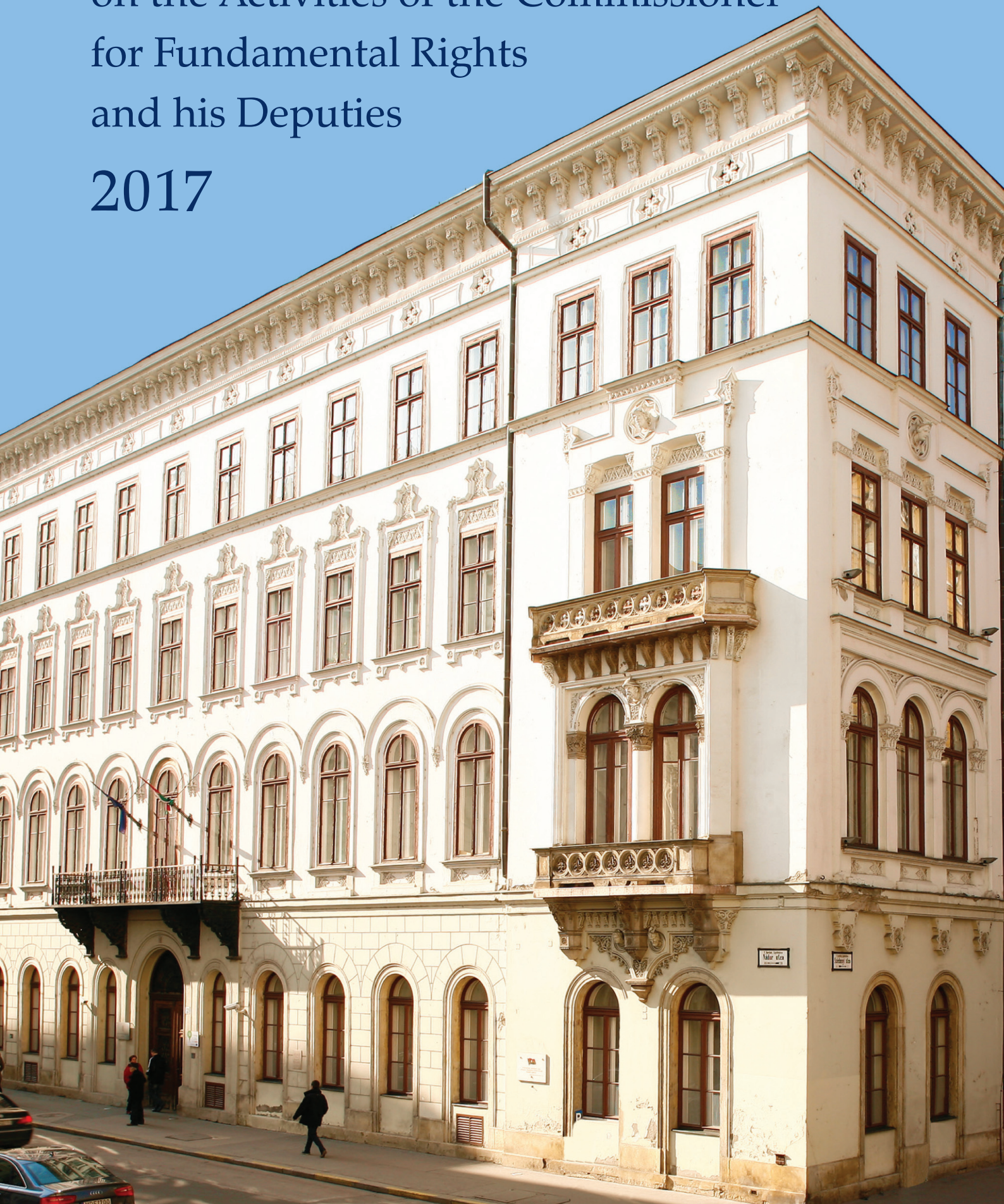
REPORT

on the Activities of the Commissioner for Fundamental Rights and his Deputies

2017



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Lectori salutem…

You are reading a report on the 2017 activities performed by the Commissioner for Fundamental Rights and his deputies. Although I would be much happier to give an overview of the situation of fundamental rights in Hungary, to make comparisons with the tendencies of some past years, or I may just write an ordinary foreword here, unfortunately I am not in the position to do so now. The situation is that I must tell you about an event which, in my view, may be the forerunner of a dangerous phenomenon and it would cause serious constitutional dilemmas if we failed to clarify the theoretical implications of this issue. It does not make me happy that I have to burden you with the details of the legal background of the operation of the Ombudsman's institution but I am compelled to do so because of the legal uncertainty.

The experts working for the OPCAT National Preventive Mechanism paid an unannounced visit to a Budapest-based children's home in 2016, as they usually do, which I will call a place of detention, in accordance with the OPCAT terminology. On the occasion of this visit, the group of investigators was accompanied by the Deputy Commissioner for the National Minorities in Hungary as well. It is here that I would like to note that during the more than three-year operation of OPCAT NPM, this was the only place where the head of the institution was trying to prevent and hinder my colleagues' work. The report was completed later, it was disclosed by the Office in the usual way, and it was also put on our homepage.

It was at this point that the story took a strange turn. In their petition submitted on March 10, 2017, the children's home requested that the Office of the Commissioner for Fundamental Rights (hereinafter referred to as: AJBH) be obliged to pay a grievance fee of three million Forints, a material damage compensation of one and a half million Forints and its duties, as well as to extend a public apology. The children's home also requested that those points of the report be deleted in which, according to the claimant, AJBH untruthfully stated and spread the news, through the media, that the residents of the children's home were exposed to the threat of prostitution, overcrowdedness and other abuse. The children's home wished to enforce the material damage compensation because two economic associations had withdrawn from sponsoring the children's home.

I am convinced that the conclusions that were refused by the claimant were drawn as a result of an on-site inquiry that was professionally well-founded, so as long as the court examined the report in substance, it could be established that the Commissioner for Fundamental Rights acted professionally and with due care when compiling and publishing the report, this is why he cannot be held liable from a civil law perspective.

The report sums up those conclusions which were drawn on the basis of the on-site inquiry into the children's home. These factual conclusions and proposals suggested the direct threat of an impropriety concerning children's rights.

The Ombudsman's inquiry was specifically aimed at checking whether the place of detention meets the criteria of the prohibition of torture and other degrading or inhuman

treatment, whether it fulfills its obligation to enforce fundamental human rights and if these are not done, at promoting the full enforcement of the requirements through targeted measures.

This means that the conclusions drawn by and the proposals made by the Ombudsman did not hurt the reputation of the claimant, on the contrary, these were aimed at changing the operation of the children's home in a favorable direction and developing a more favorable picture of the home in the public opinion.

With regard to the fact that the recommendations made in the Ombudsman's report do not have binding force, the proposed actions reflect the Ombudsman's view of the situation, they do not qualify as facts in the legal sense of the word but they are rather the expressions of opinions, this is why they are not suitable for hurting reputation.

In its petition, the claimant attributes such statements to the Commissioner for Fundamental Rights which are not included in the report in the form quoted by the claimant, and they do not have the content understood by the claimant in its claim, either. It is not the responsibility and opportunity of the Ombudsman, who formulates a professional opinion, to judge what further judgments are arrived at from a professional conclusion, which reaches the public opinion with the intermediation of the media. The operation of a children's home within a constitutional framework is a public matter, consequently, the disclosure of the report of the Commissioner for Fundamental Rights can be freely discussed as a public matter, so the act of injuring reputation cannot be established for this reason either.

After the closing of the report on the activities performed by the Office in 2017, the first instance court rejected the claims lodged by the claimant but the procedure is still in progress, due to the appeal lodged by the claimant and we are looking forward to the court's judgment of precedent value.

I apologize to you for having burdened you with the Ombudsman's institution's legal problems but I felt it to be my duty to provide information on this as well and I am hereby going on to report on our inquiries conducted in protection of the fundamental rights and the related achievements.

László Székely

1
Our international relations

1.1
UN National Human Rights Institution

The set of criteria of the Paris Principles, i.e. the basic principles of the operation of National Human Rights Institutions was adopted by the UN General Assembly in 1993. The Paris Principles are not internationally binding but it is based on compliance with these principles, through an accreditation process, that an institution may become a UN National Human Rights Institution, i.e. an NHRI. There are currently three categories (status A, B, C) available for the classification of the institutions that wish to become NHRI's, depending on the degree that the institution in question complies with the Paris Principles. If an institution meets all the criteria, it will be awarded status "A", through which it will become a full-fledged member of GANHRI (Global Alliance of National Human Rights Institutions), so among others, it can participate in the meetings of the most important human rights body of the UN, i.e. of the 47-member Human Rights Council (HRC). As a general rule, there is usually only one national human rights institution in one country.

In Hungary, the Commissioner for Fundamental Rights with fundamental and human rights protection responsibilities has been a status "A" UN National Human Rights Institution since 2014. As part of the protection and promotion of human rights, our institution pays special attention to achieving compliance with the human rights obligations set out in the United Nations Charter, the Universal Declaration of Human Rights, as well as other legal instruments ratified by Hungary and in international law. During his NHRI activities, the Commissioner for Fundamental Rights maintains a close working relationship with the institutions that are involved in Hungarian and international human rights protection, with special regard to the UN and its organs, and he also supports the work of these organizations and the experts thereof with his statements, professional materials, as well as by holding regular consultation sessions.

The Office of the Commissioner for Fundamental Rights is a member of GANHRI, i.e. the Global Alliance of National Human Rights Institutions, which works with the UN OHCHR, i.e. the Office of the High Commissioner for Human Rights and which comprises the National Human Rights Institutions, and it is also involved in the activities performed by the European regional organization of the network, i.e. the European Network of National Human Rights Institutions, i.e. ENNHRI. The Office undertakes professional consultation roles in several professional working groups of ENNHRI; such include, for example, the work of the Asylum and Migration Working Group dealing with the UN Convention on the Rights of Persons with Disabilities (CRPD), as well as the work committee established by the UN for the coordination of the activities performed in order to achieve the Sustainable Development Goals and to enforce human rights. The Office of the Commissioner for Fundamental Rights represents Hungary as

an active member in the project on "The Enforcement of the Human Rights of People in Old Age Care" funded by the European Commission, which was launched at the initiative of the European Network of National Human Rights Institutions (ENNHRI). The goal of the project is to monitor the care provided to the elderly on the European level, to identify the experience, the problems and the best practices, as well as to escalate these to the European level. In the framework of this, as a summary of the project work, the participants formulated a joint recommendation, i.e. a proposal package to be submitted to the European Commission.

From among the documents mentioned above, it is mainly the UN's human rights treaties and the related additional protocols that define the frameworks for the human rights protection activities for the NHRI's. By now, Hungary has ratified 7 treaties and 9 additional protocols from among the UN documents.

There are two of these that are specifically mentioned in Act CXI of 2011 on the Commissioner for Fundamental Rights:

Since January 1, 2015, the Commissioner for Fundamental Rights has been fulfilling the tasks of the OPCAT NPM, i.e. the National Preventive Mechanism as defined in Article 3 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was announced in Act CXLIII of 2011. See more details on the Commissioner's international activities related to the Convention in Chapter 2.5.

During his activities, the Commissioner for Fundamental Rights should pay special attention to supporting, protecting and controlling the enforcement of the UN Convention on the Rights of Persons with Disabilities, which was announced in Act XCII of 2007.

In 2007, Hungary ratified the Convention, according to Article 35 of which the participating states have a periodic reporting obligation. The first monitoring procedure was conducted between 2010 and 2012, then two issues were investigated into in the framework of a follow-up procedure in 2013. Hungary had to fulfill its upcoming reporting obligation related to the Convention in 2017. The Commissioner for Fundamental Rights as a National Human Rights Institution joined the monitoring procedure at several points. In February 2017, he contributed to a more accurate assessment of the situation of the rights of persons with disabilities in Hungary through a written submission, then via a video conference through consultation with the rapporteur of the Convention.

The Act on the Ombudsman does not specifically mention the United Nations Convention on the Rights of the Child but it does contain some provisions on that promoting the enforcement of children's rights should be paid extra attention to in the activities performed by the Ombudsman, consequently, the Commissioner for Fundamental Rights takes part in the work of several international organizations involved in children's rights. The key responsibility of the European Network of Ombudspersons for Children, i.e. ENOC, which was established in 1997, is to promote the protection of children's rights set out in the United Nations Convention on the Rights of the Child. The European umbrella organization called EUROCHILD, comprising some 100 children's rights organizations, which was established in 2003 from the European Forum for Child Welfare, i.e. EFCW, pays special attention to the fight against the starving and ill treatment of children. Our Office regularly cooperates with the UNICEF (United Nations International Children's Emergency Fund) National Committee Hungary as well. The organization is a spokesperson for children's rights, it plays an important role in controlling the enforcement of the United Nations Convention on the Rights of the Child adopted in 1989.

The Commissioner for Fundamental Rights further extended his broad international relations when the Office was awarded the status of UN Human Rights Institution. The above-mentioned rights and obligations generate a high number of new tasks.

From among the tasks related to fulfilling the international obligations of the National Human Rights Institutions, we should first of all mention that they should provide assistance to the international organizations in the monitoring procedures that control the enforcement of the international conventions by issuing policy statements, comments, as well as by submitting parallel reports, and they should also promote and support the adaptation into the Hungarian law of the recommendations that were made when the procedures controlling the enforcement of the international conventions were concluded. The National Human Rights Institutions should support and assist the country visits of the international experts, as well as the orientation of the rapporteurs. As part of meeting these obligations, in 2017, the Office hosted the delegation of the UN Subcommittee on the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), the delegation of the regional representation of the Office of the UN High Commissioner for Refugees (UNHCR), the 4-member delegation of the Parties Committee of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as the Lanzarote Convention, the delegation of the European Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe, as well as the representatives of the Office of the UN High Commissioner for Human Rights (UNHCR) on several occasions.

1.2
Visits by delegations, international events

The visits paid to the Office by the international partners represented a major part of the international activities of AJBH in 2017 as well, of which the meetings with the heads and staff members of diplomatic missions, partner institutions, professional networks, as well as international organizations are of outstanding significance.

Ombudsman László Székely is joining the White Ribbon Campaign coordinated by the European Institute for Gender Equality (EIGE) (March 22, 2017)

The event organized by Equinet, the European Network of Equality Bodies on March 22, which was hosted by the Office of the Commissioner for Fundamental Rights, was focused on the fight against abuse against women and gender-based abuse. At the meeting, the Commissioner for Fundamental Rights Mr. László Székely announced that he was joining, both as an Ombudsman and a private individual, the White Ribbon movement coordinated by the specialized agency of the European Union called the European Institute for Gender Equality, i.e. EIGE, which is active globally as well, and which was established in order to eliminate violence against girls and women.

In early April, the regional representative of the Office of the UN High Commissioner for Human Rights, Hungary-based Mr. Paul d'Auchamp paid a visit to the Office. At the meeting with the Commissioner for Fundamental Rights, the operation and the history of the Office, as well as a few recent complaints were discussed. The future cooperation opportunities of the two institutions were also mentioned at the meeting.

The Board of the European Ombudsman Institute held its meeting in Budapest on April 7, 2017. Our Office was also involved in organizing the event. The European Ombudsman Institute, which was established in 1988, and which is seated in Innsbruck, Austria, is an independent, non-profit organization, the mission of which is to promote the institution of the Ombudsman, as well as to facilitate the exchange of experience on the national, European and international levels. At the meeting, the Deputy Commissioner for Future Generations Mr. Gyula Bándi was unanimously elected a new member of the Board.

In June, the new Slovakian Ombudsperson Dr. Mária Patakyová invited the Commissioner and his colleagues to Bratislava, Slovakia. In addition to building a personal relationship, the general responsibilities of a commissioner for fundamental rights were also discussed in detail.

In July, as part of their country visit, the Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, i.e. the Lanzarote Convention also paid a visit to the Office. Earlier, the

Visit by the delegation of the Lanzarote Committee (July 5, 2017)

Lanzarote Committee expressed its concern in a letter that the new Hungarian regulations amending certain laws aimed at making the procedures affecting border control stricter may have an adverse effect on the enforcement of the Lanzarote Convention, to which Hungary is also a party. Their main concern was that those unaccompanied minor asylum-seekers who are aged between 14 and 18 are regarded as adult asylum-seekers and they are accommodated in transit zones stand a higher chance of becoming victims of sexual exploitation and harassment, furthermore, it becomes difficult to identify the child victims and to provide support services and protection to them. The Lanzarote Committee discussed the response given by the Hungarian government at its 18th meeting held in Strasbourg, where a decision was adopted on that the Committee would accept the invitation of the Hungarian government to visit the transit zones, in order to get a better understanding of the local situation. During the country visit, the delegation did not only pay a visit to the Office but they also visited the transit zones at Röszke and Tompa, South Hungary, they met with the officials of the local and central authorities, as well as the representatives of the competent ministries and civil society organizations.

