Commissioner for Fundamental Rights responsible for the protection of the interests of future generations. On 8 October 2012 the Parliament elected, with a significant majority of the votes, **dr. Marcel Szabó** as the new Deputy Commissioner for

<sup>5</sup>Láposy, Attila: Az alkotmánybíráskodás és az ombudsman szerepe az új alkotmányos valóságban [*The Role of the Constitutional Court and the Ombudsman in the New Constitutional Reality – For the contents and English Summary of the Hungarian publication see the Appendix at pp. 152–155*]

Fundamental Rights responsible for the protection of the interests of future generations.

Here I would like to emphasize that, together with my deputies, our colleagues at the Office and all citizens honouring us with their trust and through our joint work and combined efforts, we managed to successfully accomplish the novel tasks of a difficult year. Beside conducting our ex officio investigations, we tried to help everyone who turned to us and to give them direction and bring them closer to the solution of their problems. Our citizen-oriented approach and our cooperation with civic organizations and other forums of complaint are duly demonstrated by our original statistics and in a separate Chapter on civil organizations, appearing for the first time in the annual report of the ombudsman.

Beside our reactive, complaint-handling profile and within the frameworks set by the law, we launch and carry out our practical tasks, special projects with outside material support, upon summing up and evaluating the suggestions and complaints of citizens and the inputs from other sources, e.g. the mass media, social sciences, civil consultative bodies. Such projects are series of inquiries, workshops and conferences, embodying proceedings conducted both ex officio and upon complaint; their results have been published in a string of booklets and other publications. Our 2012 projects strived to uncover, from a comparative angle, the system-like structure of fundamental rights improprieties originating from the social-political surroundings of the institute of ombudsman.<sup>6</sup>

The protection of children's rights has been a priority task of the institute of ombudsman ever since its inception.<sup>7</sup> We have launched projects on this particular issue every year since 2008. In 2012, in parallel with the concurring priorities of the Hungarian Government and the EU, we investigated the system of **child-friendly justice**. On the subject of other groups at risk, one of our projects in 2012 concentrated on **the protection of the rights of detained** people, including the rights of minors and adults in **immigrant detention**, plus the **guarantees of legal protection** and other challenges faced by the legal profession. It generated serious response during the events organized by the Hungarian Bar Association. In his speech delivered in an event on Lawyers' Day, the President of the Hungarian Bar

<sup>6</sup>For the contents and English Summary of the Hungarian publication of the Projects see the Appendix at pp. 156–172.

<sup>7</sup>Lux, Ágnes: A gyermeki jogok védelmének európai rendszeréről [On the European System of Protecting Children's Rights – For the contents and English Summary of the Hungarian publication see the Appendix at pp. 152–155]

Association called this project the most comprehensive inquiry of recent decades into the situation of lawyers.

Our “**Dignity of Labour**” project was prompted by the adoption of the new Labour Code; we investigated the improprieties of the world of labour deriving from the old and new regulations. Our series of inquiries into the fundamental rights aspects of community work was innovative and widely referred to; beside the mass media, both written and electronic, it also got the attention of the Parliament’s Committee on Employment and Labour: the results of our investigation was put on its agenda twice, which was unique in the ombudsman’s experience.

Our series of inquiries under the title “**Losers of the Crisis – In the Captivity of Legal Provisions**” can be considered new and innovative from the angle of both domestic and international practices of ombudsmen. In the process of this project we wanted to find out to what extent the old and new legal regulations prevent citizens from giving adequate response to the phenomena of the economic and social crisis or, when they help them, why this help is less than optimal. We took notice of exclusionist behavioural patterns deriving from **mechanisms of “scapegoating”, uncovered the structures of social and ethnic exclusion, the problems of healthcare, the protection of financial autonomy as well as the problems of regional and local environmental protection and waste management.** We also formulated the thesis of “environmental protection as a loser of the crisis”.<sup>8</sup> In our investigations carried out in various fields and with various methods but from the perspective of fundamental rights, we put on the agenda the problems of the ethnic minorities, the homeless, the indebted families and the inhabitants of mental-social institutions, thus facilitating the establishment of a comprehensive framework for interpretation. It was an “innovation within an innovation” that, in the given regional-local context of **Szentgotthárd, Vas County**, together with **cross-border environmental issues**, the problems of the **Slovenian minority** living near the border and the buffer zone between nature conservation and industrial areas, we also inquired into the operation of **Europe’s largest mental-social institute** of almost 800 inhabitants (supervised from the capital). In this complex, multi-dimensional heap of problems we intended to demonstrate, through a multitude of local inquiries, the coexistence of multi-tiered fundamental rights related issues and the challenges they present,

<sup>8</sup> Borza, Beáta (ed.): *Beteg- vagy egészségügy? A betegjogok helyzete [Sick- or healthcare? The state of the rights of the sick]*. AJBH: Budapest. 2012. and Litkey-Juhász, Orsolya – Trombitás, Gábor (ed.): *A települési hulladékgazdálkodás válsága [The crisis of settlement-level waste management]*. AJBH: Budapest. 2012

both on local and central level, to the legal and administrative bodies trying to solve them.

Although we covered a multitude of topics, the list of relevant problems is far from complete. There still remains a profusion of complaints waiting to be processed, ex officio investigations and **petitions to the Constitutional Court**. Our treatise in the publication analyzing the new regulation of the institution of ombudsman compares the parliamentary discussions on the ombudsman statutes and their amendments and states that in their discussions back in 2011 the political parties and their representatives already treated the institution of ombudsman as an indispensable constitutional institution within the frameworks of the constitutional system of the rule of law in Hungary irrespective of their disagreements on the organization and competences of this institution.<sup>9</sup> Just as the public opinion polls conducted among the general population, this investigation conducted among the decision-makers also indicates the **growing acceptance of the institution** of ombudsman in Hungarian society and public life.

Our **international recognition** is well demonstrated by that fact that I could deliver one of the keynote speeches at the 10<sup>th</sup> World Conference of the International Ombudsman Institute held in **Wellington, New Zealand**, under the title “**Speaking Truth to Power**”. It is of similar significance that, from among the ombudsmen of former post-communist countries, only the Hungarian ombudsman has been invited to participate in the **European consortium helping Turkey** to set up its own system of ombudsman. The positive tendencies in our international recognition are also reflected in the continuous feedback we are getting from international organization and from the Diplomatic Corps in Budapest in connection with our English language publications introducing our activities, our various events and consultations.

I am confident that in 2013, upon completion of my 6-year tenure in office, the President of the Republic will be able to appoint my successor as the new head of well structured and significantly strengthened institution with rich investigative experience.

Budapest, 1 March 2013



Prof. Dr. Máté SZABÓ

<sup>9</sup>Tábori Ferenc: Az ombudsmani intézmény szabályozásának és a politikai pártok álláspontjának alakulása Magyarországon [*The Evolution of the Ombudsman Institution's Regulation and the Position of Political Parties Thereon – ibid.*], in: Hajas–Szabó i.m. .171-186.o.

# 1. Ombudspersons in Charge during 2012

## 1.1.

Prof. Dr. Máté SZABÓ, Commissioner for Fundamental Rights

He was elected by the Hungarian Parliament as the **Parliamentary Commissioner for Civil Rights** for six years which position he had held from 26. 09. 2007. He continues his role and stands as the **general ombudsman of Hungary**. From 1st January 2012, Prof. Szabó is **Commissioner for Fundamental Rights**.



He received his **law degree** at the Eötvös Loránd University, Faculty of Law in Budapest in 1980 and got a job as a journalist. From 1984, he worked as a scientific associate in the **Political Science Department** of the Eötvös Loránd University's Faculty of Law. From 1990, as an associate professor. He defended his **Ph.D.** on social movements in 1987, and got the 'Doctor of the Political Science' title from the Hungarian Academy of Science in 1996.

He is a founding member of the **Hungarian Political Science Association** and the Hungarian Humboldt Association; furthermore, he is an active member of the **Political Science Committee of the Hungarian Academy of Science** and several international associations related to sociology and political science.

Since 1980, he has continuously carried out several project researches on various subjects of political and social sciences.

- Between 1991 and 2007, he was a fellow of the Alexander von Humboldt Foundation in Hamburg, Berlin, Bremen, Mainz and Frankfurt an der Oder in Germany.
- He was a visiting fellow of the **Netherlands Institute of Advanced Studies**, Wassenaar, in 1995.

- In 2000, he was a research fellow at the **European University Institute in Florence**, Italy.

He is specialized in **civil society, social movements** and **political protest** and the **theory of law and politics** as well. He published **more than 300 scientific contributions** in **Hungarian, English** and **German**. He is a regular participant at conferences in political science, law, and political sociology in Europe and around the world. He teaches political science and European studies. Since he was elected ombudsman, he is an active member of the **International Ombudsman Institution** and the **European Network of Ombudsmen** and board member of the **European Ombudsman Institute**.

### Awards

- The '**Erdei Ferenc Prize**' of the Hungarian Sociological Association for young talents in 1988.
- The memorial medal '**For Hungarian Higher Education**' of the Ministry of Education for his teaching career in 2006.
- The '**István Bibó-Prize**' of the Hungarian Political Science Association in 2007, as an acknowledgement of his life work.
- The **Gold Cross of Merit awarded by the President of Poland** in 2012, in recognition of his merits in strengthening human rights and developing Polish–Hungarian relations in this field.

### Publications in Foreign Languages

Hütchenspiel? Wie kämpft man denn nun in Ungarn seit 20 Jahren gegen die Korruption? (– Barnabás Hajas) In: Bálint Balla-W. Dahmen-A. Sterbling (Hrsg.): *Korruption, soziales Vertrauen und politische Verwerfungen*. Krämer Verlag: Hamburg. 2012. 151–173. o.

The Role of the Ombudsman in a Democratic Legal State, in: (eds.) 12th AOA Secr. *Challenges for the Ombudsman in a Changing Socio-economic Environment*, AEB-MIC. Tokyo. 2012. 106–115.

Die Stellung und Rolle der Institution des Ombudsmannes in der ungarischen Rechtsordnung, (– Julia Sziklay) in: *BBE Europa Nachrichten* 2012/7. 1–4. o.

Changes in the Institutional Context of the Ombudsman System in the Republic of Hungary in 2010–2012 – *Beijing Law Reviews*, Vol. 3. Nr. 3. 30 June 2012.

1.2.

Dr. Ernő KÁLLAI, Deputy Commissioner for Fundamental Rights, responsible for the Rights of Nationalities

### **Studies**

**2008** Ph.D. degree in legal theory and legal sociology at the Deák Ferenc Doctoral School of Law and Political Sciences, University of Miskolc

**1997–2002** Eötvös Loránd University Faculty of Law and Political Sciences – lawyer

**1994–1998** Eötvös Loránd University Faculty of Arts – secondary school teacher of history

**1990–1994** Eszterházy Károly Teacher Training College – teacher specialised in history and music

**1994–1995** Journalism School – certified journalist

**1995** Hungarian Radio – news editor and radio journalist



### **Employment**

**2010** Eszterházy Károly College, Faculty of Teacher Training and Knowledge Technology – head of department

**2009** University of Debrecen, Faculty of Law and Political Sciences, Department of Constitutional Law – guest professor

**2008** Corvinus University of Budapest, Post-graduate specialist training programme in equality and minority issues – mentor and guest professor

**2007** Parliamentary Commissioner for National and Ethnic Minority Rights

**2002–2010** Apor Vilmos Catholic College, Institute of Romology and Applied Social Sciences – head of institute, college professor

**1998** Hungarian Academy of Sciences Ethnic and National Minority Research Institute – Head of research group on Romology

**1999–2002** Miskolc University, Department of Sociology, professor

**1996–1998** member of staff of the Roma Civil Rights Foundation

**1988–1997** teacher at various educational institutions

### **Scholarships**

**2000–2002** Civic Education Project

**1997–1999** Soros Foundation

**1998–2002** European Roma Rights Centre

**1997–1999** Roma Civil Rights Foundation, „Invisible College” for Roma students

### **Public and professional activities**

**2007–** Member of the Equal Treatment Professional Advisory Board

**2002–2005** Member of the board of trustees of the Autonomy Foundation

**1998–2004** Member of the board of trustees of the Gandhi Public Foundation

### **Membership of professional organisations**

Hungarian Sociological Society – member of the Presidential Board

Hungarian Academy of Science – member of the Public Body

Hungarian Association of Lawyers

Hungarian Society of Political Sciences

Hungarian Ethnographical Society

### **Awards**

**2006** Award for Minorities

**2005** honoured by the National Gypsy Self-Government for excellence in research

### **Main areas of research using empirical data survey in the past years**

- Emergence of cultural rights of the minority communities'
- The new paradigms of handling of ethnic data
- Roma entrepreneurs in Hungary
- Research on local Gypsy minority self-governments
- The past and present of Gypsy musicians
- The social history of the Hungarian Roma in the 20th century
- Equal opportunities of Roma in Hungary. Self-governance, positive discrimination, and the role of education in improving the situation of the Roma – theoretical and practical models
- The theoretical models and practice in Hungary of local Gypsy minority self-governments
- The cultural autonomy of minorities

1.3.

Dr. Marcel SZABÓ, Deputy Commissioner for Fundamental Rights, responsible for the protection of the interests of future generations

**Appointed:** 8 October 2012

#### **Education**

**2003** Pázmány Péter Catholic University, Ph.D.,  
summa cum laude

**2000** Bar exam

**1996–1997** University of Cambridge – Diploma  
in International Law

**1995–1996** Pantheon – Assas University, Paris,  
Certificate of Advanced Researches

**1995** Fall semester: Stanford University, Diplo-  
mat Training Program

**1993** Technical University of Delft, River Basin  
Administration Centre, supervised research

**1989–1994** Faculty of Law and Political Sciences of the Eötvös Loránd  
University (Budapest), Juris Doctor degree, cum laude



#### **Tutorial Activity**

- **From 2003:** Chair of the European Law Department at the Faculty of Law and Political Sciences of the Pázmány Péter Catholic University; 2004-2011: Chair of the European Law and International Public Law Department; from 2012: Chair of the European Law Department.
- **September 2003 – June 2010:** Vice Dean for International Relations at the Faculty of Law and Political Sciences of the Pázmány Péter Catholic University.
- **1997–1998:** teaching assistant, 1998-2003: assistant professor, from 2003

associate professor at the Faculty of Law and Political Sciences of the Pázmány Péter Catholic University. Main subjects taught: European law, international law, international environmental law in the basic training of law students and in the Deák Ferenc Law Training Institute.

### **Visiting Professor and Visiting Researcher Invitations**

- **23 May 2010 – 19 June 2010:** Marymount College, Los Angeles, professor of the subject Introduction to International Relations
- **January 2010 – 31 May 2010:** University of Cambridge, Centre for European Legal Studies, visiting researcher.
- **26 August 2008 – 16 September 2008:** University of San Francisco, teaching the course European Economic and Political Integration.
- **January 2008 – June 2008:** University of Cambridge, The Lauterpacht Centre for International Law, visiting researcher.
- **March 2002:** Sacred Heart University of Milan, Italy, visiting lecturer.
- **Academic year 2001 – Fall 2010:** the Budapest-based Central European Studies programme of the University of San Francisco, professor.
- **March 2001:** Sacred Heart University of Milan, Italy, visiting lecturer.
- **2000–2005:** the Budapest-based environmental manager programme of the University of San Francisco, teaching international environmental law.

### **General International Law**

#### **and International Environmental Law Activity**

- **From October 2011:** Ministerial Commissioner responsible for the sustainable utilization of natural resources divided by state borders in the Ministry of Public Administration and Justice.
- **From February 2011:** Representative of the Hungarian government at the International Court of Justice of The Hague.
- **2011:** Participation in the preparation of the study revealing the international law and European law implications of sustainable development, upon the request of the National Council for Sustainable Development. This study served as a background material for the National Sustainable Development Strategy.
- **January 2011:** international environmental law professional consultation with the colleagues of the Parliamentary Commissioner for Future Generations, in relation to the environmental policy statement on the development of the Danube Valley, its ecosystem services and the conservation of usage possibilities.
- **2008:** Participation in the research organized by the Jean Monnet Cen-

tre of Excellence of the Pázmány Péter Catholic University, the aim of which was to reveal the impact of the European Court in developing environmental law. In this framework preparing the study titled “The Max Plant Case: the Way towards Euro-chauvinism?”, which was published in the volume “The Impact of ECJ Jurisprudence on Environmental Law” (published by Szent István Társulat, 2008, ed.: Gyula Bándi)

- **2001 and 2002:** Head of the Hungarian wing of the Hungarian-Slovakian Legal Expert Working Group mandated to negotiate the implementation of the Gabcikovo-Nagymaros judgement (dated 25 September 1997) of the International Court of Justice of The Hague.
- **1998–2002:** Senior Government Advisor at the Secretariat of the Governmental Commissioner for the Danube, and Head of the Department of International Law at the Prime Minister’s Office.
- **1997–1998:** Advisor of the Ministry of Foreign Affairs 1997-98
- **1994–1995:** Attaché at the Department of International Law of the Ministry of Foreign Affairs

### **Publications in Foreign Languages**

Marcel Szabó: The Implementation of the Judgement of 25 September 1997 of the International Court of Justice of The Hague – Comparison of the Legal Theoretical Considerations and the Practice. In: Marcel SZABÓ (ed.): *Celebratory Volume in Honour of Gyula Gál*, Európa Nostra Kiadó, 2011, 129-140.

Marcel Szabó: Ronald Reagan and International Law. In: Schmidt Mária (szerk.) *A Country Boy against the Evil Empire – Ronald Reagan (1911 – 2004)*. Budapest: XX. Század Intézet, 2011, 173-192.

1.4.

Dr. Sándor FÜLÖP, former Deputy Commissioner for Fundamental Rights, responsible for the protection of the interests of future generations



**Resigned:** as of 1 September 2012

**Education**

**1981–1987** Psychologist, Faculty of Humanities, Eötvös Loránd University, Budapest

**1977–1982** Juris Doctor, Faculty of Law and Political Sciences, Eötvös Loránd University, Budapest

**Employment**

**01. 01. 2012** Deputy-Commissioner for Fundamental Rights, responsible for the protection of the interests of future generations

**2008–2011** Parliamentary Commissioner for Future Generations

**1994–2008** Attorney-at-law, Environmental Management and Law Association

**1993–1994** Associate, Ruttner & Partners Law Offices

**1991–1993** Prosecutor, Office of the Prosecutor General

**1984–1991** Prosecutor, Office of the Municipal Prosecutor of Budapest

**Other Professional Activities**

**1992–** Expert on environmental law for various NGOs

**1996–** Assistant Professor, Faculty of Law and Political Sciences, Eötvös Loránd University, Budapest

**1997–** Invited lecturer, Pázmány Péter Catholic University, College of

Public Administration of Győr, Central European University, University of Miskolc, University of Debrecen, University of Gödöllő

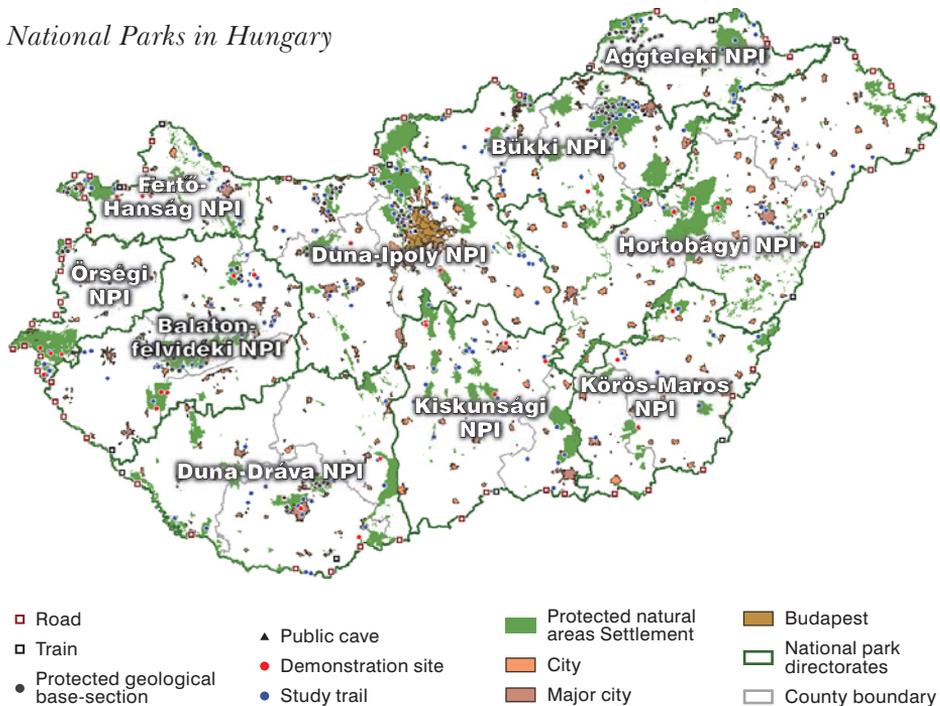
**1998–2003** Member then Vice President, National Council on Environment

**2000–2006** Member of an international consortium led by the World Resource Institute

**2002–2006** Participant in various international projects (environmental law, trainings, Albania, Macedonia, Croatia, Kazakhstan etc.)

**2002–2008** Member, Enforcement Committee, Aarhus Convention

### *National Parks in Hungary*



Source: Nature Conservation Information System (NCIS)  
([http://geo.kvvm.hu/tir\\_en/viewer.htm](http://geo.kvvm.hu/tir_en/viewer.htm))

# 2.

## Constitutional Changes in 2012 – Introduction of the New Office

After the "electoral revolution" of 2010, resulting in a two-thirds majority for the Fidesz-KDNP party coalition, the new government was able to adopt a new constitution and a series of cardinal Acts which required a qualified majority of two-thirds of Members of Parliament. The new constitution (called Basic Law) and the new Ombudsman Act, both adopted in 2011 by Parliament and effective as of 2012, established the new institutional arrangement of the ombudsman institution in Hungary.

### 2.1

#### Legal Background

In accordance with the Basic Law of Hungary, **Act CXI of 2011 on the Commissioner for Fundamental Rights** created a unified ombudsman system. The offices of the special Ombudsmen (Parliamentary Commissioners for the Rights of National and Ethnic Minorities and for the Interests of Future Generations) were integrated into the office of the general Ombudsman. According to **Article 30 of the Basic Law**, the Commissioner for Fundamental Rights is an organ comprising a single person who shall be nominated by the President of the Republic and elected by Parliament to carry out activities guaranteeing the protection of fundamental rights.

The new Act preserved the achievements in the field of the Ombudsman's protection of rights, but at the same time it sought to provide solutions to the problems which have arisen in the course of the practice of Ombudsmen in the past 15 years.

## 2.2

### Role of the Commissioner

The Commissioner for Fundamental Rights pays special attention to the protection of

- the rights of children,
- the rights of nationalities living in Hungary,
- the rights of the most vulnerable social groups,
- the values determined as ‘the interests of future generations’.

The Commissioner for Fundamental Rights gives an opinion on the draft rules of law affecting his/her tasks and competences; on long-term development and land management plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations; and he/she may make proposals for the amendment or making of rules of law affecting fundamental rights and/or the recognition of the binding nature of an international treaty.

The Commissioner surveys and analyses the situation of fundamental rights in Hungary, and prepares statistics on those infringements of rights in Hungary which are related to fundamental rights. Therefore, the Commissioner submits his/her *annual report to Parliament*, in which he/she gives information on his/her fundamental rights activities and gives recommendations and proposals for regulations or any amendments. The Parliament shall debate the report during the year of its submission.

In the course of his/her activities, the Commissioner cooperates with organisations aiming at the promotion of the protection fundamental rights.

As a new mandate, the Commissioner for Fundamental Rights may initiate the review of rules of law at the Constitutional Court as to their conformity with the Basic Law.

Furthermore, the Commissioner participates in the preparation of na-

tional reports based on international treaties relating to his/her tasks and competences, and monitors and evaluates the enforcement of these treaties under Hungarian jurisdiction.

**The Act on the Commissioner gives an exhaustive list of authorities.**

**These are:**

- a public administration organ;
- a local government;
- a nationality self-government;
- a public body with mandatory membership;
- the Hungarian Defence Forces;
- a law enforcement organ;
- any other organ acting in its public administration competence, in this competence;
- an investigation authority or an investigation organ of the Prosecution Service;
- a notary public;
- a bailiff at a county court;
- an independent bailiff; or
- an organ performing public service.<sup>10</sup>

According to the new Ombudsman Act, the Commissioner for Fundamental Rights may even proceed exceptionally if, on the basis of the petition, it may be presumed that the **activity or omission of an organization not qualifying as authority** gravely infringes the fundamental rights of a larger group of natural persons.

**Fundamental rights may be infringed in particular by the following:**

- unreasonably long proceedings,
- discrimination,

<sup>10</sup> Regardless of their form of organisation, organs performing public services shall be the following:

- a) organs performing state or local government tasks and/or participating in the performance thereof,
- b) public utility providers,
- c) universal providers,
- d) organisations participating in the granting or intermediation of state or European Union subsidies,
- e) organisations performing activities described in a rule of law as public service, and
- f) organisations performing a public service which is prescribed in a rule of law and to be mandatorily availed of.

- provision of inaccurate or wrong information,
- unfair treatment,
- refusal to disseminate information on unreasonable grounds,
- unlawful decision.

A very important aspect of the Commissioner's role is that a complaint may be filed even if the complainant has already exhausted the available administrative remedies – except for judicial review of administrative decisions –, or where no legal remedies are ensured.

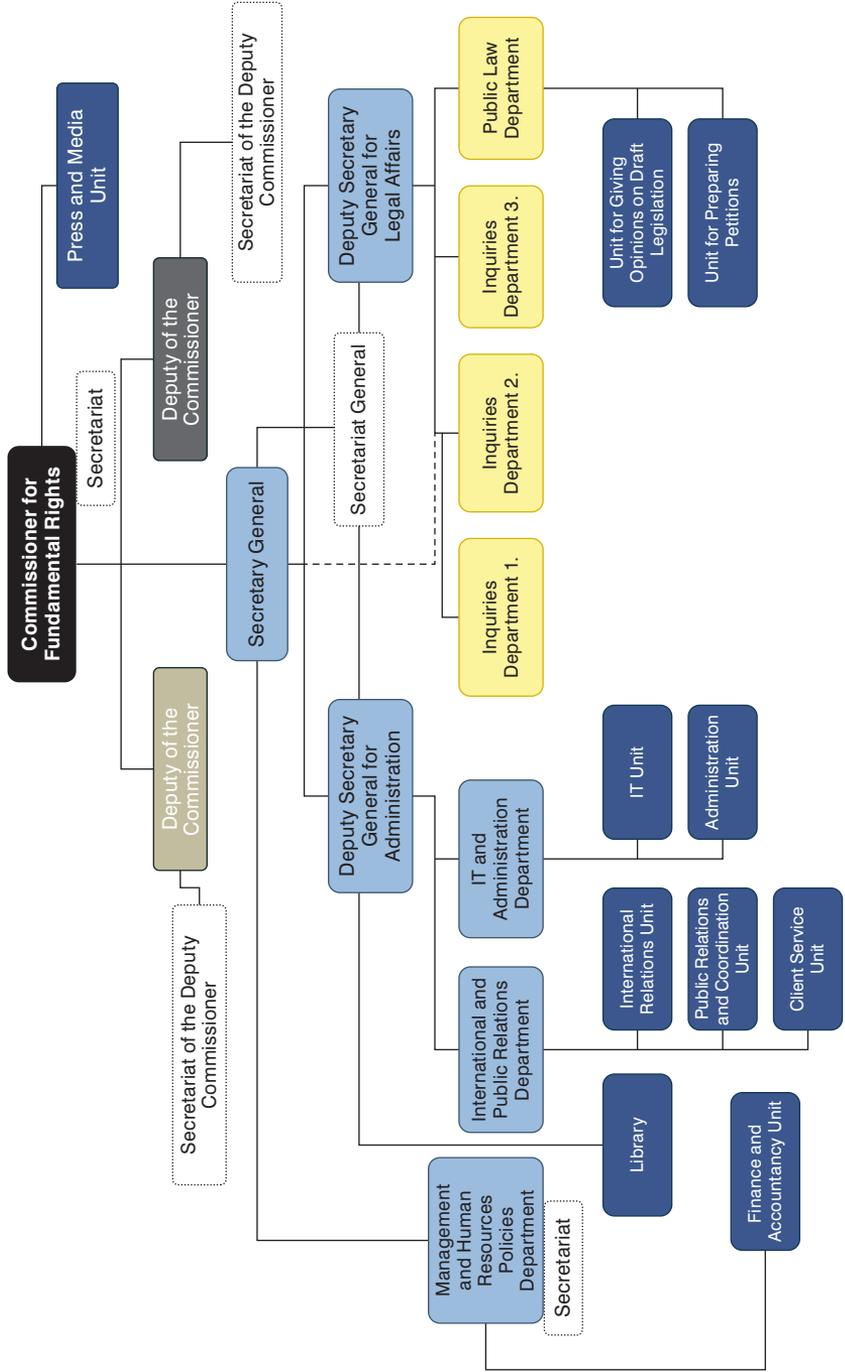
**Cases where the Ombudsman cannot help:**

- If the proceedings have begun before 23 October 1989,
- if the final administrative decision was made more than 1 year before the submission,
- if legal proceedings are pending or a final court decision has been rendered,
- if the complainant starts legal proceedings.
- The Ombudsman cannot inquire into the activities of Parliament, the President of the Republic, the Constitutional Court, the State Audit Office or the Prosecution Service (except for the investigation office of the Prosecution Service).

**The Ombudsman selects him/herself the course of action that is deemed to be most appropriate. Key measures are:**

1. To initiate redress of the impropriety by the head of the authority subject to inquiry and inform the supervisory organ.
2. To initiate proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General.
3. To *turn to the Constitutional Court* in accordance with the provisions of the Act on the Constitutional Court.
4. To participate in the proceedings as an intervener in the course of the judicial review of an administrative decision relating to the state of the environment.
5. To initiate minor offence or disciplinary proceedings with the organ authorized to conduct such proceedings.
6. To propose that the organ authorised to make law modify, repeal or issue the rule of law, or to propose that the organ in charge of preparing rules of law prepare a rule of law.
7. To submit the case to Parliament and request a parliamentary inquiry.

2.3. Organizational Structure of the Office (as of December 2012)



# 3.

## Activities of the Office

### 3.1.

#### Complaints (their types, numbers)

##### **Year 2012 in the Office of the Commissioner for Fundamental Rights – Changes, Trends and Numbers:**

**The number of complaints filed to the Office increased by 25% during the first year of the transformed, reorganized ombudsman system. The Office managed to accomplish its legally defined, partly new tasks in 2012 with a uniform approach, flexible organization of work and considerable surplus labour.**

As of 1 January 2012, instead of the four independent ombudsman offices a new, one ombudsman system headed by Máté Szabó, Commissioner for Fundamental Rights, was established, where the interests of national minorities and future generations are protected by deputy commissioners. As opposed to 5,046 in 2011, the Office registered 7,049 requests to investigate in 2012, and its information service was accessed by almost 13 thousand people, against nine and a half thousand a year earlier. On the basis of the complaints and the – partly on the spot – investigations initiated *ex officio*, there were 231 Ombudsman's Reports prepared, containing 331 dispositions and recommendations. The statistics of the year 2012 also show that 61% of the Ombudsman's recommendations were accepted and 14% were refused or ignored; in the case of the remaining 25% the 30 or 60 days deadline to respond has not expired yet.

With 225 acts passed in 2012, the correction of legislative mistakes, decrees and laws, adopted in the process of the democratic system's speedy transformation, obtained special significance. Last year, the commissioner for fundamental rights and his co-workers gave their opinions on almost 250 draft regulations, commenting in some form or other on every third of them. As a result, drafts were significantly amended on several occasions. (There were two occasions when the drafts' authors did not agree with the commissioner's opinion – in those cases

the ombudsman appealed to the Constitutional Court on the grounds of the drafts' anti-constitutionality.)

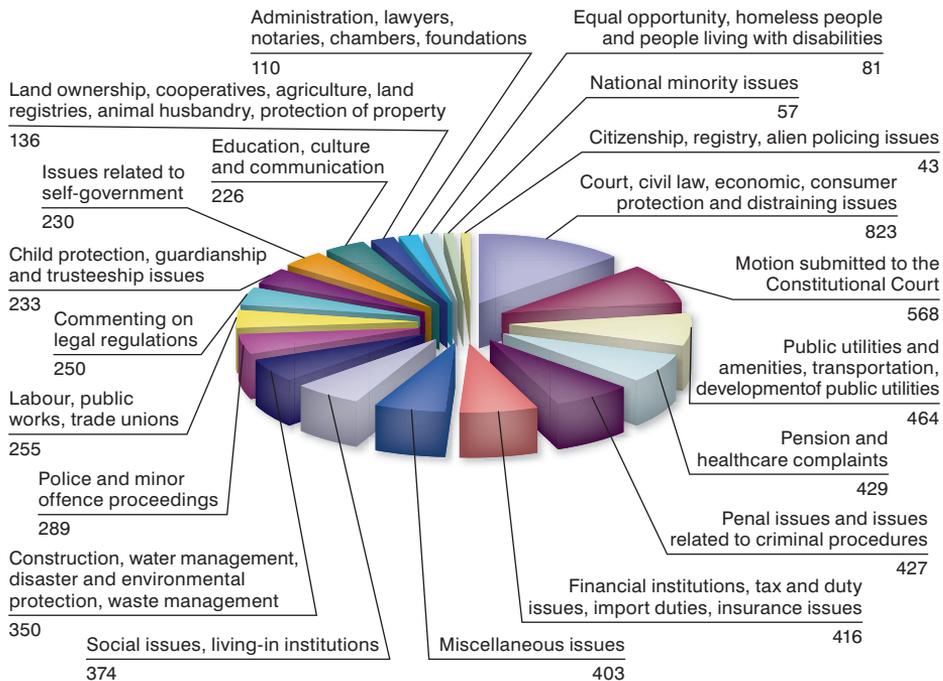
*Initiator*

	<b>2012</b>
Commissioner for Fundamental rights ex officio	178
Deputy Commissioner under Section 3, Subsection (1), Paragraph b)	2
Deputy Commissioner under Section 3, Subsection (1), Paragraph c)	5
Deputy Commissioner under Section 3, Subsection (2), Paragraph b)	14
Deputy Commissioner under Section 3, Subsection (2), Paragraph c)	25
Firm, other	75
Civil organization	126
Family	200
Individual	5859
Unknown	40
Collective	105
Other office	40
Unspecified	366
Member or committee of the Parliament	14
<b>Altogether</b>	<b>7049</b>

*Nationality of the Petitioner*

	<b>2012</b>
Unknown	586
Foreign	78
Hungarian	6368
EU member state	17
<b>Altogether</b>	<b>7049</b>

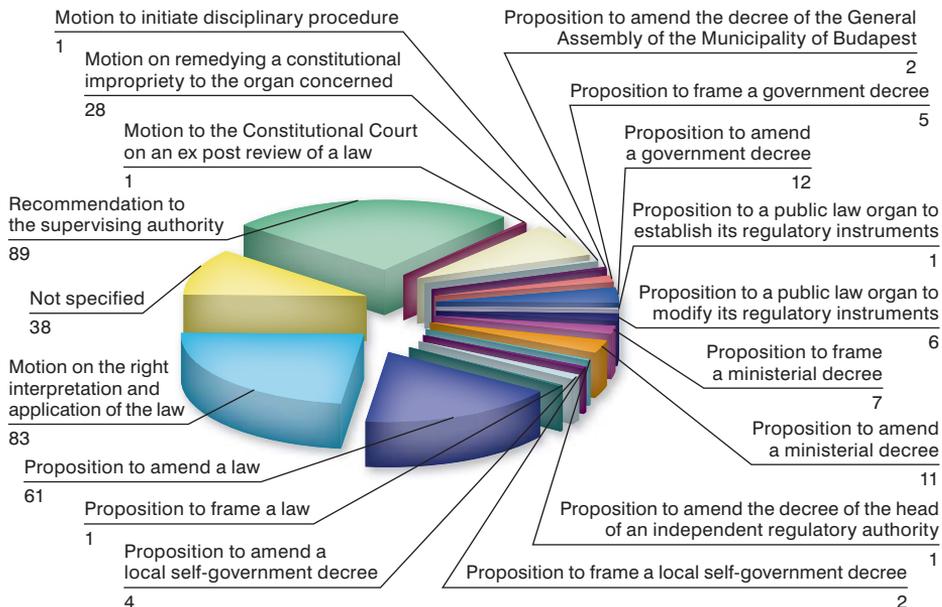
*Types of the Investigated Issues*



Rejected due to lack of competence	special inquiry not justified	37
	originated from before 23 October 1989	4
	complaint not concerning any constitutional right or clearly unfounded	1497
	repeated filing with no new data	174
	more than a year passed from the date of entering into effect	45
	having failed to seek legal remedy (ban on taking another authority's jurisdiction)	895
	court procedure under way	522
	complaint against the proceedings of a non-authority carried out as such	705
	petition by a non-entitled entity	28
	<b>Total</b>	<b>3907</b>

Transfer	transfer, due to lack of competence, to a competent organ	258
	forwarding for consideration	4
	forwarding with a call to notice	6
	Total	268
Inquiry cancelled	with a formulated opinion	16
	settled in the meantime	106
	deriving from a closed case without initiating a new one	127
	petitions that cannot be assessed	67
	anonymous petitioner (also in the absence of full name or postal address in e-mails)	77
	upon the passing away of the complainant	1
	upon the complainant's request (also in the case of his/her failure to complete the documentation, and if discreet handling of data is requested)	106
	upon oral notification of the complainant (at the complaints office, by phone or direct e-mail)	69
	complaints filed repeatedly irrespective of previous notification	21
technical closing (e.g. combined cases, closing an ex officio case)	18	
Total	608	
Completed after inquiry, with no report	established lack of constitutional impropriety	110
	being of minor or no significance	13
	in view of an agreement between the parties concerned	2
	closed by a report on another case	131
	rejected after starting an inquiry (on the basis of the competent organ's response)	118
	Total	374

Completed after inquiry with report	report on a solved complaint, with no recommendation in view of the measures taken	4
	report with a call to notice	9
	report without establishing any impropriety	14
	report with concrete measures and recommendation	162
Total		189
Submission to the Constitutional Court	submission to the Constitutional Court	20
	refusing to submit to the Constitutional Court	295
	closed by a submission to the Constitutional Court in another matter	253
	Total	568
Comment on legal regulation	without formulating an opinion of a legal regulation	144
	formulating an opinion of a legal regulation	106
	Total	250
<b>Altogether</b>		<b>6164</b>



As of 1 January 2012, citizens may directly request legal remedy from the Constitutional Court only in case their individual rights have been encroached by the implementation of an anti-constitutional legal regulation or ruling of the court. In all other cases they can submit a proposal to the commissioner for fundamental rights to file an appeal; however, the commissioner shall decide within his discretion, on the basis of his own investigation, and appeal to the Constitutional Court on his own behalf. The Office received 758 such proposals in 2012. The commissioner for fundamental rights decided to uphold twelve of his motions submitted during the previous years, and he appealed to the Constitutional Court 19 times on the basis of the complaints received and 4 times *ex officio*. The Constitutional Court has already made its decision in 11 cases, including the Family Protection Act.

In November 2012 Szonda Ipsos conducted a survey of public opinion on the Ombudsman institution's social awareness and recognition.



**Dr. Miklós GARAMVÁRI** graduated in law from the Faculty of Law of Eötvös Loránd University, Budapest, in 1993. Between 2003 and 2011 he was the Head of Office of the Office of the Parliamentary Commissioner for Civil Rights. Currently he is Deputy Secretary General for Legal Affairs at the Office of the Commissioner for Fundamental Rights.



**Dr. Zsolt KOVÁCS** received his law degree at the Faculty of Law of Eötvös Loránd University, Budapest, in 1985. During the period of 1995-2011 he was Head of Department at the Office of the Parliamentary Commissioner for Civil Rights. Currently he is Head of Inquiries Department I. at the Office of the Commissioner for Fundamental Rights.

In November 2012 Szonda Ipsos conducted a survey of public opinion on the Ombudsman institution's social awareness and recognition.

*Weighted sample distribution by social characteristics*

		%
Sex	Male	47
	Female	53
Total		100
Age group	18-30	24
	31-45	24
	46-60	27
	61-	25
Total		100
Education	primary school or lower	36
	vocational school	21
	secondary school graduate	29
	college, university graduate	14
Total		100
Occupation	active entrepreneur	8
	active manager	2
	active intellectual	0
	active junior white-collar	11
	active skilled labourer	20
	active unskilled labourer	6
	student, young mother on maternity leave	11
	retired	31
jobless, dependent	11	
Total		100
Wealth	poor	29
	average	45
	wealthy	26
Total		100
Type of settlement	Budapest	18
	county seat	18
	other city or town	32
	village	31
Total		100

*Organizations and institutions one can turn to when one's rights are infringed on by an authority or a company (spontaneous answers)*

	%
Commissioner for Fundamental Rights and variations	53.8
Defunct ombudsmen (for national minorities, data protection)	0.3
Ombudsmen altogether	54.1
Local self-government	1.2
Labour Court	1.1
Court	4.2
Constitutional Court	0.1
Notary	0.3
Consumer protection agency	4.0
Aid and charity organizations, Red Cross	0.6
Patient's rights representative, healthcare representative	0.3
Trade unions	0.2
Hungarian Competition Authority, Hungarian Financial Supervisory Authority	0.9
Hungarian Helsinki Committee	0.5
Hungarian Civil Liberties Union	0.3
Civil, human rights and civil rights organizations	0.9
Attorney	0.7
Legal aid service	2.5
Police	1.4
Quality control institute	0.5
Guardianship office, family assistance agency	0.4
Legal expenses insurance company, D.A.S.	0.4
Mediating body, financial mediator	0.3
Aware of the existence of such bodies but cannot name them	0.4
No one to turn to	0.2
Other answer	2.0
Cannot name any	33.3

### 3.2.

#### Petitions to the Constitutional Court

The development of the Constitutional Court proceedings is linked to the tendency of developing correctional mechanisms, constitutional balancing bodies in Europe after the authoritarian systems. The institutions of the Constitutional Court proceedings ensure the democratic development of the Italian, Austrian, Spanish and post-communist regimes or the post-apartheid regimes in South Africa.<sup>11</sup> The origins of the ombudsman institutions are not the post-authoritarian but actually the stable democracies: Sweden, Finland, Denmark and New Zealand.<sup>12</sup> These first generation ombudsman institutions mean the revision-correction of the constitutionality of administrative decisions as a “soft” type of mechanisms possibly complementing, cooperating with the administrative court proceedings. At this stage, ombudsmen are reactive, commencing a proceeding on complaints and their task is to control the decisions of the administrative authorities. The Spanish ombudsman established in 1978,<sup>13</sup> following the Franco regime, meant the first post-authoritarian ombudsman institution which exceeded its earlier reactive-administrative powers at the time and it could resort to the Constitutional Court. The Spanish ombudsman institution fulfilled proactive functions as well, that is, it could initiate inquiries *ex officio* and there was a shift towards the constitutional court activity in cases of human rights, that is, proactive and human rights abuse as well. This model was adopted by the ombudsman institutions emerging in the various post-colonial, post-authoritarian systems. The first post-communist ombudsman was set up in Poland and

<sup>11</sup> Paczolay, Péter (ed.): Alkotmánybírászkodás-alkotmányértelmezés (Constitutional Adjudication, Constitutional Interpretation). Rejtjel: Budapest 2003.

<sup>12</sup> Kucsko-Stadlmayr, Gabriele (ed.): Európai ombudsmani intézmények (Ombudsman Institutions in Europe). ELTE Eötvös Kiadó: Budapest. 2010.

<sup>13</sup> Kucsko-Stadlmayer *ibid* pp. 237-245

this way it operated during the entire time of the political/democratic transformation, even before the real function of the Constitutional Court existed. Due to the impact of the Polish model,<sup>14</sup> in essence, all post-communist systems whether democratic or authoritarian, set up their own ombudsman institution that could cooperate with the Constitutional Courts widespread in the post-communist countries as well.

*Press release: 15/14/2012*

***Petition of the Ombudsman to the Constitutional Court on the provisions concerning the confinement and detention of juvenile offenders***

*The provision of the Regulatory Offences Act making it possible to order confinement and detention for regulatory offences is contrary to the Basic Law and the UN Convention on the Rights of the Child, which has been promulgated in Hungary. Since, in spite of previous warnings by the Ombudsman, the new Regulatory Offences Act, effective as of 15 April, still allows the above sanctions, the Commissioner for Fundamental Rights has requested the Constitutional Court to review certain provisions of the Act.*

In Hungary, the Constitutional Court was created earlier, in 1989, and assumed a creative and widely recognized role in reshaping the constitutional system of the political/democratic transformation, just as the ombudsmen elected in 1996 for the first time.<sup>15</sup> The ombudsmen established later in Hungary, followed the Spanish-Polish model, too; they all had proactive and reactive functions as well as administration controlling and constitution protection functions or functions institutionalizing the resort to the Constitutional Court and even international human rights protection functions (proposal of ex post review of norms colliding with international treaties). Nevertheless, their organizational form was a “poor imitation of the Swedish model” according to the characterization given at the meeting on the Hungarian ombudsman system in Brussels in 2007, with the European ombudsman, Nikiforos Diamandouros. In Sweden, the system of the single parliamentary ombudsman with deputies and ministerial ombudsmen in independent but lower positions, replacing the coexistence of parallel ombudsmen of the king and the Parliament, was translated by the Hungarians into the solution of a common office

<sup>14</sup> Kucsko-Stadlmayer *ibid* pp.185-195

<sup>15</sup> Hajas, Barnabás, – Szabó Máté: Az alapvető jogok legutóbbi húsz évéről (1988-2008) [On the Last Twenty Years of Fundamental Rights (1998-2008).] In: Szabó, Máté (ed.): *Emberi jogok-alapvető jogok? Esélyek és veszélyek az ombudsman szemével*. Kairosz Kiadó. Budapest.2011. pp.110.-133

for four independent parliamentary ombudsmen. The contradiction of the constructive procedural and the counterproductive organizational rules between 1996 and 2007 was softened by the solidarity among the ombudsmen and the relative conflict avoidance. However, in 2007 when another ombudsman position emerged (that of the parliamentary for future generations), the balance shifted towards the special ombudsmen. This prompted my vigorous and public protest at the time against the position of the three special commissioners who wished to settle the common affairs on the basis of the principle of majority rule.<sup>16</sup> The conflict that had arisen in various forms and that had hindered the operation between the ombudsmen was terminated by a solution in the Basic Law which set up a single institution, that of the general commissioner (“commissioner for fundamental rights”) with two professional deputies, also elected by two thirds of the Parliament, in the fields of the rights of national minorities and the sustainability and environmental protection. The data protection and freedom of information ombudsman became an independent authority pursuant to the provisions of the Basic Law in compliance with EU regulation. The authority is entitled to levy fines of millions of Forints. (It is another question that in this field the EU still criticizes the Hungarian solution since the last commissioner for data protection, András Jóri, in their view, has not given the chance to fulfil the position of the president of the authority, whereas the general and the special ombudsmen Máté Szabó, Sándor Fülöp and Ernő Kállai could decide it if they would work together in the new set-up.)

***Press release: 16/04/2012***

*The mandatory conditions of student contracts laid down in a rule of law, in particular the regulation that provides for a long and general obligation to perform work in Hungary, constitute a disproportionate restriction of rights. The Commissioner for Fundamental Rights therefore requested the Constitutional Court to examine whether the government decree on student contracts is compatible with the guarantees laid down in the Basic Law.*

This transformation of the ombudsman system is not without precedent. In France, Norway, Sweden and in Italy, where there are only local ombudsmen, and in Malta such centralizing trends have been prevailing in the recent years due to the impact of the crisis in the ombudsman systems. In each of the Visegrád countries (Poland, Slovakia, Hungary and the Czech Republic),

<sup>16</sup>Szabó, Máté: op. cit. pp. 169-174 and pp. 187-191

single commissioner systems emerged, only the Hungarian solution was “an odd one out.” The French reform is particularly comprehensive where the earlier independent commissioner for children’s rights, the Equal Treatment Authority and the institutions similar to our Independent Police Complaints Board and which are mostly collectively managed and have extensive functions were merged under the management of a single ombudsman.<sup>17</sup> The trend is similar in Malta, too. Sweden, Norway and Lithuania carried out a coordination of rather an administrative nature and cost reducing rationalization by decreasing the number of commissioners.

The organizational reforms do not necessarily concern the relationship of the Constitutional Court and the ombudsman. In the countries concerned, there is not even a Constitutional Court everywhere either, or if there is one, the ombudsman institution does not have a duty with regard to that. In Hungary, the ombudsmen could resort to the Constitutional Court *ex officio* within their sphere of competence in order to eliminate constitutional improprieties. The number of such actions was not too high; the general commissioners did not submit more than five petitions annually on the average. The special ombudsmen who could resort to the Constitutional Court on the basis of some legal rules, the Act on National Minorities, the Environmental Protection Act and the Data Protection and Freedom of Information Act submitted even less petitions.

The Constitutional Court did not deal with the ombudsmen’s petitions as star cases despite the fact that priority is set out in their rules of procedure. For years, they were not even put on their agenda, either. This was done in the context of the so-called *actio popularis* which, as justice Mihály Bihari mentioned, proceeded with those of the about 800 citizens’ petitions of *ex post* review of norms annually which was deemed appropriate. No uniform processing was made in the course of decades about the fate of thousands of petitions submitted or, at least, it was not made public. However, in the absence of that it can be concluded that before the deadline of resubmission of the petitions in the past to the ombudsman, 1 April 2012, their fate was the disappearance in the archives of the Constitutional Court, that is, the oblivion, the disappearance in the Lethe River. I think that the view of László Sólyom, former President and that of others are wrong stating that the *actio popularis* would have been

<sup>17</sup>Soós, Eszter Petronella: Ombudsman a la française – adalékok egy reformhoz. (*Ombudsman à la Française – Glosses on a Reform - For the contents and English Summary of the Hungarian publication see the Appendix at pp.119-122*) In: Hajas, Barnabás – Szabó, Máté: Az ombudsmani intézmények újrászabályozása a 21. században Magyarországon és Európában. Országgyűlés Hivatala: Budapest. 2012. pp. 106-120

an efficient constitutional safeguard. On the input side yes, all citizens “could go to Donáti street”, where the Constitutional Court was located, but it seemed useless as the petitions had no real impact or processing. On the output side, the Constitutional Court was unable to deal with this colourful multitude of the petitions during the time available. The permissive input side was not proportional to the output efficiency resulting from it, as a consequence of which not too many initiatives could benefit from the numerous petitions in compliance with the criterion of people’s democracy. The *actio popularis* could take a role of softening the utility efficiency of the numerous legal actions as a political protest, the number of citizens’ petitions submitted to the Constitutional Court to a great extent. (All these assumptions would certainly be justified only if one could analyse at least 100-200 randomly selected petitions per year to see how they impacted the Constitutional Court’s work. Our generous assumption may be that giving preference to certain subjects the Constitutional Court might have served the public taste as a consequence of the nature of the large number of the petition filing trends designating the directions of the civil dissatisfaction due to public pressure. Nonetheless, is this the function of the Constitutional Court in the post-authoritarian democracies? Let us just think of the assessment of the death penalty in the Constitutional Court’s decisions and in the pressure of the public opinion!).

*Press release: 09/05/2012*

***The Ombudsman’s petition concerning certain provisions of the Media Act***

*The Commissioner for Fundamental Rights requested the Constitutional Court to examine and annul certain Provisions of the Media Law because the rules on the election and the termination of the mandate of the Hungarian Media Authority and of the President of the Media Council raise concern on several points.*

Against this position of the Constitutional Court, in my view, the respective organization of the Constitutional Court proceedings follows explicitly professional elitist models. Constitutional courts are the highest, entirely independent from politics, highly qualified, special forums making binding decisions. They are neither the spokesperson of the contemporary political majority nor that of the social majority’s opinion. These latter tasks are taken by the Parliament and the civil society. Constitutional Courts have to ensure a decision based on solely constitutional-professional

arguments balancing majority democracy and majority society. Their decisions base on constitutional, legal arguments rather than the public opinion Constitutional court proceedings may take advantage of the people's feedback, but using it is not obligatory. If thousands or ten thousands of petitions object to the pension issue, however they contain merely lay arguments, what can the Constitutional Court proceedings do with them?

On the basis of the citizens' complaints in the past 12 months, my view is that legally qualified or trained helpers have contributed to drafting the majority of the relevant complaints, no matter if they were submitted by individuals or civil organizations. Consequently, it is not the amount of petitions but the quality of the argumentation with which the society may help the constitutional corrections in the Constitutional Court proceedings. For this purpose not the unconstrained use of the direct ex post review of norms would be necessary, since comprehensive processing may not be expected from the jurist elite organization doing the Constitutional Court proceedings, but an organization is needed with a suitable screening function and which is experienced in handling civil complaints and has the appropriate level of constitutional law expertise such as the ombudsman.

***Press release: 31/05/2012***

***Application to the Constitutional Court regarding campaign financing***

*The Commissioner requested the Constitutional Court to examine the provision of the Act on Electoral Procedure which limits in HUF 1 million per candidate the amount that can be used during the electoral campaign for Members of Parliament.*

*The Ombudsman has invited the Constitutional Court to examine also a possible failure to act by the law-maker in connection with the control of the utilisation of campaign funds.*

This solution is included in the Basic Law instead of the actio popularis which opens, however, two more channels of much more of a political nature which currently do not fulfil the function of forwarding civil complaints to the Constitutional Court as a consequence of the current two third government majority and the divided opposition. The head of government authorized by a two third supermajority is unlikely to be uncertain regarding at least the legislation by his own government and Parliament in order to resort to the Constitutional Court for ex

post review of the norms. There has not been an example for it for ten months, though, logically it cannot be excluded. For instance, this way the international organizations' criticisms may be "tried" through the internal constitutional control institutions by the head of government. This is much more likely in a divided coalition government, though; in this case the coalition cooperation agreement may limit using this opportunity. Another channel is the one quarter of the representatives, this does not work under the current political division, however in principle this can be easily accomplished by two cooperating parties which may bring this way their voters' demands as a result before the Constitutional Court in a permanent offensive. Based on the very short experience of the 10 months, neither the government nor one quarter of the representatives has taken advantage of the current 2010-2014 parliamentary composition except the ombudsman. (I emphasize that this situation may change owing to many reasons even within one legislation period as well, so the current situation after the *actio popularis* placing the ombudsman to the front may quickly transform.) The other two channels of the constitution may gain substance and at the same time with the emergence of the proceedings the civil complaints may disperse towards the head of government and/or the cooperating parties of the opposition. The present analysis based on the experience of a few months may not assert a right to the task of recording long term results and trends. The current trend may change or modify even within this legislation cycle. Nevertheless, currently the ombudsman is the exclusive addressee of the citizens' petitions requesting *ex post* review of norms.

*Press release: 13/08/2012*

***Turning to the Constitutional Court because of the provisions of the Act on Churches***

***According to the opinion of the Commissioner for Fundamental Rights the legal provisions regulating the recognition of churches are in contrary to the principle of separation of power, to the right to fair procedure and to the right to legal remedy. After analysing the initiatives of many religious organisations Szabó Máté turned to the Constitutional Court.***

*The Ombudsman finds the provision contrary to the Basic Law, which not considering the constitutional principle of separation of power among government branches allows the Parliament to decide by itself and inappealably on church status recognition.*

*The close relation to freedom of religion makes it indispensable that the decision on the recognition of the church, on rendering the religious status meets all guarantees protecting fundamental rights. If it is at the discretion of the decision-maker to give the religious status, then the aspects of deliberation have to be regulated by Act. The Act lacks such principles and provisions. The refusal should be reasoned, but the Act also lacks the requirement of reasoning in case of refusal. Thus we would never learn the reason of the refusal – stated Szabó Máté. Legal remedy has to be guaranteed against the decision on church status and the current regulation lacks it.*

*The Ombudsman emphasises that on the basis of the principle of separation of power the Parliament cannot exercise tasks, during which it makes political decisions affecting fundamental civil rights without having appropriate constitutional guarantees.*

One of the first petitioners put it in a reserved manner and reasoned his petition by that he was induced to resort to the ombudsman because he had been deprived of his right to petition. There is no doubt that the citizens and civil organizations in the absence of interest were deprived of this right. They cannot turn to the Constitutional Court for an ex post review of norms against every law. However, the Venice Commission's proposal opened a new channel which forwards the civil petitions for ex post review of norms to a politically independent organization, the Commissioner for Fundamental Rights due to the strict regulation of the conflict of interests in Hungary today. The other two currently theoretically existing channels are, however, entirely of a political hue, either the government or one quarter of the representatives. So it is up to one's choice whether one may resort to a politically neutral channel or a channel committed to the government or an opposition oriented one for an ex post review of norms unless one has a direct interest. Consequently, the triad of mediation that cannot be considered scarce and that contains various alternatives appears in the Basic Law. The ombudsman's new types of petitions gain considerably more opportunities for a hearing by the Constitutional Court than the previous annual approximately eight hundred individual petitions. Since if the current trend goes on, the Constitutional Court encounters annually a few dozen of prioritized ombudsman's petitions serving as appropriate starting points in the perspective of the analysis.

**Press release: 03/09/2012**

***Petition of the Ombudsman to the Constitutional Court on student contracts***

*The Commissioner for Fundamental Rights turned again to the Constitutional Court and requested it to examine whether the regulation of student contracts, now laid down in an Act of Parliament but unchanged in its content, is compatible with the right to freely choose one's job and profession or the right to participate in higher education. According to the Commissioner the obligatory conditions of the contract continue to constitute a disproportionate restriction of rights, in particular the stipulation of a long-term and general obligation to perform work in Hungary.*

The work load of the Constitutional Court is, however, so heavy already now before the end of the year that it is almost certain that the petitions, some of which affect many people and are of existential importance in many cases, may not be discussed in a hearing and not at all decided in the current year, the year of submission by the Constitutional Court. The experience gained in the first quarterly has to be added to the fact that there was almost no petition of this new type and the petitioners did not even attempt to maintain the old ones. Consequently, we resubmitted the previous ombudsmen's petitions and preparation of the own new petitions was going on in this period. At the beginning, we were highly uncertain as the many slashing crisis management measures, the reregulation of the basic public services and the unfolding of the practice of the new constitution all predicted the possibility of a massive petition submission with which such organizations had to cope without having had direct experience beforehand. The first quarterly break favoured the preparation of the ombudsman institution suffering from the difficulties of the restructuring. The real first swallows appeared in the second quarterly, and the first petition on the Transitional Provisions gained so much press and media publicity together with the first remarkable amendment of the Basic Law responding to it that is remarkable in all respects that following this the petitions began to arrive massively, in groups and frequently at the ombudsman. These were in many cases organized protest campaigns and legal actions as part of the campaigns organized by civil organizations.

**Press release: 04/10/2012**

***The Commissioner upholds the petition challenging the Transitory Provisions of the Basic Law***

*The first amendment to the Basic Law has not answered all the questions according to which the ombudsman challenged the Transitory Provisions – stated Máté Szabó. The Commissioner finds that only those regulations of the Transitory Provisions are parts of the Basic Law that are necessary for the transition from the former constitution to the new one.*

The petitions arriving after this confirmed their dynamics. Consequently, the petitioners' expectations have been increasing up to this very moment; they have not been apparently rejected by the Constitutional Court. Regarding the petitions to the Constitutional Court, we faced a “wildfire” mobilization for the third quarterly. New significant types of conflicts and civil campaigns appeared following one another at the ombudsman submitting their petitions seeking publicity for their demands and to obtain a legally binding nature through a positive decision by the Constitutional Court. As a result, the number of initiations reached the number of 650 altogether in 2012. (However, if we count with the possibility of real constitutional law petitions, then the decrease by 150-200 may also reach the previous level of petitions as a matter of fact, namely petitions against the court rulings may have been numerous among the *actio popularis* without a mandatory legal representation. This is, however, only an assumption.) For us, the current level and rate of the petitions seems to be manageable; the department established for this purpose could catch up with the rate so far. This is made easier by the existence of the multiple petitions with the same text in the framework of several hundreds of coordinated legal protesting actions.

Mostly in the protest culture of the Federal Republic of Germany and Austria where parliamentary petition committees existed, the campaigns of white hot mobilizations have long been the standard means, where the occurrence of the “collective petitions” supplied with the signature of even more than a million people joining online is not a rare example.

Our work with respect to the Constitutional Court has been performed on different levels as of 1 January 2012;

- a) maintenance of the previous ombudsman petitions
- b) the submission of own petitions
- c) preparation of petitions on the basis of the civil petitions
- d) monitoring the follow-up of the petitions

*Press release: 04/10/2012*

*The Commissioner's reply to the petition claiming the restriction of the Government's "exclusive power":*

*The Commissioner for Fundamental Rights refused to turn to the Constitutional Court for examining whether the Government forces to achieve exclusive power. Máté Szabó held that the Commissioner had neither competence nor standards for such an enquiry.*

*The Freedom and Reform Institute ('Szabadság és Reform Intézet') claimed the Commissioner to turn to the Constitutional Court. The Institute stated that a large number of statutes made it possible for the Government to achieve exclusive power.*

### **It is the ombudsman who knocks on the door of the Constitutional Court instead of the citizens**

As of 1 January 2012, not every citizen has the *actio popularis* at his/her disposal for initiating the abstract *ex post* review of norms, which was a distinct "Hungaricum", existing only in this country, in Hungary. The supreme authoritative forum of the jurist elite is not mistaken for a general complaints forum anywhere else, which has never even worked as such in practice.<sup>18</sup> A nine-month-long experience is that those initiatives are able to provide basis for the ombudsman's petitions to the Constitutional Court in which the professional legal expertise had played an important part from the beginning. The mass of the "lay" complaints means in itself an important confirming and guiding feedback, however no directly constructive or critical Basic Law arguments are derived from them (though such arguments can be formulated through experts' deductions). The colloquial problem interpretation may be of a symptomatic value; however, it requires further professional elaboration.

It does not belong to the ombudsman's task to translate the general political critics into the language of the Constitutional Court. The Basic Law gives the opportunity to the political forces having one quarter of the mandates to initiate the proceeding of *ex post* review of norms at the Constitutional Court. This has not led to cooperation among the parties in opposition with a common petition yet. This opportunity may arise with a changing parliamentary composition in which the comprehensive critical attitude of the opposition is likely to appear in the submission of

<sup>18</sup>See the summary of the critical junctures for the *actio popularis*: Paczolay, Péter: *Megváltozott hangsúlyok az Alkotmánybíróság hatásköreiben* (Changing Stresses at the Competences of the Constitutional Court). *Alkotmánybírósági Szemle* 1/2012. p. 67

petitions. Compared to this, the ombudsman, within his or her competence, focuses on partial questions, single issues. The petitions do not challenge the legal institutions but their partial aspects, for example, the types of pension, but not the whole of the pension system, certain anomalies of the education system, but not the foundations of the education system.

*Press release: 06/11/2012*

***The Ombudsman asks the Constitutional Court to revise the amendment of an act on possible law enforcement measures applicable in case of truancy***

*According to the commissioner for fundamental rights the authorization to the police for the application of coercive measures against children under the age of 14 is an unnecessary and disproportionate restriction of rights, which can be even worse considering the basic deficiencies of the regulation and the risk of uncertain and arbitrary application. The ombudsman therefore asked the Constitutional Court for the urgent revision and the suspension of the entry into force of said provision.*

*In July 2012, the Parliament adopted the amendment of an act entering into force from 1 January 2013, which makes possible for the police to take measures against pupils younger than 14 who miss school without permission. Following previous consultation, the police may escort the child to the director, if he/she cannot justify his/her absence. Credible permission may be issued by the school, the doctor and the parent of the student.*

*In the course of giving his opinion on the draft, Commissioner Máté Szabó pointed out that the concept of preventing truancy by means of law enforcement measures is irrational, adverse and presents a disproportionate restriction of rights. The draft might have led also to several problems in practice: as an example, policemen are not able to judge whether the child's absence from school is justified or not. The ombudsman requested to delete from the draft the possibility of applying law enforcement measures. This request was ignored by the Parliament, therefore the ombudsman asked the Constitutional Court for the urgent revision and the preliminary suspension of the entry into force of the provision.*

### The previous ombudsmen's petitions

In February 2012 upon the request of the Constitutional Court, I *maintained* all the petitions that I submitted before 1 January 2012 as parliamentary commissioner for the citizens' rights with a reference to the Basic Law.<sup>19</sup>

Pursuant to the new Act on the Constitutional Court, the commissioner for fundamental rights had to make a declaration on the maintenance of the previously independent special ombudsmen's petitions. I maintained the ongoing petitions of the parliamentary commissioner for the interests of the future generations regarding the site authorization rules<sup>20</sup> and regarding the regulation of the noise emission of cultural festivals.<sup>21</sup> I partially maintained and complemented the petitions regarding the Dunakeszi Marsh and the Páty golf-course project.<sup>22</sup>

I submitted in my own name the petitions submitted before 1 January 2012 by the commissioner for data protection and which had not been heard by the Constitutional Court until that time (with two exceptions), since the Hungarian National Authority for Data Protection and Freedom of Information was not entitled to turn to the Constitutional Court.<sup>23</sup>

The Constitutional Court only partially heard these previously maintained petitions until the completion of the present manuscript. The petition requesting the annulment of Subsection (2) of Section 3 of the Strike Act was rejected by the Constitutional Court with its decision 30/2012. (VI. 27.) CC. The Constitutional Court also rejected in its de-

<sup>19</sup> Pursuant to Subsections (1) and (2) of Section 71 of the Act on the Constitutional Court upon the entry into force of the new Act on the Constitutional Court only the ongoing procedures will be terminated which concern the ex post review of the unconstitutionality of the legislation set out in Subsection (1) of Section 24 and which was submitted by not the petitioner set out in Clause e) of Subsection (2) of Section 24 of the Basic Law

<sup>20</sup> Government Decree 358/2008 (XII. 31.) regarding the site authorization procedure and rules of notification

<sup>21</sup> The value limits of noise pollution deriving from certain activities with regards to protected areas are regulated by Appendix No. I-II of KvVM-EüM joint ministerial decree No. 27/2008 (XII. 3).