On September 5, the regional deputy representative of the Office of the UN High Commissioner for Refugees (UNHCR) Mr. Jon Hoisaeter and his colleagues visited the Office and held a discussion with the Ombudsman and his colleagues.

The reception of Mr. Jon Hoisaeter, deputy regional representative of the Office of UNHCR (September 5, 2017)

In October, several high-level meetings took place at the Office. On October 5, the Director of the European Union Agency for Fundamental Rights, i.e. FRA Mr. Michael O'Flaherty visited the Office as part of his country visit, in order to hold negotiations with the heads of the Office on the relations between the institutions and the situation of fundamental rights in Hungary.

Visit by the director of FRA (October 5, 2017)

On October 25, the Director of OHCHR, i.e. the Office of the UN High Commissioner for Human Rights Ms. Peggy Hicks and the regional deputy representative for Europe of OHCHR, Hungary-based Paul d'Auchamp paid a visit to our Office. The coordination talks were about three main topics, i.e. the current situation of the civil society organizations, the treatment of unaccompanied minors by the Hungarian authorities, as well as the TOPHÁZ case.

It was on October 19th that the interactive professional program entitled "For Us, With Us, To Us" was held at the Office. At this event, the mobile game called StoryLab, which was developed with support from the European Union in the framework of the project entitled Rights Court for Children was presented by the Terre des Hommes Hungary Foundation and the Pressley Ridge Foundation, in joint efforts with Bulgarian, Croatian, Romanian, Italian and English partners.

On November 16, the Office organized a conference on children's rights entitled "Children in Danger – Children's Rights in Focus" in cooperation with the UNICEF Hungarian Committee Foundation and the General Representation of the Government of Flanders in Hungary. At the conference, the following topics were discussed, in addition to analyzing the Hungarian situation: the consideration of the related international examples, the constructive criticism that can be formulated on the basis of these, from a fundamental rights aspect, as well as drawing attention to improper situations.

1.3 Cooperation with international organizations

Cooperation with the different international human rights organizations continues to be an important element of the international activities of the Office, which is critical from a professional aspect as well.

At the beginning of the 23-year history of the institution of the Hungarian Ombudsman, the commissioners had to introduce an institution in Hungary which had been unprecedented in Hungarian public law before.

Each of the 15 commissioners and the deputy commissioners who headed the institution during its history expanded the international relations of the Office, through an ever increasing number of international agreements, partner institutions involved in human rights and international rights protection, as well as through joining academic centers and networks.

One of the key international partners of the Office, with the longest history of cooperation, is the European Network of Equality Bodies, i.e. Equinet. The forum of cooperation established in 2002 became an international organization with a separate legal personality in 2007 and it currently also fights against the various forms of discrimination. Hungary is represented in Equinet by the Equal Treatment Authority and the Office of the Commissioner for Fundamental Rights.

In 2017, the Office took part in the meetings of several working groups of Equinet through expert level representation. On March 21, Vienna hosted the meeting of the Communication Working Group, where the new tools supporting the communication between the organizations involved in human rights and equal opportunities, as well as the efficient application thereof were discussed. In May, the staff members of the Office took part in two seminars in Brussels. At the end of August, the experts of the Office participated in an Equinet meeting in Brno, at the office of the Czech Ombudsman.

International Equinet workshop in Budapest (March 22-23, 2017)

The topic discussed was related to the Equinet publication on the practical promotion of the principle of equal pay to men and women entitled *How to Build a Case on Equal Pay*.

In the framework of the cooperation platform established by Equinet, the Council of Europe, ENNHRI and the European Union Agency for Fundamental Rights, i.e. FRA in 2013, the Office is involved in the activities of several working groups on the hot topics of our days. Such working groups include the ones on Hate Crime and Hate Speech, Asylum and Migration, Economic and Social Rights, Roma Equality. The experts of the Office participated in the work of the platform on the equality of the Roma in Paris in May, while they took part in the meeting of the working group on refugees and migration in Brussels in October.

The Commissioner for Fundamental Rights is a member of the International Ombudsman Institute, i.e. IOI, established in 1978, comprising some 188 national and regional Ombudsman's institutes from as many as 90 countries of the world.

In 2017, just like in the previous years, the most important partners of the Office, in addition to the UN, were the organizations operating under the aegis of the European Union. Due to Hungary's EU membership, the Office of the Commissioner for Fundamental Rights is actively involved in the work of the different European Union bodies dealing with human rights issues. FRA was established on March 1, 2007, on the basis of Council regulation No. 168/2007/EC (February 15, 2007), in accordance with which the Vienna-based Agency had taken the place of the European Monitoring Centre on Racism and Xenophobia (EUMC). In addition to the October visit by the FRA director at the Office of the Commissioner for Fundamental Rights, the experts of the Office also took part in many events that were organized by the Agency. A symposium entitled *Is Europe doing enough to protect fundamental rights?* organized by FRA and the Maltese EU presidency was held in Brussels in June, where the 10-year anniversary of the functioning of the Agency was also celebrated, and two panel discussions on migration, child poverty and social exclusion were organized. In December, a conference where FRA presented its report on the situation of European minorities was held in Brussels. The Office of the Commissioner for Fundamental Rights also participates in the efforts of the Innsbruck-based (Austria) European Ombudsman Institute, i.e. EOI, as well as the European Network of Ombudsmen, i.e. ENO, which was established in 1996. ENO is a network comprising more than 95 ombudsman's offices of as many as 36 European

countries, which was established in order to facilitate the exchange of ideas on human rights between the EU member states, candidate countries, the members of EEC, as well as the European Ombudsman and the Committee on Petitions of the European Parliament. In June 2017, Mr. Gyula Bándi attended the annual ENO conference in Brussels. The key topics of the conference included the new challenges faced by the ombudsmen, of which the issues of the migration crisis and digital administration affect each Ombudsman.

The European human rights networks such as the Vienna-based FRA, the Organization for Security and Co-operation in Europe, i.e. OSCE, or the Council of Europe largely rely on the human rights institutions, as they regard them as appropriate partners in the area of human rights protection.

During 2017, the Office directly or indirectly cooperated with the Council of Europe on several occasions. The Office hosted the delegation of the Supervisory Committee of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as the Lanzarote Convention, as well as the delegation of the European Committee for the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe.

The experts of the OPCAT NPM took part in the professional meetings of the European National Preventive Mechanisms organized by the Council of Europe several times.

An expert from the Secretariat of the Deputy Commissioner for the Rights of National Minorities attended the meeting of the Council of Europe Ad hoc Committee of Experts on Roma and Traveler Issues, i.e. CAHROM in Strasbourg on two occasions this year.

In September, one of the experts of the Office held a presentation on the competence and responsibilities of the Ombudsman to those foreign judges who came to Hungary in the framework of the short-term judicial exchange program of EJTN, i.e. the European Judicial Training Network, which was established in 2000 and which counts some 120 thousand judges, prosecutors and lecturers of law. The goal of EJTN is to coordinate the judicial training exchange programs and to promote the cooperation between the national training institutions of the EJTN member states. On the European level, many crossborder educational institutions organize judicial and legal training programs by themselves. Such is the Academy of European Law (ERA), which is based in Trier, Germany, or the European Center for Judges and Lawyers in Luxembourg. The experts of the Office have regularly taken part in the Trier-based training programs of the Academy of European Law for several years. In 2017, they attended the seminars on gender equality, the rights of persons with disabilities, as well as the law on non-discrimination,

The Office was represented by the Commissioner or the Deputy Commissioners at IOI's workshop organized in Barcelona, Spain in April, at ENO's June conference in Brussels, as well as at EOI's annual general meeting in Bucharest in September.

The ombusdman's institutions take turns in organizing the annual meetings of the Ombudsmen of the Visegrád Group countries, which go back to a history of some fifteen years. In 2017, the Czech Ombudsman hosted the event, the Hungarian Ombudsman's Office was represented by deputy commissioners Dr. Elisabeth Sándor-Szalay and Mr. Gyula Bándi. In addition to the coordination of the current issues affecting the individual activities of the Ombudsman, there is one specific topic to be discussed by the professional consultation each year. In 2017, this special topic was the situation of persons with disabilities.

As part of its data supply activities, the Office assisted the work of FRA, Equinet, ENNHRI, OHCHR, the European Commission, OECD, as well as the World Bank by completing general and thematic questionnaires.

2
Evaluation of the situation of constitutional rights

2.1
Areas of investigation highlighted by the act

In harmony with the prevailing directions and spirit of the Ombudsman Act, the Commissioner for Fundamental Rights paid continuous and heightened attention to the priority areas of investigation in 2017 as well. Below, strictly following the order applied in the Act, we give a brief analytic presentation of the investigations and tendencies affecting three areas that are expected to raise international attention as well, i.e. the protection of the rights of children, the disabled and the most vulnerable groups.

2.1.1
Protection of children's rights

The Fundamental Law records that every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. It is especially highlighted in the UN Convention on the Rights of the Child that a child needs special protection and care, due to the lack of their physical and intellectual maturity, namely, they need appropriate legal protection both before and after their birth. The Convention obliges each institution and authority that gets in contact with children to conduct proceedings and adopt decisions that are suited to the best interests of the child. Safeguarding the enforcement of children's rights, rights protection with legal and non-legal tools is one of the priority obligations of the Commissioner. Using the public domain traditionally as the proactive means of legal protection is given more emphasis in the protection of children's rights.

1. In the framework of the 2017 Children's Rights Strategy, the Commissioner launched a comprehensive ex officio inquiry *under number AJB-2026/2017* because he wished to explore how the safeguards set out in the United Nations Convention on the Rights of the Child, as well as the requirements of children's rights, proportionality and gradualism are enforced during the official procedures of taking a child into state care, how the principle which prohibits that children be taken into state care for primarily financial reasons is adhered to. The inquiry extended to Budapest, Borsod-Abaúj-Zemplén, Nógrád, Pest and Szabolcs-Szatmár-Bereg counties. It had already been concluded by an earlier report and confirmed by KSH, i.e. the Hungarian Central Statistical Office, as well as professional civil society organizations that every third child who is taken into state care is removed from their family because of their financial and social situations. This is so despite the fact that the Child Protection Act stipulates that no child should

be separated from their family exclusively for their endangerment arising from financial reasons. The Commissioner for Fundamental Rights concluded that the current practice was incompatible with the obligations defined in the United Nations Convention on the Rights of the Child and it gravely violated the rights of the affected children in a vulnerable situation, to being raised in a family, as well as to protection and care.

The inquiry also pointed out the correlation that fewer children have to be taken into state care for financial reasons in such cases where it is possible to extend the scope of contributions in kind and financial support as defined in the Social Act and where the families in need can also be supported by child welfare agencies. However, the experts responding to the Ombudsman's inquiry also pointed out that taking children into state care cannot be prevented solely by financial support, as the willingness of the families to cooperate and the support provided by the municipalities of the settlements are also highly significant. Those who provide basic care services regard it as important to ensure that the adult members of the families receive support with mastering a marketable profession and essential life skills.

The Ombudsman concluded that after the earlier investigations into temporary care provided to children, no meaningful changes have taken place, no strides forward have been taken. According to the Child Protection Act, the parents may request that the children be taken into temporary state care, or they may agree to the child's placement into care. As part of temporary care, a child may stay with a substitute parent or in a temporary children's home for a maximum of 12 months. In temporary shelters for families, the children and their parents can be accommodated together at the request of the parent who becomes homeless. The Child Protection Act stipulates that temporary care should first of all be provided with the substitute parent, however, the experts answering the questions of the Commissioner for Fundamental Rights mentioned it as a serious problem, besides the lack of council and social flats, that there are significantly fewer substitute parents and institutions providing temporary care than needed. It is concerning that the distribution of the existing very few opportunities and places in institutional care is very uneven, there is overcrowdedness, there are long waiting times.

From all this, the Ombudsman concluded that the placing of children in state care primarily or exclusively for financial reasons cannot be prevented purely by applying the tools available in basic child welfare services, or by increasing financial support. The problem cannot be solved by increasing the number of places available for temporary care and the distribution thereof in line with the needs, either. The principle of the child's best interests and the right to be raised in one's own family can be fulfilled through harmonized social policy measures and it is only so that the requirement according to which no children should be separated from their families due to financial endangerment can be met.

The Commissioner requested the minister to assess the institutional deficiencies, to take steps for increasing the number of substitute parents who provide temporary care and that of the beds in the temporary shelters for families, in order to apply a solution which is easier to access and which is adjusted to the needs of the care area. Furthermore, it is also necessary to ensure that the services provided by the basic child welfare care provide sufficient support to the affected families, thus possibly preventing the separation of the children from their families primarily or exclusively for financial endangerment. Finally, the Ombudsman asked the ministry to investigate into the possibility of setting up such a professional working group which may define how this problem could be prevented or remedied by applying tools of social policy.

EMMI's (the Ministry of Human Capacities) state secretary for social affairs and social development informed the Commissioner of the amendment of the Child Protection Act, which is effective from January 1, 2018. In accordance with this amendment, the range of the forms of placement will be extended by supporting the establishment of non-institutional, external places from January 2018. After this amendment, temporary shelters for families may provide care to those families who are capable of independent lives with minimum support, at the non-institutional places that have been established within the set limit. The number of municipalities that establish temporary shelters for families may increase, as the municipalities not obliged to carry out these tasks will also be exempted from the obligation to accept such families from July 12, 2017. In the framework of the project entitled "Modernization of Temporary and Rehabilitation Homes", the maintainer of the temporary shelters for families may submit a tender for improving the conditions of temporary care.

The content of the response and the measures taken were basically welcomed by the Commissioner but he also indicated that this did not give a full answer to what was written in the measures detailed in his report. As a result of all this, the Commissioner asked the head of the ministry to provide him repeated and out-of-turn information on his position in substance related to the measure that was mentioned above, as well as those of his measures which he has already taken and that he still intends to take. The Commissioner also asked the minister to ensure that the services provided by basic child welfare care give sufficient support to the affected families, thus possibly preventing the separation of the children from their families primarily or exclusively for financial endangerment. The Ombudsman initiated the setting up of such a working group which may define how this problem could be prevented or remedied by applying tools of social policy. According to his response, the head of the ministry agreed with these two recommendations and he also promised to prepare the implementation thereof.

2. The continuous monitoring of the institutions of child protection based on the complaints and signals sent to him, or even based on news from the press, in the form of ex officio inquiries, is an important and permanent element in the Commissioner's practice related to children's rights each year. In 2017, the Commissioner investigated into the operation of the Zalaegerszeg Children's Home *under number AJB-159/2017* on the basis of a report that he had received.

According to the complaint, the children residing in the institution do not receive proper care, they are exposed to regular abuse and some of the professional staff also establish sexual relationships with them. The children are not allowed to speak with the children's rights representatives and the child protection guardians on a one-to-one basis, as one of the teachers or a child supervisor is always present when the former pay their visits to the children's home. The Commissioner ordered a complex investigation into the children's home, including an on-site inspection – at the unannounced on-site inspection, the Office's lawyers and psychologists talked to the director and they inspected the children's home and interviewed the 28 children who live there.

According to the report, it violates the right of children to protection and care if a higher number of children with dual needs than the limit allowed by the respective law is placed in one group. It gives rise to concern from the aspect of legal remedy and requesting support that the house rules and the contact details of the children's rights representatives are not uniformly displayed in each group. The Ombudsman does not think that the automatic method applied in education, according to which the best

interests of a student are always served better by their being enrolled in home schooling and their having to enter into a legal relationship with an internal, quasi "segregated" school and meeting the expectations set there is acceptable. Furthermore, according to the Ombudsman, it is also a concerning element that the practical education of students in vocational training is becoming impossible, which is at the same time one of the consequences of the closed operational system of some of the special children's homes.

In his report, the Ombudsman stressed that the guarantee provision of the Child Protection Act allows a maximum 48 hours as the duration of measures that limit personal freedom. Based on all this, it means a grave violation of the law that a decision adopted by the head of the children's home involved a health observation period of almost one and a half months in the case of one child, which means the limitation of rights. In addition to this, it was disclosed by the on-site inquiry that in the children's home, "special" sanctions are applied for behaviors that break the rules and that are difficult to handle. Several of the children who were interviewed hinted that the staff of the institution applies deprivation of staying in the fresh air as a way of punishment. According to the report, this practice and its specific execution by the institution, i.e. obliging the children to wear slippers violated the rights of the children to human dignity, protection and care.

The report also touched upon the fact that smoking was prohibited at the institution, the director's instructions were displayed in every group but smoking cannot be hindered in practice. At the interviews, the children said that they were allowed to smoke in the area of the institution, as the professional staff had been using smoking and the prohibition thereof as a tool for rewarding and disciplining for a long time. The investigation has also confirmed the occurrence of peer abuse between the children. It was emphasized by the Ombudsman that it is the responsibility of the state to enforce the right of children in state care to protection and care and it is the responsibility of the experts who deal with them to draw the children's attention to the harmful effects of smoking, to provide support with giving up smoking, to prevent or reduce aggression by using pedagogical and psychological methods.

During the interviews, several children gave account of verbal and physical aggression that they had been exposed to from the side of the professional staff. The child protection representative received 8 complaints of abuse in a few months, and the child protection guardians were also sent as many as 8 complaints on abuse. The report points it out that the complaints were found unsubstantiated by the inquiries carried out by the heads of the institution but the occurrence of the abuse was probable based on the interviews conducted with the children, as well as on the basis of the information received from the child protection representative and the child protection guardians.

The Commissioner launched judicial review proceedings with regard to the operation of the children's home with the competent public prosecutor, through the General Prosecutor. In addition to this, the Ombudsman made a recommendation to the Minister of Human Capacities to continue the steps already taken for the termination of the practice of the restriction of the personal freedom of children placed in special children's homes, which violates the law. The Commissioner took several initiatives with the director of the children's home. First of all, he requested that the practices that violate the law regarding the enforcement of the measures that restrict personal freedom be terminated, and he proposed that the possibilities for the children's everyday free stay in the fresh air immediately be created, and he also suggested that methodological support be provided for managing the aggression between the children. Furthermore, he proposed that the

children who are raised in a special children's home should be given the opportunity to obtain high school qualifications in line with their respective abilities and that it should also be reviewed how justified the enrollments in home schooling are.

The supervising authority requested a leader who has experience in child protection to manage the institution. A new form for documenting the enforcement of the measures restricting personal freedom was introduced, the house rules were now displayed in every housing unit. The experts of the children's home participate in a preparatory course against drug consumption and smoking consisting of several parts with the involvement of external experts. The supervising authority is planning to launch a training program for the staff and the residents of the institution for the management of aggression, to be managed by an external trainer. As part of an internal training program, the staff members take part in a conflict prevention and management course. The supervising authority provides an opportunity for visiting institutions of a similar professional profile. Self-knowledge games, experiential therapy programs, as well as group personality development training programs contribute to the prevention of the aggressive behavior of children. Making the daily activities of the young people residing in these institutions more intensive and meaningful is focused on, by taking the needs and the age-related characteristics into account. At the institution, there is continuous and intensive control from the part of the head of the institution and the supervising authority. As of January 1, 2018, it is stipulated by law that, adjusted to the child's health status and the weather, every child in state care should be given the opportunity to stay in the fresh air without any controlled activities for at least one hour every day.

3. Although the Ombudsman, due to limitations of competence, examines the enforcement of child-friendly justice relatively seldom, such cases reach the Commissioner every year in which he is faced with police procedures that violate the fundamental rights of children. 2017 also saw an example of a grave impropriety: *in case No. AJB-472/2017*, the Commissioner examined the case of the police accompaniment and interrogation, without the presence of the parents, of a 14-year-old child with disabilities.

In his report, he established that the child had been taken to the police station and heard as a witness without appropriate legal grounds, by which a grave impropriety was caused. The Commissioner also drew attention to the requirement that when a child is heard, the parents should be notified and their presence should be ensured even if the proceedings are very urgent. The Commissioner asked the competent police and prosecutor's office leaders to act in order to avoid the recurrence of similar cases.

In this case, it was the mother of a 14-year-old boy with mild intellectual disability who turned to the Commissioner and in her petition, she complained that her son had been taken to the police station without the latter having notified her and neither the defense lawyer nor the mother had the chance to be present at the first interrogation. It is highlighted by the report that the respondent is a child with mild intellectual disability but the authorities claimed that during the interrogation, no circumstance suggesting this condition emerged, i.e. the child's degree of discernment was not limited. The Commissioner was not in the position to assess the child's mental state subsequently, so he had no opportunity either to draw a conclusion regarding the interrogation of the child according to the general rules. However, he also indicated that if the mother had been given the chance to attend the interrogation, then on the basis of the parent's signal, it could have been assessed whether the child's mental state would hinder his interrogation.

The police stated that the child had been summoned verbally and he had then been accompanied to the police station. Pursuant to the Act on Criminal Procedures, a minor older than 14 years of age should be summoned directly but their parents should be informed of such summons and they should be called upon to ensure the attendance of the minor. However, the mother was not aware of the summons or the accompaniment, and the police did not present any documents that would confute this. The Commissioner concluded that no summons without notifying the parents are compatible with the principle of acting in the best interests of the child, it violates the right to a fair procedure. It was emphasized by the Commissioner that the notification of the parents and the requirement of their presence in such cases are like a safeguard because a child needs help with the enforcement of his or her rights due to his or her age, and at the time of interrogating a child, in lack of representation, the formal information provided on the rules of giving testimony and the possibility to refuse giving a testimony, is not sufficient.

The responses suggest that the child was not taken to the police station, only accompanied there by the police officers, as the latter claim that the hearing was very urgent. Based on all the circumstances of the complaint, the Ombudsman did not consider it acceptable that the child summoned verbally, who was staying at home alone, was "accompanied" by the police officers to the police station without the presence of the parents. The police were not able to prove that the child had been informed, in what case and in what quality and when they had wished to interrogate him and that the child, aware of all these, had gone along with them voluntarily. Thus, the procedure meant the limitation of personal freedom in substance. The report mentioned that the parents are entitled to attend the hearing of a witness who is a minor. The police did not deny it either that the parent had not been aware of the first interrogation. Thus, the Commissioner concluded that the failure to notify the parents, and the interrogation without the presence of the latter violated the rights of the child and the principle of a procedure conducted in the best interests of the child.

The Ombudsman's report also draws attention to that, according to the laws, there is a significant difference between hearing as a witness and hearing as a suspect. If, for example, the child had been interrogated as a suspect, he could have refused to give testimony. As a witness, he had much less chance for this, given the warnings to say the truth and concerning the unauthorized refusal to give testimony, as well as in lack of the defense lawyer and the parents. The Commissioner thinks that based on all the circumstances of the case, it cannot be excluded that in order to obtain information more effectively, the police conducted a suspect hearing in the form of a witness hearing. What is more, it was done by disregarding the guarantee requirements that protect the rights of minors who are suspects, especially that of ensuring obligatory protection. In summary, the Commissioner concluded that the procedure conducted by the police had caused a very serious impropriety.

The Ombudsman requested the police superintendent to present the conclusions of the report to the staff concerned, and to order their further training. He proposed that in the future, the police refrain from the practice of accompanying minor respondents, which practice violates the guarantees, and that in the course of summons and witness hearings, they always notify the parents of the child, in line with the relevant requirements. The Commissioner asked the Prosecutor General to examine whether it has become regular practice at the police headquarters to conduct suspect hearings as witness hearings, especially in the case of minors, in order to evade the rules regarding safeguards.

The police superintendent indicated that he agreed with the report and the conclusions on the improprieties as well. In order to prevent such situations, the police headquarters ordered extraordinary further training on this subject for the staff of all the criminal units, in the course of which the statutory provisions applicable in the criminal proceedings affecting minors, as well as the fundamental rights and the legal criteria of the limitation thereof were taught. This further training was accomplished, then the mastering of the knowledge that was the subject of the training program was tested in the framework of an exam. The police superintendent ordered that this knowledge be the subject of a brush-up course every quarter in 2018 at the criminal units of the police headquarters. He indicated that in the future, during his control activity, he would pay special attention to the lawful performance of the criminal proceedings affecting minors. In addition to updating the information, continuous monitoring may ensure that no unlawful practices are applied in the future.

The county Prosecutor General informed the Commissioner on that the prosecutor's office had ordered the head of the competent police headquarters to act in a warrant, to ensure that in the future, the investigation authorities summon witnesses who are minors, notify the family members thereof, call upon the affected parties to ensure attendance, provide information on the rights of the care providers to be present in a hearing by adhering to the respective provisions of the laws. The warning also extended to that the investigation authority should authentically document the ensuring of the rights of the witnesses and their care providers. The Prosecutor General indicated that it should be examined to what extent the guaranteed procedural rights of the persons identified as witnesses and defendants are ensured during the investigations of the police headquarters. He reported that the Office of the Prosecutor General would include, in its annual review plan, the review of those investigations conducted by the police headquarters in 2017 in which the suspect had been heard as a witness by the authority in an earlier phase of the procedure. As part of this review, special attention will be paid to criminal proceedings against minors. The goal of the review is to explore, based on the available data, whether the criteria for hearing the affected person in this quality were available during the witness hearing, or whether they would rather have been suitable for declaring the person concerned a suspect.

4. *In case No. AJB-485/2017*, the Commissioner established the violation of the right to a fair procedure and that of equal treatment in the investigation into an adoption case of a person living in a same-sex relationship. The complainant said that the process of the adoption, which was in the "warm-up" phase, probably failed because the candidate who intended to adopt the child and who had earlier been found suitable for adoption, was open about her living in a same-sex relationship. The advocacy group that represented the complainant turned to the Commissioner, explaining that the procedure was hindered by applying an "abuse-like" legal technical solution and the legal remedy was not lawful either.

The child protection guardian's petition was withdrawn without any meaningful justification and legal basis, in the later phase of the proceedings, and this was not compliant with the effective laws, as was concluded by the Commissioner in his report. It was explored by the inquiry that this over-reaching of competences was not realized by the first- and second-instance public guardianship authorities but they rejected the petition of the complainant for formal reasons, acknowledging the withdrawal. Although the child protection guardian was aware of the fact that the person who initiated adoption was living in a stable same-sex relationship with her partner, the guardian did not

refer to any subsequent unsuitability when the application was withdrawn, neither were the child's rights or best interests quoted. The Commissioner pointed out that the interruption of the adoption procedure evidently took its toll on all the affected parties, especially the young child, due to the time spent together and getting to know each other.

According to the report, neither the public guardianship authority nor the child protection guardian indicated that the application had been rejected because of the complainant's sexual orientation. The child protection services established the suitability of the adoptive parent, while in its very decision on withdrawal, no substantial arguments or reasons were quoted on that the relationship, the circumstances or the lifestyle of the adoptive parent would violate any of the child's rights or interests. The Commissioner claimed that the total lack of explanation, as well as the proceedings conducted and the decision adopted by the pubic guardianship authority breached the principle of non-discrimination, due to the coincidences in time.

The Ombudsman reviewed the preference requirements for the adoption procedure and he also identified some problems in interpreting these. Based on the Hungarian Child Protection Act and the Hungarian Civil Code, three criteria of preference are set up by the effective rules of adoption: Hungarian residents are given preference over foreign residents, local residents are preferred over residents of other settlements of Hungary, and married couples are preferred to single persons. The related regulations of the set of criteria are unjustifiably parallel and the elements thereof are not stipulated in the same law. The situation that has arisen from the regulation of uncertain contents violates the principle of legal certainty, it may give rise to a voluntary application of law by the authorities.

By taking the child's rights into account, the Ombudsman looked into whether it may be justified during adoption to always prefer the married couples specified in the national list over the locally residing applicants who are single from a legal point of view. According to the practice that was explored, adopting children locally is a professionally stronger preference than adopting children to married couples. The Commissioner claims that it is indisputable that the best interests of the child require that a suitable person adopt them as soon as possible and also, that the child's cultural and local identity be preserved. Based on all this, there are serious children's rights arguments suggesting that in selecting the adoptive parents, the secondary preference should be local residence, besides the parents' being Hungarian nationals.

The Commissioner suggested that the Minister of Human Capacities review the contradictions in the preference rules for adoption and initiate the clarification of the rules in order to eliminate the uncertainties. He asked the heads of the public guardianship authority and the government office to act within the boundaries defined by the respective laws and to demand the same from the other participants of the proceedings as well, by taking into account the rights of the persons concerned to a fair procedure and the protection of the best interests of the child. The Commissioner proposed to the director of the county child protection services that he consider the further training of the child protection guardians working in the county on the fundamental rights of children.

5. In 2017, several inquiries dealt with the situation of the education and development of children and students with disabilities. *In case No. AJB-1672/2017,* the Commissioner reviewed the enforcement of the right to education of students with grave and multiple disabilities. *In case AJB-494/2017,* the Ombudsman drew attention to the need for integrative and tailor-made kindergarten education of special needs children, analyzing the current

situation. *In case AJB-1837/2017,* the Commissioner disclosed instances of negligence and practices that violate the law in the access to education of children with special needs, i.e. a lack of experts and the impossibility of such children to get to the school.

2.1.2 Protection of the fundamental rights of the disabled

Disability affairs in the arguments of the profession and fundamental rights are the parallel history of the theoretical and sociological interpretation of human rights. The obligations of state administration continue to exist after the ratification of the UN Convention, i.e. CRPD as well. Related to a specific complaint, almost each group of persons with disabilities came to the focus of the Commissioner's attention but this year, special attention was paid to the transportation conditions, the conditions in care homes and the difficulties of the early development of children. Within the circle of individuals living with disabilities, children living with disabilities and psychiatric patients classified as individuals living with psycho-social disabilities constitute a special area.

1. The Commissioner has dealt with the anomalies of the operation of residential care homes for several years. With the changes in the thinking related to human rights, the protection mechanism of the rights of persons with disabilities who need to live in residential care homes is becoming stronger and stronger.

In case No. AJB-257/2017, it was the care provider staff of the Göd TOPhÁZ Special Home that turned to the Commissioner with a petition in which they complained of the circumstances that have changed due to a new head of the institution who had taken position one year before. In their opinion, all these changes have a detrimental effect on the living conditions of the residents of the institution. The Commissioner for Fundamental Rights ordered an inquiry into the case, his expert colleagues conducted an unannounced on-site inquiry at the institution.

The report contains a reference to the inspection conducted by the maintainer in 2016, which concluded at that time that the institution only had the objective and personal conditions that satisfy the needs of the residents partially. The rights of the patients are gravely violated, the institution gives the impression of being abandoned and neglected, an infection-free and hygienic environment is only partially ensured, the care provided is not appropriate. The cooperation between the staff and the management is not satisfactory, this has an adverse effect on work and impacts the care provided to the patients. Based on the submissions, the new head of the institution was striving exactly to assign tasks clearly and accurately, to ensure consistent and regular managerial control, as well as to convey an approach that keeps the interests of the patients in mind. In the petitions, such circumstances are described and complained of which are not related to the changed management (the lack of staff, overcrowdedness, the poor condition of the residential building) and which had already existed before this change, as witnessed by the minutes of the inspection conducted by the supervising authority in 2016 and the official inspections carried out in 2015. As early as in the years preceding the change in management, such poor circumstances of care and housing had developed in the institution which gravely violated the rights of the patients. The majority of these circumstances also existed at the time of the inquiry, or the measures aimed at remedying this situation were in progress at that time.

Based on the experience gained from the on-site inspections conducted by both the Ombudsman and the maintainer, the de-institutionalization of the Göd TOPhÁZ home would be a very urgent task for the residents concerned. The Commissioner thinks that the chances of persons with disabilities living in such a conflict-ridden and frustrated environment, which is also barren as a result of the lack of staff and objective conditions, for a dignified human life, have been postponed indefinitely, as has been disclosed by the inspections as well, and this has been the case for several years.

At the institution, the "special features" of residential care homes with a high number of patients are tangible: for example, the extraordinarily high number of patients (218), the deficient objective conditions (bathrooms, toilets, beds and mattresses), as well as deficient personal conditions (the lack of care provider staff), or the lack of barrier-free accessibility (equal access). All these problems compel the staff to regularly apply contingency arrangements (group bathing of the patients, the use of cage beds, barred doors) and they also bring about a strong decline in the professional standards of care. These circumstances cause improprieties related to the right to human dignity, the principle of equal treatment, as well as the special obligation of the state to protect persons with disabilities, furthermore, they bring up the violation of the rule on the prohibition of degrading and inhuman treatment, and they are not in line with the international obligations arising from Article 4 of CRPD undertaken by Hungary, either.

The Commissioner turned to the Minister of Human Capacities, the head of the institution, as well as the supervising authority thereof, with his measures. The deputy director of the institution, hand in hand with the maintainer, effected many changes in the personal and objective conditions. For the maintenance jobs to be completed, an amount of HUF 10 million was earmarked for the institution, and a further amount of HUF 10 million was provided for ensuring the appropriate standards of the professional work, an action plan was elaborated in order to make operations lawful, and a new acting manager was appointed to perform all these tasks. The Secretary of State detected a high number of problems at the institution, and he found it topical to incorporate the de-institutionalization of the home into his program. The experts of the ministry initiated several supervisory measures, during the implementation of which further problems were disclosed, of which the Commissioner was continuously informed.