<sup>22</sup> Since the commissioner for the protection of the interests of the future generation referred to the collision of the disapproved local government decrees with other legal rules as well and the Constitutional Court has no competence to judge it pursuant to the new Act on the Constitutional Court, I resorted to the Government Office by writing a letter in order to request it to examine if the local government decrees affected by the petitions and the resolutions (construction procedure) are in compliance with the higher level legislation.

<sup>23</sup> <http://ajbh.hu/allam/aktualis/htm/kozlemany20120423.htm>

cision the petition in terms of Subsection (1) of Section 6 of the Act XLVII of 2009 on the system of criminal records, the records of court sentences issued against Hungarian citizens by the courts of European Union member states and the records of criminal and policing biometric data.<sup>24</sup>

The Constitutional Court rejected the petitions regarding the Páty and Dunakeszi local government decrees on the grounds that it examines their compliance with the Basic Law if the subject of the examination is exclusively the establishment of the compliance of the local government decree with the Basic Law without the examination of its collision with other legislation. The compliance with the Basic Law of the decrees and the normative resolutions challenged in the petitions can be heard only together with their collision with other legislation, for which I also turned to the competent government office seeking remedy for the infringement. As a result, the petition has become devoid of purpose.

The Constitutional Court also rejected my petition requesting for the annulment of the provisions of the decree of the Józsefváros (Budapest VIII. District) local government on sanctioning scavenging because the representative body repealed the legislation in compliance with the new Act on Misdemeanours.<sup>25</sup>

It can be clearly established from the above that some of these petitions seem to be new cases, however, they meant in many cases the confirmation of 3-4 year old petitions and as such they are the petitions of the previous ombudsmen.

Since 2007 as the parliamentary commissioner for citizens' rights, depending on the result of the examinations that I conducted I turned to the Constitutional Court 3-5 times. In the first nine months of the year, I turned only twice to the Constitutional Court *ex officio* for ex post review of norms on the basis of the "old" ombudsman's competence to submit a petition: when I challenged the provisions of the Act on Misdemeanours

<sup>24</sup>What is distinct in this case is that according to its file number (3255/2012. (IX. 28.) CC) it is a ruling, however, the operative part makes it clear that it was passed as a decision by the acting council.

<sup>25</sup>Apart from these, the Constitutional Court rejected the petition of the parliamentary commissioner for the protection of the interests of the future generations regarding the partial annulment of the Act on the commissioner for fundamental rights (Ruling 3002/2012. (VI. 21.) CC), and the petition of the previous ombudsman for data protection for the establishment of the unconstitutionality and the annulment of the specified text of the Subsection (2) of Section 17 of the Act XLIII of 2010 on the central state administrative organs and the members of the government and the legal status of the state secretaries and the specified text of Clause 83 of the government resolution on the rules of procedure of the Government 1144/2010. (VII. 7.)

allowing the detainment of minors,<sup>26</sup> and when I requested the annulment of the provisions on child-care allowance.<sup>27</sup> In both cases, I put forward a number of proposals for legislation.

### **Petitions based on citizens' initiatives**

410 petitions arrived to the Office of the Commissioner for fundamental rights until 10 October 2012, in which the petitioners put forward constitutionality objections partially or entirely against legislation. To be more precise, on one side these are outnumbered by the abstract review of norms petitions under *actio popularis* submitted to the Constitutional Court. On the other side, the petitions submitted had a considerably similar content or they were of similar nature (on various pension rules or the insulin supply) and approximately one third of the letters was the mass of the same petitions and/or their additions criticizing the rules on the election of the president and the members of the Media Council (made on the basis of a simply forwardable form letter available on internet).

I used my competence to submit a petition upon public initiative 19 times in 2012 (to be more precise 20 times as a consequence of challenging the student contracts again). The issues described in the petitions are rather various. I am going to present only some of them being significant for the citizens' rights and obligations.

One of them is the petition concerning the Transitional Provisions of the Basic Law, initiating the annulment of the whole Transitional Provisions or some of their provisions. According to this petition, the Transitional Provisions has not become part of the Basic Law in spite of its peculiar self-definition, as a consequence of which the Constitutional Court may examine that.

In my view, the principle of rule of law and legal certainty is violated by the uncertain systemic status of the Transitional Provisions. If the Constitutional Court interpreted the Transitional Provisions as the amendment of the Basic Law, then they should be declared as ineffective in public law concerns since the Transitional Provisions were accepted contrary to Article S) of the Basic Law.

While Subsection (3) of the Closing Provisions of the Basic Law gives authorization for adopting the transitional provisions related to the Basic

<sup>26</sup> AJB 3298/2012 (precedent: 5980/2010)

<sup>27</sup> AJB 1041/2012 (precedent: AJB 2293/2011)

Law, the word “transition” is used in a different context in the first part of the Transitional Provisions (the part entitled as the Transition from Communist Dictatorship to the Democracy). However, the second part of the Transitional Provisions entitled as *Transitional Provisions related to the entry into force of the Basic Law* contains rules of non-transitional nature as well (*designation of a court other than the courts of general competence, cardinal Acts on churches and nationalities, provisions on constitutional complaints, the right of government offices to apply to a court, the organization of the National Bank of Hungary, the Day of the Basic Law*). The petition secondarily aimed at the annulment of these non-transitional provisions.<sup>28</sup>

In its decision 45/2012. (XII. 29.) CC the Constitutional Court found the ombudsman’s petition well-founded. The Court pointed out that the Parliament overstepped its constitutional authorisation when it implemented regulations to the Transitional Provisions having no transitional character. The formal rules for legislation are binding also for the constituent power. Therefore the Constitutional Court annulled the regulations the ombudsman challenged.

It is contrary to the Basic Law that while a mandatory legal representation is set out in the Act on the Constitutional Court for the constitutional complaint proceedings, the use of legal aid is excluded in the Act LXXX of 2003 on Legal Aid. For people in disadvantageous social situation this means the violation of their right of remedy. This discriminates those, based on their financial situation, who are unable to bear the legal expenses, however, they have the constitutional complaint as the only legal remedy for disposal. In this respect, the state fails to meet its obligation of objective fundamental right protection and that of ensuring equal access to the procedure and equal opportunities.<sup>29</sup>

Upon the petition the Constitutional Court held unconstitutional and annulled that provision of the Act on Legal Aid which excluded people from socially deprived backgrounds from being able to use gratuitous legal assistance necessary for the effective enforcement of their rights in the course of constitutional complaint proceedings [Decision 42/2012. (XII. 20.) CC].

In my petition related to the *government decree regulating student contracts*, I initiated the annulment of Section 110, Subsection (1), item 23 of Act CCIV of 2011 on Higher Education (hereinafter referred to as “HEA”) and Government Decree 2/2012 (I. 20.) on Student Contracts to

<sup>28</sup> Case No. AJB-2302/2012. – <http://www.ajbh.hu/allam/jelentes/201202302Ai.rtf>

<sup>29</sup> Case No. AJB-1961/2012.– <http://www.ajbh.hu/allam/jelentes/201201961Ai.rtf>

be Concluded with the Beneficiaries of Full and Partial Hungarian State Scholarships (hereinafter referred to as “Decree”), and suggested that the Constitutional Court should suspend the Decree’s entry into force pending the Court’s review of my petition. Under and outside the authority of the HEA, the Decree regulates the rules governing the Student Contracts, together with the rights, obligations and the legal consequences of a possible non-performance. Students are obliged to obtain their degree within an adequate period of time and, within 20 years after having received that degree, to establish, maintain and continue an employment in Hungary for a period twice the length of his/her studies under full or partial state scholarship. Failing to do so, the former students shall reimburse the full or partial amount of the stipend. It is a restriction of the graduates’ right to self-determination and the right to freely choose their work and profession. The right to work is also violated since in the case of the students’ majority the element of voluntariness will be missing when concluding an employment contract. The decree-level regulation of this issue is incompatible with the Basic Law as state support to high-level studies should have been regulated in an Act. The restriction of rights stipulated by the student contract may not be qualified as indispensably necessary and even as an appropriate instrument for the domestic employment of the graduates, and it is not proportional either.

The Constitutional Court did not review the contents of the government decree, but in its decision 32/2012. (VII. 4.) CC the Court stated that both the provisions of the government decree regulating student contract and the authorization by the HEA<sup>30</sup> are *formally incompatible with the Basic Law*. In that decision the Court did not examine the challenged regulations in merits. Consequently, the Parliament amended the HEA by incorporating the earlier, decree-level regulations into the Act, therefore I raised objection to these new regulations of the HEA, as well.<sup>31</sup>

According to my petition initiating the annulment of certain regulations of Act CLXXIX of 2011 on the Rights of Minorities (hereinafter referred to as “MRA”) within the frameworks of an ex post review of norms and the establishment of incompatibility of some of its regulations with an international treaty, one of the major problems was, since there is no way to list them all here, that, by allowing only organizations of public

<sup>30</sup>Through deleting the expression “– on terms defined by the Government –“ from Section 39, Subsection (3) of the HEA

<sup>31</sup>See Motion AJB-2834/2012 at <http://www.ajbh.hu/allam/jelentes/201202834.rtf> and <http://www.ajbh.hu/allam/jelentes/201202834Ai.rtf>

benefit to have candidates, the MRA restricts, in violation of the Basic Law, the rights of national minorities to form their local and national self-governments, and that it wrongfully discriminates among organizations of national minorities,<sup>32</sup> in violation of the requirement of equal treatment.

On the basis of nearly 150 petitions of identical content I requested the annulment of certain regulations of *Act CLXXXV of 2010 on Media Services and Mass Media* (hereinafter referred to as “MA”). According to my petition the rules governing the election of the Media Council of the National Media and Infocommunications Authority (hereinafter referred to as “Media Council”) are in breach of the Basic Law, because not only is the Chairperson of the Media Council simultaneously the Director of the Authority, but the functions are interwoven as well, and furthermore, several provisions of the MA regulating the election, legal status and termination of the mandate of the Chairperson of the Media Council together are uninterpretable and inapplicable. This may lead to the breach of the requirement of legal certainty deriving from the rule of law, mock the proper functioning of the Media Council, leading subsequently to the infringement of the obligation of objective institutional defence in connection with the freedom of expression. After the submission of the petition the Parliament amended the MA.<sup>33</sup>

In my petition initiating the annulment of Section 92, Subsections (1) and (4) of *Act C of 1997 on Electoral Procedure* I raised objection to the fact that the per capita campaign budget of candidates during parliamentary elections had been limited, for about 15 years, and not counting the support from the central budget, at HUF 1 million while the political parties’ expenditures had significantly increased. The amount stipulated by the law is clearly not enough for substantial campaigning, thus limiting the parties’ ability to contribute to forming the people’s will and forcing them to operate outside the boundaries of the rule of law and, at the same time, discriminating a well-defined group of – non-parliamentary – parties.<sup>34</sup>

In my petition initiating the annulment of Sections 7 and 8 of *Act CCXI of 2011 on the Protection of Families* (hereinafter referred to as “FPA”) and the suspension of its entry into force I draw the attention to the fact that the concept of family, based on marriage between man and woman, set out in the FPA, constitutes discrimination on the basis of a different

<sup>32</sup> See Motion AJB-2709/2012 – <http://www.ajbh.hu/allam/jelentes/201202709Ai.rtf>

<sup>33</sup> See Motion AJB-3299/2012 – <http://www.ajbh.hu/allam/jelentes/201203299Ai.rtf>

<sup>34</sup> See Motion AJB-2303/2012 – <http://www.ajbh.hu/allam/jelentes/201202303Ai.rtf>

aspect, sexual orientation, in connection with the rights to private and family life and to human dignity, and unnecessarily and disproportionately restricts the rights to human dignity and to private and family life of those living not in marriage but in some other form of partnership. It may cause uncertainty that, according to the intestate succession specified in the Civil Code (hereinafter referred to as “CC”), a spouse and a registered partner shall inherit on the same level, while the FPA recognizes exclusively the family based on marriage.

In its decision 31/2012. (VI. 29.) CC the Constitutional Court, as a new measure stipulated by the new Act on the Constitutional Court, suspended the entry into force of Section 8 of the FPA scheduled to 1 July 2012.<sup>35</sup> Later on decision 43/2012. (XII. 20.) CC annulled the pertaining regulations. The Constitutional Court held that no direct or indirect discrimination was allowed among children irrespective to the fact that their parents lived in marriage or some other kinds of partnership. The Court also pointed out that the regulations of the Act pertaining to succession were so incompatible to the Civil Code that the situation infringed legal certainty.

The right to fair procedure and the right to legal remedy are infringed when the Parliament adopts a decision on the recognition of an association conducting religious activities as a church so that the act does not define the criteria of deliberation, the Parliament is not obliged to justify its decision to reject, and there is no legal remedy against such a decision. That is the reason why I initiated the establishment of the violation of the Basic Law and the annulment of certain provisions of *Act CCVI of 2011 on the Right to Freedom of Conscience and Religion and on the Legal Status of Churches, Religious Denominations and Religious Communities*. Furthermore, it runs contrary to the principle of separation of powers that the Parliament assumed the right to decide in a matter that is alien to the political character of the supreme representative body.<sup>36</sup>

The *Act on Elimination of Early Retirement Schemes, Early Pensions and Service Dues* entered into force on 1 January 2012. Allowances established earlier are continued to be paid under another legal title, as so-called early retirement allowances, e.g. transitional miners’ allowance or, in case of the armed forces as service allowance. In my petition I requested the annulment of certain provisions of the Act. The reason for this is that the Act stipulates the reduction of the monthly amount of certain allow-

<sup>35</sup> See Motion AJB-4159/2012 – <http://www.ajbh.hu/allam/jelentes/201204159Ai.rtf>

<sup>36</sup> See Motion AJB-2784/2012 – <http://www.ajbh.hu/allam/jelentes/201202784Ai.rtf>

ances (e.g. early retirement allowance to Members of the Parliament or service allowance) by the amount of the personal income tax, when the provisions of the Act stipulating to burden the nominal amount of old age pensions with public dues, i.e. deductions, are in breach of a requirement deriving from the rule of law. The Act defines the suspension of the service allowance as an automatic, “supplementary punishment-like” legal consequence to certain crimes. Since it comes from the Basic Law that the state may not arbitrarily use the instruments system of penal law, I also initiated the annulment of these provisions.

By virtue of the Act, old age pension shall be terminated if the person entitled engages in, in lay terms, “black work” (undeclared gainful activity). The Act links two unrelated issues: the payment of the old age pension-type allowance to the entitled and his/her failure to comply with the obligation to pay tax on the income from such undeclared work. Therefore, this provision is also in breach of the requirements of the rule of law.<sup>37</sup>

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

## **For Conclusions**

*The changes have promoted the institution of ombudsman in Hungary becoming more efficient and more European, and today the results at hand confirmed the direction of those changes.* The active, sometimes even hyper-active functioning of the ombudsman and other internal correction mechanisms is not aimed at curtaining off Hungarian democracy, in search of its own ways, from the external, international correction mechanisms; it offers quicker, closer to the problem itself, more efficient solutions and it may take the edge off the too frequent activities of various international forums trying to chip at the legitimacy of the Hungarian constitutional system. However, we should not be shy: we are a new democracy searching for our own way, trying to find our own equilibrium.

<sup>37</sup> See Motion AJB-4744/2012 – <http://www.ajbh.hu/allam/jelentes/201204744Ai.rtf>

Between 1990 and 2011 Hungary was the least changing among the new democracies; we did not even have a new constitution. The years 2010-11 have brought about a radical change: time has come for extremely quick and substantial changes where the internal instruments of finding an equilibrium have become more important than ever before – it all has been reckoned with by the Basic Law: they have been strengthened and given new functions (as in the case of the ombudsman), their elected tenure in office has been extended, or the number of their members has been increased (the number of the justices of the Constitutional Court from eleven to fifteen).

What effect will have on all this the new Parliament, consisting of fewer members but completed with the representatives of ethnic minorities, that will be elected in 2014 with the participation of significant number of Hungarian citizens living abroad? As far as the ombudsman is concerned, I think it will be *even more appreciative of the role played by the commissioner for fundamental rights as an institution assisting the Parliament and controlling the government and the public administration*. In my opinion, decision-makers should pay more attention than before to the messages of a more vocal ombudsman in their search for equilibrium. The ombudsman shall avoid being stuck in an “ivory tower” and strengthen cooperation with the non-governmental organizations<sup>38</sup> – the actors are formed by the new rules, and the actors shall form the roles they are playing, adjusting to the public’s expectations.

<sup>38</sup> On 1 October 2012 the post of Coordinator for Civil Affairs was created in the Office of the Commissioner for Fundamental Rights – this post is filled by Dr. Timea Csikós, legal officer, whose main task is to maintain contact with non-governmental organizations and document the results of this interaction (see p. 114).



**Dr. Barnabás HAJAS** graduated in law from Pázmány Péter Catholic University, Budapest, in 2000. Since 2002, he has been working for the ombudsman's office. He is senior lecturer at the Constitutional Law Department of the Faculty of Law and Political Science of Pázmány Péter Catholic University. His Ph.D. thesis focused on the current theoretical and practical issues of freedom of assembly. Currently he works as Head of the Public Law Department of the Office of the Commissioner for Fundamental Rights.



**Dr. András MAGICZ** graduated in law from the University of Miskolc in 1996. Between 2000 and 2011 he was the Deputy Head and Head of the Office of the Parliamentary Commissioner for National and Ethnic Minorities. He works at the Office of the Commissioner for Fundamental Rights since 2012 as Deputy Head of the Public Law Department.



**Dr. Lóránt CSINK** is senior advisor at the Office of the Commissioner for Fundamental Rights and a lecturer at the Constitutional Law Department of the Pázmány Péter Catholic University. He graduated from Károli Gáspár University of the Reformed Church in 2003 where he received his Ph.D. in 2008 (on the separation of powers and the president's role in parliamentary states). He has been working at the Office of the Commissioner for Fundamental rights since 1 May 2012.

## 3.2.1.

## List of the Petitions to the Constitutional Court

*I. Ex officio*

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

*II. Upon submission*

	Date of initiation	File	Subject	Decision of the CC	Reaction of the legislator
1.	13/03/2012.	AJB-2302/2012	Transitional Provisions of the Basic Law	Annulment	Amendment to the Basic Law
2.	22/03/2012.	AJB-1961/2012	Free legal aid concerning the submission of constitutional complaint	Annulment	None
3.	30/03/2012.	AJB-2834/2012	Government decree on student contract	Annulment (due to formal causes)	Amendment to the Act on Higher Education
4.	27/04/2012.	AJB-2709/2012	Rights of minorities	Rejection	Amendment to the Act on Minorities
5.	04/05/2012.	AJB-3299/2012	Election of the Media Council	In process	Amendment to the Media Act
6.	10/05/2012.	AJB-2303/2012	Party and campaign financing	In process	None

7.	24/05/2012.	AJB-4159/2012	Family protection	Annulment (previously the entry into force was suspended)	None
8.	26/06/2012.	AJB-2332/2012	Rules of taxation	In process	None
9.	28/06/2012.	AJB-4436/2012	Insulin supply for people suffering from diabetes	In process	None
10.	19/07/2012.	AJB-2523/2012	Public education	In process	None
11.	24/07/2012.	AJB-2883/2012	Vocational training	In process	None
12.	27/07/2012.	AJB-2638/2012	Transformation of the Social Service System of the Disabled	Partial annulment	None
13.	10/08/2012.	AJB-2784/2012	Act on churches	In process	None
14.	30/08/2012.	AJB-2834/2012	Act on higher education (student contract)	In process	None
15.	04/10/2012.	AJB-6347/2012	The right of the Government Control Office to challenge contracts at courts	In process	None
16.	04/10/2012.	AJB-4744/2012	Pensions granted before the age of retirement	In process	None
17.	02/12/2012.	AJB-5695/2012	State property of documents previously owned by the Institution of Political History	In process	None
18.	14/12/2012.	AJB-6468/2012	Protection of labour legislation of pregnant women	In process	None
19.	14/12/2012.	AJB-7505/2012	Limitation of arbitration	In process	None
20.	21/12/2012.	AJB-7342/2012	Prohibition of the Operation of the Slot Machines	In process	None

*III. Petitions initiated before 2012 and upheld later on*

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

*IV. Petitions rejected or refused*

	Date of initiation	File	Subject	Date of rejection
1.	19/04/2012.	AJB-2467/2012	System of criminal records	18/09/2012.
2.	15/02/2012.	AJB-1874/2012	Omission concerning the Act on strike	26/06/2012.
3.	16/02/2012.	AJB-2078/2012	Dustbin scavenging	26/07/2012. Refusal (the local government withdrew its decree)
4.	27/04/2012.	AJB-2709/2012	Rights of minorities	04/12/2012.

*V. Petitions the CC declared to be well-founded*

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

*VI. Petition maintained*

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

### 3.3.

#### Projects

The Commissioner for Fundamental Rights Prof. Dr. Máté Szabó launched a new working method in 2008. He examines **every year topics** which are **especially important for the society** and the **enforcement of the rule of law** and have a **particular significance from the point of view of rights and freedoms**.

Within these defined fields, he initiates special projects which have particular focus and consideration within the Ombudsman office (initiating particular inquiries, etc), in the media and the public presentation of the Commissioner. Since there is no independent parliamentary institution for the protection of the rights of children, the Commissioner operates during his mandate also as an ombudsperson for children's rights.

*Projects in 2012 were:*

- **Child-Friendly Justice**
- **Penitentiary System with a Human face**
- **situation of Lawyers**
- **Dignity of Labour**
- **Losers of the Crisis**

#### 3.3.1.

##### Project on Children's Rights – Child-Friendly Justice

There is still no special ombudsman for children's rights in Hungary; but the Commissioner fulfilled this role effectively launching a special, proactive working method in 2008 with annual children's rights projects. The new Ombudsman Act entered into force in 2012 (*Act CXI of*



2011 on the Commissioner for Fundamental Rights), which gives even higher priority to the protection of children's rights and provides that in the course of his activities the Commissioner for Fundamental Rights shall pay special attention – among others – to the protection of the rights of children.

According to statistical data on Hungary 2012

- more than 200 000 children were registered as “at risk”
- more than 10 000 children were in the criminal justice system
- about 6000 children/year become victim of a violent crime
- 30 children/year die as a victim of physical abuse.

Within the framework of the Children's Rights Project<sup>39</sup> the Ombudsman defines a special area of interest every year. In 2012, following the agendas of the European Union, the Council of Europe and the European Network of Ombudspersons for Children (ENOC) he launched a Project on Child-Friendly Justice with special focus on child victims, mediation, juvenile justice and youth crime prevention. Choosing this topic was very reasonable since thousands of children may get involved with justice systems, whether as victims, defendants, witnesses or asylum-seekers, or when their parents divorce and disagree over custody.

**In 2012 Ombudsman Máté Szabó initiated ex officio, comprehensive inquiries into the following topics concerning child-friendly justice:**

1. system of child victim support
2. how does Hungary fulfil its international legal obligations concerning child-friendly justice in general (also the conditions in juvenile detention facilities)
3. mediation and other forms of restorative justice, use of alternative sanctions
4. youth crime prevention, possibilities of reintegration
5. general evaluation of youth justice system (criminal, civil and administrative procedures) from the aspect of children's rights.

The basis of the Ombudsman's investigations was the *Council of Europe's Guidelines on child -friendly justice* adopted in 2010 and the *Council of Europe's Strategy on the rights of the child “Building a Europe for and with children” 2012–2015*. The Guidelines on child-friendly justice aim to enhance children's

<sup>39</sup> For the contents and English Summary of the Hungarian publication of the Project see the Appendix at pp. 156–158.

access to and adequate treatment in justice. In the current strategy the program focuses on the following main objectives: promoting child-friendly services and systems; eliminating all forms of violence against children; guaranteeing the rights of children in vulnerable situation and promoting child participation. It should be emphasized, that in accordance with Art. 1 of the *UN Convention on the Rights of the Child (UN CRC)* every human being is a child under 18 requiring special protection and guarantees. The 10. General Comment of the CRC Committee (2007) states that the reaction given to an abuse of law made by a child shall be proportional with age, maturity, necessities, circumstances of the children, and has to take into account the long-term interests of society (education, reintegration, not mere punishment).

In May 2012 the Ombudsman expressed his concerns in a press release over the draft Hungarian Criminal Code which provides the lowering of the minimum age of criminal responsibility from 14 to 12 years in case of committing serious, violent crimes. This may result in the deprivation of the child's liberty if she/he is found



guilty. Previously, in 2010 the Ombudsman had stated that the provisions of Minor Offences Act then in force were contrary to the right of children to care and protection, as well as to their right to liberty. The contested provisions lifted the prohibition on the confinement of juvenile offenders and even permitted that fines imposed on them be converted to confinement. Since, in spite of these warnings by the Ombudsman, the new Regulatory Offences Act, effective as of 15 April, still allows the above sanctions, the Commissioner for Fundamental Rights has requested the Constitutional Court to review certain provisions of the Act. As Prof. Dr. Máté Szabó has argued several times, problems of “deviant” children can be solved primarily nor with criminal sanctions, but with the close and dialogue-based cooperation of child care professionals, social workers, child care institutions, health care professionals, schools etc. to support prevention emphasizing children's best interest and respecting their universal rights.

The opening event of the project, titled “*Justice with a Human Face – fundamental rights in and out*” was organized in our Office on 24 April 2012, as a joint event of another project focusing on detainees' rights. Among the participants were the Attorney General, the Minister of State for Justice from the Ministry of Public Administration, representatives of the Office



of Immigration and Nationality, the Hungarian Helsinki Committee, UNICEF Hungary, child care professionals and psychologists. Main issues on the agenda were the situation of juveniles in penitentiary institutions, psychological effects of imprisonment and their long-term consequences. The Ombudsman's colleagues presented the main finding of the latest reports on inquiries carried out in 2012 into several penitentiary institutions for juvenile offenders.



As in previous years, we preserved the tradition of organizing the project's closing conference as part of the events celebrating the Universal Children's Rights Day in November. On 22 November 2012, the Office of the Commissioner for Fundamental Rights hosted this international conference titled "Child-friendly justice – from Hungary to Europe". Due to the financial and professional support given by the Council of Europe's special program on children's rights, we had the possibility to invite high level experts from the Council of Europe, the European Commission, the UN CRC Committee, the Children's Rights International Network and among other Hungarian specialists (e.g., National Judicial Council, UNICEF Hungarian Committee) to address the participants. The conference also aimed to discuss the findings

of the inquiries carried out this year by the Ombudsman and to give publicity to more than 90 child care experts, police officers, judges, prosecutors, academics, and ministerial representatives.

The *Commissioner for Fundamental Rights as a national focal point of the Council of Europe* contributes to raising awareness of the institution's work and campaigns promoting the ratification of the relevant international conventions. A separate menu item on Council of Europe related documents was created on our webpage for children ([www.gyermekjogok.ajbh.hu](http://www.gyermekjogok.ajbh.hu))

The Commissioner for Fundamental Rights continued his work in the Monitoring Committee of the Strategy “Making Things Better for our Children” set up by the Ministry of Human Resources. Besides, Prof. Dr. Máté Szabó actively participated in the working groups on child-friendly justice and domestic violence set up by the Ministry of Public Administration and Justice.

The Ombudsman and his colleagues have been regularly participating in the so-called *Telekom Children's Island*. This year we set up a tent jointly with UNICEF Hungarian Committee with the aim to establish direct contacts with children and their parents and to enhance their legal consciousness by several games and competitions. This year, having regard to the newly integrated ombudsman institution, we included games to learn about minority rights and environmental protection.

In 2012 Poland was celebrating the 100<sup>th</sup> anniversary of the setting up of The Orphans' Home and the 70<sup>th</sup> anniversary of the death of Janusz Korczak, the Polish-Jewish educator, children's author and paediatrician. To mark this occasion, a memorial tablet dedicated to Janusz Korczak, killed in the Treblinka extermination camp, was inaugurated in our Office on International Human Rights' Day, 10 December 2012. The honour guests and speakers of the event were H.E. Ilan Mor, Ambassador of Israel, H.E. Roman Kowalski, Ambassador of Poland, Zsolt Németh, Minister of State of the Ministry of Foreign Affairs of Hungary and Péter Feldmájer, President of the Federation of Hungarian Jewish Communities. At the ceremony Ambassador Kowalski thanked Ombudsman Máté Szabó for his initiative and presented to him the Gold Cross of Merit awarded by the President of Poland in recognition of his merits in strengthening human rights and developing Polish-Hungarian relations in this field. The Janusz Korczak memorial plaque has been placed in the hall named after him. The plaque was un-



veiled by Máté Szabó and H.E. Marek Michalak, Ombudsman for Children of Poland.

The project in numbers:

- *On the spot inspections*: 4 in penitentiary institutions for juvenile offenders; 1 concerning segregation (in Jászapáti), 1 (in a nationality school, still in process) 2 in Fót Children's Home;
- *Questions/complaints sent via our webpage created for children*: **126** ;
- *Events organized by Ombudsman*: 5 (2 conferences, 1 inauguration of memorial plaque, 1 participation on Telekom Children's Island, 1 participation on International Day of Deaf event) ,
- *Presentations made on events and conferences by the Ombudsman/staff*: 27 (7 on conferences abroad);
- *Participation of the Ombudsman/staff on international events, seminars*: **42**
- *Petitions to the Constitutional Court*: **4**
- *Recommendations in reports*: **36**
- *Participation in national working groups*: Working Group on Child-Friendly Justice/Ministry of Public Administration and Justice/, Working Group on Domestic Violence/Ministry of Public Administration and Justice/; Working Group on Human rights/Ministry of Justice/, Monitoring committee of the Strategy of "Making Things Better for our Children"/Ministry of Human Resources
- *Cooperations/partnerships*: European Network of Ombudspersons for Children (full member); EUROCHILD (associate member); Blue Line Child Crisis Foundation (Kék Vonal Gyermekkrízis Alapítvány (Joint events in autumn 2012)

### Our senior staff member responsible for the Project



**Dr. Ágnes LUX** graduated from Eötvös Loránd University of Budapest in political science (2005) and law (2010). Since 2008 she has been working for the Office of Parliamentary Commissioners / Office of the Commissioner for Fundamental Rights, where she has been head of the Ombudsman's children's right project since 2010.

## 3.3.2.

## Project on the Penitentiary Institutions of Hungary

The Commissioner for Fundamental Rights paid particular attention to the human dignity and the rights to life and humane treatment of those limited in their freedom (persons in custody, convicted, detained under alien policing) in 2012, as well, for one cannot dispute the actual and/or perceived exposedness of detainees.<sup>40</sup>

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

**Press release: 24/07/2012**

***Children's home, juvenile correctional centre or prison? The Ombudsman's inquiry in the special children's home in Fót***

*The special children's home in Fót reminds the Commissioner of a law enforcement institution. On the basis of the on the spot inquiry and those laid down in the institution's documents Máté Szabó has found that in the institution, which cares for children with psychological problems, measures restricting liberty of the person are applied even in the absence of dangerous conduct as defined in the Child Protection Act.*

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

The penitentiary system is an important element of the social and political control mechanisms in the broad sense. Beside law enforcement, jurisdiction,

<sup>40</sup>For the contents and English Summary of the Hungarian publication of the Project see the Appendix at pp. 159–163

civic education and the normative structures (values, ethics, model ways of life), the penitentiary system is also a strong sanctioning instrument. In a state governed by the rule of law, penalty should also serve behavioural correction as an instrument of education and re-socialization.