2. *Case No. AJB-470/2017* was launched by a submission by a mother: the complainant turned to the Commissioner about social security support to be provided for a device supporting the communication of persons with disabilities on an equitable basis. The complainant's child is 13 and a half years old, with multiple disabilities, brain paralysis, compulsive movements, without the ability to do fine and targeted movements, or hold objects, speak, however, with a sound mind and the ability to develop. In the past few years, they have tried out several methods and devices to ensure that the child can express himself in everyday life and in his relationships. The most effective of all these was an eye-controlled device (a so-called "eye mouse"), the point of which is that the eye movements of the person watching the monitor are tracked by a special sensor, supported by a special software, and this is displayed on the monitor.

The complainant submitted an equitability application to the National Health Insurance Fund (Hungarian acronym: OEP) for obtaining social insurance support for the device. The opinions of the specialist doctor and the child's physiotherapist were attached to the application, which certified the effectiveness of the device and its important role

in the learning of the child. OEP rejected the application with reference to that based on the annex to the ministerial decree on the inclusion of medical aids in social security support, from among the communication aids, the health insurance authority supports optical aids, from among face-to-face communication devices, they support sound generators, as well as hearing amplifiers, which devices cannot be considered similar to the ones that are listed in the application, not even on the basis of their nature. The decision on rejection also contained that according to the standard, the eye controller and the related software are not communication aids.

Based on the expert opinions, the examination results, as well as the experience of a person concerned, the Commissioner emphasized that this eye control device, the related software and the similar communication systems, in an ideal case, may not only efficiently support the communication of persons with grave disabilities but also, their application may bring about a considerable improvement in the quality of their life, increased autonomy and social participation, as well as development opportunities for the persons concerned.

Besides the well-substantiated expert opinions, all the international legal norms and domestic laws, including CRPD, the Act on the Rights of Persons with Disabilities, OFP (the National Disability Program) and the Action Plan stipulate the right to equal access to communication and information, emphasizing several times the enforcement of the rights of persons with grave disabilities. Based on the principle of human dignity and equal treatment, it is the obligation of the state to ensure the availability of such communication technologies which guarantee the exercise of all the fundamental rights even to those persons with disabilities who have grave communication problems, on the same basis as others. This means giving them the opportunity for a more efficient and meaningful social participation, as well as community life, with regard to access to the individual public utilities, as well as in the area of work and education. The Commissioner concluded that the criticized practice of applying a law which does not allow that a highly developed technological aid which can exclusively be applied effectively by the complainant be available for a person who is gravely hindered in his communication causes an impropriety.

The Commissioner requested the Minister of Human Capacities to call upon the general director of the National Health Insurance Fund to consider the amendment of the ministerial decree and the decision in such a way that these should allow in an individual case but also in general, that the highly developed communication technologies be available to those persons who are gravely hindered in their communication in the framework of social security support. The director general indicated that he was committed to taking part in the elaboration of the amendment of the law aimed at changing the principles of assessing equitability, based on the content of the report and the instructions of the ministry. The general director of the National Institute of Medical Rehabilitation thinks that it would be imperative to take the legal steps required for the availability of these devices. The state secretary for health care maintained his view according to which the provisions of the law do not exclude, even now, that support be requested for medical aids that are not supported on a normative basis, in the form of an equitability procedure. However, he also added that with regard to the problems of law application indicated above, with a view to creating complete coherence, they would review both the respective laws and the place of supporting the new innovative techniques in the disability supply system and the possible financing techniques as well.

2.1.3
Protection of the rights of the most vulnerable social groups

The Ombudsman Act expects the Commissioner in office to pay special attention to every vulnerable social group in need and in danger. The quality, complexity and depth of neediness is clear from the investigations conducted in 2017 as well, with dire material existence and its consequences appearing in the case of almost all social groups. The social groups falling in this circle, already emphasized by the Commissioner in previous years, can be classified to be at risk for different reasons (e.g. their existential situation, age, health and mental status), however, due to this situation, they are also defenseless against all state and public authority interventions. At the same time, in their case, it may have severe and direct consequences if the state – through one of its institutions – does not satisfy some of its constitutional tasks, does not satisfy its obligations related to the establishment and maintenance of the special regulation and practice helping people in need, or does not satisfy them appropriately Be it some, even unjustified, public authority intervention or the failure to perform some state task or obligation, the ability of those affected to enforce their rights or interest is slim.

The Commissioner for Fundamental Rights met yet other forms of poverty in the year under review, it is especially the strategies of subsistence that seem to be very varied. The keeping of homes is one of the key aspects of subsistence but the levels of vulnerability are unpredictable for those who live in extreme poverty. Public funerals or the availability of firewood may be the indicators of survival, while the official decisions were also contradictory in this area.

1. The protection of the lives and health of the homeless required extra attention in 2017, due to the cold winter weather, both from the professionals involved in homeless care and from the maintainers of the social welfare system. *In case No. AJB-811/2017*, the Commissioner, following the practice of the previous years, intended to map the situation of homeless care in the winter crisis period of 2016/17 as well, focusing on the capital city in the first place. It was a positive experience in 2017 too that the network of institutions of homeless care was fully built up in Budapest, it is suitable for uninterrupted operation, and as a result of the professional cooperation, there are perceivably less conflict situations related to people living in the streets, and the social welfare system can quickly and efficiently respond to those extraordinary crisis situations which were experienced by the experts involved in homeless care in January 2017, due to the extreme weather conditions. The Commissioner thinks that the extent of undertaking commitments cannot be reduced just because homelessness in public space is less perceivable in the capital city, and that this winter compelled the organizations and authorities concerned to a higher than average level of cooperation. It has been a stride forward that the relevant tender resources became available in time, the tender invitations were preceded by wide policy coordination efforts, and it does not any more mean an administrative or budgetary problem if a homeless person wishes to use the services offered by several daytime warming shelters in a day, furthermore, the authorities and social care experts are trying to reduce the problems related to homelessness from several directions and in an organized manner, offering a wide range of opportunities.

However, the report also mentioned that the types of institutions that provide basic services to the homeless are defined by the effective laws accurately but very laconically,

this is why harmony should be created between the special needs of homeless people who struggle with very complex problems and the professional care provided on an acceptable standard through more detailed definitions of competence. In his report, the Commissioner emphasized that social care and health centers adjusted to the special needs of homeless people, providing complex services suited to the needs continue to be necessary and he still encourages that the health care functions of the temporary shelters and daytime warming shelters, which also fulfill the function of convalescence units, should also be clearly defined in the laws. Furthermore, the systemic organization and financing of the professional care to be provided to homeless people who struggle with psychiatric or addictology problems, or have any other special needs, are also a high priority task waiting to be solved. In this context, the operation of the 9th district station that fulfills the function of a disinfection bath in the capital city, as well as the creation of the related background, are to be treated as a priority issue that affects the social welfare system as a whole.

It was explored by the inquiry that the elimination of mainly administrative deficiencies and dissonances is still necessary. For instance, the harmonization of the laws that determine the weekend opening hours of the daytime warming shelters and the operational rules of street care services with the basic principles of need-based social work still remains to be considered, and in this context, the KENYSZI-TEVADMIN (the Centralized Electronic Registration of Recipients of Social Services) system still needs to be reviewed continuously, in order to ensure that the lack of the safeguard elements necessary for the clear, consistent and authentic running of the registration system should not jeopardize the availability of the funds for providing social care services.

It was due to all this that the Commissioner proposed to the Minister of Human Capacities that the registration system and the statutory environment of KENYSZI be monitored on an ongoing basis and that the ministry in charge think it over how those priority professional competences and institutional care activities that require infrastructure, and which are needed by those homeless persons who require special health care and social care services, could be financed. The Commissioner for Fundamental Rights also asked the minister to propose that the laws that define the statutory and financing background of the temporary shelters for convalescent patients, as well as the provision of street social care services be clarified. The head of the responsible ministry agreed with the conclusions of the Commissioner, in his response, he already reported on the preparation of the amendments already proposed with regard to the individual types of services, as well as the commitment to facilitating the efficient social integration of the homeless and ensuring their housing with dignity.

2. In this reporting period, the Commissioner for Fundamental Rights and his colleagues conducted several individual or comprehensive inquiries at several old-age homes on the basis of complaints or as ex officio inquiries conducted on the occasion of traditional county-level monitoring exercises.

In case No. AJB-335/2017, one of the residents of the old-age home at the Sárosd site of the Fejér County Integrated Social Institution turned to the Ombudsman in a petition, in which this person complained of the condition of the building, as well as the placement and hygienic circumstances. The Commissioner launched an inquiry and asked the Fejér County Government Office to conduct an unannounced inspection. From the inspection, the Commissioner concluded, in summary, that in the institution, neither the objective nor the personal conditions are in line with the statutory requirements. The experience gained

on the site showed that the conditions of barrier-free movement were only partially available to the residents of the institution. The building of the institution is of a monument type, the wall is coming down and peeling off at several parts, despite the regular sanitary whitewashes. The number of shower rooms is not in line with the statutory requirements, their ventilation goes out to the internal corridor, however, the comment on their condition was not substantiated, as they are in working condition. The coat of paint is missing from the doors of the rooms at several places. There are as many as 12 rooms where more than the permitted 4 persons were placed, what is more, there was such a room too where 12 persons were placed and there are 7 such rooms where not even the 6 square meters of individual residential areas are ensured for the patients, this is why some of the rooms are indeed way too crowded. There is not even one qualified care provider in the mental hygiene area in the home, so there is a complete lack of professional competence.

The Ombudsman emphasized that the quality assurance of social institutional care largely depends on the professional staff. There is no quality social welfare system without a qualified and committed professional staff. Aging naturally involves the deterioration of the previously existing skills and capabilities but there should be an endeavor to ensure that these persons preserve their physical and mental health as long as possible. This is, however, a targeted development activity, which is impossible without professional mental hygienic activities. Professional work of the appropriate standards is one of the key factors in the operation of a social welfare institution, as this is the only way to achieve that the persons who are admitted to these institutions and who need comprehensive care are provided services that are in line with their real needs and that keep in mind the requirements of equal treatment and human dignity.

It was established by the Ombudsman that the deficient objective and personal conditions of the home, the high level of overcrowdedness, as well as the lack of professional competence in the mental hygienic area have caused an impropriety related to the right of the patients to life and human dignity. It is also mentioned in the report that the regulation of the institution regarding the application of restrictive measures is not fully in compliance with the statutory provisions, and the wording of the notification deadline of the statutory representative and the patient representative, which is not in line with the law, also raises concerns.

During the inquiry, it was found out that the institution has a temporary operating permit and it did not even meet the statutory requirements 20 years ago, i.e. in 1997. In relation to this, the Commissioner pointed out that the very fact that an institution has been continuously operating for nearly 20 years “on a temporary basis”, with such serious statutory deficiencies, involves the threat that the institution of temporary operating permits will lose sense. The question arises, with a meaningful reason, how long the violation of the fundamental rights of the residents of institutions with incomplete objective and personal conditions can be maintained, with reference to the continuous need for care and the prolongation of the validity of the temporary operating permits. The Commissioner concluded that the operation of residential homes that are run on the basis of temporary permits whose validity has been prolonged several times due to the lasting lack of objective and personal conditions maintains the threat of the occurrence of an impropriety related to the right of the patients to human dignity.

The Ombudsman requested the Minister of Human Capacities to consider the development of such strategies and programs which also provide support and assistance to the residential care homes and nursing homes possessing temporary operating permits

in remedying the improprieties arising from the lasting lack of objective and personal conditions, as well as facilitating de-institutionalization. Furthermore, the Commissioner also proposed to the head and maintainer of the institution that it should be ensured that the institution fully meets the statutory requirements and that they should take immediate action to guarantee that the patient rights are fully enforced in the institution, especially when restrictive measures are taken. In his response, the minister informed the Commissioner of the tenders invited for the modernization of residential institutions. The Commissioner emphasized that while there are tender invitations for institutions that provide temporary and rehabilitation care, as well as for the de-institutionalization of the care homes and nursing homes that provide services to persons with disabilities, the care services provided to the elderly have been pushed to the periphery and in addition to the increasingly painful lack of staff, the undignified circumstances of care, the narrowing of development opportunities lead to the impossibility to provide care activities, as well as a significant deterioration of quality. According to the information provided by the head and maintainer of the Fejér County Integrated Social Institution, he had taken action for remedying the improprieties disclosed in the report, as well as ensuring the necessary objective and personal conditions.

3. In case No.*AJB-305/2017*, a civil society organization, i.e. an advocacy group sent a signal to the Commissioner. It was explained in the complaint that they had detected serious problems that made the right of persons under emergency medical treatment to legal remedy senseless, the primary contributing factor to which was the statutory environment. The situation is that it causes a grave violation of rights that in the case of emergency medical treatments, the person who receives emergency medical treatment should receive the decision on the lawfulness or unlawfulness of this measure on the 27th day from the starting date of the treatment, i.e. from the date of admission to hospital at the latest (1 day until notifying the court, 3 days until the date of adopting a decision, 15 days until putting the decision into writing, 8 days until the delivery of the decision). As the court reviews the necessity of such restriction ex officio every 30 days, the right of appeal practically becomes pointless. The Commissioner launched an ex officio inquiry to map the enforcement of the right of persons who receive emergency medical treatment to legal remedy. In the course of this investigation, he held coordination talks with the Minister of Justice, the President of the National Office for the Judiciary (Hungarian acronym: OBH), and he also asked for a policy statement from the President of the Curia.

It was disclosed by the inquiry that the legal interpretations represented by the Minister of Justice and the Curia reflect substantive contradictions, which in itself is suitable for violating the principle of legal certainty. Judicial practice may primarily evolve on the basis of the legal interpretation developed by the Curia, and this interpretation will result in a significant prolongation of the deadline as compared to the one calculated on the basis of the Minister's interpretation. The Ombudsman is not responsible for resolving the contradiction between the two legal interpretations but the current legal practice, based on which even as many as 27 days may elapse between the admission of the applicant to hospital and the receipt by the applicant of the decision on the lawfulness or unlawfulness of the decision, does not appropriately guarantee that the right of those concerned to legal remedy will be enforced. According to the legal interpretation of the Minister, the currently effective laws stipulate that within 96 hours of emergency hospitalization, a first-instance decision put into writing, supplied with a justification,

and providing on the necessity of hospitalization and involuntary treatment should be adopted. The Ombudsman thinks that this would much better serve the enforcement of the rights of persons subjected to emergency medical treatment. In addition to the contradiction in legal interpretation, in their letters, both the Minister and the President of the Curia indicated to the Ombudsman that they found it necessary to clarify the provisions of the Health Care Act, although for different reasons.

The Commissioner underlined that the effects of the amendment of the law should also be assessed, especially with regard to the further objective and personal conditions. He also emphasized that the actual efficiency of the legal remedy was definitely a subjective notion in these cases. The situation is that in the majority of cases, when the second-instance decision is adopted, the persons concerned are not in the institution any more and subsequently, it is impossible to conclude, for example from an incomplete expert opinion, whether the respondent demonstrated endangering behavior there and then. It is also a significant fact that in the case under review, the court decision that was challenged by an appeal contains a court-ordered supervision, which constitutes the most severe restriction of the affected person's self-determination and personal freedom. It is obvious that the consequences of disproportionate measures are irreversible, prevention is of key importance. However, the subsequent establishment of liability in itself cannot restore the original condition, the period spent in disenfranchisement cannot be undone for the affected person. With regard to all this, the Commissioner drew attention to the significance of the first-instance decision.

The Commissioner requested the Minister of Health to consider the appropriate clarification of the Health Care Act, with the involvement of the Curia and the National Office for the Judiciary, which will create the conditions for the uniform and appropriate application of the procedural laws on the non-litigious procedure under review based on a clear legal interpretation. He proposed that the Minister of Justice ensure that the forensic psychiatrists receive adequate training, during their university course, on the importance of their work in the judicial procedure, as well as the minimum scope of substantive elements required for issuing expert opinions, based on the decree on legal education required for pursuing forensic expert activities. Finally, he requested the head of the Integrated Legal Services Office (IJSZ) to ensure that their 2014 publication also be prepared in a form understandable for those who have psychosocial disabilities, with simplified content. The Commissioner proposed that the President of the National Office for the Judiciary order a comprehensive inquiry that would extend to the entire procedural practice related to the judicial establishment of the justification of emergency hospitalization stipulated by the Health Care Act, and in connection with this, to the availability of personal and objective conditions required for meeting the deadlines.