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

The phenomenon of the “crisis of crisis management” is manifesting itself in law enforcement, as well. Law enforcement is using the penalty of imprisonment more and more; however, since additional funding for law enforcement is scarce or non-existent, the penitentiary system is chronically overcrowded,<sup>41</sup> inhumane and degrading. What the over-burdened and under-paid personnel neglects is exactly the function of education and re-socialization. Therefore, an ever-growing number of convicts may become repeat offenders or carriers of prison abuse; special treatment requirements vis-à-vis juvenile delinquents and those in custody pending trial are rarely if ever met. Crisis management institutions themselves may be over-burdened by the crisis to an extent when functional anomalies and troubles may arise.

<sup>41</sup> Utilization ratio of domestic penal institutions between 2007 and 17 December 2012:  
2007 – capacity (number of detainees): 11,252; actual number of detainees: 14,353;  
utilization ratio: 128%

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

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

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

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

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

**Press release: 10/08/2012**

***Prisoners in overcrowded cells, on three-storey bunk beds – the Ombudsman on circumstances in two prisons***

*Máté Szabó has found the circumstances in the Pécs and Szolnok prisons inhumane and humiliating and asked the Chief Commander of the Hungarian Prison Service to take steps. In both places there are plans for improving the situation but neither has the financial means to realise them.*

**Press release: 31/05/2012**

***The Ombudsman on the Mandatory Employment of Detainees***

***It should not be of a coercive or punitive nature. There should be unified legal regulation, including that of the wages. Social security entitlements should be included. These are, among others, the points raised by the Commissioner for Fundamental Rights with the competent Minister in connection with the employment of convicted persons, mandatory since 1 January.***

*According to the amendment of an Act effective as of 1 January 2012, convicted persons have to perform work. At present detainees are employed within penitentiary institutions, in economic companies of penitentiary institutions and/or in outside business organisations. Máté Szabó Ombudsman has conducted an ex officio inquiry to find out whether such work qualifies as coercion or as mandatory work and analysed the labour law and social security implications of such employment.*

*Having reviewed the relevant regulations Máté Szabó Ombudsman has found that pursuant to the observations of the International Labour Organization, convicted persons may perform work in other business organisations if they give their written consent, although this voluntary consent is rather of a formal character, since the conditions are far from being similar to those in free labour law relations.*

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

This project was closely intertwined with the project on the rights of lawyers and their clients. It was prompted by practical experience, a typical prob-



lem of lawyers: legal counsels having difficulties entering penitentiary institutions and having to wait several hours before they can speak to their clients. Infrastructural conditions for maintaining contact with the detainee are not duly provided in every prison, either. On the other hand, law enforcement's demand to have the institutions' special discipline observed is also natural.

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

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

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

**Press release: 13/09/2012**

***There is worse than prison: Temporary hostel of restricted access, Nyírbátor – on the spot inspections of the ombudsman***

***Buildings in terrible conditions, plastic bottles used instead of toilets, abused persons in detention, continuous violations of human dignity.***

***Prof. Dr. Máté Szabó ombudsman asked the General Prosecutor, the Chief of Police of Hungary and the Minister of Internal Affairs for intervention after inspections made on the spot at Nyírbátor temporary hostel of restricted access.***

*At Nyírbátor temporary hostel of restricted access mainly single men, illegal migrants coming from countries outside of Europe are held in custody for a period no longer than 12 months. During their two-day visit, members of the staff of the Commissioner for Fundamental Rights spoke with 62 foreigners out of 207 and with members of guard personnel. As to their general impressions, living conditions of foreigners accommodated in building „A” practically were similar as in a prison, while those accommodated in building „B” were living under even worst conditions, this building under present circumstances is unsuitable for detention.*

*Most of the staff members of the temporary hostel of restricted access speak no foreign languages, thus persons in detention had to communicate with gestures. Verbal abuse of detainees is part of the guarding-routine and active abuse is not uncommon. According to the house-rules, detainees are not allowed to bring bread to their cells, a rule being controlled through inspections including mouth-examination, constituting a degrading treatment.*

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

We can conclude that the project was a success. It made possible to explore and understand the fundamental rights context of penitentiary detention and detention under alien and asylum policing and to convey our observations to those who are able and willing to act in this cause. If they come through, the exposure of problems, fundamental rights conflicts and dilemmas by the Ombudsman and the formulation of opinions based on fundamental rights argumentation have not been in vain.



### **Our senior staff member responsible for the Project**

**Dr. Erika PAJCSICSNÉ-CSÓRÉ** received her law degree at the Faculty of Law of Eötvös Loránd University of Budapest in 1983. During the period of 1995–2011, she was a senior counsellor and the head of department of the Office of the Parliamentary Commissioner for Civil Rights. Since 1 January 2012 she is the head of Inquiries Department 2.

## 3.3.3.

## Project on the Situation of Lawyers

In the wake of his project on the penitentiary system (inquiring into the basic legal inherence of the detention of convicts in penal institutions and foreigners under alien policing and asylum procedures, and into the rights of lawyers and their clients), the Ombudsman started his *Project on the Situation of Lawyers and the Protection of the Rights of Lawyers and Their Clients* in 2012.<sup>42</sup> The Ombudsman's comprehensive inquiries focused on the implementation of the rights of lawyers and their clients, the practices of bar associations and the constitutional monitoring of the related regulations.

**Press release: 02/05/2012**

***On the new text of the oath of lawyers***

*The stipulation of secrecy has been eliminated from the current oath of lawyers, which is contrary to Hungarian legal traditions; furthermore, it can destabilise the confidence-based relationship between clients and lawyers – the Ombudsman has found in the first report of his comprehensive inquiry into the profession of lawyers. Moreover, the fact that the oath confuses public law officials and lawyers working in the private sphere gives the impression that members of the profession of lawyers form part of the body of civil servants.*

The new Basic Law does not contain any particular provision on the legal profession. In its chapter *Freedoms and Fundamentals*, the Basic Law deals with some (judicial) procedural guarantees (Article XXVIII) emphasizing that anyone indicted in criminal proceedings shall be entitled to defence at all stages of such proceedings and defence counsels shall not be held accountable for their opinions expressed in defence arguments.

The role of lawyers, the activities of legal and defence counsels are of major importance not only for the proper functioning of the justice system, ensuring the right to legal defence, but, in general, from the point of view of the protection of individual fundamental rights, as well. Access to legal representation and defence, operation of lawyers without fear and outside influence, equality of arms and ensuring contact are all very important requirements.

<sup>42</sup>For the contents and English Summary of the Hungarian publication of the Project see the Appendix at pp. 159–163

**Press release: 19/09/2012**

***The Ombudsman on the strict liability of lawyers***

*Access to defence and representation by lawyers, the equality of procedural legal instruments and the operation of lawyers without fear and outside influence are of primary importance from the point of view of the protection of the fundamental rights of individuals. These requirements were put at risk by the amendments to Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings which entered into force on 1 March 2012, therefore the Ombudsman started an ex officio inquiry in the course of which he requested information from the Minister of Public Administration and Justice and the President of the Hungarian Bar Association.*

Just as in the case of previous inquiries, the rule of law and the requirement of legal certainty (Article B, Paragraph (1) of the Basic Law), the enforcement of the right to fair procedure (Article XXIV), i.e. transparency, unimpeded operation and professional quality control by the bar, are of paramount importance from the point of view of practice and regulation.

The right to defence is substantial both as an individual right and from the point of view of the law's institutional protection aspect and the fulfilment of the obligations by the state.

**Press release: 26/09/2012**

***Regulation of the appointment of defence lawyers in need of reform – findings of the Ombudsman***

*If in the pre-trial stage of criminal proceedings the accused person is unable to pay for the services of a lawyer of his or her own choice or the lawyer prescribed by law, the defence counsel for the accused is chosen by the same authorities which are otherwise interested in the success of the accusation. The present system of appointing lawyers in such a manner does not serve the effective enforcement of fundamental constitutional rights, in particular the rights of defence – states Máté Szabó Ombudsman in his recent report on a comprehensive inquiry into the legal profession.*

The new Ombudsman Act (CFRA), quite reasonably from the perspective of constitutional law, does not entitle the Commissioner for Fundamental Rights to investigate, either *ex officio* or acting on a complaint, the activities, practices and decisions of lawyers; however, it was not even needed for laying the jurisdictional foundation of the project.

**Press release: 26/09/2012**

***The Ombudsman on services providing legal aid***

***Access to law is one of the most important guarantees of the enforcement of the rule of law, it is however insufficient to ensure it only on a constitutional level. For those who do not possess sufficient financial resources the state shall provide legal aid so that they be able to use legal assistants necessary for the effective enforcement of their rights. It is not only by the intervention of a legal assistant, out of court, that the burden of courts can be reduced but also by preventing litigious situations, for example by receiving clients and giving clients timely and personalised legal information. In his inquiry the Commissioner for Fundamental Rights focused on the enforcement of the principle of the rule of law, on the requirement of legal certainty derived from it and on due process.***

By virtue of Section 18, Subsection (1), Paragraph d) and Subsection (4) of the Act on the Commissioner for Fundamental Rights (CFRA), however, the Commissioner for Fundamental Rights is entitled to inquire *ex officio* into the activities of public bodies with mandatory membership, such as bar associations.

Pursuant to the CFRA, *ex officio* proceedings aimed at eradicating the improprieties related to fundamental rights, arisen in the course of activities of the authorities were extended to investigating improprieties affecting larger groups of citizens, the enforcement of fundamental rights and to initiating legislative amendments with the competent ministries.

**Press release: 20/12/2012**

***On the decision of the Constitutional Court concerning legal aid***

***The Constitutional Court, approving the petition filed by Ombudsman Máté Szabó, in its decision of 18 December 2012 declared as contrary to the Basic Law and annulled the provision of the Act on Legal Aid which excluded that persons in precarious social situation submitting a constitutional complaint receive legal advice and legal representation financed from state budget.***

In carrying out his task, the Commissioner for Fundamental Rights closely cooperated with the bar associations, the Hungarian Helsinki Committee, and tried to involve the competent ministry, the leaders of the penitentiary institutions, the prosecution and the police, as well.

The project summarized the complaints received from citizens and prepared the following reports:

1. On changing the text of the oath of lawyers;
2. On the practice of appointed counsel;
3. On the current situation of legal aid provided by the state;
4. On the necessity of fundamental rights training of lawyers;
5. On the problems related to the regulation of the management of deposits in the care of lawyers;
6. On clarifying some elements of the disciplinary proceedings against lawyers;
7. On fines imposed on lawyers by the registry court;
8. On the circumstances of maintaining contact between lawyers and their clients;
9. On the liability insurance of lawyers.

The project was intended to hold a mirror to the state, the legal profession and the society so that those in need and their legal representatives could exercise their fundamental rights at the highest possible level.

During the implementation of the project, special attention was paid to the lawyers' ability to operate without fear and unwarranted outside influence and to the equality of procedural right's instruments.

The project was announced at a press conference held by Máté Szabó in March 2012. On that occasion, János Bándi, President of the Hungarian Bar Association, Bence Rétvári, Secretary of State of the Ministry of Public Administration and Justice, and András Kristóf Kovács, Co-President of the Hungarian Helsinki Committee also shared their thoughts on the subject. State Secretary Rétvári promised that the findings and recommendations of the project would be used in the legislative process. The project was closed on 26 September 2012 with a high-level professional round-table conference that was attended, beside the aforementioned invitees, by Péter Darák, President of the Curia and the representative of the Supreme Prosecutor's Office, and with a press conference summarizing its outcome.

**Our senior staff member responsible for the Project**

**Dr. Péter SERES** graduated from the Faculty of Law of Eötvös Loránd University in 1995. He worked in one of the biggest law firms of the country till 2005, first as an associate then, from 1998, as a partner. From January 2006 he has been working at the ombudsman's office as a senior legal advisor in charge of civil and administrative cases. Beside the highly recognized Project on Lawyers (2012), he is participating in several other projects, as well (e.g. the project on "hate speech").



**Dr. Nikolett DÓCZÉ** graduated from the Faculty of Law of Szeged University in 2006 and from the Institute of Postgraduate Legal Studies of Eötvös Loránd University in Budapest in 2009 (majored in EU law). Between 2006 and 2009 she worked as an associate in a law firm specializing in international law. She received her mediator diploma from Lege Artis Adult Education Institute in 2011. She has been working in the ombudsman's office since 2009. She is specializing in education, discrimination, equal opportunity and national minority issues and in issues related to lawyers and various areas of civil law.

## 3.3.4.

## The 'Dignity of Labour' Project



Work plays an important role throughout the most part of people's life. Individuals often dream about having a work life that will be rewarding and meaningful; at the same time, people have to struggle with disappointment in their work lives as they seek to adapt to situations in which they often have little control

or autonomy. For many people, working is the "playing field" of their lives, where their interactions with others and with existing social mores are most pronounced, with opportunities for satisfaction and even joy, as well as major challenges and, at times, considerable psychological and physical pain. Consequently, there is no doubt that the working activity or its absence, that is, unemployment is a major concern in people's lives. The persisting crisis and the increasing unemployment not only in Hungary but all over the world drew the attention to the importance of employment.<sup>43</sup>

In 2012, a number of changes were introduced in the field of the regulation of employment relationships. As of 1 January 2012, the Basic Law has been in force replacing the former Constitution. The new Basic Law pays special attention to the role of work, setting out several new elements in the rights and obligations related to working activity. In July, the new Labour Code entered into force which contains a number of novelties, ensuring, however, fewer safeguards for the employees from a certain aspect. As of 2013, the government introduced a new community employment program whose objective is to ensure work to 200,000 people.

As a consequence of what has been described above, the Commissioner for Fundamental Rights launched a project entitled as "Dignity of Labour." The project examined the implementation of the right to work and of other fundamental rights in the world of work, such as the right to human dignity, compliance with the requirements of equal treatment and of the rule of law.

<sup>43</sup> For the contents and English Summary of the Hungarian publication of the Project see the Appendix at pp. 164–166

*On the spot investigation of  
the Commissioner for Fundamental Rights*



Within the project, the inquiries took two directions. One of them focused on keeping to the requirement of equal treatment. Since in compliance with the law on establishing the procedure and competence of the Commissioner for Fundamental Rights, the Commissioner shall pay special attention to the rights of the most vulnerable social groups, therefore the he principally focused on the employment opportunities of the people belonging to the different protected groups such as

- women and mothers with small children,
- career starters,
- homeless people,
- people with disabilities.

The ombudsman examined the employment of women and mothers (parents) with small children in different alternative forms – like teleworking and part time work – in both the public and the private sector. Employment opportunities for career starters were also explored. In addition, the ombudsman surveyed what opportunities and assistance were available to homeless people and detained people to help them return to work. Furthermore, the project examined the impact of benefits given to employers employing people with disabilities, and the practical implementation of integrated employment for these people.

**a) Work opportunities of women and mothers (parents) with small children**

Persons belonging to protected groups, especially the chances for employment of mothers (parents) with small children, their opportunities for part-time employment or teleworking and their further training are among the main topics of the 'Dignity of Labour' project.

The inquiry aimed at assessing the possibilities of part-time employment for mothers with small children in the public sector, the range of courses the labour centres organised for this specific group, the practice of labour recruitment and the relevant problems and practices in the private sector. The employment of parents with small children was more difficult because of the lack of jobs, the rare possibility for non-typical employment forms (such as teleworking and part-time work) and the refusal by employers of flexible working hours. One of the biggest obstacles for the employment of women and parents with small children was that they could not arrange care for their children for the time they are at work. In his previous reports the Commissioner stated that the system of daytime care of children was dysfunctional in many parts; there were not enough places in the crèches and kindergartens or they were overcrowded. Neither did the opening hours of these institutions fit the working hours of the parents. The employment rate of mothers with small children in Hungary was the lowest employment rate among the EU Member States in the case of the occupation of those who bring up children under 3 years (14 %). The revealed circumstances had a great impact on the employment opportunities of women, and the obstacles hindering them to return to work may violate their right to work. The Ombudsman requested the Minister for National Economy to pay special attention to the improvement of the opportunities of women in the labour market.

**b) Employment opportunities for career starters**

Two inquiries were launched concerning the career starters. On one hand, the Commissioner generally reviewed what opportunities the career starters may have without prior work experience on the labour market and what kind of assistance they receive in order to get a job as soon as possible. On the other hand, the Commissioner examined if the competent special Ministries assisted the employment of the career starters who involuntarily stayed outside higher education in the course of the preparation of the higher education reform and the establishment of the envisaged number of future students. It was the subject of a separate inquiry to see if illegal child work exists in Hungary and how the competent organs act against it.

**Press release:** 03/09/2012

***The Ombudsman on the employment opportunities of young people unable to get into higher education***

*Young people preparing for their final examination but unable to get into higher education as a consequence of changed student quotas did not – and still do not – have at their disposal career orientation possibilities related to further education or to choices of professions or jobs, clear and easily accessible information material, or professional guidance on the basis of which they could make responsible and informed decisions. The Ombudsman attributes this to a failure of the competent organs and says that this situation has brought about a permanent and present danger of the infringement of legal certainty; furthermore, it carries in itself the permanent and present danger of infringement of the right to the free choice of a job or profession of young people starting their career.*

**c) Employment opportunities for the homeless in Hungary**

Also two inquiries were launched concerning the employment opportunities of homeless people. In the first half of the year, the Commissioner for Fundamental Rights inquired into the employment opportunities of homeless people in the capital to see what kind of assistance they receive in order to return to the world of work. In the second half of the year, he extended his inquiry to the homeless people in the countryside in order to get a thorough picture about the situation and employment opportunities of homeless people.

Pursuant to Article 18(4) of the Ombudsman Act within the 'Dignity of Labour' project the Ombudsman started a comprehensive *ex officio* inquiry aimed at preparing a situation report from a fundamental rights point of view on the employment opportunities of the homeless and on the possibilities and problems of their integration or reintegration into the world of work.

As a first step of the comprehensive inquiry the Commissioner requested relevant information and data from the Minister of National Resources, the National Employment Service, the Local Government of Budapest and the Local Employment Office. In parallel, information was also gathered in a more informal way, via personal consultations, from the civil representatives of homeless-service who had practical experience in the field (the '**Oltalom**' **Charity Society, the Public Foundation for the Homeless, the Social Methodology Centre of Budapest, the Hungarian Maltese Charity Service and the Shelter Foundation**).

Concerning the employment of the homeless and their access to work, the professionals of social services pointed out that most often the greatest obstacle was their lack of employability. Due to their mental and physical condition, they need thorough and careful social assistance and mental health treatment to become employable. Those who become employable, however, sooner or later succeed to reintegrate into the labour market. The professionals also highlighted the importance of employment in the (social) institutions, the necessity of increasing the number of protected employment forms and, finally, the importance of gradual progression as a decisive criterion of effectiveness. Concerning the attitude of the homeless to work, they reckoned that they were basically willing to work. However, their inclination for looking for work and for performing work decreases in parallel with their state of socialisation.

Governmental answers showed that the employment system, in principle, meets the minimum criteria as defined by rules of law. On the other hand, complex and personalised solutions are missing from the inflexible system (which is also applied in a discriminatory way), therefore it is practically inefficient.

#### **d) The state of employment of people with disabilities in Hungary**

The employment of people with disabilities is an extremely complex task. Consequently, four inquiries were launched in this field. In the course of the first inquiry, the Commissioner considered the employment opportunities of people with disabilities, the legal context facilitating that and the forms of assistance in general. Following that, an inquiry into their working conditions, the opportunities for creating disability-friendly work places and the integrated employment opportunities of people with disabilities took place. The basis for employment is the insurance of adequate training. Consequently, the Commissioner paid special attention to that if proper education and vocational training are ensured for the people and with disabilities and if it is possible for the adults to participate in labour market trainings and vocational training services in the spirit of life-long learning in order to extend their eventually outdated knowledge with new competitive knowledge and vocation. In connection with one concrete complaint, the Commissioner also inquired into the obstacles of employment of people under conservatorship precluding legal competency.

*Press release: 24/07/2012*

***The Ombudsman on legal barriers to the employment of persons with disabilities***

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

On the one hand, the Ombudsman found that there was **progress** in the legal background concerning disabilities for instance in the following fields: educational and rehabilitation programs, measures for accessibility, institutions supporting the mentally handicapped, local community care and home care service, measures for independent life conduct and the special legal remedies enabling people with disabilities to enforce their rights. On the other hand, people with disabilities **still suffer** disproportionate exclusion from the labour market. The information from the Minister of National Resources, the job centres of all government offices, the National Employment Service, the Equal Treatment Authority and several civil society organisations representing the interests of people with disabilities were involved in the inquiry.

The Ombudsman stated that although **job centres** perform their tasks in accordance with the rules of law, there were not many people with disabilities who visited the centres. Most job centres did not present physical obstacles for people with disabilities; however, the level of accessibility was different for the various groups. Unfortunately, the legal regulation failed to define the concept of 'people with disabilities' and, as a consequence, there was no single system of registration concerning the employment of people with disabilities. The wage subsidy system needs to be substantially reviewed, as in its present form it does not provide an incentive for employers to employ people with disabilities. It would be extremely important to strengthen the cooperation of civil society organisations and job centres. The experience of the past years showed that people with disabilities are rather open to civil society organisations, which help their employment more effectively with their elaborate methodology and programmes. In the establishment of a complex system of rehabilitation one also needs to lay a much stronger emphasis on the education of people with disabilities.

Secondly, the project targeted to analyse the problems concerning fun-

damental rights in the field of public employment via inquiries pursuant to individual complaints. In this regard, the project aims at giving a general situation report on the issue.

- 1, on the spot investigations
- 2, aspects of equal opportunities
- 3, aspects of sustainability
- 4, individual complaints
- 5, comprehensive systemic situation

### ***The Ombudsman on community employment***

***Press release: 04/10/2012***

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

***Press release: 27/12/2012***

*A nine-month inquiry of the commissioner for fundamental rights has revealed improprieties constituting an infringement of the requirement of legal certainty and violating basic rights of persons in community employment. In his report Máté Szabó has urged the competent ministries to the early implementation of several measures to eliminate problems and improprieties concerning the regulation on community employment and its application.*

## **1. Preliminary report based on the experience of the on the spot investigations**

In the report prepared on the basis of the experience of the on the spot investigations in the settlements of Jászkarajenő, Gyöngyös, Bátorfőnyé and Mátyásfalva, the Commissioner highlighted four important problems that require the ombudsman's fast reaction:

- remuneration, payment of wages
- cancellation of trainings
- consequences of being out of public employment
- the anomalies arising from the control of the obligation to cooperate

## 2. Report on equal opportunities

The purpose of the complementary inquiry connected to the general inquiry was to establish if the public employment system has elements supporting the accomplishment of equal opportunities which facilitate the employment integration of the people of Roma nationality.

## 3. Report on sustainability



On one hand, the inquiry based on on the spot investigations as well sought to answer the question if the objectives of the “START” program (enhancement of local solutions in the field of food and energy supply, value creative work of productive nature) are fulfilled. On the other hand, it intended to gather the local government practices.

## 4. Inquiry based on individual complaints

The inquiry conducted at the Metropolitan National Civil Defence sought to answer the question if the public employment practice of the state organs complies with the provisions set out in the law on the national public employment program

## 5. Comprehensive systemic report

The purpose of this report was to draw a comprehensive map at national level about the system of public employment.

Thirdly, the inquiries examine the implementation of collective rights, especially the right to strike. In the framework of the Project, three petitions were submitted to the Constitutional Court regarding the right to strike, student contracts and the new Labour Code. In addition, a number of events were organized in the framework of the Project throughout the year.

*Press release: 17/10/2012*

*Constitutional Court petition concerning the Act on the termination of early retirement pension, on allowances paid before reaching the old age pension age limit, and on service allowance*

*According to the Commissioner for Fundamental Rights certain provisions of the Act on the termination of early retirement pension (paid before reaching the old age pension age limit), on allowances paid before reaching the old age pension age limit, and on service allowance are contrary to the principle of the rule of law, to the right to the protection of personal data, as well as to the right to social security. Taking into account the submissions of nearly 30 individuals and of two civil society organisations, Máté Szabó has initiated with the Constitutional Court the ex post review of the compliance of the Act with the Basic Law.*

### **Our senior staff member responsible for the Project**



**Dr. Adrienne ZEMPLÉNYI** graduated from the Faculty of Law of József Attila University in 1991. After having passed her bar exam, she received her second diploma from the Budapest University of Economics in 2003. In 2010 she graduated from the training programme of the US Federal Mediation and Conciliation Service as a mediator and arbitrator. She has been working at the ombudsman's office since 2004 specializing in labour, employment and social security issues. In 2009 she was the project leader of the Office's Project on the right to strike.

## 3.3.5.

## Project on the “Losers of the Crisis – in the Captivity of Legal Provisions”

Within the framework of the project entitled ‘The Losers of the Crisis’<sup>44</sup> the Commissioner for Fundamental Rights has been conducting several comprehensive inquiries about the effects of global crisis on human rights. Numerous phenomena and symptoms related to fundamental rights are brought about by this hard and critical period of economic, social and moral crisis. The Ombudsman has been mapping the treatment of uncovered problems and conflicts within the framework of the protection by state institutions.

The project aims to propose solutions on how eventually improper practices related to fundamental rights or the deficiencies and contradictions of the relevant legal background can be remedied with the Ombudsman’s human rights’ instruments.

Financial and economic difficulties affect the whole society adversely. They do however strike especially hard persons belonging to the most vulnerable groups of society, such as ethnic minorities, disabled persons, elderly people etc. The new Ombudsman Act, in effect as of 1 January 2012, defines as an important priority the enhanced protection of the rights of persons belonging to the most vulnerable social groups. Parliamentary Commissioners have always paid special attention to the protection of the fundamental rights of persons who, left by themselves, are not or only partially able to protect their rights. The project ‘Losers of the Crisis’ focuses on problems and negative processes affecting especially vulnerable social groups and on measures of the State in connection with which one can best show the constitutional improprieties in legal practice.

The crisis, however is a challenge not only for the vulnerable groups, but in some way, for all social groups, including middle-class families with children. These families are dealing with decreasing income and increasing debts, and are having difficulties to support their children.

As a result of the economic crisis the financial situation of citizens and of their groups is becoming less stable. There is a decrease in social solidarity, and under the impact of the new challenges it is becoming more and



<sup>44</sup>For the contents and English Summary of the Hungarian publication of the Project see the Appendix at pp. 167–172

more difficult for the State to play its role and to find the right objectives. So, the concept of crisis has multiple layers: besides the economic downturn, it also has impacts on the inclusive capacities of society. Times of financial crisis generally favour extremist ideologies and tendencies of scapegoating the most vulnerable groups for economic difficulties. Equally, within the concept of crisis, the ombudsman has to deal with the reactions of the State, which are often dysfunctional: the State tends to leave citizens alone by cutting back social transfers. In compensation, the concept of public order becomes central and tendencies of criminalisation prevail instead of resolving social problems. The State has to be very conscious when choosing methods to resolve financial problems and their consequences in society. Keeping in mind the European norms of rule of law and fundamental European values, the use of certain administrative and legal means and methods is not acceptable even in times of crisis. The Ombudsman has a double role to play: in addition to pointing out specific fundamental rights concerns, he has to call attention to these concerns and bring to the surface any bottom-up best practices and civil society initiatives.

**Press release: 12.12.2012.**

***The Commissioner on the Constitutional Court's Decision***

*Máté Szabó ombudsman holds the Constitutional Court's decision of 12 November exemplary in terms of the enforcement of the rights of the affected vulnerable people and the protection of fundamental rights in Hungary in general. The Constitutional Court declared unconstitutional and annulled the provision of the Minor Offences Act on the basis of the petition of the Commission for fundamental rights, which qualified the permanent living in the public place as a minor offence. The Court annulled those legal provisions as well which authorized the local governments to pass a decree for the definition of finable anti-social behaviour.*

**The main focuses of the project are the following:**

*I. „Guilty poor – guilty minorities”*

Within the framework of the project the Ombudsman has been examining the trend towards a *stricter regulation of the usage of public space*, and in particular the fundamental rights evaluation of homelessness, begging and scavenging in a changing legal environment. Special emphasis is laid on the increase of *ethnic and social prejudice*, and on forms of discriminative behaviour, as well as on the responses of the State, or the lack thereof, in strained socio-economic crisis and conflict situations.

Economic crisis – as shown by several historical events – enhances extremist ideologies and ideologies of exclusion. In this context, based on the work of previous projects, the ombudsman has to put on his agenda the acts restricting the usage of public areas again. Such regulations give room for too broad interpretation and authorization for local governments to sanction the improper use of public places and thus they infringe the constitutional rights and human dignity of the relevant vulnerable group.

It is beyond any doubt that the State is obliged to care for citizens in severe need, while respecting their right to human dignity. As a principle, the decision-makers have to keep in mind that homelessness on its own cannot, in any circumstances, justify solutions under criminal law. It has to be stressed again: such regulations and sanctions are neither effective nor preventive but only suitable for further discrimination and humiliation of these people. Living on the streets is the result of a serious social crisis situation and generally it does not depend upon the free choice of the individual. Homeless people have no own private sphere and often no other alternative than living on the streets.

In the last two centuries, attempts to tackle prejudice and verbal and physical hate crimes with legal instruments seemed to fail. It is a great problem that regulations passed in order to step up against extremist groups cannot be effectively used in practice. Therefore, the Ombudsman has intended to analyse legal regulations and their use in practice concerning hate crimes.

***Press release: 31/12/2012***

***The ombudsman urges more efficient state action targeting the usury phenomenon.***

*The rules of the state action against the crime of usury are not applied, which is linked principally to the victims' vulnerable situation. The Commissioner proposes integrated government measures for facilitating the efficiency of law enforcement.*

Economic crisis also draws attention to usury crimes. Economic and social problems have led to a rise in usurious credit activities and the victimization of financially vulnerable households. People living in deep poverty have very often no other options to get – at least temporarily – some money and basic goods indispensable for their living. The disproportional credit contracts constitute a real trap for the most disadvantaged who cannot break the vicious circle without endangering their basic needs. However, victims of usury crimes are often surrounded by indifference, moreover, by antipathy aggravated by ethnic prejudice. In the last years, the State has mainly offered

criminal law solutions to tackle this problem, however, the real resolution of the problem requires more complex solutions. Therefore, this problem is one of the focuses of the project „Losers of the Crisis”.

*II. Fundamental right to a healthy environment and its conflicts with other human rights*

Within the framework of the project, the Commissioner has been examining the state of our defenceless *environment* exposed to the impact of human activities, the related conflicts and crisis phenomena, and the fulfilment of the obligations of the State to protect the environment. He pays special attention to the innovative potential of the crisis, the programmes pointing to possible ways out of the crisis and to opportunities to use alternative sources of energy.

Economic and financial downturn affects adversely not only individuals and their families, but also the State and its institutions. It has an especially serious effect on the protection of environment, as it is a subject that has long term effects in the future for which however, serious work has to be done in the present. Within the project, the Ombudsman has aimed to map the effects of State measures connected directly or indirectly to the crisis on the institutions of environment.

Within this context, the problems of local waste management have to be mentioned. In the last few years, the Ombudsman has received numerous complaints in this field. Within the complex problem of waste management, independently of the locality of the complainant, most complaints deal with the question of whether it is reasonable and permissible to make inhabitants pay for waste management services.

In the crisis, a great number of individuals have growing difficulties to support even their living expenses, not to mention the fees of waste management. This results in adverse activities, such as illegal abandoning and burning of waste. In this regard, the project aims to map the problems the crisis entails, with special emphasis on illegal burning of waste. In a series of global crisis, here is one, especially far-reaching crisis we have to deal with: the climate-change. In this relation, the aim of the project is to examine the legal background of the use of renewable energy.

*III. „Responsible state – conscious citizen”*

In the times of crises, conscious state activities receive special emphasis because they provide a safety net for people in precarious situations and for members of disadvantaged social groups. In this field, the Commissioner for Fundamental Rights plans to examine the impact of the changes in the

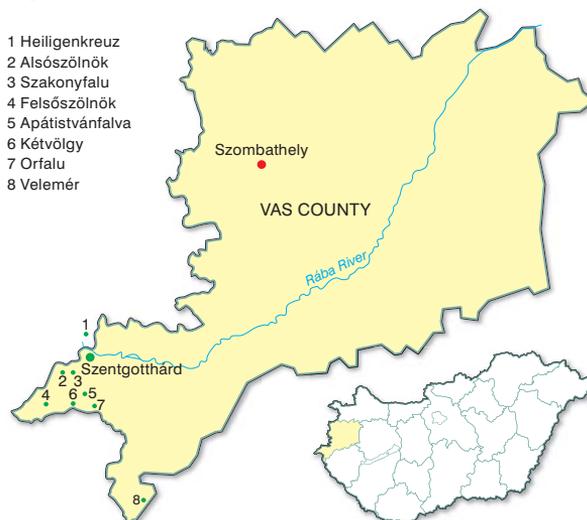
social security system and the measures taken by the State to protect private persons against bankruptcy.

In times of crisis more and more individuals and families live under narrow financial circumstances, and may amongst them get severely indebted, thus endangering even their homes. According to legal regulations, even the homes of indebted families can be brought under execution, entailing homelessness of the precarious families. In the past years, the possibility of introducing private debt emerged several times. The Ombudsman has also initiated the institutionalisation of private debt, however, it has not been introduced yet. Article XVII. of the Basic Law of Hungary stipulates that Hungary will strive to provide social security to every citizen. Hungary will provide social services through social security and a system of social institutions and measures. The system of social security has a special importance in the times of financial difficulties, therefore the Ombudsman has examined the changes occurring in this field within the project „Losers of the Crisis”.

#### *IV. The local focus of the project – Szentgotthárd and its area*

The ombudsman appointed the town Szentgotthárd and its area as a local focus of the project because all kinds of nationality, environmental, and social problems are present here, occasionally as rival issues. The basic topics and issues of the inquiry were the following: Cross-border environmental conflicts – the waste incinerator in Heiligenkreuz, Austria; the rights of nationalities: from among the Slovenian, Croatian, and German nationalities living in the area; patient rights, rights of psychiatric patients in the Home for Psychiatric Patients of Szentgotthárd.

#### *The Location of Szentgotthárd in Vas County*



**Our senior staff member responsible for the Project**

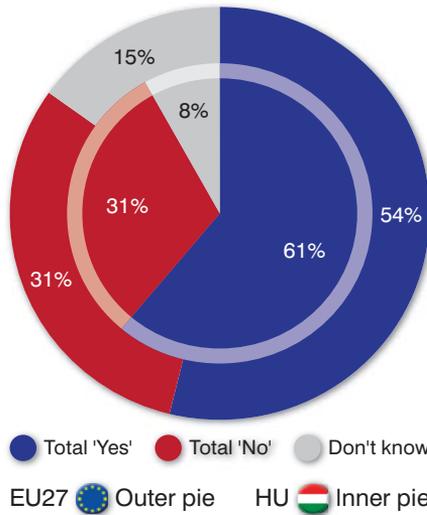


**Dr. Katalin SZAJBÉLY** received her law degree (2002) and her Ph.D. (2010 – Measures combatting race discrimination in the European Union and the transposition of EU standards in France, Great-Britain and Hungary) at the Faculty of Law of the University of Szeged. She wrote her doctoral thesis about measures combating race discrimination at EU level and in some member states. During the period of 2005-2011, she worked at the Minority Ombudsman’s Office as legal counsellor and

deputy head of department. As of 2012, she is head of the Unit for Preparing Petitions to the Constitutional Court.

Discrimination in the EU in 2012	EU 27		Number of interviews: 26.622	Fieldwork: 02/06–17/06 2012
	HU		Number of interviews: 1.009	Fieldwork: 02/06–17/06 2012
Methodology: face-to-face				

*Public policies combatting discrimination*



Source: Eurobarometer 77.4 Results for Hungary

### 3.4.

## Ethnic and minority rights in 2012

### **Protection of the Rights of National Minorities Living in Hungary as One of the Major Tasks of the Commissioner for Fundamental Rights**

Under the CFRA, the Commissioner for Fundamental Rights is also the successor of the Minorities Ombudsman. Protection of the rights of national minorities living in Hungary, as specified in Article XXIX of the Basic Law, is one of his major responsibilities, a responsibility he is fulfilling – among others – by initiating *ex officio* procedures.

The Commissioner for Fundamental Rights launched a series of *ex officio* procedures in 2012; protection of this area of law received special attention practically in every field of his activities. A good example is the investigation aimed at getting acquainted with the findings of the national minority self-governments' legal compliance tests, the assertion of the national minorities' right to use their mother tongue, the legal standing of national minority civil organizations, the "School-Net Programme" etc.

Project-based, thematic approach is a new element in the field of national minority rights. The inquiry into the assertion of national minority rights was a key element in all projects launched by the Commissioner for Fundamental Rights in 2012 where the special aspects of national minority law manifested themselves.

### **The effect of national minority rights on the Ombudsman's activities**

The constitutional rights of the national minorities living in Hungary are the constitutional rights of a group of Hungarian citizens. Therefore, national minority rights play a constitutional role aimed at guaranteeing the equality of all national minorities in exercising their constitutional rights.

Most of the constitutional rights do not have their clear-cut equivalent among national minority rights. The right to human dignity, the prohibition of torture and inhumane, degrading treatment, the right to freedom and personal safety, the respect for privacy and family life, the right to good reputation, the right to protect one's property and to choose one's profession etc. can rarely be put in a national minority rights context. The exceptions are when the requirement of equal treatment gets infringed on the basis of ethnic background.

Since the ethnic background of a complainant in itself, as opposed to the previous practices, does not turn a complaint automatically into a national minority right complaint, the special character of constitutional rights can manifest itself in the activities of the Commissioner for Fundamental Right only if the complainant explicitly refers to the infringements of his/her rights specified in the Act on the Rights of Minorities or if it cannot be ruled out, considering the facts at hand, that the case is about discrimination on the basis of real or perceived ethnic background.

### **The frameworks of the protection of national minority rights and the changes in their legal regulation**

Fundamental national minority rights are specified in the Basic Law, their detailed explanation is contained in the Act on the Rights of Minorities (hereinafter referred to as "Minorities Act"). The most important sectoral regulation of national minority rights had been the Act on Public Education which was replaced by the Act on National Public Education in September 2012.

The Commissioner had a professional dispute with the State Secretary in charge of Public Education on the possible reasons why the Act on National Public Education neglected the principles of equal opportunity and "the child's interest above all". According to the Ombudsman, the alarming results of the PISA<sup>45</sup> and our international commitments would have justified the preservation of the relevant provisions of the Act on Public Education by the new Act on National Public Education. In his Motion 2523/2012, submitted to the Constitutional Court, the Ombudsman brought to the Court's attention that it may be justified to investigate whether the Act on National Public Education fully contains the guarantees for the adequate physical, mental and moral development, protection of and care for children.

<sup>45</sup> Programme for International Student Assessment

**Press release: 17.12.2012.**

***The Ombudsman on the obstacles of Nationality communities' rights***

*Due to the lack of adequate legal and technical conditions to ensure that Nationality communities get involved in local government decision-making process, these communities are not able to exercise all the rights to which they are entitled. The commissioner for fundamental rights has turned to the minister of administration and justice.*

### **Inquiries into the system of minority self-governments**

Article XXIX of the Basic Law, incorporating the provision of Section 68, Subsection (4) of the Constitution, enables the minorities living in Hungary to set up their local and national self-governments. According to the Ombudsman, self-government rights may be effectively exercised if the state, simultaneously with providing organizational and functional autonomy, creates the conditions for budgetary autonomy, as well.

In 2012, the Ombudsman's inquiries related to minority self-governments were mainly focused on their legal compliance, budgetary issues and the conditions of their functioning.

**Press release: 08/06/2012**

*Certain provisions of the Act on the Rights of Minorities, which entered into force on 1 January 2012, are contrary to the Basic Law and restrict the fundamental rights of nationalities – the Commissioner for Fundamental Rights has requested the Constitutional Court to establish this and to annul the text parts indicated in his petition.*

*Based on the submission of the nationality self-government of a municipality, Máté Szabó has summarised his objections in several points. One of them is that the requirement of equal treatment is not observed in the Act: it allows only those nationality organisations to have candidates at nationality self-government elections which are legally qualified as of 'public benefit'.*

The investigation involving the participation of government offices analyzed the functioning of minority self-governments also from the aspect of their compliance with their obligations to guarantee national minority rights. On the basis of his inquiries, the Ombudsman pointed out that certain provisions of the statutes regulating the functioning of minority self-governments are deficient, inaccurate and contradictory. The Commissioner for Fundamental Rights proposed the amendment of the regulations concerned.

The Ombudsman stressed the importance of starting the education

and professional training of the representatives and leaders of minority self-governments as early as in 2013 instead of the next election cycle.

The Commissioner for Fundamental Rights submitted his legislative proposals to the minister of human resources and the minister of public administration and justice.

The Commissioner, following up the minority ombudsman's investigation concluded in December 2011, also conducted an inquiry analyzing the processing of the census's minority-related data. The Central Statistical Office accepted the Ombudsman's proposal to process all census data related to the citizens' ethnic and language background via adequately grouping the individual code numbers.

***Press release: 20/04/2012***

*The Ombudsman's inquiry drew attention to the fact that in the course of processing the census data, because of deficiencies in encoding, certain members of the nationalities cannot be counted towards the nationality to which they wish to belong according to their declaration. This has also practical consequences since as of 2013 the enforcement of the right of nationalities to self-government, and as part of this right, the extent of financial support of nationality self-governments, will be determined on the basis of the census data of 2011.*

In connection with the enforceability of minority self-government rights, the Ombudsman also investigated the increased criminal protection of the representatives of minority self-governments.

The Commissioner for Fundamental Rights requested the minister of public administration and justice to draft and submit to the Parliament an amendment to the Penal Code in order to ensure that the increased criminal protection of the representatives of minority self-governments be guaranteed even before the new Penal Code enters into force.

**Inquiries into minority education**

It has been proven by a series of sociological studies that the future of national minorities, due to the extent of their assimilation, depends more and more on the efficiency of minority education. That is the reason why the Commissioner for Fundamental Rights gave high priority to following up the issues started but not completed by the minority ombudsman in 2011, to reopening the previously completed inquiry unveiling the segregation of Roma students in schools and complementing the still

missing elements to the series of inquiries into the entire spectrum of minority public education.

The tendencies known from the earlier practice of the minority ombudsman resurfaced, in two distinct groups of issues, in other investigations carried out by the Commissioner for Fundamental Rights concerning minority education, too. Part of the petitions concerning minority education were enforcement-related, they were aimed at explicating the legal basis for the organization of minority education, and the substance and procedural rules of the minority self-governments' right of consent. Another group of issues concerning minority education included the ombudsman's inquiries into the disadvantages suffered by Roma students in the system of public education. The follow-up investigation in the school of Jászapáti provided a good opportunity for the full-scale demonstration of the problems of illicit segregation. In the interest of a more efficient implementation of the requirement of equal treatment, the Commissioner for Fundamental Rights submitted his legislative proposals to the minister in charge of education and requested the Government Office of Jász-Nagykun-Szolnok county to investigate the school's unlawful operation.

### **The enforcement of language rights**

The use of mother tongue in minority communities is receding. Its protection and possible revitalization are extremely important because language is not simply the most important attribute of minority affiliation but also the substance of minority identity and, consequently, the most important community-preserving force.

The Minorities Act specifies the protection of children's rights as one of the most important tasks of the Commissioner for Fundamental Rights. Within his competence in this field, the Ombudsman launched the project "Child-friendly justice" in 2012. His investigation covered, among others, the implementation of the minorities' right to use their mother tongue, establishing several deficiencies: the Ombudsman requested the minister of human resources to take the necessary measures in order to make guardianship authorities and offices and juvenile correctional facilities complement their lists of interpreters with minority and sign language interpreters.

The Ombudsman also launched a comprehensive inquiry into the implementation of the minorities' right to use their own languages. He also investigated how the members of various minority groups could exercise their right to use their own language, stipulated by separate statutes, during civil and penal procedures and during the administrative procedures of the authorities.

**Press release: 08/06/2012**

***Petition of the Ombudsman to the Constitutional Court concerning certain provisions of the Act on Nationalities***

*It is a restriction of the right to use one's mother tongue that nationality self-governments must draw up minutes of their sittings in Hungarian even if the language of the sitting is the mother tongue of the given nationality; this also infringes the obligations undertaken by the State and laid down in the European Charter for Regional or Minority Languages – says the Commissioner for Fundamental Rights in his petition to the Constitutional Court.*

Under the provisions of the Minorities Act which are to be in force from 2014, local governments shall ensure, on the basis of the relevant census data, a broader implementation of the minorities' right to use their languages. In this regard the Commissioner also deems necessary to assess the actual influence of the Minorities Act on the minorities' use of their mother tongues. During those inquiries he intends to find out what kind of organizational and human development is required to ensure the proper implementation of the rights guaranteed by the law on the local level, too.

**The Ombudsman's inquiries into the equal opportunities of the Roma**

A significant part of the Hungarian population qualifies as poor. The number of the Roma among those fallen behind, in desperate, futureless situation, is high above this minority's share in the entire population. Some of the Roma, already pushed to the peripheries of society and subjected to prejudice, are unable to use the benefits offered, in principle, by the system of equal opportunities; their integration seems unrealistic, even though the amount of support allocated to the improvement of the situation of the Roma minority has been multiplied since the country's democratic transformation



and the supporting system and the assistance programmes also have become more complex.

The Ombudsman considers it one of his tasks to draw the legislators' attention, through his *ex officio* investigations, to the fact that some of the legal norms from various branches of law, related to equal opportunity, do not have any or suf-

ficient influence on the integration of groups with structurally impaired advocacy and enforcement capabilities, most of all on that of the Roma. The Commissioner started several investigations in this field during 2012: he inquired *ex officio* into the equal opportunities of the Roma in the systems of public works, education and social catering for children during the Summer.

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

According to his conclusions, public works do not offer but a temporary solution to socially disadvantaged persons. The Ombudsman pointed out that the labour market positions of the marginalized Roma may be improved in the long term only as a result of the coordinated implementation of various measures aimed at equalizing their opportunities. Public works programmes can play such an equalizing role *vis-à-vis* the Roma population only if they encompass the most disadvantaged actors of the labour market, as well.

The Commissioner for Fundamental Rights drew the attention to the fact that in the legal relationship of public works characteristically the state or its organs is/are one of the major actors; therefore, the implementation of the requirement of equal opportunity is of utmost importance. He requested the government to take the necessary measures in order to *provide free legal advice to the disadvantaged public workers on the local level and/or through a call-in client service.*

The minister of state for social inclusion concurred with the conclusions of the report and the measures related thereto. The minister of interior concurred with the Ombudsman's proposal to amend the Act on Equal Treatment and Promotion of Equal Opportunities: the ministry, responding to the request formulated in the report, will prepare an information booklet for public workers on the basic rules of their legal relationship and on the activities of and contacting the institutions of legal assistance at their disposal in case of discrimination. The ministry will officially request the prospective employers of public workers to distribute the booklets.

In 2012 the Ombudsman inquired into an equal educational opportunity programme, too. The "School-Net Programme" is aimed at contributing to the lessening of social differences in the educational system through the inclusion by the state of the cumulatively disadvantaged stu-

dents. The programme focuses on locations where the ratio of disadvantaged social groups is the highest, where the negative influences of needs, deficiencies and social disadvantages are mostly felt and having their impact on the local communities and schools.

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

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

*Press release: 29/10/2012*

***On the TV-program of the Pesty Fekete Doboz titled „The Gypsy-Hungarian coexistence”***

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



### **Our senior staff member in charge**

**Dr. László FÓRIKA** received his degree in law at the Eötvös Loránd University's Faculty of Law and Political Science in 2001. He has been working at the ombudsman's office since September 2001 where he is now a legal advisor. He specializes in educational and national minority issues.

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

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

Source: Central Statistical Office

### 3.5.

## Protection of the interest of the future generations

### **The Environment Protection, Protection of the Interests of the Future Generations**

The Basic Law and the Act on the Commissioner for Fundamental Rights adopted a uniform basis for the protection of citizens' fundamental rights by the creation of the uniform ombudsman institution.

The Commissioner is assisted in his work by the Deputy Commissioners for Fundamental Rights, responsible for the Protection of the Interests of Future Generations and for the Rights of Nationalities living in Hungary. The Deputy Commissioner for the Protection of the Interests of Future Generations shall monitor the enforcement of the interests of future generations, and

- regularly inform the Commissioner for Fundamental Rights on his/her experience regarding the enforcement of the interests of future generations or minorities living in Hungary,
- draw the attention of the Commissioner to the danger of infringement of the rights of a larger group of natural persons,
- may propose the Commissioner to institute proceedings ex officio,
- participate in the inquiries of the Commissioner for Fundamental Rights,
- may propose the Commissioner for Fundamental Rights to turn to the Constitutional Court.

The Commissioner for Fundamental Rights pays distinctive attention to the values (interests of the future generation set out in Article P) of the Basic Law in the course of his activity, especially by conducting ex officio proceedings. In terms of this Article, natural resources, in particular agricultural land, forests and the reserves of water, biological diversity, in particular indigenous plant and animal species, as well as cultural assets

shall form the nation's common heritage; the State and every person shall be bound to protect, maintain and preserve them for future generations. The Commissioner has conducted his inquiries considering the right to physical and mental health and the right to a healthy environment. However, he often referred to the legal certainty deriving from the rule of law and the requirement of fair trial.

***Press release: 22/03/2012***

*The Hungarian Deputy-Commissioner for Future Generations, Mr. Sándor Fülöp sent a message of support to the meeting at the London House of Commons.*

*The British Green House Think Tank has launched its latest report Guardians of the Future at a packed meeting at the London House of Commons on 10th January 2012. The report argues that we need a specialist jury of Guardians to protect the interests of future generations, who are disenfranchised within our existing political system.*

The inquiries conducted in the framework of the “*Losers of the Crisis – in the Captivity of Legal Provisions.*”

In 2012, as part of the project entitled “Losers of the Crisis – in the Captivity of Legal Provisions,” several ex officio inquiries on the subject of environment were launched. In the framework of the project, the Commissioner examined how the State measures taken due to the crisis had influenced the institutional system of environment protection and its efficient operation.

According to the Commissioner, the reorganization and restructuring affecting the organizational system of environment protection, the continuous decrease of the budgetary resources experienced in the last period, the absence of the specialist staff being displaced gradually weakened the organizational system of the environmental administration. As a consequence of the insufficient financial resources, the efficiency of the performance of duties of the environmental, water public and administrative organizational system gradually decreased, the control over the environment users weakened. It is important for the current government to recognize the importance of environment protection and to accordingly form the system of the institutions from the level of Ministries to the territorial authorities, to enforce the interests of environment protection in the course of passing decisions and not to regard this field as an obstacle to economic development, a sector to be reduced and overshadowed. It is inconceivable to take into consideration the interests of the future

generations without environmental, nature conservancy and water institutions of suitable prestige and managing sufficient budgetary resources since the right to a healthy environment will lose its substance.

The comprehensive inquiry regarding the application possibilities of renewable energy carriers was also conducted in the framework of the “Losers of the Crisis in the Captivity of Legal Provisions” project. Concerning the application of the renewable energy sources in electricity, he intended to examine the extent to which the legal conditions of their energetic applicability, the rules on the permit procedures in force facilitate or, if appropriate, prevent the emergence of renewable investments on the market as well as at the level of the individual, small community, local administrative area or the part thereof or at national level.

The inquiry of the issue of the private illegal waste incineration was also launched in the framework of the project. The Commissioner pointed out that often social problem, sometimes however, crassitude (the absence of the knowledge of harmful health impacts of waste incineration) are in the background of the illegal waste incineration. The report of the inquiry also pointed out that the private waste incineration is now playing an increasing role in air pollution causing an increasingly widespread problem countrywide.

The inquiry entitled as “Szentgotthárd – at the intersection of boundaries and impacts” was also conducted in the framework of the project which focused on the right to a healthy environment, besides the rights of the sick and the ethnic nationalities, in the town and in its region. Pursuant to the decision of the Austrian Administrative Court and the Environment Senate, the inquiry launched in relation to the cross-border environmental impacts of the waste incineration plant planned in the directly neighbouring business park in Heiligenkreuz became void. On the basis of the available data, however, the Commissioner considered the inquiry of the cross-border connections of the institutional protection obligations and the air pollution necessary.

In his report, he revealed that the Ministry led by the minister responsible for environment protection and the competent inspectorate for environment, nature and water jointly and severally caused an infringement in relation to the right to a healthy environment and the right to access of public data by failing to ensure and publish the up-to-date environment information characteristic for the level of permissible pollutants in the air.

The public service of transport of local solid waste affects the entire population; therefore the comprehensive inquiry of the field from the

perspective of the fundamental rights deserves special attention. The primary goal of the inquiry entitled as “The occurrence of the crisis in the treatment of solid waste” was to reveal what problems are caused by the economic-financial crisis in the field of waste management, within this local treatment of solid waste, if its performance is endangered by that or how is it reflected in the behaviour of the participants. The Commissioner underlined that the right to a healthy environment may be infringed if the financing basis of the public service of the transport of local solid waste is uncertain. The consecutive, fast amendment of the Act on waste management has brought about an infringement in relation to fundamental rights.

Similar to the previous years, also in 2012, a number of individual complaints concerned *the public service of the transport of waste*. Principally, the complaints concern the mandatory access and the establishment of the amount of the fee of the transport of waste and they are usually associated with the obligations set out in laws.

***Press release: 17/10/2012***

***The Ombudsman advocates clear regulation of waste management***

*The Ombudsman has conducted an inquiry into the setting of the fees of waste transport, the collection of fees, the requirements of those using the service as well as the possibilities for the enforcement of their rights.*

The ombudsman’s inquiries almost in all cases covered the review of the local governments’ regulation by decree complained: in its course the deficiencies of the local governments’ regulation by decree can often be detected.

The complainants usually disapproved of being obliged to pay the fee for the transport of waste as real property owners in spite of that they do not or hardly use the service. Most often they refer to that they do not produce waste (they compost, they do not cook at home, etc.), they do not have a container or they did not conclude a contract with a public service provider. A typical complaint concerns the exaggerated frequency of the performance of the public service, the absence of plausibility and discounts. A general problem is the issue of the size of usable vessels and the disapproval of the collection as taxes.

In the course of the inquiry into a complaint related to the operation of a selective waste collection island, the Commissioner explained that if it is possible, it is useful to place the islands further from the houses, to a bigger place, in front of a public institution where their useful functions



remain, however they do not or less annoy the inhabitants. If it is not possible, a place has to be found where the operation pollutes the environment to the least extent.

The operation of selective waste collection islands is a public interest; therefore citizens may be burdened with an

obligation of higher endurance. The disturbance which may accompany ordinary operation, including the noise emanating from the discharge of the vessels, should be considered necessary. The Commissioner's position is that the obligation to tolerate is, however, not absolute, it only applies to daytime in order to ensure the right to physical and mental health, not to the period of rest. So this means that the collection can be exclusively done during the day, the date of emptying the containers has to be organized in a way that does not fall on the night period. In addition, the ombudsman raised the attention to the importance of the environmentally conscious behaviour.

Similar to previous years, in the reporting period, the number of complaints related to noise was significant as well. Typically, the complainants disapproved of the noise pollution related to road transport, the disturbing operation of catering facilities and the noisy activity carried out on sites near their place of residence.

A complainant disapproved of that the terminus of buses is situated only 2-3 metres from their house. Although the disturbance related to the operation of the community transport, including the burdens produced from the existence of the bus stop, should be considered necessary, the obligation to tolerate is required not to be unnecessary and disproportionate, that is, the traffic organizing measure needs to be duly reasoned and to ensure the higher level and general enforcement of the right to a healthy environment. The Commissioner initiated that the concerned bus stops should be transformed as soon as possible but at latest in the course of the planned renovation of the public area so that they should not be in front of houses, as a consequence of which they should not have a harmful impact on the inhabitants of the houses at issue from an environmental health aspect. In another case, the complainant disapproved of the noise impacts of the tram transport. Although the inquiry related to the proceeding of the environmental protection authority did

not conclude an infringement of a fundamental right and the noise pollution complied with the emission limits, in his report the Commissioner concluded that the screeching sound at uncertain intervals at the time when cars turn means a severely disturbing impact for those living there. Consequently, he proposed that the transport company, if possible, should avoid using the older type trams accounting for this phenomenon in the sensitive (early in the morning and late in the evening) periods. In addition, he requested the Minister of Rural Development to consider the amendment of the regulation related to noise protection in order to facilitate the efficient treatment of cases which do not reach the noise limits because of their nature and the duration of their occurrence, but at the same time their frequency and amplitude disturb the tranquillity of those living in the area to a great extent.

The rise of the number of population coexist with the rise of the number of motor vehicles, this meant, however, a massive increase exceeding the proportionate growth by the expansion of market possibilities in the previous years. The self-government has to do its best in order to ensure the healthy environment of the inhabitants of the settlement so that the motor vehicles transport should involve the least environmental pollution.

Another report pointed out that significantly more motor vehicles are used in the transport of Budapest than the capital can tolerate without significant environmental pollution. The ombudsman reminded of that in a year the particulate matter in the air can be over the health limits at most on 35 days. Since the particulate matter concentration exceeded the health limits in Budapest (and in other towns in Hungary) and it was in excess of what is required, the European Commission launched an infringement procedure against Hungary. The Commissioner pointed out regarding forming and rebuilding urban environment that it is of special importance to increase the green surfaces in public areas. In Budapest, the green surface per inhabitant is really low even in international comparative terms; therefore it is essential in all cases to examine the possibility of maintaining the urban green surfaces and their expansion.

Since the disturbing impacts caused by entertainment facilities continue to make the rest of many impossible and several of the initiatives and recommendations set out in the previous inquiries were not accomplished and since their completion a number of significant legislation amendments have been carried out, in order to facilitate the establishment of a suitable legal context and an efficient practice of law enforcement, a comprehensive inquiry was launched on the basis of the incoming com-

plaints, unifying them. In their living environment, the complainants disapproved of the operation of entertainment facilities, often situated in their houses, mostly the noise pollution produced in the course of their operation. However, they considered the rowdiness of the arriving and leaving guests and their uncivilized behaviour as a disturbing circumstance. Typically, these complaints also concerned sanitary problems. The number of those complaints is also significant in which the petitioners disapproved of the registration, authorization procedures and operation of the sites situated near their houses and the noise pollution produced in the course of their operation and the increased motor vehicle traffic generated by these sites.

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

In the reporting period, some of the complaints concerned the noisy operation of military and non-military civil firing ranges. These latter are considered to be leisure noise, with respect to which the environment authority is the notary of the local government being the administrative seat of the micro-region. A completely different approach is required to assess the operation of military firing ranges since in order to completely and safely perform the basic function of the military organizations of the Hungarian Defence Forces, the musketry instruction is a priority and inevitable. Consequently, on one hand, the state is obliged to guarantee the sustainability and conservation of the condition of the environment and nature, on the other hand, it has to perform the country's military defence and the collective



defence duties arising from international treaties. The Commissioner highlighted that if collision of certain segments of public interest arises, for example the protection of the environment is contrary to military and national security inter-

ests, then all circumstances of the given case need to be individually considered paying attention certainly to the institutional protection obligations arising from the right to a healthy environment and the conditions for limiting it.



Compared to earlier years, the number of ombudsman's inquiries related to *tree felling* considerably increased. It is commonly known that trees play an outstanding role in the enhancement of the condition of the environment and life quality, therefore their conservation is of a really strong social and environmental interest. Only a well-founded reason may serve for felling of trees in public areas, due to their outstanding environmental benefit, certifying its inevitability in the given area. In an inquired case, the ombudsman experienced that for a planned investment, tree felling permit was issued so that the building permit procedure had not even started and it could not be known if the permit would be issued for the investment.

From among the inquiries related to nature conservation, the inquiry launched ex officio for clarifying the current state of the land registry record of the limitations and prohibitions of protected natural areas and for environmental protection has to be highlighted. Its most important establishment was that no progress was made in the field of the regulation facilitating the land registry records in question and ensuring the conditions for the performance of the duties of the state. In another case, the Commissioner explained regarding the procedure for lifting the protection of a protected natural area that it did not comply with the requirements set out in the legislation in force either in form or in content. In addition, the inevitable necessity of lifting the protection, the step backwards was not reasoned with another fundamental right or constitutional value.

The sustainable development is a system of the social-economic conditions which preserves the natural values for the present and future generations. The ecological network of the European Union, the Natura 2000,

intends to achieve this objective by designating the nature conservation areas. The performance and organization of the activity for using and polluting the environment shall therefore be governed by the principles of precaution, prevention and restoration. The ombudsman concluded that in the nature conservation permit procedure of a known outdoor event the environment, nature and water inspectorate did not enforce the principle of prevention. The Commissioner asked the director of the inspectorate to put more emphasis on the proper conduct of the nature conservation authority permit procedures and the prevention of activities involving the danger of nature and environment pollution.

Because of the collapse of one of the red sludge reservoirs of the Hungarian Alumina Production and Trade Private Company Limited by Shares, an industrial catastrophe took place demanding the death of 10 people on 4 April 2010. The Commissioner launched an ex officio inquiry for mapping the environment and disaster management legal aspects and analysing the shortcomings of the legislation and established a number of infringements.

*Press release: 18/07/2012*

***Red sludge inquiry and disaster management – the Ombudsman proposes the amendment of rules of law***

*According to the rules of law in force, the disaster management authority and the environment protection inspectorate do not participate in each other's proceedings; they make their decisions in isolation, unaware of the activity of the other authority. The current cooperation system of specialised authorities does not adequately take into consideration difficult licensing cases of a complex nature which require the joint decision of several authorities. This is the conclusion Máté Szabó arrived at after he inquired into the background of the red sludge disaster.*

In the reporting period, a petition to the Constitutional Court was submitted, in which according to the Commissioner the provision concerned is contrary to the right to a healthy environment. Pursuant to the Act on the Formation and Protection of the Built Environment, the authority decides by a decree not to be challenged by independent legal remedy instead of a final judgement on issuing the environmental protection permit in the integrated settlement procedure, which, according to the ombudsman, violates the non-retrogression principle, and through this violates the right to a healthy environment. In addition, pursuant to the petition, the provision is contrary to a provision of the Aarhus Convention saying that

the member states have to ensure the publicity of the underlying grounds and considerations for the decisions on environmental protection.

*Press release: 12.12.2012.*

***The Ombudsman's Petition to the Constitutional Court concerning the Amendment of the Construction Act.***

*The provisions on the integrated settlement procedure of the recently amended Construction Act are contrary to the Basic Law and the international conventions. Consequently, based on the proposal of the deputy ombudsman responsible for the interests of future generations, Marcel Szabó, Máté Szabó, the Commissioner for fundamental rights initiated their annulment at the Constitutional Court.*

**Our senior staff member in charge:**



**Dr. György SOMOSI** graduated in law from the Faculty of Law of Eötvös Loránd University, Budapest, in 1996. During the period of 1996-2011 he was deputy head of the Department of Preliminary Inquiries of the Office of the Parliamentary Commissioner for Civil Rights.

*Municipal waste (MW)*

	MW generated, kg per person	Total MW treated, kg per person	Municipal waste treated, %			
			Land-filled	Incinerated	Recycled	Composted
EU 27	513	504	38	20	24	18
Belgium	491	486	5	35	36	24
Bulgaria	468	450	100	-	-	-
Czech Rep.	316	274	83	12	2	2
Denmark	833	833	4	48	34	14
Germany	587	564	0	34	48	18
Estonia	346	285	75	0	14	11
Ireland	742	730	62	3	32	4
Greece	478	474	82	-	17	2
Spain	547	547	52	9	15	24
France	536	536	32	34	18	16
Italy	541	594	45	12	11	32
Cyprus	778	778	86	-	14	-
Latvia	333	333	92	0	7	0
Lithuania	360	342	95	-	3	1
Luxembourg	707	707	17	36	27	20
Hungary	430	427	75	10	13	2
Malta	647	643	96	-	4	-
Netherlands	616	520	1	39	32	28
Austria	591	591	1	29	30	40
Poland	316	264	78	1	14	7
Portugal	488	488	62	19	8	12
Romania	396	308	99	-	1	0
Slovenia	449	495	62	1	34	2
Slovakia	339	311	82	10	2	6
Finland	481	481	46	18	24	12
Sweden	485	480	1	49	36	14
UK	529	538	48	11	26	14
Iceland	554	520	73	11	14	2
Norway	473	467	14	42	28	16
Switzerland	706	706	-	49	34	17

- Data for the EU 27, Denmark, Germany, Spain, France, Italy, Cyprus, Luxembourg, Netherlands, Romania, Portugal and the United Kingdom are estimated.
- 0 equals less than 0.5%, „-“ indicates a real zero

### 3.6.

## Protection of fundamental rights of the most vulnerable groups

The new Ombudsman Act, in effect as of 1 January 2012, defines the enhanced protection of the rights of persons belonging to the most vulnerable social groups as an important priority. Ombudsmen have always paid special attention to the protection of the fundamental rights of persons who, left by themselves, are not or only partially able to protect their rights. Financial and economic difficulties affect the whole society adversely. They do however strike especially persons belonging to the most vulnerable groups of society, such as ethnic minorities, homeless people, disabled persons, elderly people etc.