In his response, the President of the National Office for the Judiciary informed the Commissioner on that "the content of the report concerns the practice of the application of law at several points, this is why it will be used by the judicial organization". Furthermore, he took care of taking up direct contact with the Curia in order to discuss the question of legal interpretation. The head of the Integrated Legal Services Office indicated that two of their experts would take part in a working group initiated by the Hungarian Psychiatric Association, which was established for the preparation of a clearly understandable information material for the patients placed in acute psychiatric departments from which both the patients and their relatives may find out what they need. The report was sent to all the patient representatives. In his response, the Minister of Justice indicated that in his

opinion, some of the regulation, including the review thereof, is the competence of EMMI, i.e. the Ministry of Human Capacities.

In the case of the procedural provisions on judicial non-litigious procedures, the ministry, however, made the following modification, in agreement with the National Office for the Judiciary. "The court shall adopt a decision within 72 hours from receiving the notice. The patient may temporarily be held at the institution until the court decision is adopted. The court shall put the decision into writing within five days from the adoption of the decision the latest and within two days from the availability of the decision in a written form, it will order the delivery thereof." The Health Care Act has been effective since January 1, 2018, so the above amendment thereof significantly shortens the deadline as compared to the practice applied to date. The Minister indicated that hat the forensic experts receive adequate training on the importance of their work in the judicial procedure. It is the professional training system to be developed by the Hungarian Chamber of Judicial Experts (Hungarian acronym: MISZK) and the elaboration of revised methodological letters related to this field that may contribute to the higher level performance of expert activities in the future, In connection with this, the Commissioner will take measures in the form of a supplementary report.

2.2 Further investigations revealing the enforcement of fundamental rights

In addition to the areas of examination prioritized by the Ombudsman Act, as well as the protection of the most vulnerable social groups, in 2017 the Commissioner launched investigations in several individual cases, also with comprehensive nature, based on a concrete complaint, as well as ex officio.

1. In case No. AJB-1306/2017, the complainant considered those provisions of the old Hungarian Criminal Code problematic which stipulate the earliest date (the lower limit) of examining the eligibility for parole from a life sentence. In his report, the Commissioner concluded that the compulsory statutory lower limit does not violate or threaten any fundamental rights, however, the lack of defining the upper limit in the law raises constitutional concerns.

The Ombudsman pointed out that, since the earliest date required by law for examining the eligibility for parole indicates a minimum value, the acting court may also define a date that is beyond the statutory minimum. A statutory provision without a general maximum, i.e. without an upper limit carries the possibility that the court determines the earliest date of parole as a date later than 30 years from the time of the decision, in the case of a crime not subject to a statute of limitation, while as a date later than 20 years in other cases. However, the new Hungarian Criminal Code contains a general maximum deadline for the acting judge, which was set by the legislator at 40 years. In harmony with this, the legal regulation of prison sentences introduced the mandatory pardon process for those convicts with life sentence who are excluded from parole, in the framework of which, among others, the possibility of parole for the convict should be examined when 40 years of detention have already been completed.

The Commissioner thinks that based on all this, it raises concerns that adopting judgments on the basis of the old Hungarian Criminal Code carries the risk that the judge may even determine the earliest date of examining the parole for the convict in a duration exceeding 40 years. It was also mentioned in the report that in a judgment adopted by the European Court of Human Rights in 2017 in a Hungarian case, the following was explained: the examination of eligibility for parole after the elapse of 40 years is not in line with the requirement under the European Convention of Human Rights arising from the prohibition of torture, inhuman, degrading or humiliating treatments or punishments, i.e. that the convict should be ensured a genuine hope for release.

In the framework of the inquiry, the Ombudsman turned to the Minister of Justice, who indicated in his response that in judicial practice, such application of the above-quoted provisions of the old Hungarian Criminal Code in which the convict would be put in a more disadvantageous situation than under the requirement of the new Penal Code will probably not happen. However, with regard to that the application of the above-quoted provisions of the old Hungarian Criminal Code cannot be excluded in the course of judgments to be adopted in the future and this provision also brings up the breach of the right to human dignity, the prohibition of inhuman punishments, the principle of legal certainty in the sense of Strasbourg case law as well, in his report the Commissioner made a proposal for a codification level measure to be taken by the Minister of Justice. Simultaneously, the Commissioner also sent the report to the President of the National Office for the Judiciary.

In his response, where he mainly quoted practical arguments, the Minister of Justice indicated that in his view, there was no realistic threat of the adoption of any unlawful judgments with respect to the future decisions to be made on the basis of the old Hungarian Criminal Code, any potential breaches of law can be remedied on the basis of the general rules governing legal remedies. The Minister thinks that in the case of those persons convicted on the basis of the old Hungarian Criminal Code whose eligibility for parole was determined by the court in a period beyond 40 years, due to the lack of a statutory upper limit, it is not necessary to introduce general regulations, with regard to the very low number of affected convicts (i.e. two persons). The Minister thinks that these cases can be treated on an ad hoc basis with the institution of personal pardon. In his response, the Ombudsman explained that no such legislation can be constitutionally justified which is not in line with the requirement of foreseeability arising from legal certainty and which makes the enforcement of the right of the persons affected by such legislation to human dignity and the guaranteed enforcement of the prohibition of inhuman punishment dependent on the discretion of the legal practitioner. Thus, the Commissioner maintained his proposal according to which the constitutional concerns outlined in the report should be eliminated on the level of legislation, irrespective of the actual percentage of convicts that this regulation practically affects.

2. *In case No. AJB-473/2017*, a retired complainant reported that although he had always paid the amount of the social security contribution during his years of active duty, when he uses health care services, the central system signals to the doctor who treats him that he is uninsured, as currently he has no registered permanent address. Since the situation of this complainant was not unique but it affected a high number of persons in vulnerable situations, the Commissioner conducted his inquiry in his own competence, in addition to inquiring into this individual case, on the subject of exploring the legal situation

of those persons who receive limited social security care in lack of a permanent address. From the response given to the inquiry by the Commissioner, it became clear that the problem is not unknown to the National Cooperative Fund (Hungarian acronym: NEA), the Ministry for National Economy, or the Ministry of Human Capacities either, and it does not only affect pensioners without a permanent address but it concerns a much wider group of people, i.e. nearly 35 thousand citizens.

In the case of some legal relationships, it is a further criterion of eligibility for health care services that the person concerned qualify as a Hungarian resident. Pursuant to the Social Security Act, those persons will qualify as Hungarian residents who are Hungarian nationals with a registered place of residence in the territory of Hungary in compliance with the provisions set out in the Act on Keeping Records on the Personal Data and Address of Citizens. Thus, in lack of a registered address in Hungary, it is not possible to register a legal relationship of eligibility, no eligibility for health care services can be obtained even by paying the required contributions. The Commissioner pointed out that it raises constitutionality concerns that different concepts are applied by the two laws in a key question concerning the compliance of the legal relationship with the relevant rules (Hungarian resident – permanent address), and that those citizens who in fact have a place of residence but are unable to register it for reasons beyond their control could only use the health care services against the payment of a charge if the law is interpreted strictly. The majority of these nearly 30 thousand people meet the requirement of having a de facto place of residence. The Commissioner concluded that the uncertain and inconsistent use of concepts causes an impropriety regarding the principle of legal certainty.

It was disclosed by the investigation that there was a rule adopted by the responsible secretary of state that when the legal relationship is verified, these citizens should receive a so-called diverted red light and should be given the opportunity to use health care services in kind. The settlement of this issue via pseudo norms violates the principle of the rule of law: the situation is that the legislator responded to handling the uncertain legal situation by issuing an informal legal interpretation, which generated unpredictability. The quoted "circular letter of the state secretary" is the "normative instruction" given by EMMI, i.e. the Ministry of Human Capacities, based on which those who do not qualify as Hungarian residents but have a legal relationship listed in the law are given a so-called diverted red light when the legal relationship is verified. In his response, the Minister indicated that the letter of the state secretary which contains the proposed amendments of the law was prepared after coordination with the respective experts, and it was then sent to the Ministry for National Economy but the proposed modifications had not been started as yet. In order to mitigate the disadvantages, the use of health care services should be made possible for the persons concerned until a meaningful solution of the issue is arrived at, this is how this bridging solution was introduced. However, the State Secretariat for Health Care did not regard it as acceptable either that this question, which concerns several thousand citizens, is not regulated within the appropriate legal framework. The issue has not been reassuringly settled ever since then.

The Commissioner requested the Minister for National Economy to consider modifying the definition of being a Hungarian resident which is specified in the Social Security Act, to ensure that those persons who meet one of the conjunctive criteria of eligibility for health care services de jure, while the other they meet de facto, should not be disadvantaged during the verification of their legal relationship due to their not

being Hungarian residents because of the lack of a registered permanent address. The Minister for National Economy does not think that those citizens who have residential addresses and are obliged by law to register these addresses but fail to do so for any reason whatsoever are law abiding citizens. The requested amendment of the law would facilitate the maintenance of this "unlawful situation" because there is a theoretical possibility for registering the address, by which the statutory criteria could be met and then the legal status of these citizens could be settled, this is why the Minister for National Economy did not accept the Commissioner's recommendation on the preparation of an amendment of the law. His arguments were supported by listing those difficulties which would burden the system in the case of a potential amendment. Those citizens who do not abide by the law would fail to register their places of residence in pretty much the same way, Hungarian residence could not be verified at the time of using the health care services, it would be difficult to screen those people who also use the services, although they do not live in Hungary.

The Commissioner thinks that it is also relevant from the content side what the reason for which the affected citizens do not or cannot comply with the provision in question may be, beyond the theoretical possibility. Such behavior has complex sociological roots related to the level of rights awareness and the ability to assert interests. In practice, homelessness or the appearance of being homeless, the possession of a regional level address card indicate the marginalization of the person in question, in order to avoid which these persons prefer to have no registered address at all. Those tenants who are informally or formally "prohibited" by the landlord to register their addresses, by threatening them with the termination of the tenancy, or by putting them in an impossible situation by his unwillingness to enter into a written agreement with them, are in a similarly vulnerable situation. He stressed that in his report, he had emphasized that applying informal normative legal acts violated the principle of the rule of law. He upheld his recommendation by adding that the purpose of this behavior, i.e. ensuring access of those concerned to health care services is fully acceptable. However, as regards the selected form of this, he could not disregard that a rule of law cannot be served by tools which are not in harmony with the rule of law.

However, the Minister for National Economy did not think that it was justified to propose an amendment even despite all the above. On July 26, 2017, the Ministry of the Interior adopted a decision on the basis of the outcome of the expert coordination talks with the representatives of the Ministry of Human Capacities and the National Cooperative Fund. The Commissioner had asked the head of the Ministry for the minutes of the coordination meeting but he did not receive it despite his request.

3. *In case No. AJB-354/2017,* a man turned to the Commissioner with a submission, in which he reported his concerns about the circumstances of the death of his common-law spouse. In the wake of this, in this specific case and in general too, questions related to exercising the rights that partners have on the basis of the laws on health care emerged, so the Commissioner launched a comprehensive inquiry. The inquiry was aimed at discussing the questions related to fundamental rights concerning the definition, the ability to establish and apply the status of a common law spouse in the case of health care services. The situation is that it became clear that there are considerable and recognized differences between the practices of the individual health care institutions, what is more, the legal practitioners themselves are hesitant many times as well.

The starting point is the provision of the law on health care which clearly defines common-law spouses as close relatives, and ensures a number of rights for the close relative partners. This provision of the law states, in relation to the right to get familiar with health care documentation, that in the case of the death of a patient, their statutory representative, close relative and heir are entitled to get familiar with the health care data related to the medical treatment preceding the patient's death, related to or possibly related to the cause of death, furthermore, they are entitled to review the health care documentation, to prepare extracts or copies thereof, as well as to ask for a copy at their own cost, based on a written request. Furthermore, it cannot be disregarded either that the partner may also be entitled to make decisions that exert a significant impact on the patient's life. In the course of exercising these rights, the health care provider obviously has to assess the fulfillment of several criteria. In this specific case, what had to be decided was whether the complainant filing the case for getting familiar with the documentation was in fact the dead patient's partner.

According to the report, it is in itself a question to be answered what concept of a partner should be used for the legal relationships and situations that are under the effect of the Health Care Act, as the concept of a common-law spouse is not defined by the law. Pursuant to the definition of the Hungarian Civil Code, a partnership exists between two persons who share a household without having gotten married, who live in an emotional and financial community, who are not married to anyone else, who do not have a registered partnership or common-law partnership with anyone else, and who are not lineal relatives or siblings of each other. It would obviously be an impossible task for a health care provider to obtain complete probability of the existence of these criteria. Based on all this, both the close relative partners who wish to use their rights ensured by the law and the health care providers which are meant to help them with exercising their rights are in a difficult situation.

The practices and internal regulations of the health care providers are accordingly heterogeneous. The case under review also proves that if the same criteria exist, one of the service providers accepts the existence of the partnership, while the other does not. According to the information provided by the Integrated Legal Services Office, if the patient was not in the position to have made a statement or was admitted to the institution after his death, the existence of a partnership will be presumed in the case of registered partners. In the case of those partners who are not registered partners or have not made a mutual statement on the existence of their relationship in a public deed, the policy of the different institutions is different as to whether they accept the statement of the partner as it is, or whether they get the statutory representative or the child of the deceased person to make a statement, or whether they request an address card, a statement by the neighbors or utility bills to be handed in. Based on this, the data on health status, which qualify as special data and high security data may be possessed by third persons on different conditions.

It was emphasized in the report that the institutional protection of the patients' right to self-determination and information self-determination, and in the case of deceased persons, the relatives' right to piety includes that the legislator should provide clear instructions in the guarantee rules on who is entitled to get familiar with the data on health care, and based on what criteria. It is common knowledge that certifying a common-law spouse relationship as a factual situation that is acknowledged by the law but one which is not established by a formal act causes great difficulty in practice, especially when it is not possible to spend a long time with such verification on account of the need to make a quick

decision or assessment, and the case of providing health care services is such. It causes an impropriety related to the right to a fair procedure and the principle of legal certainty that, in lack of a regulation, it is not clear to the health care providers based on what procedural rules and in the case of the co-existence of what criteria they can provide information and allow the person who identifies himself/herself as the patient's partner to exercise his/her rights guaranteed by the law. All this situation is suitable for causing an impropriety related to the affected persons' right to self-determination and information self-determination, and in the case of deceased persons, the relatives' right to piety, and to create a permanent and direct threat of the occurrence of the violation of rights.

The Commissioner requested the Minister of Human Capacities to propose that the current regulatory environment be reviewed, and based on this, to take the necessary measures for setting up the regulations related to the clear definition of the status of a common-law spouse as a close relative in the field of health care services.

The Secretary of State answered that the problem outlined above can be put down to the practical difficulties in certifying the partnership rather than a legal loophole. The report complained of the heterogeneousness of the institutional practice, and the Secretary of State said that in this area, a central methodological guideline adjusted to the internal policies of the institutions, for the elaboration of which he recommended the Integrated Legal Protection Services, would contribute not only to the enforcement of patients' rights, information security and the right to information self-determination but also, to the functioning of the institutions. The goal of such guidelines would be to give bases for assessing whether a partnership in fact exists and to create uniform institutional practices. The document may also support the interpretation of the effective legal regulations, and in it, the verification of objective and easily controllable criteria may be proposed. With this solution, the threat of elaborating inflexible, unrealistic regulations does not exist but the practice of applying law becomes more unified and legal certainty also grows. In his response, the Commissioner asked the Secretary of State to send him the central methodological guidelines to be edited by the Integrated Legal Protection Services. However, the methodological guidelines have not yet been received.

4. In case No. AJB-360/2017, the Commissioner for Fundamental Rights conducted a comprehensive inquiry related to the consequences of making the requirements of entrance exams to institutions of higher education dependent on passing intermediate level language exams. It is declared by the report that preparing students for academic studies is the responsibility of grammar schools and specialized grammar schools. In both types of secondary schools, the rules for learning foreign languages are defined by the National Curriculum (Hungarian acronym: NAT), based on which a frame curriculum is elaborated, according to which the secondary schools should make sure that by the time of the school-leaving examinations, the students master the first foreign language at least on level B1 in classes where there is a normal number of language classes per week. According to the government decree on the academic admission procedure, only those can be admitted to undivided Bachelor's training programs who have passed a general complex language examination at least on the level of B2.