Since entering his office, the Ombudsman has launched several projects which have particular focus on the examination of the situation and fundamental rights of the most affected and vulnerable groups. In 2012, the Commissioner for Fundamental Rights conducted a rapid survey on the current situation of the homeless living in the capital. The Ombudsman studied the “homeless policies” of some districts greatly affected by homelessness in order to explore the current conditions in the streets, and contacted the local governments for information regarding their to change some legal provisions allowing them to take measures against the homeless. From the responses received it became clear that there were no plans to pass legislation regulating the stay of homeless people in public areas. The staff of the Ombudsman’s Office also gathered information in the area of Lehel, Nyugati, Ferenciek, Nagyvárad Batthyány and Blaha Lujza squares and Budapest South and West Railway Stations.

In his reports, the Commissioner emphasized that he may only investigate measures and programs regarding the homeless or tackling the issues of homelessness only if they are of social nature and suitable for fostering the long-term social reintegration of homeless people.

On 3 February 2012, in second stage of on-site inspections carried out in order to examine the situation of the homeless crisis, the Office's staff members visited the newest homeless shelter inaugurated at the end of 2011 and other institutions supporting homeless people, e.g. the Budapest Methodological Social Centre and Institutions (BMSZKI). During the visit of the colleagues of the Ombudsman, official authorization and acceptance procedure to the building took place in the presence of local government officials and the director of the institution. The director of the facility showed the visitors around the freshly painted, but vacant building, explaining that the furnished institution would operate both as a night shelter with a capacity of 340 persons and a day-care shelter with fixed opening hours. Homeless persons would be provided with washing and cooking facilities and other social services: a general information service and recruitment service assisting social reintegration would also be available, and a medical room had been established. A co-educate, barred detention room with fixed furniture had also been established, which had been highly criticized (on the grounds that it lacks legal basis) by several social experts, mainly because its operation would fall within the competence of Budapest Police Headquarters. The director drew the visitors' attention to the fact that recent changes in the financing system of the institution might cause serious shortcomings in its functioning.

After the visit, on 13 February 2012 the director informed the Ombudsman that conditions had not changed a lot since 3 February, smaller finishing works like fixing door-locks and installation of washing machines were still going on. The final installation of equipment was financed by the Ministry of Interior and the Ministry of National Resources, the transfer of the money was in process.

In the course of its on-site inspection, the licensing authority noted the missing equipment and, presumably for this reason, did not issue the operating license. Other official licenses (fire department, National Public Health and Medical Officer Service) had been previously obtained, the operation was secure; however, allocated state funds could be used by the City only upon getting the operating license.

**Homeless people in crisis – saving lives without stigmatizing: report of the ombudsman**

**Saving homeless persons from freezing to death is only first step. Besides helping to avoid immediate risk of death there should also be individual solutions to end or prevent “reproduction” of home-**

**lessness. The commissioner for fundamental rights summarized the findings of its on the spot inspections carried out during the days with extremely cold temperatures.**

Following his report listing serious problems regarding homeless situation in Budapest and “subway-cleansing”, Máté Szabó has found this year that the so called survival spots were eliminated, however the welfare system intended to solve the problem by opening new hostels and increasing capacity.

Helping to avoid immediate risk of death is only first step, social welfare system should provide further, personalized solutions to fight homelessness and to stop its reproduction – the ombudsman pointed out. He recalled that being homeless, sleeping and staying in public places is not a crime in itself to be sanctioned by the authorities, but a social emergency which calls for socio-political response.

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

The ombudsman holds that there are no professional or legal reasons for the establishment of detention rooms and police areas within the shelters for homeless people. This – for the moment – symbolic action as well as the communication emphasizing that some homeless people staying in shelters are ex-convicts – contribute to strengthen prejudice in society against homeless people.

In his report Máté Szabó stressed that as commissioner for fundamental rights the only programmes and measures which he considers acceptable are those of social character and suitable for the long-term social reintegration of homeless people.

### 3.6.1.

#### Rights of People Living with Disability

In his “Dignity of Labour” project the Commissioner paid special attention to the employment of people living with disabilities, their circumstances and opportunities on the labour market. In the interest

of a thorough investigation, the project proceeded on three main topics: the chances of the disabled to enter the labour market, the circumstances and conditions of their employment and the education system facilitating and supporting the employment and the work of people living with disabilities.

**Press release: 24/07/2012**

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

*In his labour law project entitled 'The Dignity of Work', the Commissioner for Fundamental Rights has found that although there are positive changes in different rules of law, persons with disabilities are still disproportionately excluded from the labour market.*

In connection with the first topic the Ombudsman established that the job centres do not have detailed data on people living with disabilities because they use the broader concept of people with reduced work capacity. Unfortunately, in the Hungarian legal system there is no single definition for "person with disabilities", different fields operate with different notions. The current system of employment does not support the employment of people living with disabilities since the concept of people with reduced work capacity is broad, it contains several homogenous groups, such as people with permanent health problems and handicapped persons. According to the Ombudsman, there may be significant differences even within the individual groups depending on the extent of the health damage or the handicap.

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

The Commissioner for Fundamental Rights requested the Minister for National Economy to pay extra attention, together with the Minister of Human Resources, to the employment of people living with disabilities

and initiate decisive measures in order to facilitate the integration of the disabled into the labour market.

The Ombudsman's inquiry into the working conditions of the disabled established that, although the New Labour Code and the Act on Provision of the Rights of Persons Living with Disability and Equality of Opportunities adopted the concept of rational adaptation, the legislator failed to define the system of its content requirements. It is mainly because the resources and the supporting system necessary for creating the conditions of rational adaptation are not accessible for the employers. At present only accredited employers may apply for support from the central budget, the legislator intends to support non-accredited employers through the institution of the rehabilitation card and by freeing them from under the obligation to pay rehabilitation contribution.

The current, not so transparent and not well elaborated employment and support system still cannot ensure the implementation of labour safety guarantees for people living with disabilities. Therefore, the rights of persons with disabilities to human dignity and free choice of occupation are infringed on, persons with disabilities do not receive the protection stipulated in the Basic Law and the requirements of equal treatment and legal certainty are not respected. The current practice of the law and the activities of the various bodies enforcing the law create insecurity on many occasions.

To remedy this situation, the Commissioner for Fundamental Rights requested the Minister for National Economy to work out, in cooperation with the Minister of Human Resources, the detailed rules of rational adaptation and to harmonize the support system designated to facilitate the employment of people living with disabilities.

In the course of his inquiries into the education system, the Ombudsman concluded that the training of people living with disabilities cannot be separated from their successful employment, so the competent ministries should pay particular attention to efficient cooperation and continuous consultation with each other. It turned out, however, that the ministries concerned distance themselves from one another referring to various legal regulations, accentuating their lack of competence in the given subject. It is clearly demonstrated by the absence of concrete measures aimed at implementing the National Disability Programme.

According to the Ombudsman, the absence of a clear and unambiguous regulation and a harmonized, hierarchical system of institutions under central guidance, supporting the training and employment of people with disabilities, can also be traced back to the absence of inter-ministry cooperation.

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

The report concluded that there are no uniform regulations and institutions functioning in a coordinated way, under central control, that could support the employment and training of people with disabilities in an efficient and transparent manner. The current legal environment is not fully compatible either with the provisions of the Europe 2020 Strategy of the European Union or with the norms of independent life and social participation stipulated by the UN Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007.

***Press release: 31/12/2012***

*The disabled people may not be constrained in their access to the public goods available to the non-disabled people because of their disability. Because of their condition, they need to be supported so that they have equal chances and quality to exercise their universal rights. This justifies the requirement of preference in all fields of the society, for which the public services have to be organized depending on the differing necessities of the various groups of disabled persons. It is not sufficient to determine the requirement of preference by legal means. The law applying organs have to ensure the conditions of the enforcement of these rights as well.*

The rights of the disabled students are not enforced in a uniform practice by the higher education institutions, moreover, in certain cases, by the faculties within these institutions. The Commissioner for Fundamental Rights concluded from this that the legislation is inadequate or ambiguous. He requested the Minister of Human Resources to establish a clear legal context.

The Ombudsman's inquiry on the disabled students studying in higher education institutions pointed out several contradictions. Among the problems he pointed out that the definitions of a disabled person and

the scope of persons covered by that definition are different in the UN Convention and the domestic rules on higher education. The diverging practice of the higher education institutions (in certain cases their individual faculties) may be due to the fact that they established their procedures not or not completely in compliance with the legal provisions.

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

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

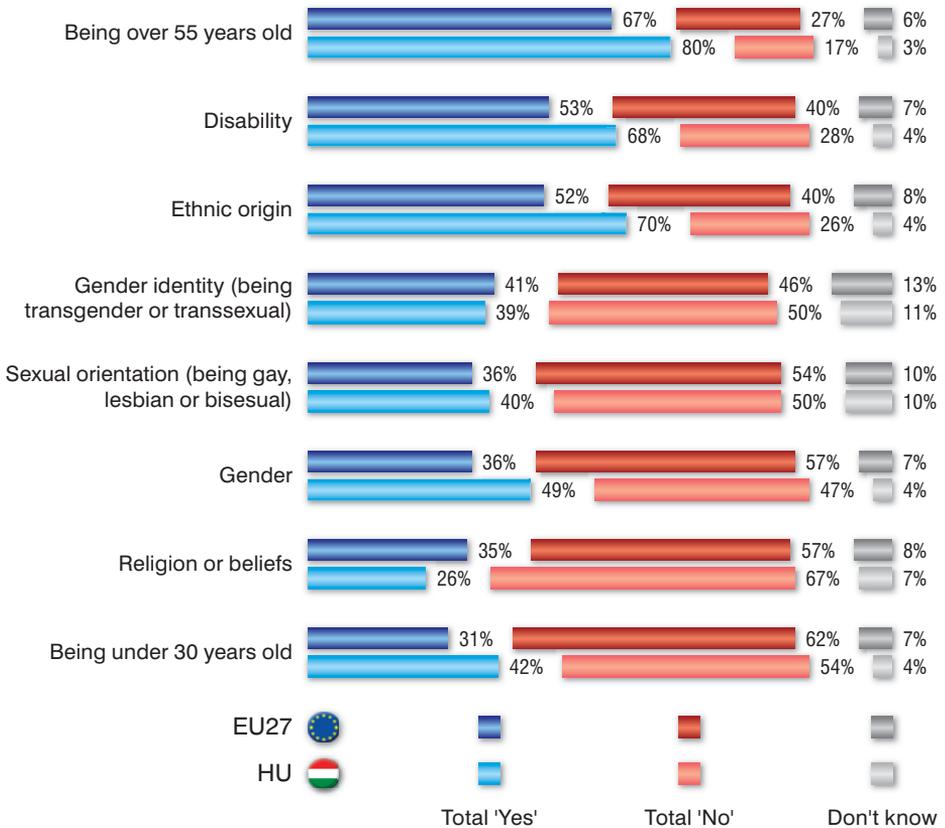
### **Our senior staff member in charge**



**Dr. Beáta BORZA** got her law degree at the Faculty of Law of Eötvös Loránd University of Budapest in 1994. She joined the staff of the Office in 1997. Between 1997 and 2011 she was the head of the “Dignity” projects of the Parliamentary Commissioner for Civil Rights: Homelessness (2008), Disabilities (2009), The Elderly (2010), Patients’ Rights (2011). Currently she is the Head of the Inquiries Department 3.

Discrimination in the EU in 2012	EU 27		Number of interviews: 26.622	Fieldwork: 02/06–17/06 2012
	HU		Number of interviews: 1.009	Fieldwork: 02/06–17/06 2012
Methodology: face-to-face				

*Views about Equal Opportunities in Employment*



## 3.7.

### The Situation of Fundamental Rights

#### 3.7.1.

##### Right of Peaceful Assembly

Although each and every case may have its special, unique fundamental rights aspect, the events investigated by the Commissioner for Fundamental Rights in 2012 pointed out some crucial issues that had manifested themselves on several occasions. Among those were the clarification of the concept of the right of assembly, including that of a public place, the issues of an assembly's venue and route, and the institutional protection of the right of assembly.

In connection with the concept of the right of assembly, the Commissioner stressed that the definition given by the OSCE should be modified: assembly means not only “the intentional and temporary presence of a number of individuals in a public place for a common expressive purpose” in general – its purpose should be the expression of the participants' opinion on public affairs in their widest sense, otherwise the event cannot be considered an assembly.

***Press release: 31/12/2012***

*According to the Ombudsman ... an event held in an out-leased public place is similar to an event held at a privately owned venue: the police has but restricted jurisdiction under the Act on the Freedom of Assembly. It is unclear in what way the police may be represented and what actions they may take, while those with an intent to disturb the public order may have free access to the venue. It is also fraught with risks when the event's organizers use the lease-out so as to evade certain stipulations of the Act on the Freedom of Assembly, i.e. they interpret the Act according to their momentary interests and treat the place as public or private depending on the character of the police action they deem necessary.*

*In view of this problem, the Ombudsman pointed out that if a place can be accessed by anyone, it should be handled during demonstrations as a public place irrespective of its ownership, thus making clear the organizers' responsibilities and the police's jurisdiction. To this end, explicit legal regulation would be needed – Ombudsman Máté Szabó has requested the Minister of Interior and the Minister of Public Administration and Justice to take the necessary measures.*

The Commissioner issued several reports aimed at clarifying the concept of public place. Generally speaking, the right of peaceful assembly covers assemblies in both private and public places. However, under the Assembly Act the police should only be notified of assemblies held in public places. Accordingly, the representatives of the police may attend assemblies held at private places only with the consent of the owner of the given place. In this respect the Commissioner pointed out that in the context of the right of assembly any place that is freely accessible for anyone should be considered public irrespective of its land registry status.

The Commissioner's 2012 reports on the right of assembly also dealt with the possible reasons for banning an event, especially with that provision of the Assembly Act which allows banning an event if traffic cannot be rerouted. This provision had become a kind of general, public order clause, i.e. the police routinely used it as a reference for banning events they deemed "riskier". The problem is that the practices of both the police and the courts cannot be considered consequent as far as this reasoning is concerned. The Commissioner pointed out that exercising the right of assembly may not be subject to the free deliberation of the authorities. According to the Ombudsman, the fact that the police can take certain measures under the prevailing legislation does not necessarily mean that the proportionality of the given police action should not be investigated. It is even more so when the actions of the police may affect the exercising of fundamental rights and/or freedoms.

Concerning the institutional protection of the right of assembly, the Constitutional Court stated that the exercising of the right of assembly should be protected not only from the state's unwarranted meddling but also from hostile viewers, counter-demonstrators and other troublemakers: the state has positive obligations in order to secure the implementation of the right of peaceful assembly.

In harmony with international practice deriving from the similar provisions of various international treaties, the Assembly Act is not a means of absolute restriction but a norm resolving fundamental rights conflicts

and establishing the requirement of proportionality. To put it in different words: the Assembly Act guarantees that the others, the obvious majority should not suffer disproportionate grievance. It is imperative, however, to define exactly what is to be meant by “others”, their “rights and freedoms” and “concrete, disproportionate grievance”. Consequently, the Assembly Act is not applicable in cases where there are no concrete persons suffering grievance while exercising their concrete fundamental rights.

Although there has been some progress in the enforcement of the right of assembly since 2008, still there are several legislative proposals, made by the Ombudsman, aimed at strengthening the guarantees of this fundamental right, waiting to be implemented. The police’s practice vis-à-vis the right of peaceful assembly has been gradually evolving in recent years. They started to use fundamental right-friendly methods that not only make assembly possible but also facilitate the exercising of this fundamental right.

***Press release: 31/12/2012***

*The Commissioner for Fundamental Rights deems exemplary the way the police handled the sometimes hardly followable student demonstrations, helping the students to exercise their right of peaceful assembly. The Ombudsman’s co-workers, present at the venues, did not experience any irregularities in police actions, the police followed and secured the demonstrations in a proportionate way, being observant of the right of assembly.*

Simultaneously with the positive trends in the application of law, there are still several improprieties waiting to be solved through legislation. In 2008 the Ombudsman proposed to codify the rules governing competing assemblies, i.e. assemblies close to each other in space and time. During the last 5 years he made several proposals to have the earliest date when prior notice of an event can be given stipulated by law.

In his proposal put forward in late 2012, the Commissioner for Fundamental Rights requested the Minister of Interior and the Minister of Public Administration and Justice to consider the possibility to draft a unambiguous bill on the competences and regulatory rights of local self-governments concerning the use of public places as there had been some uncertainty in handling events falling under the right of assembly, held in public places, e.g. concerning the police’s competences in securing public order and the exercising of the right of assembly depending on the classification of a certain venue.

## 3.7.2.

## Rights of Immigrants

In 2012 the Ombudsman made an unannounced on the spot inspection at the Temporary Detention Facility of Békéscsaba in order to examine the enforcement of the fundamental rights of immigrant families with minor children living there. This is the only place in Hungary where the police are detaining children under the age of 14, i.e. children who lack the capacity to act.

***Press release: 18/07/2012***

*With a view to deportation, alien policing authorities may take into custody for up to 30 days foreign nationality children together with their adult family members for illegally crossing the state borders of Hungary. According to the Commissioner for Fundamental Rights this is unnecessary on one hand, and, on the other, there is no legal basis and there are no legal guarantees for the detention of minors.*

In proceedings carried out by the alien policing authorities, unaccompanied foreign minors may not be placed in detention, but children accompanied by their adult family members may be placed in detention for 30 days at most. The Commissioner for Fundamental Rights established in his inquiry that the actual subject of such detention as a measure is, in fact, not the minor who lacks the capacity to act but the adult family member accompanying him/her. It violates a fundamental right when minors without the capacity to act are held in detention for an alien policing law infringement committed by their adult family members.

In the process of the Commissioner's inquiries the authorities explained the detention of children accompanied by their adult family members with their intent to protect the fundamental right to family integrity and privacy, and the public order. In his report the Ombudsman pointed out that the right to privacy is not guaranteed at the Temporary Detention Facility since the immigrants are detained in a totalitarian institution where handles are removed from the doors of most bedrooms and the families cannot move away even for their meals. The Commissioner also raised the question whether or not it is necessary to detain minors for a period of up to 30 days as a preparatory measure of deportation since, as a matter of fact, in the absence of a deportation order the child would be free to leave the place, either alone or accompanied by his or her adult relative, from the 31<sup>st</sup> day following the ordering of detention.

**Press release: 18/07/2012**

*In small children who are unable to comprehend the cause of the detention and estimate its length, 30 days in custody cause a mental stress incompatible with childhood. Consequently, this measure does in no way serve the best interests of the child as laid down in the UN Convention on the Rights of the Child.*

The Commissioner for Fundamental Rights therefore requested the Minister of Interior and the Chief of the National Police to take the necessary measures.

Before the Ombudsman acted in the matter, unaccompanied minors seeking asylum had been placed in the accommodation centre of Bicske where conditions were not really adequate for providing education and getting to know the country. Following the initiative of the Commissioner, the Minister of Social and Labour Affairs and the Minister for Public Administration and Justice set up, by amending the relevant Act, a home for unaccompanied minors in Károlyi István Children's Centre in Fót. The living conditions of alien minors, in respect of whom asylum proceedings are pending, who are recognised as refugees or who are in aftercare, are considerably better than they were in Bicske; this has also been confirmed by young persons who have been living there for a longer period of time.

The new inquiry of the Ombudsman also highlighted some problems. Among others, his report mentioned the fact that there is no isolation ward in the centre where newly arrived youths suffering from infectious diseases or parasites could be treated and cared for. This presents a danger to the right to physical and mental health, as laid down in the Basic Law.

Both the teachers of the school providing education for these alien children and the staff of the centre reported that almost all minors had been gravely affected by the shocks suffered during their journey to Hungary. In medical terms, they are suffering from 'posttraumatic stress disorder', which may result in a sudden loss of weight without any apparent cause, in chronic headaches or unexpected and uncontrollable outbursts of anger. The psychologists and the pedagogical support staff working in the children's centre are unable to properly attend to these problems since their time and energy is taken up by caring for the inmates of the special children's home also situated in Fót.

The inquiries of the Ombudsman also revealed the fact that not only the youths living there but the staff caring for them, as well, are in need of professional support. After some time children open up and begin to de-

velop confidence in and emotional ties towards the grown-ups caring for them and tell them about all the horrible things they went through – this is very taxing even for the teachers and educators who, with no psychological support, are unable to cope with this emotional burden.

### **Our senior staff member in charge**



**Dr. Katalin HARASZTI** graduated from the Faculty of Law of Miskolc University in 1988 then she passed her prosecutor exam. She received her Ph.D. at the Institute of Postgradual Legal Studies of the Faculty of Law of Eötvös Loránd University on 2010 (on the constitutional guarantees of the prohibition of torture). Between 1997 and

2011 she worked at the Office of the Parliamentary Commissioner for Civil Rights as deputy head of department. She is a part time lecturer at the Constitutional Law of the Faculty of Law and Political Sciences of Eötvös Loránd University.

#### 3.7.3.

##### Family Law

The Commissioner for Fundamental Rights conducted a separate investigation in 2012 in connection with the employment possibilities of parents with small children. He concluded that their situation is made more difficult by the lack of jobs and other non-conventional forms of employment. Women and parents with small children usually cannot arrange for their children's supervision during working hours because there are not enough day care centres and the existing ones are overcrowded. The Ombudsman inquired into the possibilities of part time employment for young mothers in the public sector, the education opportunities offered by the job centres for this group, the practices of labour management, the chances to find employment and the problems of the private sector in this field.

From his investigation the Commissioner concluded that the employment rate of mothers with small children considerably lags behind compared to that of the European Union. In the case of mothers with children under 3 this rate is 14%, the lowest among EU member states.

The investigation clearly showed that non-conventional forms of em-

ployment are still rare. There are not enough part time and teleworking opportunities, flexible working hours are not widely accepted. The biggest problem for women and parents with small children is day care. As it was established by the Commissioner in an earlier report, the existing day care system does not fulfil its function, its capacity is insufficient, the day care centres are overcrowded and their operating hours are not in harmony with the parents' working hours. The Commissioner for Fundamental Rights requested the Minister for National Economy to take into account these findings when drafting the ministry's proposals for improving the situation of women on the labour market.

The Commissioner also requested the Minister of National Resources to consider the amendment of a statute. According to the Ombudsman, it runs contrary to the rights to employment and work and the requirement of legal certainty that, under the relevant statute, mothers on child-bearing allowance, childcare allowance or benefit are not entitled to participate in the trainings of the Social Renewal Operational Programme (TÁMOP), which impedes their re-entry to the labour market. In the Commissioner's view, the optimum would be if the parent, upon the expiry of the childcare allowance and benefit, had the proper qualifications to start working. Under the current regulation, parents with small children may participate in any form of education or training aimed at helping their re-entry to the labour market only after the period they spent on childcare allowance and benefit – this way years may pass before they can start working again.

#### 3.7.4.

#### Right to Health

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

The competence of the Ombudsman in the sphere of healthcare is rather limited. Under the statute regulating his activities, he may not investigate all types of grievances, e.g. medical professional issues. Nor can he

take a stance in matters related to malpractice compensation claims which fall within the jurisdiction of the civil courts.

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

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

The Commissioner also established that there not enough pharmacists, assistants and professional assistants in Hungary, continuity is not guaranteed and the level of the training of healthcare assistants is uneven. The universities do not educate enough pharmacists, certain basic activities (e.g. extemporaneous pharmacy) are atrophying, the pharmacists and assistants are overloaded and overworked. In many cases they have to carry out activities not matching their competences, and pharmacies find it harder and harder to secure the continuous presence of at least one pharmacist during business hours.

During his investigations the Ombudsman established that the level of the assistants and professional assistants' training is uneven, the system of their education is deteriorating and the legal regulations governing their training are often disrespected in practice. The personal and material premises of transferring and acquiring professional knowledge are inadequate, legal regulations specifying the length of training are not harmonized. Market competition between institutions specializing in adult education may also be conducive to the deterioration of the quality of education.

According to the Ombudsman, the above mentioned factors may in-

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

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

### **Our senior staff member in charge**



**Dr. Attila LÁPOSSY** graduated from the Faculty of Law of Eötvös Loránd University in 2007 then continued his Ph.D. studies at the Faculty's Institute of Postgradual Legal Studies. Since September 2007 he has been part-time teacher and, since 1 January 2013, assistant professor at the Department of Constitutional Law of the Faculty. Since 1 January 2008 he has been a staff member of Ombudsman Máté Szabó. Currently he is senior legal advisor at the Public Law Department.

# 4.

## International and Public Relations in 2012

The international recognition of the Hungarian ombudsman institution is well illustrated by the fact that during last year the commissioner for fundamental rights was invited to eight venues on three continents to give lectures and share his experience. Among them was the conference of the International Ombudsman Association where he was one of the keynote speakers and the European Group of National Human Rights Institutions, a body operating under the auspices of the UN. In 2012, the ombudsman received 27 foreign visitors and delegations, including rapporteurs of the Council of Europe and the UN, the High Commissioner on National Minorities of the OSCE and several ambassadors accredited to our country. In 2012, the co-workers of the commissioner for fundamental rights were invited to 47 international conferences and consultations, mainly in the fields of children's rights, equal opportunity and the right of assembly.

Just as in previous years, the activities of the commissioner for fundamental rights in 2012 were conducted before the eyes of the public. He gave account of his work, investigations, reports and recommendations in 248 statements altogether, published several booklets summarizing his projects, gave interviews on and analyzed the state of fundamental rights in Hungary and the ombudsman's activities in both the domestic and foreign press.

### 4.1.

#### Our International Relations

##### **The Office of the Commissioner for Fundamental Rights as the National Human Rights Institution of the United Nations**

The Office of the Commissioner for Fundamental Rights received the United Nations' National Human Rights Institution (hereinafter NHRI) B-status classification from the UN's International Coordinating Committee for National Human Rights Institutions (ICC) in May 2011. This prestigious status significantly increased our international recognition, which revealed in the

active international performance of the Office by participating on several international conferences and bilateral meetings, as well as taking part in the UN bodies' policy-making decisions through reports and professional consultations carried out during the year.



An important obligation for an institution obtaining NHRI-B status is to share information on its activities, institutional operations, projects and statistics, as well as on its investigations and the national legislative environment. By filling out questionnaires and providing information, the Office participated in shaping several UN reports and policies: In January 2012, the Commissioner for Fundamental Rights reported on his findings and the legislative environment related to the freedoms of peaceful assembly by answering the questionnaire of the UN Special Rapporteur on the issue which report was submitted to the Human Rights Council for consideration at its 20<sup>th</sup> session in June 2012. Another special rapporteur's questionnaire was responded in details regarding the situation and legal background of the human rights defenders and institutions in Hungary.

The UN Committee on the Rights of Persons with Disabilities requested the Office of the Commissioner for Fundamental Rights, as Hungary's National Human Rights Institution, to share its view and send its contribution regarding the initial report of Hungary under the UN Convention on the Rights of Persons with Disabilities which was considered by the UN Committee on 20-21. September, 2012. The ombudsman report was welcomed and received a positive feedback during this session. *(Noting that Article 33 of the UN Convention on the Rights of Persons with Disabilities stipulates the establishment of a multi pillar control mechanism in order to fulfil national implementation and control, state Parties have to designate besides one or more focal points within government and the coordination mechanism within government a framework including one or more independent mechanism with regard to the legal status and functioning of national institutions for protection and promotion of human rights. According to Section 1, Subsection (3) of Act CXI of 2011 on the Commissioner for Fundamental Rights in the course of his activities the Commissioner for Fundamental Rights pays – especially by conducting proceedings ex officio – special attention to assisting, protecting and supervising the implementation of the UN Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007.)*

The Ombudsman Office also played an active role and being participant on several UN-OHCHR meetings and seminars; including the annual plenary session of the ICC (International Coordinating Committee for National Human Rights Institutions) held in Geneva in March, 2012; or taking part on the European Group of National Human Rights Institutions 2012 Regional



Workshop on Business and Human Rights, held in Berlin, Germany, in September. The participants of this workshop, including the leaders of the European NHRIs as Prof. Dr. Máté Szabó, discussed the important issue of human rights' situation in the troubling economic environment and the increasing role and importance of the NHRIs in this area. In April 2012, a joint meeting of the European Group of NHRIs and the European Union Agency for Fundamental Rights (hereinafter FRA) took place, as well as tripartite meeting including the EQUINET (European Network of Equality Bodies, hereinafter EQUINET) to the group in October. The parties emphasized the importance of increasing communication and info-sharing for providing technical and professional assistance to each other in the current difficult environment. The colleagues of the Office were committed regarding the common goals established and they actively cooperated on the meetings.

In 2011, the Office of the Commissioner for Fundamental Rights became a member of a highly-respected international network and cooperation. However, the year of 2012 is said to be the year learning: by the institutional restructuring and the extension of the mandate of the ombudsman, by the rethinking of the nomination and election of the commissioner, as well as grace to the good relations with the Hungarian civil society and the excellent relations with international organisations and NGOs; the protection of fundamental rights could have been better implemented in Hungary in 2012. Therefore, the activity of the Commissioner for Fundamental Rights and his colleagues could be considered as a basis for the reaccreditation proceeding for an NHRI A-status in the year 2013.

## 4.1.1.

## Delegations received in 2012

In 2012, the international relations of the Office of the Commissioner for Fundamental Rights (hereinafter, OCFR) were also marked by significant increase of international bilateral meetings. Important delegation visits from Europe and the world were received; many diplomats and international experts visited our Office during the year.

The official high-level visits were “opened” in January by Mr. Markus Löning, the **Federal Government Commissioner for Human Rights Policy and Humanitarian Aid** at the Federal Foreign Office of Germany, who requested information on the new Basic Laws of Hungary, as well as on several Hungarian legislations which received high European attention (such as the media law, or the regulation on churches), moreover some questions were raised that threaten the implementation of fundamental rights in Hungary (e.g.: the amendment of the mandate of the Constitutional Court, or the law concerning the independence of courts...etc.)

In the beginning of February, the Secretary-General and his colleagues from The **Norwegian Helsinki Committee** travelled to Budapest to gain a better understanding of the developments in Hungary with regards to the political situation and the recent reforms. During the meeting, the recent judicial and constitutional reforms and the role of the Commissioner for Fundamental Rights were in focus of the discussion.

In May, a **Taiwanese delegation of the Central Yuan** visited the Ombudsman which event provided an excellent opportunity for mutual information sharing on both ombudsman institutions, on their legal backgrounds and the defined areas of activity.

A delegation of the **European Parliament’s Committee on Civil Liberties, Justice and Home Affairs** (LIBE) organised a visit to Budapest in September, which purpose of this delegation is to gather information and comments by Hungarian authorities, representatives from civil society, academics, experts and additional stakeholders regarding the current situation and the recent political developments in Hungary. On the margin of this visit in Budapest, the members of the delegation consulted with Prof. Dr. Máté Szabó, the Commissioner for Fundamental Rights.

In October, the **UN Special Rapporteur**, Mr. Calin Georgescu had a consultation on hazardous materials, waste management and their storage in Hungary. In the focus of the discussion with Prof. Dr. Máté Szabó, the Commissioner for Fundamental Rights, the two touched the issue of red sludge catastrophe, the situation of disaster management and the relevant

Hungarian legislations, as well as the ombudsman inquiries and reports.

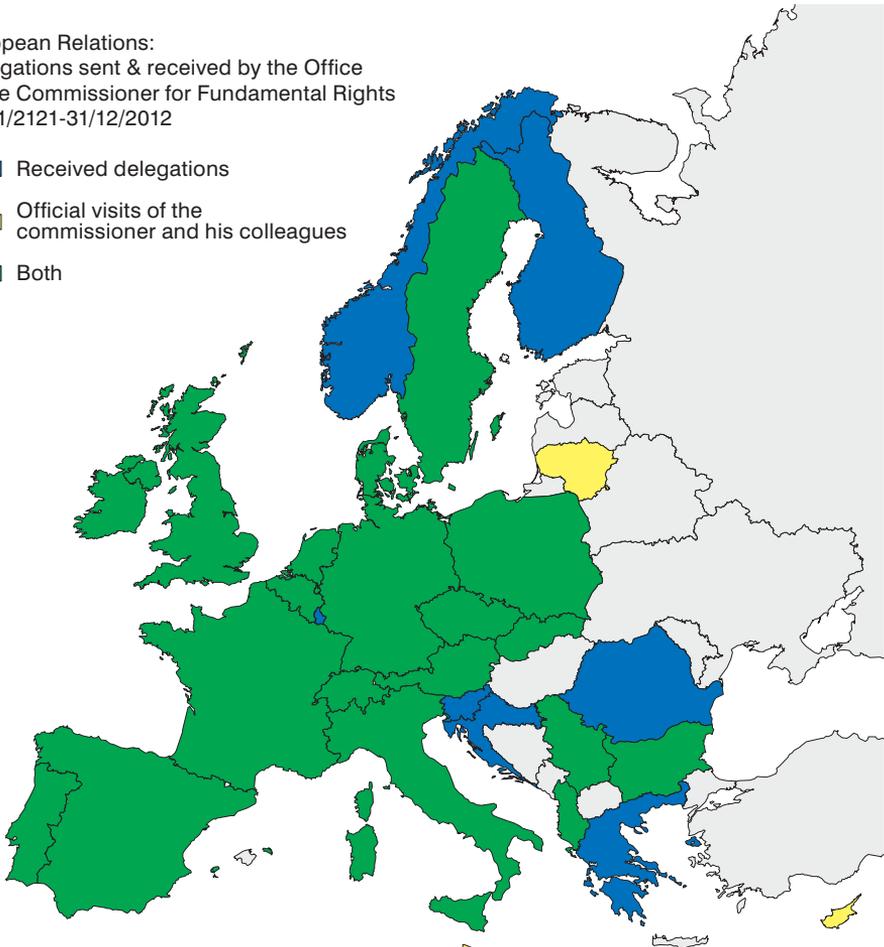
Also in October, the Commissioner for Fundamental Rights had received Mr. Knut Vollebaek, the **OSCE High Commissioner on National Minorities** and his delegation. The main subject theme of the consultation was the protection of ethnic and minority rights in Hungary after the adoption of the new Basic Law.

The People's Republic of China and Hungary have a Human Rights Dialogue since 2000. In the framework of this cooperation, Mr. Mingjin Hao, the **Vice-Minister of the Ministry of Supervision of China** visited the Office of the Commissioner for Fundamental Rights between 17-19 October.

Besides the above-mentioned visits, we could also welcomed the Congress Delegation of the Council of Europe in February and May, the **Petition Committee of the Parliament of the Czech Republic** also in May, the delegation of the **South-Korean Anti-Corruption and Civil Rights Commission**, and **former Polish Ombudsman** Ms. Ewa Letowska in December.

European Relations:  
Delegations sent & received by the Office  
of the Commissioner for Fundamental Rights  
01/01/2121-31/12/2012

- Received delegations
- Official visits of the commissioner and his colleagues
- Both



## 4.1.2.

## Other International Activities

**EQUINET**

The **European Network of Equality Bodies (EQUINET)** brings together 38 organizations from 31 European countries to enable national equality bodies to achieve and exercise their full potential by sustaining and developing a network and a platform at European level. The EQUINET regularly organises trainings and seminar for its member organizations. These trainings are designed to enhance and promote the efficiency of the equal treatment activity of the members as well as the providing forum for the exchange of view on thematic issues and the consultancy of experts. The Office actively participated on these trainings and the organisation's work by sending its contribution in connection with the development of European policies. Regarding specific topics, our Office presented the national regulatory environment, the achieved results and the established practices.

In September, the **European Roma Information Office (ERIO)** organized a workshop on the subject how the equality bodies and networks (like EQUINET) can be involved in the work and policy-making of the Commission relating to Roma people. Within the framework of the **Race Equality Directive 2000/43** and the Commission's Communication on the implementation of the Directive in 2008, this workshop provided a platform for discussion between different Equality Bodies and Roma representatives to exchange ideas and concerns, as well as to inform each other about the barriers they face. The final conclusion of the seminar was that the consistent actions against discrimination are more important in times of crisis than ever.

**Environmental protection**

Dr. Sándor Fülöp, the Deputy-Commissioner for Fundamental Rights responsible for the protection of the interest of future generation attended several international workshops and seminars during the year 2012. He gave lectures on the sustainable development on the **UN Rio+20 Conference** in June 2012, as well as on the preparatory meetings held in New York and Brussels as being the member of the environmental governance workgroup.

## Children's Rights

As of January 2012, the protection of children rights has received more emphasis in the Hungarian legislation including certain provisions of the Act on the Commissioner for Fundamental Rights as well. As in every year since 2008, a special project of the ombudsman was dedicated to a specific area of interest, in addition to dealing with the traditional task of complaint handling. In 2012, the issue of child-friendly justice was placed in the focus of the investigations. As being one of the national focal points of the Council of Europe in Hungary, the Office participated on high-level conferences such as the one organised by the European Commission and dedicated to the theme of missing children. It also took part on the 7<sup>th</sup> **European Forum on Children's Rights** and the Annual Conference of **EUROCHILD** (an European umbrella organisation bringing together 100 members), on which conference our colleague participated as a rapporteur on the theme of family-group conference.

Our Office were actively involved in the work of the **European Network of Ombudspersons for Children** (ENOC). Enhancing the international character of the Office's project on children's rights, on 22 November 2012, the Office of the Commissioner for Fundamental Rights jointly organised the closing conference of the project with the Council of Europe. On this event, high-ranked representatives from the **European Commission**, the **Council of Europe** and the **United Nations Children's Fund** (UNICEF) attended.

## The GODIAC International Project

The transnational project runs from 1 August 2010 to 31 July 2013; in which 20 partner organisations from 11 countries participate. The members are 12 police organisations and 8 research/ educational organisations including the Office of the Commissioner for Fundamental Rights. The objectives of the project are to contribute to the development of an European approach to policing political manifestations, to learn how research based principles, especially communication and dialogue are applied to de-escalate and prevent public order disturbances. The project developed excellent co-operation and network between practitioners, researchers and trainers in the partner countries and it also enhanced the use of research based knowledge in police operations.

In January 2012, a seminar was organised by the Swedish Police Academy in Solna, where the colleagues of the Office (Mr. Barnabas Hajas, Ms Agnes Lux and Mr. László Tóth) actively participated in the first year evaluation

summary of the project. They were invited to take part in three on the spot investigations from five, such as the LGBT march in Bratislava (Slovakia) or the unreported extreme Anti-Jihad demonstration in Stockholm. Comprehensive reports were made on these on the spot investigations.

### OPCAT

On 12 January 2012, Hungary has joined to the **Optional Protocol to the UN Convention against Torture** (OPCAT) adopted in 1984. The Convention requires the establishment of independent bodies both on national and international levels, which execute regular visits in the detention institutions for verifying conditions therein.

Hungary officially notified the **UN Subcommittee on Prevention of Torture** (SPT) on that the Commissioner for Fundamental Rights will carry out the task as national preventive mechanism from 1 January 2015. This also means that the Office may investigate all the detention centres declared in Paragraph 4 of the Additional Protocol, and can interview all the official and private individuals without any witnesses.

The Office has started the professional and technical preparation for fulfilling its new task and duty. Therefore, our colleagues participated on several relevant conferences, consulted with experts, like it happened on the OPCAT Conference organised by the Hungarian Helsinki Committee and Mental Disability Advocacy Centre in Budapest.



### Participating in international ombudsmen organisations

The Annual Meeting of the **Visegrád Four Ombudsmen** was held in Brno, Czech Republic, in May 2012. The main subject themes of the consultation of the Four Ombudsmen (the Czech, Slovakian, Polish and Hungarian) were the special relations of the ombudsmen with the judicial bodies, such as the Constitutional Court or the Supreme Court. The meeting provided an excellent opportunity for further increase of the fruitful relations among these institutions.

Following the invitation of the Tuscan region, the **European Ombudsman Institutions** (EOI) called together its members to Florence, Italy, for the annual general and board meeting in April. Besides discussing the institutional matters; several lectures were held such as in the cases when the Italian and Hungarian ombudsmen reported on their activities.

On 10 July 2012 Máté Szabó was received by Spanish Ombudsman Maria Luisa Cava de Llano in Madrid. At the meeting the Commissioner for Fundamental Rights gave an overview of the recently integrated Hungarian ombudsman institution with presenting its main characteristics. Máté Szabó travelled to Madrid to participate at the **XXII. World Congress of the International Political Science Association** organized on 8-12 July 2012.

On 1–4 August 2012 Máté Szabó participated at the **II. ISA Forum of Sociology on Social Justice and Democratization** held in Buenos Aires. In the framework of the conference the Commissioner for Fundamental Rights held consultations with Argentine Ombudsman Anselmo Agustín Sella and Public Defender Stella Maris Martinez. On 2 August the Commissioner participated and delivered a speech at the meeting of the Hungarian Community in Buenos Aires.

On 13–15 September the Commissioner for Fundamental Rights participated at the **XII. Annual Conference of the European Society of Criminology in Bilbao**. The conference was held under the title “Criminology in the 21<sup>st</sup> Century: a necessary balance between Freedom and Security”. During his stay the Commissioner met Basque Ombudsman Iñigo Lamarca Iturbe. The meeting offered an opportunity to share results and experiences in the field of LGBT rights’ protection, the functions of national and regional ombudsman institutions or the impacts of the economic crisis on social rights.

The 10<sup>th</sup> World Conference of the **International Ombudsman Institute (IOI)** was held in Wellington, New Zealand, from 12–16 November 2012, where ombudsmen from all around the world were presented. Following the plenary session, experts from five continents gave lectures on specific issues including the Hungarian Ombudsman, who talked about ‘*Serving vulnerable groups effectively*’.



**Éva HEIZERNÉ HEGEDŰS** graduated from the Faculty of International Affairs of the Moscow State Institute of International Relations in 1988. She has been working for the Office of Parliamentary Commissioners since 1997. Between 1997 and 2007 she was the Head of the Department of Documentation and International Affairs of the Parliamentary Commissioner for National and Ethnic Minorities and from 2007 to 2011 she headed the Department of Organization and Client Services. From 2012 she is Deputy Secretary General for Administration of the Office of the Commissioner for Fundamental Rights.

**Staff members of the International Relations Unit**

*(From left to right)*

	<b>Graduated from</b>	<b>Staff member of the Office since</b>
Ágnes BALAJTI	Faculty of Social Sciences, Corvinus University of Budapest (2009)	October 2010
Dr. Zoltán ELEK	Faculty of Law, University of Pécs (2007)	November 2012
Dr. Nikolett BABOS	Faculty of Law, Eötvös Loránd University, Budapest (2000)	September 2012
Dr. István PEROSA	Faculty of International Relations, Moscow State Institute of International Relations (1988)	December 2012

## 4.2.

### Cooperation with Civil Society Organizations



*Act CXI of 2011 on the Commissioner for Fundamental Rights specifies as part of the ombudsman's functions and powers that "In the course of his or her activities the Commissioner for Fundamental Rights shall cooperate with organisations aiming at the promotion of the protection of fundamental rights."*

In the course of conducting the specific inquiries, the framework of cooperation is given substance by the civil society experts of the relevant fields, the involvement of the non-profit organizations, consultations and workshop discussions, conferences, exhibitions and, in the institutionalized form, by the Civil Consultative Body, created by the ombudsman in 2010.

This cooperation between the ombudsman and civil society is relevant at three main levels:

#### 4.2.1.

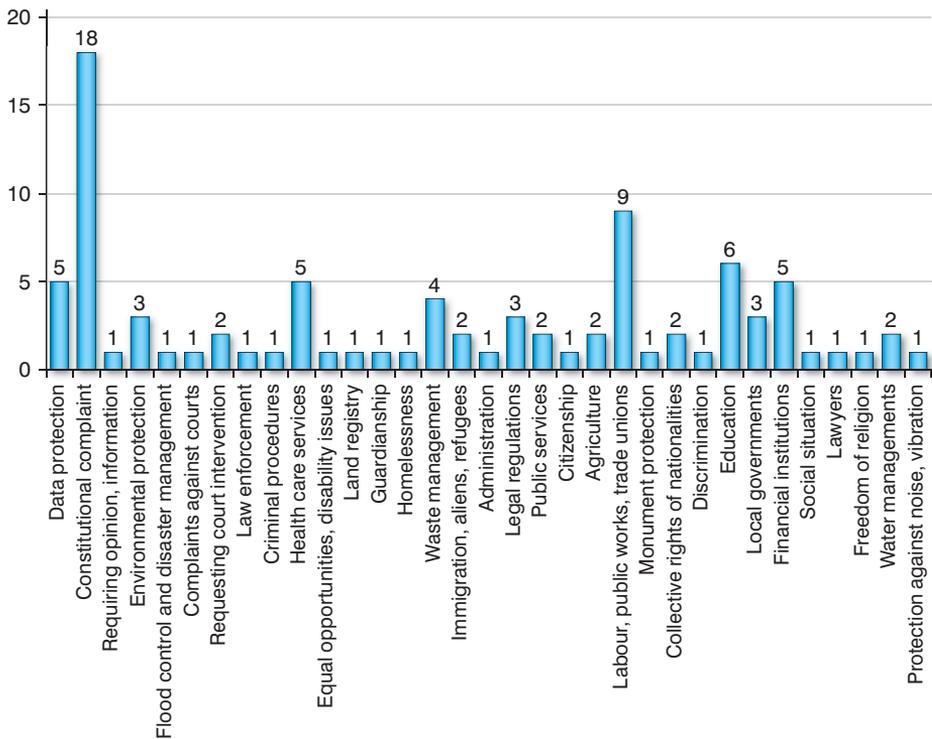
Complaints, proposals of civil organizations submitted to the commissioner for fundamental rights

- *In 2012, the Office of the Commissioner for Fundamental Rights received more than 7000 complaints including around 100 submitted by civil organizations.*
- *In 60-70 cases the Ombudsman initiated an investigation based on a civil request.*

Considering the different types of cases initiated by members of the civil society, the *number of complaints questioning the constitutionality of legal regulations* is strikingly high (18) and the *number of complaints submitted by civil organizations concerning labour and education issues* was relatively high (9 and 6), as well.

Other common types of complaints received from civil organizations were those about *data protection, health care services, financial institutions, waste management, collective rights of minorities* and local government issues but there were also some civil initiatives concerning protection against noise and vibration, water management, freedom of religion, homelessness, asylum seekers or public services.

#### *Types of complaints submitted by NGOs*



As the institution of *actio popularis* has been abolished, citizens may no longer submit a petition to the Constitutional Court for ex post review, therefore the ombudsman's competences in this regard have gained major importance.

This was reflected in numbers, as well: in 2012, the Commissioner for Fundamental Rights received *683 proposals to file a petition to the Constitutional Court*; on their basis (and considering the consolidated petitions and petitions submitted ex officio, as well) *the commissioner for fundamental rights appealed to the Constitutional Court more than 20 times*.

In 19 cases the proposals were submitted to the ombudsman by civil organizations, two of which, the National Conference of Student Self Governments' proposal concerning the Act on Higher Education and the National Federation of Disabled Persons' Associations' proposal concerning social services and assistance for disabled persons, were of outstanding importance, which is well illustrated by the fact that the Constitutional Court annulled the contested regulations as a result of the petitions submitted by the ombudsman.

Furthermore, the ombudsman submitted petitions to the Constitutional Court based on the proposals of the Network for Freedom of Education, the Hungarian Gambling Federation and the Hungarian Civil Liberties Union (TASZ), and there are three pending procedures before the Constitutional Court started upon the proposals of the Association of Hungarian Journalists and the One-Step-Ahead Non-profit Association (Lépéselőny Közhasznú Egyesület).

In addition to the above mentioned organizations, the commissioner for fundamental rights received proposals to file a constitutional complaint from the Association of Family Representatives, the Hungarian Medical Chamber, the National Federation of Agricultural Co-operators and Producers, the Human Chain for Hungary, the Nebáncsvirág Association or the Felis Hungarica (Macskások Egyesülete).

#### 4.2.2.

Meetings, programs, other events; cooperation with the civil sector in the special projects launched by the commissioner for fundamental rights

*In 2012, (almost) each program or event organized in the Ombudsman's Office was, (and still is) connected on some points to civil society: either because of its subject or agenda, or because of the participants invited, at some level there is always civil society involvement in these programs.*

Events organized especially for the civil society included a round table discussion for experts on disability issues 27 March 2012, panel discussions

*Exposition and fair of eco-friendly products in the Office (March, 2012)*

on the environmental impact assessment of settlement planning tools (April-May), competition organized by the NGO Civitas Association or the announcement of results of the “Carbon Detectives” program competition; but we can also mention the plant fair and sale on 14 March 2012, the fair of eco-friendly products and the event organized by the NGO Green Office on 23 May 2012.



The Office of the Commissioner for Fundamental Rights hosted the meetings of civil environmental and nature conservation associations and, in the course of their work, the ombudsman’s staff had also attended several consultations with notable representatives of the civil society.

NGOs like the Hungarian National Committee for UNICEF, the Hungarian Civil Liberties Union, (HCLU/TASZ), the Hungarian Helsinki Committee, the Legal Defence Bureau for National and Ethnic Minorities (NEKI), the Eötvös Károly Institute, researchers, teachers and students of the Central European University (CEU); representatives of the social and health sector, (Public Foundation for the Homeless, Shelter Foundation, Hungarian Maltese Charity Service, Hungarian Academic Association of Rural Health, Hungarian Hospital Association, Hungarian Psychiatric Association) were frequent visitors to the Office of the Commissioner for Fundamental Rights.

The ombudsman also has a strong professional relationship with the most important disability advocacy organizations, just to mention some major ones: National Federation of Disabled Persons’ Associations (MEOSZ), Hungarian Association of the Deaf and Hard of Hearing (SINOSZ), National Organization of Autistics (AOSZ), National Federation of Hungarian Federation of the Blind and Partially Sighted (MVGYOSZ), Hungarian Association for Persons with Intellectual Disability (ÉFOÉSZ).

The relationship is almost the same with associations concerned about environmental protection (Humusz Waste Prevention Alliance, Védegyelet – Protect the Future, Hungarian Ornithological and Nature Conservation Association, Clean Air Action Group, WWF, Greenpeace), and with civil groups and organizations concerned about national and ethnic minorities’



*Inauguration of the exposition of Bulgarian painters (March, 2012)*

rights (EQUINET, Chance for Children Foundation, European Roma Rights Centre). We maintain permanent personal and professional relationship with civil partners including the Hungarian National Council on the Environment or other civil organizations participating in the activities of the National Council for Sustainable Development: the Hungarian Ornithological and Nature Conservation Association, Environmental Management and Law

Association, Ecology Institute for Sustainable Development, Clean Air Action Group, WWF Hungary, Seedling Nature and Environmental Protection Association, GATE Green Club Association, Nettle Nature and Environmental Protection Association, E-mission Association. In this regard we should also mention the sessions of the Coordinating Board of Environmental Protection Civil Organizations held at the Office of the Commissioner for Fundamental Rights with the participation of the ombudsman's staff. We must also highlight the ombudsman's contribution to the publication of the Hungarian Ecovillage Network's Bulletin as part of our long term cooperation with local communities striving for sustainable development.

*The traditional ombudsman type activities (handling complaints, carrying out inquiries) were supplemented with several project-activities focusing on different fundamental rights related topics. In order to achieve success in the comprehensive investigations carried out in the framework of these projects, it is essential to consult and cooperate with civil experts and representatives of advocacy organizations. Consequently, consultation with civil representatives of the relevant fields is an important element of the ombudsman's inquiries carried out as part of the projects, and especially of the Project on Child Friendly Justice, the Project on Dignity of Labour and the Project on Losers of the Crisis.*

Cooperation is especially effective with civil organizations representing those fields where civil activity is intensive and civil advocacy organizations have major importance (children's rights, community employment, persons with disabilities, care for homeless people, education and nationalities, environmental protection or the economic crisis and victims of financial institutions). Furthermore, it can be stated that *cooperation mechanisms between civil organizations and the previously independent commissioners*

(now deputy-commissioners) have been integrated into the unified ombudsman institutional system set up from 1 January 2012, to further enforce the effectiveness of the new institutional structure.

On the basis of reciprocity, the Office has also attended several events of civil organizations like the International Public Sanitary Forum and Exposition (26 April 2012), the Annual Meeting of Nature Conservation Associations organized by the National Society of Conservationists – Friends of the Earth Hungary (24 October 2012), and the ombudsman inaugurated the temporary photo exhibition entitled “*The past, the present and the future of Verespatak*” at the Office Building of the Members of Parliament on 26 April 2012.

The ombudsman’s colleagues are also involved in the work of the so called *Aarhus roundtable* (which aims to contribute to helping civil participation and access to information concerning nuclear energy use), they cooperate with the *Environmental Management and Law Association*, the *Energiaklub Climate Policy Institute and Methodological Centre*, and they conduct regular consultations with Greenpeace Hungary concerning the recultivation of the red sludge reservoirs in Almásfüzitő.

Following the previous consultation practices of the former commissioner for national and ethnic minorities, in the new unified ombudsman institutional system our colleagues maintained strong relationship with representatives of civil advocacy groups and legal defence organizations in 2012. Accordingly, the commissioner’s staff attended several training seminars and conferences of EQUINET Antidiscrimination Network and the *European Union Agency for Fundamental Rights (FRA)*; held litigation consultations on Roma education and segregation issues with representatives of the *Chance for Children Foundation*. There is also an informal platform for exchange of information between the ombudsman and the *European Roma Rights Centre*, the *Tom Lantos Foundation* and the *Kurt Lewin Foundation*. Strong civic participation characterized the presentation delivered in January on minority education and education of migrants, the several panel discussions and the various minority programs, like the *Bulgarian spring festival* on 1 March 2012.

In addition to the participation of NGOs in the professional events of the ombudsman’s Office, we should also mention the large number of invitations received from representatives of the civil society requesting the participation or intervention of the ombudsman or his staff. The ombudsman is invited on a regular basis to the events and programs of nationalities’ self-governments and several NGOs (the *Transylvanian Armenian Roots Cultural Association*, the *Association Védegylet – Protect the*

Future, the National Society of Conservationists – Friends of the Earth Hungary, National Federation of Disabled Persons' Associations (MEOSZ), Hungarian Association of the Deaf and Hard of Hearing (SINOSZ), Public Foundation for the Homeless, Shelter Foundation etc. *Highlighting the most significant events among the numerous civil-related programs of 2012 attended by the Commissioner for Fundamental rights*, we have to touch upon the two-day professional conference “Paradigm Shift in Homeless Care”, organized by the Hungarian Academic Association of Rural Health under the patronage of the Commissioner, with several of his colleagues among the conference's speakers. The Ombudsman also participated, both as a patron and a speaker, in the large-scale programme organized by the Hungarian Association of the Deaf and Hard of Hearing (SINOSZ) on the occasion of the International Day of the Deaf; his colleagues, having their own stand, were at the disposal of the children and their parents interested in the sphere of fundamental rights the entire day.

**Press release:** 13/12/2012.

**“Responsible State, Conscious Citizen” – Workshop on Social Issues**

*Within the frames of a general project called the “Losers of the Crisis” the Commissioner for Fundamental Rights organised a workshop on 29 November 2012. The conference focused on three social issues; the changes in the system of pensions and disability allowances, the wage of employees in medical fields and the costs of enforcement proceedings.*

*Zoltán Balogh (president of the chamber of medical workers) analysed the grave problem of financing medical workers. Although there has just been a rise in the wages, they are still much less than the European average.*

### Our civil contacts coordinator



**Dr. Tímea CSIKÓS**

She received her degree in law at the University of Pécs, Faculty of Law, in 2010 and got a job already in that year in the Office of the Parliamentary Commissioner for Civil Rights. From September 2012 she started her post-graduate studies at the University of Pécs, in Political Sciences. From September 2012 she coordinates all the contacts, all the interfaces between the ombudsman and the Civil Organizations.

## 4.2.3.

## Civil Consultative Body, Prizes and Recognitions

Back in 2010, the Parliamentary Commissioner for Civil Rights established the Civil Consultative Body (CCB), a standing advisory group for the utilization of the skills of specialists, who are also public figures, with considerable experience and/or high-level theoretical knowledge in order to facilitate the assertion of constitutional fundamental rights. During the last meeting of the CCB, on 3 October 2012, the *Civil Contacts Coordinator* of the Commissioner for Fundamental Rights and two new members of the CCB were introduced, and the group discussed professional issues like the transparency and drafting methods of motions to be submitted to the Constitutional Court and the Ombudsman's reviews on legal regulations. Members also discussed the practices of handling complaints under the new structure of the Office, the necessity of possible civil contribution to the publishing of the annual reports, and the possibility of introducing the practice of filing complaints through a uniform complaint form was also raised.

*Current members of the Civil Consultative Body*

**Dr. Gáspár Bíró**, university professor (Eötvös Loránd University, Faculty of Law),

**Dr. Nóra Chronowski**, associate professor (University of Pécs, Faculty of Law),

**Dr. Géza Finszter**, university professor (National Institute of Criminology),

**Dr. Zoltán Fleck**, associate professor (Eötvös Loránd University, Faculty of Law),

**Dr. Péter Hack**, assistant professor (Eötvös Loránd University, Faculty of Law),

**Dr. György Könczei**, university professor (Eötvös Loránd University, College of Special Education),

**Dr. Lehoczky Dr. Csilla Kollonay**, university professor (Eötvös Loránd University, Faculty of Law),

**Mr. Péter Nizák**, senior program manager (Open Society Institute),

**Dr. Miklós Radoszáy**, assistant director (Csányi Foundation),

**Miklós Vecsei**, vice president (Hungarian Maltese Charity Service),

**Dr. András Varga Zs.**, associate professor (Pázmány Péter Catholic University, Faculty of Law),

**Dr. Mónika Weller**, senior adviser (Ministry of Public Administration and Justice)

### 4.3.

#### Media coverage

##### **Activities of the Commissioner for Fundamental Rights as reflected in the media in 2012**

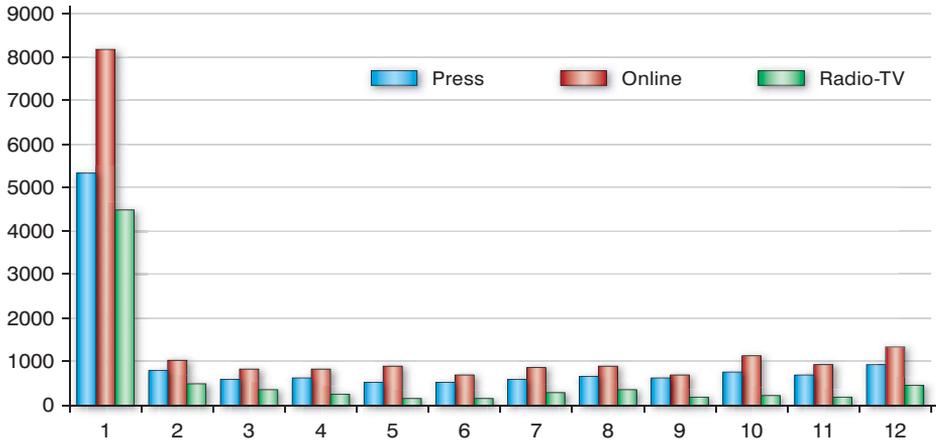
Since the entry into force of Act CXI of 2011 on the commissioner for fundamental rights on 1 January 2012, the media followed with increasing interest the newly transformed ombudsman-system functioning with a unique ombudsman and two deputy ombudsmen. In January 2012, the media (radio-television-online media) dealt mainly with the perspectives and future effectiveness of the new structure. As a result, the coverage in the media of the commissioner's activities had almost doubled in 2012 compared to 2011 (497 in one month!). Media interest in the commissioner's activities and inquiries remained high during the year however there were several fluctuations according to the actual economic-political environment and the publication of the topics inquired into.

Online media was still gaining ground. The presentation of the commissioner's and his Office's activities and the topics in the centre of their investigations was utterly high in the online media. You can find a statistical diagram below showing the total number of the media appearances of the ombudsman's activities and the coverage of his topics inquired into. It is well demonstrated that media interest was utterly high in January 2012.

As for the interpretation of the January 2012 datas it should be noted that these datas refer to the total number of internet search keywords referring to the duties and activities set out in the Basic Law and Act CXI of 2011 on the commissioner for fundamental rights. Media coverage of the analyses of the legislative environment regulating the activities of ombudsman Máté Szabó and the restructuring of the Office gave place to presentations of the ombudsman's work in January 2012 which produced a relatively low number compared to January but was significantly higher than in the past years.

In 2012, like in the previous years the ombudsman carried out his

*Media coverage of the ombudsman’s topics in 2012*

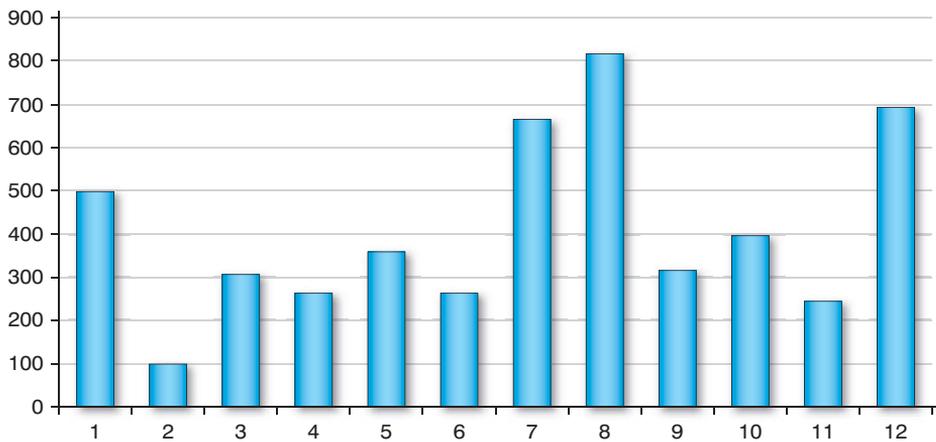


Source: Observer

activities in the limelight of publicity. The commissioner issued 248 communications on his activities, inquiries and reports, published brief summaries on his projects, the national and international media dealt with the situation of human rights in Hungary and the ombudsman’s work in several press articles, interviews and analysis.

After the transformation of the institution and the Office could start its „everyday” operation, the media rather followed with interest the ombudsman’s communications and events forming the background of his special projects. In 2012, the national and international media followed with special attention the project on *child friendly justice*. The large num-

*The ombudsman in the media 2012*



ber of inquiries related to the enforcement and infringement of children's rights was well reflected in the number of media appearances, the commissioner issued 38 communications on this topic.

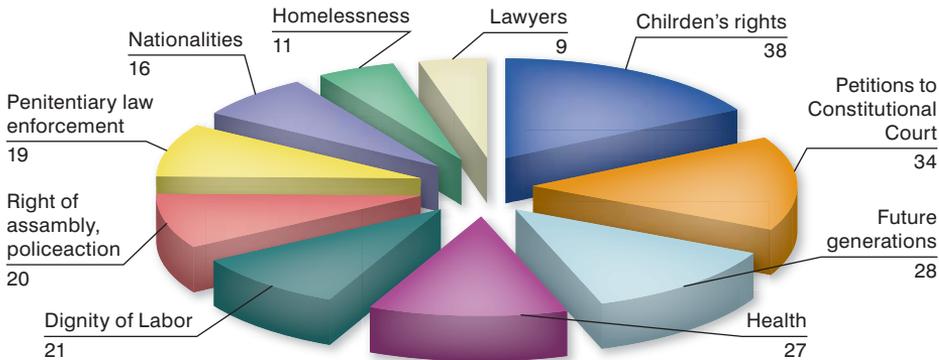
In his project entitled „*Dignity of Labour*” the ombudsman examined problems concerning labour law, community work, employment opportunities of women and mothers (parents) with small children, homeless people, persons with disabilities and of other disadvantaged persons in the financial-economic crisis. The commissioner summarized the findings of his inquiries and analysis in 21 communications.

The focus of this project was on the negative impacts and state measures effecting particularly vulnerable groups of society (nationalities, the elderly, the sick, the homeless, etc.); it also analyzed problems concerning environmental protection and healthcare in the course of the inquiry conducted in the region of Szentgotthárd city.

A significant part of the ombudsman's communications dealt with the problems analyzed within the project entitled “*Losers of the Crises- in the captivity of the legal regulations*”. The ombudsman issued 11 communications concerning events and inquiries related to fundamental rights of homeless people, 16 communications on problems of nationalities and 28 communications related to the protection of the interest of future generations. 27 communications were issued dealing with healthcare problems and the enforcement of the right to the enjoyment of the highest attainable standard of physical and mental health.