It was explored by the inquiry that with the current set of school conditions and practice of foreign language education, based on the results that have become familiar to date, it is a negligible proportion, i.e. 7.5 percent of those students taking school-leaving exams who did not take extra language classes that passed an advanced level foreign

language examination equivalent to a level B2 language exam, although they are entitled to receive extra scores for this, according to today's entrance exam requirements. There are several educational professional factors that contribute to the school results, the most important one of which is that the students should be motivated or should be made motivated. Well-trained educators are available but it has come up that their levels of qualification are not appropriate for the individual types of schools, many times teaching depends on personal commitment or the lack of such commitment, it was also brought up that language teachers are not given any support and they have an excessively high weekly number of classes. The inquiry has clearly pointed out that there are deficiencies with regard to the objective conditions for the mastering of foreign languages and required by law, and also, the Commissioner emphasized the high number of students in the individual learning groups. As these factors fundamentally determine the mastering of the levels of languages required for each year of study, such educational obstacles to the teaching of foreign languages have been disclosed, through the deficiencies in the individual factors, which can be analyzed from the aspect of fundamental rights.

It was explored by the inquiry conducted by the Commissioner that the National Curriculum and the frame curricula require the students of grammar schools and vocational schools who take part in ordinary foreign language training to master foreign languages at level B1, while they expect the students of special grammar schools to achieve level B2 beyond the minimum level, however, for those 9th graders in grammar schools who wish to study in higher education, the new requirement for admission to an academic institution will be the passing of a B2 level foreign language exam in 2020. In defining the new admission requirement, the requirement that the different levels of education are built on each other was not taken into account, the preparation time for the introduction of the new educational requirements or the set of criteria of foreign language education were not ensured. The Ombudsman also emphasized that in modifying the laws, which is necessary for harmonizing the secondary school study requirements for those who take part in ordinary foreign language education with the new admission requirements to higher education, it is a question of key importance that the enforcement of the children's right to rest and free time, playing and entertainment in line with their respective ages should be ensured.

In the Ombudsman's opinion, one of the priority objectives of educational policy at any time is to develop the language competence of the students, this is why efficient language teaching, the result of which is a good level of practical knowledge of a foreign language is the responsibility of public education, more precisely, of the schools. If the passing of a language exam is the admission requirement to higher education, then the school should ensure that the students can in fact achieve such level of language knowledge. This means that as long as the objective and personal conditions of preparing the students for a language examination at school are missing, the requirement to pass a language exam for admission to higher education will cause an impropriety. Furthermore, the Commissioner said that as the obligation to prepare the students for foreign language examinations does not arise from the National Curriculum or the frame curriculum, the introduction of this requirement violates the right to education.

The Commissioner pointed out that it caused an impropriety from the aspect of legal certainty and the right to education that the frame curriculum to be applied in the special grammar schools was announced prior to the beginning of the academic year 2016/2017, so no time for preparing for its implementation in that academic year was available.

The implementation of the frame curriculum without giving any time for preparation does not only involve the lack of the local conditions for teaching foreign languages but also, the uncertainty of commencing and concluding the overall special grammar school education. The uncertainty caused an impropriety related to the right to education, and it also had a detrimental effect on the preparation of those young people who wished to continue their studies in higher education in a special field.

In his report, the Commissioner proposed that the minister in charge take several measures. He requested that the personal and objective conditions available in the schools for providing ordinary foreign language education be assessed and based on the result of such assessment, the minister take urgent measures to ensure that the school conditions necessary for mastering foreign language knowledge of the level of B2 become available. He also asked the minister to propose that the requirements of the advanced level foreign language examinations for the school-leaving exam be reviewed, in order to ensure harmony with the requirements of the B2 level state language examination. He also asked the minister to take the necessary measures for the modification of the legislation on public education to ensure that the latter is in line with the new higher education admission requirements, while he should also take into account that the children's rights to rest and free time are enforced. He proposed that a new effective date of the provision on the new admission criteria concerning foreign languages be assigned, which takes into account all the legal and professional requirements related to the introduction of the new study criteria (phasing-out system, pedagogical program).

The responsible ministry, after several rounds of correspondence following the issuance of the report, insisted that the regulation provides sufficient time for implementation, and that the personal and objective conditions for ensuring that the students who take entrance exams to institutions of higher education should be prepared for the latter procedure are currently available as well. He did not think that it would be justified to postpone the effective date. The government decree on the development of the efficiency of foreign language education was issued, in which the Government calls upon the Minister of Human Capacities to prepare a mid-term strategy for the period between 2018–2027 and a related action plan, which may contribute to a more efficient language learning of the students. However, in their response, the ministry in charge provided no information on the findings of the assessment that preceded this.

2.3
On the Commissioner's sphere of authority initiating norm control

Pursuant to the Fundamental Law of Hungary, the Constitutional Court reviews the harmony of the laws with the Fundamental Law, at the initiative of the Commissioner for Fundamental Rights. In 2017, the Constitutional Court adopted decisions on the basis of a total of four motions filed by the Ombudsman in the preceding years, and in two of these decisions, the Court shared the Ombudsman's concerns related to fundamental rights.

In its decision No. 7/2017 (18. IV.), the Constitutional Court annulled the local decree in which the legislator of the local government banned the activity pursued by the muezzin, as well as the wearing of clothes that cover the whole body and head, or partially and fully, the face, furthermore, all such "propaganda activities" which present marriage as other

than a relationship between a man and a woman, or one that acknowledges something other than marriage and the relationship between a parent and a child as the basis of a family relationship, with regard to that this decree is aimed at the direct restriction of several fundamental rights, such as the freedom of conscience, religion and expression.

In its decision No. 30/2017 (14. XI.), the Constitutional Court emphasized, in agreement with the motion filed by the Commissioner, that the broad legislator's space of maneuver ensured in defining the criteria for social measures should also remain within the boundaries of the Fundamental Law of Hungary. In this respect, the minimum restriction is that the criteria defined for receiving social allowances shall not involve the violation of the affected person's right to privacy, no such criteria shall be required which would make the state's obligation to provide social security pointless by demanding impossible conditions or such that violate the freedom of the individual.

Pursuant to the Fundamental Law, the decrees issued by the local government cannot be contrary to any other laws. Pursuant to the Act on the Commissioner for Fundamental Rights, the Commissioner may propose that the Curia review the harmony of the local government decree with other laws. In 2017, the Curia decided to annul some of the provisions set out in three local government decrees on the basis of the motion filed by the Commissioner.

2.4 Activity related to legislation

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

According to the legislative act, the party preparing the legal regulation is obliged to secure that in case that the draft affects the legal standing or responsibilities of a particular organization, the affected party can enforce its right to provide an opinion.

In 2017, the Commissioner for Fundamental Rights provided his opinion on 219 draft legal regulations, upon request. The ministries sent several of the motions to the Ombudsman, however, they did not fully satisfy their obligation to ask for an opinion. On occasion, they did not ask for the Ombudsman's opinion on draft legal regulations important from the aspect of fundamental rights.

Similarly to the previous years, they sent the motions to the Ombudsman with characteristically very short deadlines, which made it difficult to provide meaningful opinions. This is why the Commissioner reserved the right, in each opinion, to propose the modification of the already promulgated law with a subsequent effect if he has established a constitutional impropriety related to the regulation.

The Ombudsman provided meaningful opinions in appr. 50 percent of the motions. The opinion of the Commissioner for Fundamental Rights presented during the preparation of legal regulations has no binding force but it may help the success of codification and the elimination of shortcomings and contradictions. It has also happened that the Commissioner for Fundamental Rights proposed that the motion be withdrawn or conceptually reviewed.

In the formulation of opinions, it is an important aspect how legislation may affect children's rights, the interests of future generations, the rights of national minorities and the most vulnerable social groups, which are priority areas in the Ombudsman Act. The Commissioner and the Deputy Commissioners, as well as the departments of the Office cooperate in the preparation of the opinions, so the viewpoints of the individual areas can be taken account in a complex manner, supplementing each other. The OPCAT Department is also involved in this internal process of professional coordination, as the expression of opinions on the draft legislation concerning detention is a responsibility of the National Preventive Mechanism defined in an international convention.

In some 70 percent of the reports issued in 2017, the Ombudsman motioned for the creation or modification of a law. In some of his reports, the Commissioner also formulated several codification proposals. In summary, he motioned for the modification of as many as 23 laws, 16 government or ministerial decrees, 5 municipality decrees, while he made proposals for the general review of the regulation in 31 of his reports.

In his report, the Ombudsman indicated that the ministries responsible for the preparation of laws should pay more attention to giving meaningful responses to the proposed codifications addressed to them.

If the public body in question refuses to take the measure proposed by the Ombudsman or does not give a meaningful response, the Commissioner for Fundamental Rights may present the case to the National Assembly as part of the annual report. The Commissioner for Fundamental Rights, using his authorization to do so, called the attention of the National Assembly to four of the codification proposals that had been worded in the previous years and had been unsupported by the affected ministries.

2.5
Activity related to the protection of whistle-blowers

In connection with public interest disclosures, different responsibilities are defined by the Act on the Commissioner for Fundamental Rights (Hungarian acronym: Ajbt) and in the Act on Complaints and Public Interest Disclosures (Hungarian acronym: Pkbt), with regard to which the Commissioner, through his Office, ensures the operation of the electronic system serving the making and recording of public interest disclosures. In addition to this, after the inquiry into the public interest disclosure, the person making the public interest disclosure may file a submission with the Commissioner if the acting body did not fully examine his disclosure, he does not agree with the result of the investigation, or if his disclosure was found unsubstantial. The Commissioner may investigate the practice of acting bodies examining public interest disclosures ex officio, as well.

Operation of the electronic system handling public interest disclosures

Public interest disclosures can be made by using the electronic system (on the interface established for this purpose on the homepage of the Office), or in person at the customer service. The discloser may request that his submission be treated anonymously, in this

case, the acting body may only get acquainted with the excerpted version of the public interest disclosure, and any data that would reveal the identity of the discloser are removed. Thus, the identity of the whistle-blower will remain hidden, he may not suffer any disadvantages because of his disclosure.

The Commissioner makes the disclosure and its annexes (in the case of such request, its excerpt without personal data, i.e. the so-called anonymous excerpt) accessible to the body authorized to investigate (the acting body) in the electronic system within 8 days. The acting bodies record the information on their (interim and meaningful) measures taken during their investigation in the electronic system. The discloser may follow the investigation of his disclosure on the webpage, i.e. to query the status of his case. In addition to that, the brief excerpt of the disclosure (the so-called public excerpt), without personal data, is accessible to everybody. In 2017, a total of 328 public interest disclosures were received by the Office. The overwhelming majority of these came through the electronic system, while the rest was presented in person to the Complaint Office. More than 90% of the whistleblowers asked that their personal data be exclusively accessible to the Office. The subject of the disclosures was really varied. Without being exhaustive, we can say that there were disclosures complaining of the operation of public transport companies, the practices of the Center for Budapest Transport (BKK), the management of funds by the local governments, the unlawful utilization of tender resources, illegal dumping, the contamination of live waters and ground waters, the burning of waste, noise pollution, misleading trading procedures, furthermore, internet frauds, data phishing, municipality decrees, disclosures reporting the tax evading behavior of some companies and private individuals, reporting the sound exposure caused by summer music festivals, disclosures calling attention to the expansion of the beggar mafia, as well as corruption.

The five most frequently addressed acting bodies were: the Ministry of Human Capacities, the National Authority for Data Protection and Freedom of Information, the Ministry of National Development, the Ministry for National Economy, as well as the Government Office of Budapest. Appr. 65 percent of the submissions were substantiated. In these cases, the acting bodies took care of remedying the situation in question in order to protect the social interest which was endangered.

Reviewing the management of public interest disclosures

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

In 2016, 69 applications were received for the review of the proceedings of bodies investigating the public interest disclosures. It happened in 8 cases that the procedure followed by the authority under review did not fully comply with the requirements of the respective laws, therefore the right to petition, legal certainty and the right to the fair

management of official matters were violated. The acting bodies reviewed were the following: National Tax and Customs Administration, the Central Office for Administrative and Electronic Public Services, the Göd Mayor's Office, the Karád Joint Council Office, the National Inspectorate for Environment and Nature, as well as the Middle Danube Valley Inspectorate for Environmental Protection and Nature Conservation (legal successor: Government Office of Pest County), the Ministry of National Development, the Ministry of Justice. In 35 of the closed cases, no fundamental law impropriety was established while handling the public interest disclosures.

The supervisory procedure of national security check-ups

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

In 2017, the investigations into three complaints filed by citizens concerning national security check-ups were concluded. In two cases, the complainants criticized the procedure of the national security check-up and the supervisory procedure, and they also resented that they could not use their legal remedy opportunity in substance. It was concluded by the Ombudsman that as a result of the difficulties in the interpretation of the sections on the information on the right to use legal remedy as set out in the security expert opinion in the Act on the National Security Services, as well as due to the earlier practice of the Constitution Protection Office of Hungary, the fundamental rights of the affected persons to a fair procedure and to legal remedy may have been violated. The Ombudsman requested the Constitution Protection Office of Hungary to pay attention to the appropriate information on the right to legal remedy to be provided by the party that initiates the procedure to the persons to be checked.

In the third case, the complainant complained of the means of the national security check-up, and he resented that he did not get the chance to get familiar with the exact contents of the risks that had been identified. The Commissioner established that the affected bodies had acted in compliance with the relevant laws and there had been no improprieties with regard to fundamental rights.

2.6
The Ombudsman's OPCAT activity

The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was incorporated in the Hungarian law through decree law No. 3 of 1988. Since January 1, 2015, the Commissioner for Fundamental Rights has been fulfilling the tasks of the OPCAT NPM, i.e. the National Preventive

Mechanism as defined in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, which was announced in Act CXLIII of 2011. The Commissioner for Fundamental Rights has been fulfilling this role in person or through his staff. The protocol established a system whereby the independent international and national bodies pay regular visits to those sites where people who are deprived of their liberty reside. On January 1, 2015, the OPCAT National Preventive Mechanism Department was established at the Office for the performance of this task. In 2017, highly acclaimed experts, including lawyers, educators and psychologists were working at the department. The experts of the department, hand in hand with the staff members of other departments, as well as external nutritionist or medical doctor experts paid visits to as many as *eight places of detention* in 2017, as follows:

1. BRFK (Budapest Police Headquarters) Central Detention Facility (February 8, 2017)
2. Márianosztra Strict and Medium Regime Prison (March 13-14, 2017)
3. Budapest Penitentiary Institution I. (March 28, 2017)
4. Platán Integrated Integrated Care Center of Bács-Kiskun County- *follow-up investigation* (May 16-17, 2107)
5. Psychiatric Ward of Balassa János Hospital, Tolna County (May 31- June 1, 2017)
6. Nagymágocs Castle Home of the Aranysziget [Golden Isle] Integrated Retirement Home of Csongrád County (September 12-14, 2017)
7. Detention Facility of the Fejér County Police Headquarters (October 19, 2017)
8. Szabolcs-Szatmár-Bereg County Penitentiary Institution (November 28-30, 2017)

In selecting the places to visit, besides the proposals of the Civil Consultation Board and the type of the place of confinement, geographical criteria and the principles according to the number of detainees were taken into account and the Department's experts also studied the OPCAT-related reports of Hungarian and international bodies when the plans for the visits were compiled. In 2017, the focus of OPCAT NPM activities was placed on *nutrition* at places of detention. The visits to places of confinement were not announced in advance by the Commissioner for Fundamental Rights in accordance with the UN guidelines (Guidelines on national preventive mechanisms, United Nations CAT/OP/12/5, Article 25) issued for National Preventive Mechanisms. In 2017, the NPM also conducted a follow-up investigation in accordance with the international requirements and he informed his partners on this.

During 2017, the NPM disclosed the following ten reports on its homepage:

1. Report on the Sátoraljaújhely Strict and Medium Regime Prison (AJB-679/2017 – year of visit: 2016)
2. Report on the Forensic Psychiatric and Mental Institution (AJB-766/2017 – year of visit: 2016)
3. Report on the Bóly-Görcsöny Joint Social Institution of Baranya County (AJB/1383/2017 – year of visit: 2016)
4. Report on the Szombathely Penitentiary Institution (AJB/793/2017 – year of visit: 2016)
5. Report on the follow-up investigation of Platán Integrated Integrated Care Center of Bács-Kiskun County (AJB/3772/2017 – year of visit: 2017)

After the disclosure of the reports, the Commissioner for Fundamental Rights conducted a dialog with the authorities and the maintainers. Until the closing of the annual report, a total of *five new OPCAT NPM reports had been prepared* on the basis of the above-listed visits. Pursuant to the statutory provision, the Commissioner prepares a separate annual report on his OPCAT NPM activities performed in 2017. The annual report is addressed to the National Assembly and the UN Subcommittee on the Prevention of Torture (SPT) but the OPCAT NPM's annual report is also sent to other Hungarian and international organizations.

During the year, the Commissioner and his staff members received several high-ranking international delegations at the Office in connection with matters specifically related to the NPM, such as: In March 2017, the UN Subcommittee on the Prevention of Torture (SPT) paid a visit to Hungary, in the framework of which they visited our Office on two occasions. On March 22, 2017, they met with the Commissioner, the Deputy Commissioner for the Rights of National Minorities in Hungary, the Secretary General and the experts of the Office. At the request of the SPT, the delegation also met with the members of the Civil Consultative Body during the day. On March 28, the NPM visited facility 1 of the Budapest Penitentiary Institution, and the SPT delegation also joined them as observers. The members of SPT emphasized that the NPM is working properly, however, they formulated several recommendations (among others, regarding the need for a fully separated budget for this purpose within the Office).

3
Report of the Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities

3.1
Introduction

2017 – the fourth year of the six-year mandate of the Deputy Commissioner for the Rights of National Minorities – was another year when me and my colleagues have made efforts within the available legal framework to do our best to protect the rights of the communities of national minorities living in Hungary against the instances of abuse of power by the authorities.

On the next few pages, we will illustrate the events of the reporting period with data and graphs: the figures suggest that the awareness of the public of the institution of the Deputy Commissioner for the Rights of National Minorities, the confidence in the institution have continued to show an upward tendency. It is not only the number of complaints and inquiries that has increased but the structure of the affected legal fields related to national minorities has also changed: there are more and more issues that concern classical nationality rights. Thus, it seems to be a logical conclusion that the joint interpretation of the Hungarian Act on national minorities and the Act that regulates the responsibilities and competence of the Deputy Commissioner for the Rights of National Minorities shows a positive picture: the protection of nationality rights based on these Acts may contribute, with increasing efficiency, to the enforcement of the rights of the communities of nationalities in Hungary.

However, to rely merely on data is not sufficient. Although figures and facts are stubborn things, the human factor is essential: there are real people who do the increasing amount of work of changing structure to the benefit of the communities of national minorities living in Hungary. The members of the communities of nationalities, who are Hungarian citizens, on the one hand, wish to recognize and strengthen their nationality identities by smoothly exercising the related rights, and on the other hand, they are sometimes compelled to suffer discrimination that may be related to their origins. Furthermore, the role of those experts, nationality advocates, heads of national minority self-governments and organizations who demonstrate a high level of empathy and professionalism in the protection of the rights of national minorities, is also important.

Although actions against discrimination on any grounds, coupled with the need for nationality education, nationality self-governing, nationality media, as well as decision-making on situations that concern nationalities may serve several purposes, the core of all this should be nothing else but the preparation of the young generations of the nationality

communities for a useful and meaningful participation in the life of a multicolored and inclusive society. For this, however, we also need awareness of one's own national minority rights and the related system of rights protection, the tools thereof, the need for obtaining information on all these, and the necessity of providing information on these questions. The 2017 report that you can find in the upcoming pages is just a snapshot: it highlights – from the perspective of the Deputy Commissioner – the legislative gaps, the problems of applying the law, as well as coherence issues that emerged during the operation of the Act on the rights of minorities, which is, in 2018, in its 25th year of functioning. This is why I recommend it for reading to my compatriots who belong to nationality communities, those who are involved in the legislation and the application of the law, as well as to all the citizens who are interested in this topic.

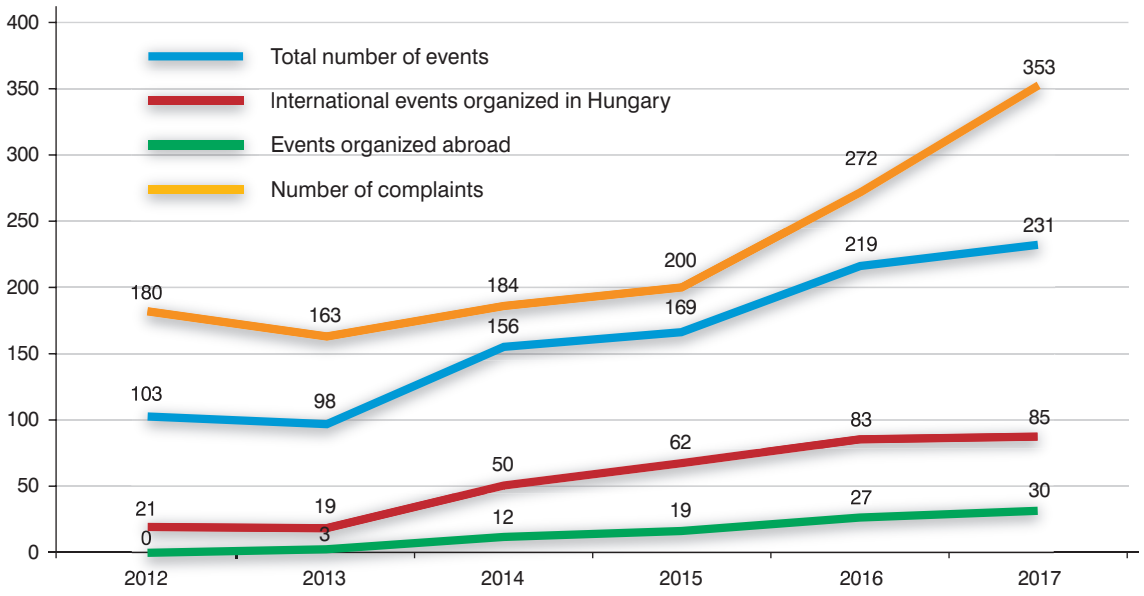
Elisabeth Sándor-Szalay

3.2
The activity of the Deputy Commissioner

Continuous liaising within the professional forums, obtaining and processing information are the priority tasks of the Deputy Commissioner, as the bases for all other activities and as a cornerstone for providing solid foundations for her professional work. Accordingly, the Deputy Commissioner endeavored to be present in the everyday lives of these communities and to monitor, collect and systematize information on the enforcement of the rights of the national minorities living in Hungary, as well as on the current situation and the public life of these communities.

There has been an unceasing increase in the number of events since the inception of the institution of the deputy commissioner, what is more, the year 2017 saw a 30 percent increase in the number of meetings between the Deputy Commissioner and her staff, and the members of these communities as compared to the previous years.

Number and basic types of events at the Secretariat, as well as the number of complaints (2012-2017)



It should also be noted that the professional events that the Deputy Commissioner takes part in exert a much broader impact than the direct interactions. The figure below clearly shows that with the increase of professional activities more and more citizens turn to the Deputy Commissioner with their complaints and submissions related to nationalities. As a result of the complex process, since Elisabeth Sándor-Szalay took office, i.e. since October 2013, the number of both the professional events and the complaints related to nationalities has doubled.

The Deputy Commissioner regularly provides information on the situation of the nationalities in Hungary both to the national communities themselves and to the members of the majority society. The key channels of such communication in 2017 were as follows: active media presence, our own media platforms – the social media, county visits and on-site inquiries, shaping attitudes and human rights education, consultations with children, organization of conferences and cultural events.

Professional forum with the heads of the German nationality self-governments operating in Veszprém County – Városlőd, Iglauer Park

Interviews after the talks with the Vojvodina Ombudsman – Novi Sad, Serbia

Visit to the German Theater of Hungary (Deutsche Bühne Ungarn) – Szekszárd

Panel discussion at the international conference entitled "Protection of Identity through Language Rights" – Budapest

The activities of the Deputy Commissioner for the Rights of National Minorities can be continuously followed on her homepage (nemzetisegijogok.hu), on her Facebook profile (facebook.com/ombudsmanhelyettes), on Twitter (@MinorityOmbud) and Instagram (#ombudsmanhelyettes), where you can find the latest news.

There was regular working cooperation between the Deputy Commissioner and the affected government leaders, especially the heads of the State Secretariat for Social Affairs and Inclusion at the Ministry of Human Capacities, in 2017 as well: the cooperation which had been previously established and which is based on constructive professional collaboration could be maintained and developed further both on the experts' and the leaders' levels. The Deputy Commissioner and her staff members participated as observers in the meetings of two specialized consultation bodies, i.e. the Roma Coordination Council and the Anti-segregation Roundtable, while she was present in the work of several thematic working groups of the Human Rights Working Group as an independent participant. These included the Thematic Working Group for Roma

Issues, as well as the Working Groups for National Minorities, for the Freedom of Expression, as well as Other Civil and Political Rights. In 2017, the integration of special needs children and students, the prevention of the unjustified qualification of persons as ones with disabilities, intersectionality, as well as the role of local and county level cooperation in social inclusion were priority topics. The Deputy Commissioner also joined the series of professional consultations of the Working Group against Hate Crimes, where she took part in the analysis of hate crimes against the Roma and the elaboration of anti-latency measures.

The Deputy Commissioner for the Rights of National Minorities maintains close and continuous professional relations with the representatives of the nationality communities in Hungary, including the heads of the country-level nationality self-governments, as well as the nationality advocates.

Although there would have been a theoretical possibility for this, the Deputy Commissioner made no proposals in her own competence for the creation or amendment of the laws affecting the rights of national minorities, however, she indirectly participated in the development and transformation of the laws on an ongoing basis. The key partners in this were the nationality advocates.

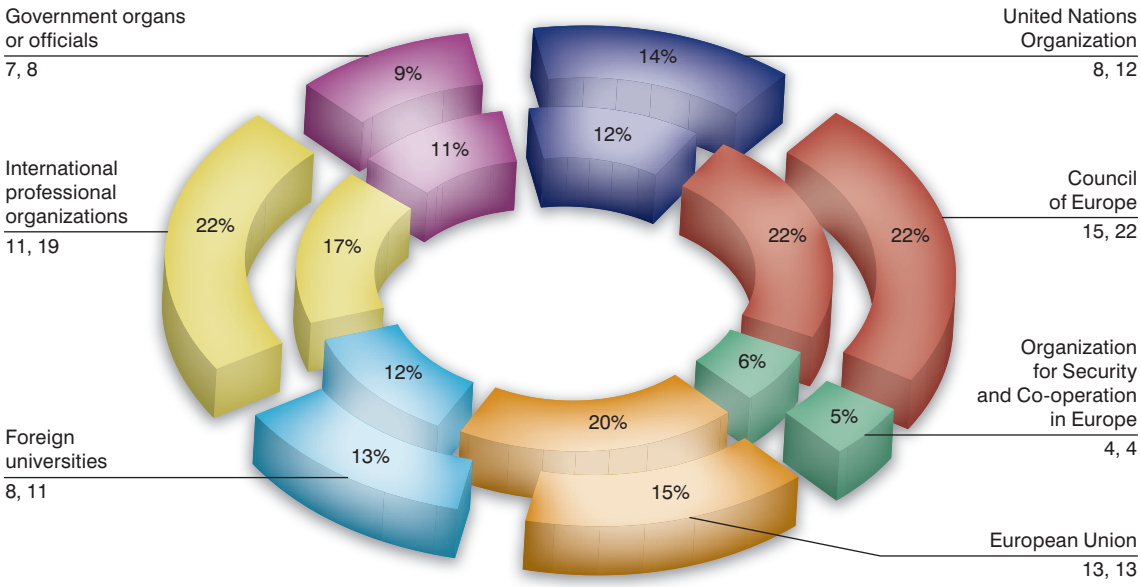
Professional consultation with the Committee Representing the Nationalities in Hungary

The Parliamentary Committee Representing the Nationalities in Hungary became the key player of the representative system of nationalities renewed in 2012. Although there were initially many professional and political debates on the substance elements of the regulation, practice has shown that this body has become an efficient institution of the National Assembly, initiating legislation related to the interests and rights of nationalities, making proposals, comments and controlling the activities of the government. The nationality advocates have also achieved success in the area of the transformation of funding, the increase of resources, as well as guaranteeing transparency. The Parliamentary Committee Representing the Nationalities in Hungary has proposed that professional meetings be held with the Deputy Commissioner several times, and it also took into consideration and incorporated into codification processes that they had launched the conclusions drawn in their joint reports by the Commissioner and the Deputy Commissioner.

3. 3
Our international relations

Regular communication with international organizations, professional bodies, experts and representative bodies was of key importance in the work of the Deputy Commissioner in 2017 as well, which is well shown by the fact that as many as 85 of the 231 events of the Deputy Commissioner, i.e. 36% of the total number of events were international in nature. In 61% of the cases, the activities related to international organizations were pursued by the Secretariat, typically in the framework of expert-level cooperation and negotiations related to the operation of the control mechanisms of the bodies and the creation of strategies. The remaining 39% of such collaboration was made up by providing information and the work on "presenting the values of the Hungarian system of institutions", which was also required by the relevant law. Typically it included a series of personal meetings, conferences and university lectures. In 2017, fewer events were related to the European Union and its individual organizations than in the previous years but the number of events related to other international professional organizations has grown. This was primarily due to the closer professional cooperation that was established with the largest European umbrella organization FUEN, which comprises the indigenous national minorities and ethnic groups.

The distribution of international relations by partners (2016 and 2017)



Tools of establishing international relations:

1. meeting with international delegations;
2. participation in international professional programs and projects organized in Hungary;
3. international presentations in front of professional forums;
4. supporting the Minority Safepack Initiative;
5. special international mandate: member of Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities

The Deputy Commissioner for the Rights of National Minorities, both in her own competence and on behalf of the Ombudsman, established intensive relations with the international advocacy organizations, the benefits of which are invaluable: the experience gained by the partners and their good practices are continuously incorporated into the professional materials, while the training sessions and the seminars make it possible to share the experience related to the nationality issues and the situation of equal treatment in Hungary. Key partners of the Deputy Commissioner include the Council of Europe, the organs of the UN, universities and research centers, as well as the European ombudsman's institutes, especially the ombudspersons of the V4 countries.

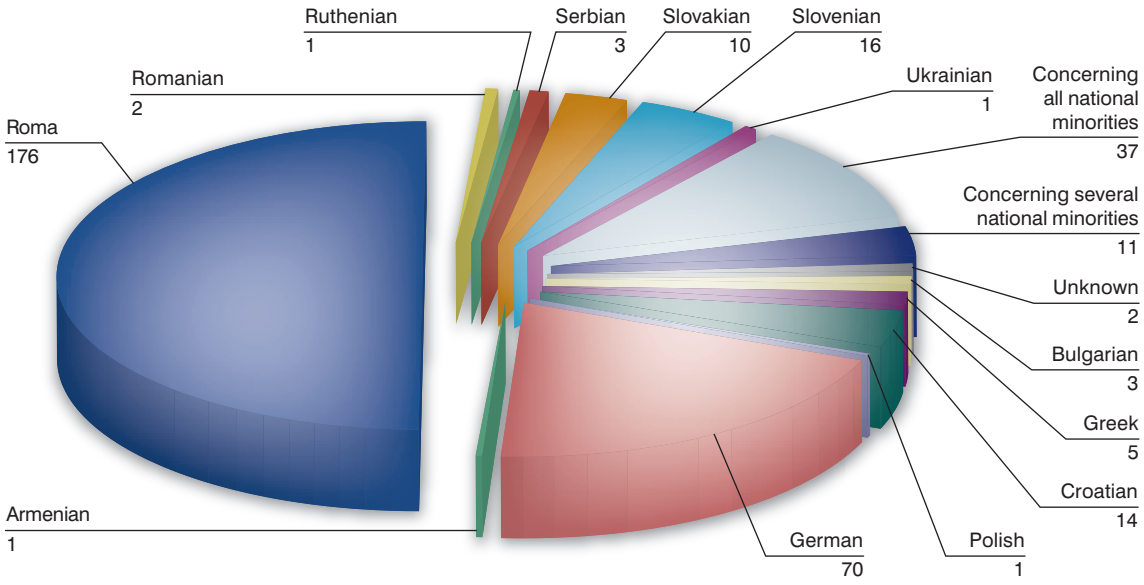
With the other ombudsmen and their senior colleagues in the breaks between the negotiations – Brno, the Czech Republic

Among our international commitments, we should mention that at the meeting of the Committee of Ministers of the Council of Europe held on May 25, 2016, Dr. Elisabeth Sándor-Szalay was elected a permanent member of the Advisory Committee on the Framework Convention for the Protection of National Minorities. Her mandate is for four years from June 1, 2016, during which period she will have the opportunity, as an independent and impartial permanent member of the Advisory Committee, to assess the actual enforcement of the rights of national minorities in a number of European states and the achievements of the different minority protection models, as well as to play an active role in establishing the European-level minority protection standards.

3.4
Cases of nationality rights

The number of nationality-related cases within the professional competence of the Deputy Commissioner for the Rights of National Minorities (complaints, inquiries launched ex officio) has risen, similarly to the previous year. In 2017, a total of 353 cases were related to nationality rights accounting for a nearly 30% increase compared to the number of cases in 2016. Of these cases, 118 specifically concerned the enforcement of individual and community nationality rights, while 235 cases contained discrimination-related complaints connected to a specific national minority from many different walks of life such as social rights, education or civil law cases.