The project entitled “Fundamental Rights in and outside the institutions” examining the situation in penitentiary institutions was given high publicity and presented in 19 press releases as a result of the more than half dozen investigations on the spot and several petitions filed to the Constitutional Court contesting the conditions of imprisonment and taking into custody of juvenile offenders. 20 press releases were issued concerning the right of assembly and police action, 9 press releases informed on the different topics regarding the situation of lawyers and their clients.

Special topics of media appearances and analysis were the amended legal regulation on the conditions of constitutional complaints effective from 1 January 2012, the new tasks assigned to the ombudsman in this regard and the legal fate of his petitions submitted to the Constitutional Court. The commissioner for fundamental rights upheld twelve of the petitions submitted last year, he appealed to the Constitutional Court 19 times on the basis of the complaints received and 4 times ex officio. The Constitutional Court has already made its ruling in 11 cases. The constitutional court petitions received exceptional media attention (1940 refer-

*Number of main types of communications*

ences in Google), the ombudsman dealt with the topic in 34 communications informing on the relevant Constitutional Court decisions, as well.

**Our senior staff members responsible for media relations**

**György BERNÁT** graduated as economist from the Budapest University of Economy in 1971. Chief editor of the public service Hungarian Radio's new channel (1988–1989). Correspondent of the Hungarian Radio and Television in Bonn, Germany (1989–1995). Founder and news director of the first Hungarian commercial television TV2 (MTM-SBS Corp. 1997-2004). Free-lance communication adviser at the Office of the Commissioner for Civil Rights (2008–2011). Head of the Press and Media Unit of the Office of the Commissioner for Fundamental Rights since January 2012.



**Dr. Eszter BASSOLA** received her law degree at the University of Szeged, Faculty of Law in 2004. In 2006 she received a degree as lawyer specialized in European law (read in English) at the Pázmány Péter Catholic University Faculty of Law and Political Sciences. In 2010 she took the Bar Exam and in 2012 she received a degree as Television editor-reporter. She has been working in the Office of the Hungarian Commissioner for Fundamental Rights since 2005. Since January 2012 she has been working as the spokeswoman of the Office of the Commissioner for Fundamental Rights.

# 5.

## Appendix

### 5.1.

#### Re-regulation of the Institution of Ombudsman in Hungary and Europe in the 21st Century

#### TABLE OF CONTENTS

##### **Introduction**

BARNABÁS HAJAS – MÁTÉ SZABÓ

The Transformation of the Institution of Ombudsmen in Europe in the 21<sup>st</sup> Century 5

##### **Essays**

JÚLIA SZIKLAY

The Separation of Powers and the Institution of Ombudsman in the European Culture of the Rule of Law 13

ZOLTÁN JUHÁSZ

The Justice System and the Protection of Rights by the Ombudsman 22

MARGIT KATALIN HARASZTI

The Institutionalization of the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in Europe 46

ÁGNES LUX

On the European System of Protecting Children's Rights – with a special Emphasis on the Ombudsman-type Protection of Rights in Hungary and Europe 74

5. Appendix	153
ESZTER PETRONELLA SOÓS Ombudsman à la Française – Glosses on a Reform	106
The Ombudsman for the Culture of Services and the Increased Engagement of Citizens – An Interview with European Ombudsman P. NIKIFOROS DIAMANDOUROS	120
ATTILA SCHUCK – JÚLIA SZIKLAY German Speaking Countries – in the Middle of Europe with no Ombudsmen?	126
SZIMONA KOMJÁTI-GARDÓ – TIBOR ÖRDÖGH A Comparative Study of the Ombudsman Institutions of Romania and Serbia	145
FERENC TÁBORI The Evolution of the Ombudsman Institution’s Regulation and the Position of Political Parties Thereon	171
ATTILA LÁPOSSY The Role of the Constitutional Court and the Ombudsman in the New Constitutional Reality	186
The Contributors	209

## **Appendix**

I. Act CXI on the Commissioner for Fundamental Rights	217
II. Extracts from the general discussion on Draft Bill T/3585 on the Commissioner for Fundamental Rights	239
III. CFR Decree 1/2012 (of 6 January) on the Charter of the Office of the Commissioner for Fundamental Rights	256
IV. CFR Decree 2/2012 (of 20 January) on the professional rules and methods of the investigations conducted by the Commissioner for Fundamental Rights	291
Earlier joint publications of the Office of the Parliament and the Office of the Parliamentary Commissioner	303

## SUMMARY

By the beginning of the 21<sup>st</sup> century the institution of ombudsman became an organic part of modern democracies. It is an institution operating outside the classical separation of powers – an institution correcting anomalies arising therein and ensuring control over and the transparency of society; an institution which, mainly in the unifying Europe, is in the prime of its existence.

The editors picked the essays in this volume from among a series of studies summarizing both Hungarian and international experience accumulated in connection with the institution of ombudsman, giving us a more detailed and more human outlook on the world, on an interesting segment of public law.

The contributors are former and present colleagues of the Commissioner for Fundamental Rights and Ph.D. students of the Institute of Political Science of the ELTE Faculty of Law. Their papers aimed at putting the transformation of the Hungarian ombudsman system in a comparative context, thus presenting the ombudsmen's place in the evolution of European law.

In their introduction the editors, *Barnabás Hajas* and *Máté Szabó* present and evaluate the changes in the ombudsman's activities which derive from the new Basic Law. In the following study *Júlia Sziklay* evaluates the ombudsman institution in the context of the separation of powers, emphasizing the importance of international legal standards for the ombudsman's work.

The next study written by *Zoltán Juhász* deals, from a comparative European perspective, with the question whether or not the ombudsman institution may function as a control mechanism over the courts. The author touches upon the independence of the judiciary then moves on analyzing the European practice of ombudsmen.

In her contribution *Katalin Haraszti* investigates the enforcement of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment in Hungary. She also briefly touches upon the ombudsman's tasks deriving from the optional protocol to the UN convention on the subject.

*Ágnes Lux* focuses on the protection of children's rights, a major item on the agendas of various national political and international organizations (e.g. the UN and UNICEF, its specialized agency; the Council of Europe).

The second part of this volume gives the reader an overview of various national systems. The contribution of *Eszter Petronella Soós* analyzes the reform of the French ombudsman institution, the possible directions of its further evolution. The study prepared by *Attila Schuck* and *Júlia Sziklay* explores the relation between the ombudsman's and the civil organizations' right protecting activities on the basis of the German example. *Szímóna Komjáti-Gardó* and *Tibor Ördög* give us a comprehensive review of the ombudsman institutions of Romania and Serbia.

Following the international outlook, *Ferenc Tábori* scrutinizes the evolution of the regulation of the ombudsman institution in Hungary and the position of political parties, emphasizing that the parties deem the ombudsman-type protection of rights successful, capable of the adequate protection of fundamental rights.

One of the major features of the new Act on the Commissioner for Fundamental Rights is the central role of the commissioner in initiating the ex post constitutional review of statutes. The contribution of *Attila Láposy* explains how the position of the ombudsman changed as a result of the termination of *actio popularis*.

The studies included in this volume truly reflect, both individually and aggregatedly, the functioning of the ombudsman institution, making this collection a useful reference material for both the practical experts and theoretical researchers interested in this subject.

## 5.2.

### Project on Children's Rights – Child-Friendly Justice

#### TABLE OF CONTENTS

Preface	5
Acknowledgements	7
<b>1. Introduction</b>	<b>9</b>
<b>2. THOMAS HAMMARBERG on child-friendly justice</b>	<b>13</b>
<b>3. Project-related activities in 2012</b>	<b>17</b>
3.1. Workshops	17
3.2. Non-legal means	26
3.3. Children's rights activities in numbers	45
<b>4. Major investigations conducted in connection with the Project</b>	<b>41</b>
4.1. Mediation and other alternative conflict management methods in the sphere of children's rights	41
4.2. Child-friendly judicial proceedings – children's rights in proceedings	48
4.3. Complying with our international obligations in the context of child-friendly judicial proceedings	64
4.4. Child victim protection proceedings of administrative organs	71
4.5. Juvenile delinquency and crime prevention	84
4.6. The skills and qualifications of officials participating in child-related proceedings	96
4.7. The juvenile delinquents' reintegration into society	108
4.8. The situation of juvenile penitentiary institutions – follow-up investigations in 2012	118
4.9. Miscellaneous inquiries	142

5. Appendix	157
<b>5. Other investigations in connection with children's rights</b>	<b>147</b>
5.1. Investigation in the Károlyi István Children's Centre of Fót	147
5.2. Inquiries into the public catering for children	149
5.3. Nursery care, educational issues, segregation	158
5.4. Follow-up inquiries into juvenile alcohol and drug abuse	164
5.5. The situation of the so-called "missing" children	177
5.6. Inquiries into the enforcement of the fundamental rights of unaccompanied foreign minors and foreigners in alien policing detention	186
5.7. Inquiries into the School-Net 2011 Programme	199
<b>6. International trends</b>	<b>201</b>
6.1. On the 2012 Activities of the UN Committee on the Rights of the Child	201
6.2. The Promotion of Child-friendly Judicial Proceedings in the EU	205
6.3. "Building a Europe for and with Children" – The Council of Europe's Efforts to Achieve Child-friendly Justice across the Continent	209
<b>7. The international activities of the Ombudsman in the sphere of children's rights in 2012</b>	<b>214</b>
7.1. The European Network of Ombudsmen for Children	214
7.2. Eurochild	224
<b>8. Contributions by experts participating in our workshops</b>	<b>231</b>
8.1. Cognitive Psychological Examination of the Juvenile Penitentiary System	231
8.2. The Requirement of Child-friendly judicial proceedings in Hungary and Europe	238
8.3. The Main Characteristics of Judicial Proceedings against Juvenile Offenders in the Capital	243
8.4. The Activities of the Child-friendly Justice Working Group of the National Judicial Office – Questions and New Directions	253
8.5. Stop making children criminals	258

## SUMMARY

A child could act in many procedural positions in the justice system: as a victim, defendant, (eye)witness, asylum-seeker, unaccompanied minor etc. Therefore, the justice system may not be blind to the fact that children have specific needs and rights. Child-friendly justice means a justice system (criminal, civil,

administrative justice) where the rights and the best interests of the child can be guaranteed at the highest possible level; justice shall take into account the level of the child's maturity and awareness; moreover, it has to be accessible, age appropriate, speedy, diligent, adapted, and focused on the needs of the child. It is important to emphasize that these special rules shall be applied to everyone under 18, following the spirit of the UN Convention on the Right of the Child (CRC) which entered into force in Hungary in 1991.

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

The Commissioner for Fundamental Rights as an Ombudsman for children, defends the rights of the child not only on the basis of the authorisation given by the Child Protection Act but, since 1 January 2012, also based on the new Ombudsman Act (Act CXI of 2011 on the Commissioner for Fundamental Rights) which prioritizes the defence of children's rights as the Ombudsman's main task. This means that the Commissioner has become stronger and more effective in fulfilling this responsibility.

Consequently, in his children's rights project in 2012 the Ombudsman focused, similarly to the Network of European Children's Rights Ombudsmen and to the Ministry of Public Administration and Justice, on certain questions of child-friendly justice, conducting comprehensive *ex officio* inquiries into the following:

- enforcement of international obligations concerning child-friendly justice (e.g.: CoE Guidelines);
- victim support mechanisms;
- children's rights in the (criminal, civil and administrative) justice system;
- mediation and other alternative conflict-management methods;
- special skills of personnel working with children in the justice system;
- situation of unaccompanied foreign minors;
- juvenile penitentiary institutions (on the spot inquiries in youth detention-centres).

This project was carried out with the support of the Ministry of Public Administration and Justice and in close cooperation with UNICEF Hungary.

### 5.3.

Projects on the fundamental rights aspects of the penitentiary system and the rights of foreigners in alien policing and sanctuary detention, and on the rights of lawyers and their clients

## TABLE OF CONTENTS

Preface	5
Acknowledgements	8
The Scientific Council for Home Affairs on the Project	9
Messages prepared by the Hungarian Prison Service Headquarter	12
<b>1. “The fundamental rights aspects of the penitentiary system and the rights of foreigners in alien policing and sanctuary detention” – Introduction to the Project</b>	<b>19</b>
1.1. The Project’s starting points – theses	19
1.2. Enforcing the criteria of fundamental rights	20
1.3. Establishing competence and investigative principles	26
<b>2. Project activities of the year (2012)</b>	<b>27</b>
2.1. Workshop	27
2.2. Cooperating with the Scientific Council for Home Affairs, the Hungarian Prison Service Headquarter, the Hungarian Helsinki Committee, the Hungarian Bar Association and with other civil and non-civil organizations	29
2.3. Non-legal means	30
2.4. What do people need to improve their view on life even while behind bars?	32
<b>3. Special investigations on the penitentiary system and their results</b>	<b>34</b>

3.1.	The Ombudsman's investigations on the map	34
3.2.	The Ombudsman's Project on detainees in light of the efficiency of the last five years' recommendations	34
3.3.	The Ombudsman's report on providing healthcare for juvenile detainees	39
3.4.	The social security status of working detainees and the dilemmas of their employment	44
3.5.	The evaluation of the circumstances of providing healthcare for detainees	57
3.6.	A few words on providing healthcare for detainees	63
3.7.	The Ombudsman on rendering more efficient assistance to the freshly released in their reintegration into society	68
3.8.	In a few words on post-release monitoring	80
3.9.	Labour market opportunities for people freshly released from the penitentiary system	84
3.10.	The enforcement of the language right of foreign and minority detainees in the penitentiary system	85
3.11.	The situation of detained petty offenders in penitentiary institutions	87
3.12.	The Ombudsman's motion to the Constitutional Court on the detention of minors	89
3.13.	The Ombudsman's motion to the Constitutional Court on providing healthcare for detainees	90
<b>4.</b>	<b>Conclusions in connection with foreigners in alien policing and sanctuary detention</b>	<b>92</b>
4.1.	The enforcement of the fundamental rights of unaccompanied foreign minors and foreigners in alien policing detention	92
4.2.	On the use of the mother tongue, confinement, over-crowdedness of prisons and on alien policing detention	109
4.3.	The current practices of alien policing detention	113
<b>5.</b>	<b>Other results of the investigations in connection with the Project</b>	<b>117</b>
5.1.	The Károlyi István Children's Centre in Fót "reminds of a penitentiary institution"	117
5.2.	The position of the Ministry of Human Resources on the findings of the investigation in the Children's Centre in Fót	120
5.3.	The dilemmas of permitting visitation to a gravely ill relative and acquiring a situation report	122
5.4.	The Ombudsman on the circumstances in a county penitentiary	125
<b>6.</b>	<b>Inquiring into the situation of lawyers and the protection of the rights of lawyers and their clients</b>	<b>131</b>

5. Appendix	161
6.1. Introduction	131
6.2. Dilemmas of the lawyers' oath	133
6.3. Observations on the appointment of defence lawyers	134
6.4. The current situation of legal aid provided by the state	136
6.5. The fundamental rights training of lawyers	137
6.6. Regulatory problems of the management of deposits in the care of lawyers	139
6.7. On some elements of the disciplinary proceedings	140
6.8. Fines imposed on lawyers by the Court of Registry	143
6.9. Maintaining contact between lawyers and their clients	144
6.10. The issues of the liability insurance of lawyers	145
Reports issued within the Project's frameworks and motions submitted to the Constitutional Court	148
Statements concerning the Project	150
Events and experiences in pictures	151

## SUMMARY

Human dignity and the rights to life and humane treatment of those limited in their freedom (persons in custody, convicted, detained under alien policing) have been in the centre of attention of every ombudsman ever since the establishment of this institution in Hungary, for one cannot dispute the actual and/or perceived exposedness of detainees. The rule of law and the democratic principles of law require that the implementation of the loss of freedom should be humane, educational and leading back to society, in other words, the convict should be given the chance of rehabilitation.

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

Law enforcement has its global aspects, as well. One can find more and more foreigners and migrants of various nationalities among perpetrators. The number of migration-related crimes is increasing, so is the number of detainees who do not speak the official language of the host country. At the same time, with the trends toward international, e.g. European standardization of penitentiary rules, the role of global and regional control norms and institutions in law enforcement is increasing (e.g. the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its implementation/supervision mechanisms).

The phenomenon of the “crisis of crisis management” is manifesting itself in law enforcement, as well. Law enforcement is using the penalty of imprisonment more and more; however, since additional funding for law enforcement is scarce or non-existent, the penitentiary system is chronically overcrowded, inhumane and degrading. What the over-burdened and under-paid personnel neglects is exactly the function of education and re-socialization. Therefore, an ever-growing number of convicts may become repeat offenders or carriers of prison abuse; special treatment requirements vis-à-vis juvenile delinquents and those in custody pending trial are rarely if ever met. Crisis management institutions themselves may be over-burdened by the crisis to an extent when functional anomalies and troubles may arise.

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

This project was closely intertwined with the project on the rights of lawyers and their clients. The new Fundamental Law does not contain any particular provision on the legal profession. The role of lawyers, the activities of legal and defence counsels are of major importance not only for the proper functioning of the justice system, ensuring the right to legal defence, but, in general, from the point of view of the protection of individual fundamental rights, as well. Access to legal representation and defence, operation of lawyers without fear and outside influence, equality of arms and ensuring contact are all very important requirements.

Just as in the case of previous inquiries, the rule of law and the requirement of legal certainty, the enforcement of the right to fair procedure, i.e. transparency, unimpeded operation and professional quality control by the bar, are of paramount importance from the point of view of practice and regulation.

The right to defence is substantial both as an individual right and from the point of view of the law’s institutional protection aspect and the fulfilment of the obligations by the state.

The new Ombudsman Act (CFRA), quite reasonably from the perspective of constitutional law, does not entitle the Commissioner for Fundamental Rights to investigate, either *ex officio* or acting on a complaint, the activities, practices and decisions of lawyers; however, it entitles the Commissioner for Fundamental Rights to inquire *ex officio* into the activities of public bodies with mandatory membership, such as bar associations.

Pursuant to the CFRA, *ex officio* proceedings aimed at eradicating the im-

proprieties related to fundamental rights, arisen in the course of activities of the authorities were extended to investigating improprieties affecting larger groups of citizens, the enforcement of fundamental rights and to initiating legislative amendments with the competent ministries.

In carrying out his task, the Commissioner for Fundamental Rights closely cooperated with the bar associations, the Hungarian Helsinki Committee, and tried to involve the competent ministry, the leaders of the penitentiary institutions, the prosecution and the police, as well.

The project summarized the complaints received from citizens and prepared nine reports, holding a mirror to the state, the legal profession and the society so that those in need and their legal representatives could exercise their fundamental rights at the highest possible level. During the implementation of the project, special attention was paid to the lawyers' ability to operate without fear and unwarranted outside influence and to the equality of procedural right's instruments.

## 5.4.

### The “Dignity of Labour” Project

#### TABLE OF CONTENTS

Introduction	5
Acknowledgements	7
Preface	9
<b>1. Introduction to the “Dignity of Labour” Project</b>	<b>15</b>
1.1. Summary of 2012’s project activities	15
1.2. Main theses of the Project	18
<b>2. Equal opportunity in the world of labour</b>	<b>28</b>
2.1. Employment opportunities for women and mothers (parents) with small children	28
2.2. Employment opportunities for the homeless in the capital and in the country	35
2.3. Employing persons living with disability	46
2.3.1. Employment opportunities for persons living with disability	46
2.3.2. Working conditions of persons living with disability	51
2.3.3. Training and retraining opportunities	58
2.3.4. Job opportunities for the incapacitated	62
2.4. The career-starters’ rights and chances in the world of labour	70
2.4.1. Employment opportunities for young adults (18-25 years)	70
2.4.2. Opportunities for young adults without a degree in the world of labour	74
2.5. Enforcing the prohibition of child labour	80
<b>3. A comprehensive study of the sphere of public work</b>	<b>90</b>
3.1. The starting point and structure of the Ombudsman’s investigation	90
3.2. The system of public work in the context of fundamental rights	95
3.2.1. The findings of the on the spot investigations and the conclusions of the preliminary report	95

5. Appendix	165
3.2.2. The findings of the comprehensive inquiry into the public work system	106
3.2.3. Investigating a concrete case related to the public work system	129
3.3. Enforcing equal opportunity for the Roma in the public work system	135
3.4. The possibilities of sustainability and environmental protection in the public work system	142
<b>4. Petitions submitted to the Constitutional Court in connection with the Project</b>	<b>150</b>
4.1. The Ombudsman's petition (2009) concerning the revision of the Act on Strike and the resulting Decision of the Constitutional Court (2012)	150
4.2. The Ombudsman's petitions concerning the constitutionality of student contracts	160
4.3. Petition to the Constitutional Court in connection with the labour law protection of expectant mothers	166
<b>5. Major presentations given at our workshop on public work</b>	<b>173</b>
5.1. Presentation by Imre Hoffman, Deputy State Secretary for Public Employment	173
5.2. Presentation by Gábor Zongor, General Secretary of the National Association of Local Self-Governments	180
5.3. Presentation by Márton Kulinyi, employment expert, President of Esély Labor Association	186
<b>6. Treatises prepared within the Project's frameworks</b>	<b>197</b>
6.1. Checking by the Employer in the Context of the New Labour Code – Manual Checking	197
6.2. Focusing on the Flexible Employment of Parents with Small Children (Hungarian Teleworking Association)	203
<b>7. Hearings on the Project before the Parliament's Committee on Employment and Labour</b>	<b>211</b>
7.1. Hearing on Public Work Report No. AJB-4162/2012	211
7.2. Hearing on the Ombudsman's reports on the employment of persons living with disability	228

## SUMMARY

Ever since its establishment, the Ombudsman's Office has been receiving numerous complaints related to labour law. Working activity and the absence thereof, that is, unemployment, are a major concern in people's lives. The persisting crisis and the increasing unemployment have been drawing attention to the importance of employment not only in Hungary but all over the world.

In 2012, a number of changes were introduced in the field of the regulation of employment relationships. The new Basic Law, replacing the former Constitution, has been in force since 1 January 2012. The Basic Law pays special attention to the role of work, setting out several new elements concerning the rights and obligations related to working activity. In July 2012 a new Labour Code entered into force which contains a number of novelties, ensuring, however, fewer safeguards for the employees. As of 2013, the government has introduced a new community work programme whose objective is to provide work to 200,000 people.

As a consequence of what has been described above, in 2012 the Commissioner for Fundamental Rights launched a project entitled "Dignity of Labour".

The Ombudsman paid special attention to the rights of the most vulnerable social strata, primarily focusing on the employment opportunities of the people belonging to different protected groups. The ombudsman examined the employment of women and mothers (parents) with small children in different alternative forms – like teleworking and part time work – in both the public and the private sector. Employment opportunities for career starters were also explored. In addition, the ombudsman surveyed what opportunities and assistance were available to the homeless and to former detainees in order to facilitate their re-entry into the world of labour. Furthermore, the project examined the impact of benefits given to employers employing people with disabilities, and the practical implementation of integrated employment for these people.

During his investigations, the Commissioner for Fundamental Rights focused his attention not on the enforcement of the right to work as a fundamental right –he intended to find out instead how and to what extent such fundamental rights as the rights to human dignity, equal treatment and the requirements of fair procedure and the rule of law were observed.

## 5.5

### Project on the „Losers of the Crisis – in the Captivity of Legal Provisions”

#### TABLE OF CONTENTS

Foreword	5
Acknowledgement	8
Introduction	9
<b>1. ”Guilty of being poor – guilty of being different”</b>	<b>18</b>
1.1. Guilty of being poor? – Persons in most vulnerable situation and the dignity of being on public areas	18
1.1.1. Sanctioning the residing on public spaces as a crime – regulations raising constitutional concerns	19
1.1.2. Homelessness in the crisis, crises situation in homelessness – review of present situation in public areas	8
1.1.3. Rights pulled down? – Eviction of temporary homeless settlements in Budapest	30
1.1.4. Lessons learned in the workshop	34
1.2. Guilty of being different? Prejudice at the intersection of law and society	40
1.2.1. Prejudice-motivated acts	40
1.2.2. The ombudsman’s inquiry into the phenomenon of usury	58
<b>2. Healthy environment and crisis</b>	<b>68</b>
2.1. Environmental protection as a loser of the crisis	68
2.1.1. Restructured institutional system	68
2.1.2. Problems deriving from the lack of financial and human resources	74
2.1.3. Measures connected to the crisis with impact on the protection of environment	76
2.2. Waste management in the crisis	81

2.2.1. Manifestation of the financial-economic crisis in public services	81
2.2.2. Manifestation of the financial-economic crisis in public services, why further examinations needed on this topical issue	82
2.2.3. Some questions concerning user fees for public services	84
2.2.4. International overview – characteristics of the user fee payment system in some Member States of the European Union	87
2.2.5. Enforcement of the right to appeal in practice	88
2.2.6. Motivating people for selective garbage collection, making citizens more waste conscious	90
2.2.7. Lessons learned in the workshop	91
2.2.8. Adverse activities of individuals, problems concerning illegal waste management	92
2.3. Renewable energy in the captivity of legal regulations	98
2.3.1. The current energy policy of Hungary and its mid-term perspectives	98
2.3.2. Topical questions concerning the supply system of renewable energy sources-based electricity generation	101
2.3.3. Problems concerning legal regulations on renewable energy sources	104
2.3.4. Proposals for legislation facilitating a maintainable energy management system and renewable energy use	106
<b>3. Responsible State – conscious citizen</b>	<b>115</b>
3.1. Lessons learned from the workshop	115
3.2. Enforcement proceedings and basic rights in the crisis	121
3.2.1. Enforcement actions effecting customer deposits hold by financial institutions	121
3.2.2. Follow-up inquiry into the problems concerning expenses of the enforcement procedure	126
3.2.3. Problems concerning personal bankruptcy	130
3.2.4. The priority of the fee of the bailiff in child support enforcement proceedings – a dilemma	132
3.3. Changes in the social security pension system from the ombudsman’s point of view	135
3.3.1. The ombudsman addressing problems concerning private pension system	135
3.3.2. Petitions to the Constitutional Court regarding changes in the social welfare system for persons with disabilities and pre-retirement allowance	149
3.4. Working and living conditions of health care employees in the crisis	153
3.4.1. The problem of wage settlement	155

5. Appendix	169
3.4.2. Training of health care employees	158
3.4.3. Problem of the lack of human resources	160
<b>4. Local focus – Szentgotthárd city and its region at the intersection of borders and impacts</b>	<b>162</b>
4.1. Changes in crisis progress and competing basic rights in Szentgotthárd and its region	162
4.2. A report and its follow-up: patients rights at Szentgotthárd Home for Psychiatric Patients	165
4.3. Nationality rights of Hungarian Slovenes and crisis: how to preserve identity?	168
4.4. Basic law related conflicts revealed by the inquiry concerning the pilgrimage road between Felsőszölnök and Kétvölgy	170
4.5. National borders and environmental impacts: possible instruments of the ombudsman protection concerning the waste incinerator in Heiligenkreuz	172
4.6. Access to environment related information in the crisis: the lack of testing data on air quality	176
4.7. Energy strategy and crisis progress: the current situation of the city and its future perspectives	178
Cooperation with civil society in the framework of the project	181
Publications on the project	183
Petitions submitted to the Constitutional Court	185
Other publications on the subject	185

## SUMMARY

Within the framework of the project entitled ‘The Losers of the Crisis’ the Commissioner for Fundamental Rights has been conducting several comprehensive inquiries about the effects of global crisis on human rights. Numerous phenomena and symptoms related to fundamental rights are brought about by this hard and critical period of economic, social and moral crisis. The ombudsman has been mapping the treatment of uncovered problems and conflicts within the framework of the protection by state institutions. The project aims to propose solutions on how eventually improper practices related to fundamental rights or the deficiencies and contradictions of the relevant legal background can be remedied with the ombudsman’s human rights’ instruments.

Financial and economic difficulties affect the whole society adversely. They do however strike especially hard persons belonging to the most vulnerable

groups of society, such as ethnic minorities, disabled persons, elderly people etc. The new Ombudsman Act, in effect as of 1 January 2012, defines as an important priority the enhanced protection of the rights of persons belonging to the most vulnerable social groups. As a result of the economic crisis the financial situation of citizens and of their groups is becoming less stable. There is a decrease in social solidarity, and under the impact of the new challenges it is becoming more and more difficult for the State to play its role and to find the right objectives. So, the concept of crisis has multiple layers: besides the economic downturn, it also has impacts on the inclusive capacities of society. Times of financial crisis generally favour extremist ideologies and tendencies of scapegoating the most vulnerable groups for economic difficulties. Equally, within the concept of crisis, the ombudsman has to deal with the reactions of the State, which are often dysfunctional: the State tends to leave citizens alone by cutting back social transfers. In compensation, the concept of public order becomes central and tendencies of criminalization prevail instead of resolving social problems.

### **I. „Guilty poor – guilty minorities”**

Within the framework of the project the ombudsman has been examining the trend towards a *stricter regulation of the usage of public space*, and in particular the fundamental rights evaluation of homelessness, begging and scavenging in a changing legal environment. Special emphasis is laid on the increase of *ethnic and social prejudice*, and on forms of discriminative behaviour, as well as on the responses of the State, or the lack thereof, in strained socio-economic crisis and conflict situations. Homeless people have no own private sphere and often no other alternative than living on the streets. Máté Szabó has found the Constitutional Court's decision of 12 November exemplary in terms of the enforcement of the rights of the affected vulnerable people and the protection of fundamental rights in Hungary in general. The Constitutional Court declared unconstitutional and annulled the contested provisions of the Minor Offences Act on the basis of the petition of the Commissioner for Fundamental Rights, which qualified the permanent living in public places as a minor offence. The Commissioner will continue to pay particular attention to the protection of vulnerable people's rights, and consistently, he will combat the practice of authorities violating fundamental rights in his view and the constitutionally questionable rules by all means at his disposal. As a result of his enquiries, the ombudsman holds it important to help the victims of usury. Therefore, he proposed that the affected Ministries should initiate the establishment of a crisis management service that would help the victims of the crime of usury in a complex manner.

## **II. Fundamental right to a healthy environment and its conflicts with other human rights**

Within the framework of the project, the Commissioner has been examining the state of our defenceless *environment* exposed to the impact of human activities, the related conflicts and crisis phenomena, and the fulfilment of the obligations of the State to protect the environment. He pays special attention to the innovative potential of the crisis, programs pointing to possible ways out of the crisis and to opportunities to use alternative sources of energy. Within the project, the ombudsman has aimed to map the effects of State measures connected directly or indirectly to the crisis on the institutions of environment. Within this context, the problems of local waste management have to be mentioned. In the last few years, the ombudsman has received numerous complaints in this field. Within the complex problem of waste management, independently of the locality of the complainant, most complaints deal with the question of whether it is reasonable and permissible to make inhabitants pay for waste management services. The ombudsman conducted an *ex officio* inquiry into the public service of waste transport with special regard to the requirements of the environment and of the population. He found, on the one hand, that the legislator did not examine in time the relevant legal practice, and, on the other hand, that it is not settled whether the local government or the State has to bear the costs of uncollectable fees. It is also important that the fees be affordable, be proportionate to the service, and provide an incentive for property owners to comply with their legal obligations.

Presenting his findings the Commissioner for Fundamental Rights has turned to the competent Ministry and warned of the danger of infringement of the right to health, recalled his earlier recommendations related to the regulation of waste management, and proposed that after the adoption of the Bill before Parliament an *ex post* impact assessment be made for the Act.

## **III. „Responsible state – conscious citizen”**

In the times of crises, conscious state activities receive special emphasis because they provide a safety net for people in precarious situations and for members of disadvantaged social groups. In this field, the Commissioner for Fundamental Rights plans to examine the impact of the changes in the social security system and the measures taken by the State to protect private persons against bankruptcy. In times of crisis more and more individuals and families live under narrow financial circumstances, and may amongst them get severely indebted, thus endangering even their homes. According to legal regulations, even the homes of indebted families can be brought under

execution, entailing homelessness of the precarious families. In the past years, the possibility of introducing private debt emerged several times. The ombudsman has also initiated the institutionalisation of private debt, however, it has not been introduced yet. Article XVII. of the Basic Law of Hungary stipulates that Hungary will strive to provide social security to every citizen. Hungary will provide social services through social security and a system of social institutions and measures.

#### **IV. The local focus of the project – Szentgotthárd and its area**

The ombudsman appointed the town Szentgotthárd and its area as a local focus of the project because all kinds of nationality, environmental, and social problems are present here, occasionally as rival issues. The basic topics and issues of the inquiry were the following: Cross-border environmental conflicts – the waste incinerator in Heiligenkreuz, Austria; the rights of nationalities: from among the Slovenian, Croatian, and German nationalities living in the area; patient rights, rights of psychiatric patients in the Home for Psychiatric Patients of Szentgotthárd.