Distribution of the individual complaints, petitions and inquiries launched ex officio in 2017 by national minorities



Based on reviewing the distribution of the cases of nationality rights by the individual nationalities, one may conclude that also in 2017 most of the cases were launched by Roma citizens or they concerned Roma themes. In addition to that, the highest numbers of cases concerned German, Slovenian, Croatian and Slovakian nationality communities. The number of cases that concern "several national minorities" was 11 again in 2017, similarly to 2016. However, the number of cases that concerned "all national minorities" has grown to 37 from the 23 in 2016. These primarily include the cases concerning the general type of the functioning and funding of nationality education, nationality self-governments and civil society organizations, as well as the amendment of some specific laws with a content related to nationalities.

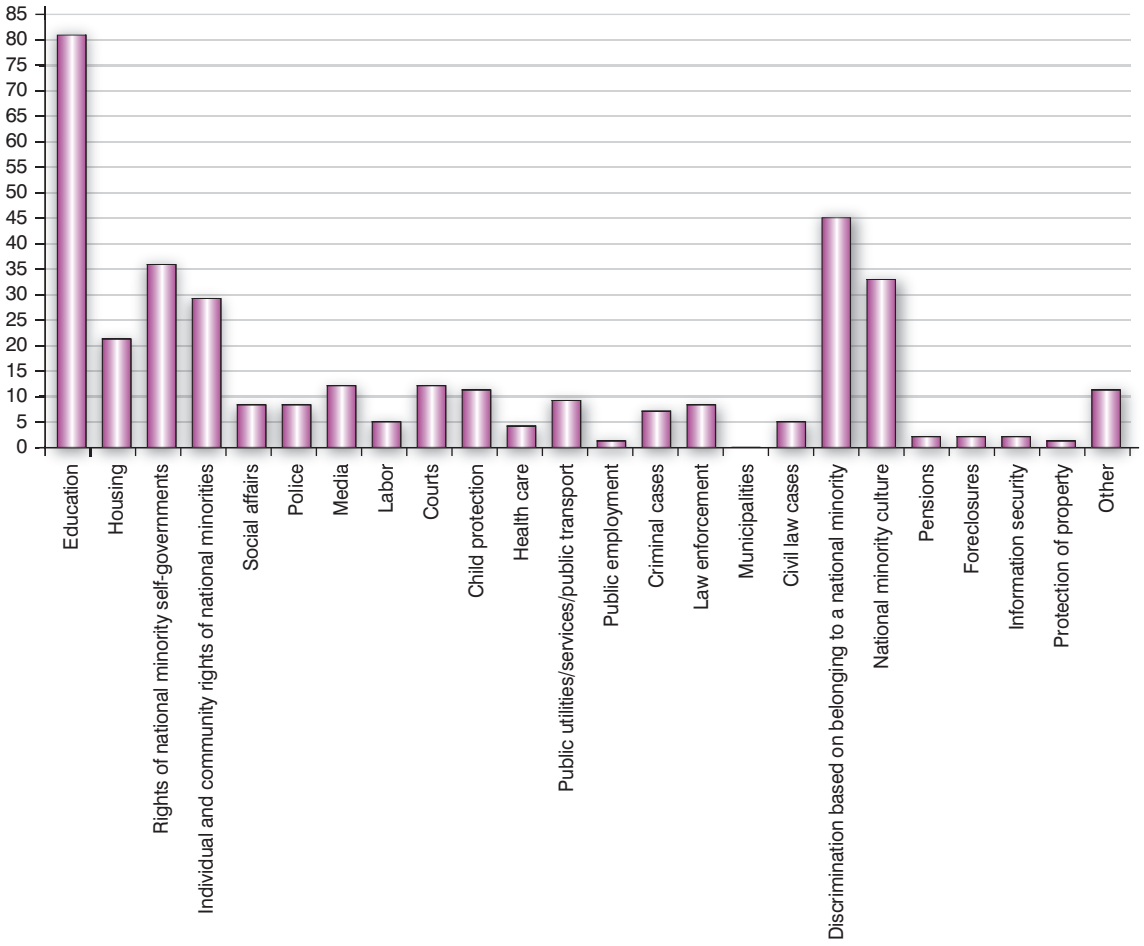
The figures show the proportions and tendencies very well. The high number of cases that concerns the Roma citizens still indicates that the social exclusion of Roma citizens and the problems that most often arise from this situation continue to be serious in Hungary, however, these problems and difficulties actually differ greatly from those of the citizens who belong to other nationality communities.

Types of complaints, petitions and inquiries launched ex officio

The categorization of nationality cases according to their subject gives an overview of the nature of petitions that the Deputy Commissioner received in 2017 and of the types of cases where she launched an ex officio inquiry.

From the Deputy Commissioner's activities in 2017, the differences characterizing various problems of the nationality communities become obvious. The number of cases concerning individual and community nationality rights, and in relation to this, those related to cultural and self-government rights have increased. In the case of Roma citizens, the proportion of petitions complaining about the lack of enforcement of the requirement of equal treatment, as well as about their social status and living conditions, continues to be very high.

Types and topics of the individual complaints, petitions and inquiries launched ex officio in 2017



A sad tendency is important to be mentioned, too: as concluded by the Commissioner for Fundamental Rights and his deputy responsible for the protection of the rights of nationalities in several of their reports, some of the local municipalities have recently intentionally prevented the successful performance of official investigations. The failure to fulfill their requests posed obstacles on many occasions and it restricted them in exercising their constitutional rights, which causes an impropriety related to the principle of legal certainty arising from the rule of law. The Commissioner for Fundamental Rights and his deputy responsible for the protection of the rights of nationalities have reported this anomaly to the National Assembly.

Cases related to education: Similarly to the previous years, in 2017, the number of cases related to education was the highest, the majority of which dealt with the operational deficiencies and funding difficulties of the system of institutions of public education for nationalities but the inquiries also concerned the statutory environment and the practice of applying the law of this area in each case. It is to be highlighted that 2017 saw the completion of a comprehensive inquiry and a follow-up investigation into teacher training for the nationalities, as well as the publication of a report on supplementary nationality education. The quality and contents of the textbooks, workbooks, digital materials and other educational support materials for nationalities were complained

of by the representatives of several nationality communities in 2017 as well. In the opinion of the Deputy Commissioner, the availability of the nationality textbooks of appropriate quality as well as providing the tools aimed at the education of pupils who belong to nationality communities are one of the fundamental criteria of the enforcement of the right to education in the mother tongue, which is a right that belongs to both the individual and the community. In 2017 again, there was a high number of petitions in which Roma complainants objected to the behavior, prejudiced attitudes and discriminatory actions of the heads and teachers of public education institutes. Some of these are mentioned among the case types that are related to discrimination related to belonging to a nationality.

Individual and community nationality rights cases, as well as cases related to nationality cultures and the rights of nationality self-governments: in 2017 the Deputy Commissioner for the Rights of National Minorities received several complaints and signals concerning the obstacles to and the deficiencies of the creation or extension of the cultural autonomy of nationality communities. The majority of these cases concerned the communities of non-Roma national minorities. The heads and representatives of nationality self-governments highlighted the difficulties of cooperation, furthermore, they indicated the lack of funds and the financing difficulties as grave problems. As several signals concerning the support system were received in 2017, the Deputy Commissioner shall deal with this topic in the framework of a targeted inquiry in 2018, including the issues related to the task-based support provided to the nationality self-governments as well as the applicable legal regulation.

Cases related to social living conditions: The submissions related to social living conditions were almost exclusively handed in by Roma families and persons living in extreme poverty. In their majority, they ask for support due to their housing problems, the lack of social benefits and support, as well as their difficulties of employment. When no impropriety regarding fundamental rights or the suspicion of discrimination emerges in relation to the complaints concerning social living conditions, the Deputy Commissioner primarily has the opportunity to get informed and ask the affected municipalities and authorities for help, with special regard to the best interests of the vulnerable families and children. In 2017, several petitions in which Roma complainants objected to the difficulties of public employment were handed in again. The primary objection was that these complainants had not been able to find public employment locally, or they could only be employed there for a very short time. As a consequence of all this, their regular income was very low, from which they were not able to cover their housing expenses and livelihood. Several of them also complained that their debts had even been deducted from their meager public employment salaries, so they struggle with very serious livelihood problems. The Commissioner for Fundamental Rights and the Deputy Commissioner for the Rights of National Minorities have no competence to provide financial support to the disadvantaged citizens in need. However, it is important that in the case of complaints that are similar to those above, which are primarily related to difficulties in livelihood, the citizen concerned should be provided detailed information on the available social benefits and services, as well as those authorities, institutions and foundations from which direct and personal support could be provided to the disadvantaged clients.

Cases related to public and other services: In 2017, the Deputy Commissioner received several complaints in which the quality of health care services or the procedures conducted by the utility providers or other private service providers (such as hairstyling salons, clubs) were complained of. In relation to the procedures conducted by the private service providers, generally the violation of the requirement of equal treatment also came up, in which the Deputy Commissioner had no possibility to conduct inquiries, in the lack of competence, so she closed these cases by providing detailed information or transferring the cases to the competent authorities. Some complaints of public transportation services also came in, the majority of which concerned checks related to air transport. These petitions were closely related to the General Comment on issues related to the pre-boarding screening of international passengers at the airport, issued by the Deputy Commissioner in 2016.

Criminal law type of cases: The number of criminal law type complaints somewhat decreased in 2017. However, a joint report on the proceedings conducted by the police was prepared, in which the application of the rules of criminal proceedings regarding the hearing of a Roma complainant, the taking of the minutes, as well as the participation of the defense lawyer was examined. In the petitions affecting the prison services, the complainants mostly objected to ill treatment and the circumstances that gravely violate human dignity.

Informal education and shaping social attitudes: The General Comment issued by the Deputy Commissioner for the Rights of National Minorities on the incorporation of the topic of the Roma Holocaust in education was of outstanding significance from several aspects. The purpose of this General Comment was to draw attention to the fact that through the incorporation of the topic of the Holocaust in education from a human rights aspect, values in which tolerance plays a central role, as well as respect for fundamental rights and democratic values can be conveyed to the younger generations. As it was highlighted in the General Comment, getting the Roma Holocaust recognized, i.e. the compensation provided to the surviving victims, the acceptance of the Memorial Day, the establishment of monuments, as well as scientific research, are the result of work of several decades, in which the work of Roma and Sinti activists and artists played an important role. According to the document, in relation to commemorating the Roma victims of the Holocaust and the role of the Roma Holocaust in formal and informal education, it should be pointed out that the terrible things that happened had a long prehistory, as the Roma communities had been gradually deprived of their rights before the events of 1944. It should be noted that today's increasing global intolerance, anti-Roma sentiments and xenophobia, as well as the unjustified generation of fear of some peoples, groups of peoples or simply persons who are presented as citizens who believe in values conflicting with those of the majority society may trigger dangerous processes in the European societies.

The airport checks that the passengers of international flights were subjected to: In last year's report, the Deputy Commissioner for the Rights of National Minorities provided detailed information on her General Comment on the unlawful practices of pre-boarding control performed at the airport, which the passengers of international flights are subjected to. In 2017, new individual complaints about these airport

checks were lodged to the Deputy Commissioner for the Rights of National Minorities, according to which, in addition to the airport checks conducted at Budapest Ferenc Liszt International Airport, similar incidents took place at other European international airports as well (such as the Paris Charles de Gaulle Airport, the London Heathrow Airport, or the Brussels Zaventem Airport). In the majority of cases, the passengers complained of checks that they were subjected to before boarding the plane or prior to changing planes, which they think happened in a humiliating manner, without providing the passengers with information on the purpose and consequences of such checks. In these cases, those concerned did not receive any information on the compensation for, and complaint options arising from their missed trips. In the majority of the new cases of complaint, the Deputy Commissioner did not have competence to investigate, as these were about the procedures conducted at European international airports. However, in addition to providing information to the complainants, the Office's status as the UN's national human rights institution, as well as its membership in various international professional groups and networks allowed cooperation with the different European equality bodies and ombudsman's offices and the Office established within the framework of Equinet a special inter-network cooperation related to these cases. The Deputy Commissioner also sent signals on the systemic-level problems to CERD, OPRE Roma Platform and CAHROM.

4
Report of the Deputy Commissioner for Fundamental Rights, Ombudsman for Future Generations

4.1
Review of the Ombudsman's responsibilities

In the past ten years, the mission of the Ombudsman for Future Generations has primarily been the promotion of sustainable development that respects ecological barriers. The responsibilities of the Ombudsman are determined by the following components of the Fundamental Law of Hungary:

1. Article P, which regards natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets, as the common heritage of the nation, the protection, maintenance and preservation of which for future generations should be the obligation of the State and every citizen.
2. From among the fundamental rights, Article XX ties the protection of the environment to the right to physical and mental health as the means to achieve the latter, while Article XXI emphasizes the right of everyone to a healthy environment.

Of course, it is not exclusively the above articles of the Fundamental Law of Hungary that are the primary principles for the Ombudsman for Future Generations. The situation is that human dignity, the special role of state property, the criteria related to education, international cooperation and sustainable development in general are key ideas in the advocacy represented by the Ombudsman, their substance is provided by the protection and equitability related to the present and future generations. Sustainable development is not a specific issue, nor is it sectoral but it is a kind of approach and lifestyle, which should

Types of tasks fulfilled by the Ombudsman and his secretariat in 2017 with corresponding numbers of cases

Providing comments on laws	66	Presentations	16
Proposals for codification or amendment of laws	10	Expert coordination	73
Ex officio inquiries	1	OKT (National Environmental Council) / NFFT (National Council for Sustainable Development)/ National Assembly Participation in committees	18
On-site inquiries / on-site visits	24		
Independent positions taken by the Deputy Commissioner	3		
Response to Constitutional Court inquiries	2	International events	23
Participation in conferences	30	Raising awareness	55
Organization of conferences	13	Monitoring	58

permeate all activities and should at the same time function as an ethical background. The very responsibility of the Ombudsman for Future Generations is to draw the attention of the decision-makers, the economic players and all the citizens to the fact that the Fundamental Law of Hungary clearly sets out that such protection is the obligation of everyone. This is why making preliminary comments on national strategies and laws of different levels is one of our key activities, along with the public criticism of activities that damage Nature without any justifiable reasons, and on the other hand, we also promote and strengthen good practices.

Gyula Bándi, the current Deputy Commissioner, Ombudsman for Future Generations was elected for a six-year term by the National Assembly on February 21, 2017. When he was elected, he pointed out that in the upcoming period, proper results can be achieved by a number of small steps, as the main direction of the activities of the Deputy Commissioner is still awareness raising on each level of decision-making. The best tool to do so is a dialog, in which we ask questions, give opinions, then make proposals. We come across a high number of individual complaints too, still, the point of our job is not only to respond to complaints but also, to contribute, on the basis of these complaints, to the development of a legal environment which gives less reasons for filing complaints.

Ombudsman for Future Generations
Gyula Bándi

4.2
Key objectives and tasks

In some cases, the Ombudsman also turned to the Parliamentary committees to share his constitutional concerns with the MP's. This happened when the parties preparing a certain law had not taken his comments into account, or he had no opportunity to express his opinion but in his view, the possible adoption of the bill submitted to the National Assembly threatened to cause irreversible damage in the common heritage of the nation, or it would have led to the impossibility of the enforcement of the right to a healthy environment, as well as to physical and mental health (in connection with the rules that refer to forest management, well drilling and chimney sweeping). The Ombudsman emphasized it several times that the legal conditions, the substantive and procedural laws that ensure that the values protected by the Fundamental Law are preserved and the fundamental rights whose enforcement partially depends on the condition of the environment are enforced, as well as the background institutions that take part in the creation of these laws, furthermore, the managing and official authorities that serve the enforcement of the laws are all the integral parts of a system, this is why all changes directly or indirectly affect the operation of the system as a whole. Furthermore, the Ombudsman resented the lack of preparation time several times both during the inquiries and in legislation.

The implementation of Sustainable Development Goals in Hungary

UN Sustainable Development Goals

The Ombudsman issued a general opinion on the realization of the UN Sustainable Development Goals (hereinafter referred to as: Goals) in Hungary defined in the document entitled 'Transforming our world: the 2030 Agenda for Sustainable Development' (hereinafter referred to as: Agenda). The Agenda makes specific references to fundamental human rights in several places. Thus, during the national implementation of the Goals, the enforcement of fundamental rights deserves special attention, granted through handling the improvement of the situation of the most vulnerable citizens as a priority. Therefore, the practice applied by the Ombudsman is especially relevant, as the Commissioner and his deputies support the most vulnerable strata of society in performing their fundamental rights-related tasks, so the measures that they propose in their inquiries based on the complaints filed by the citizens may be especially important in the elaboration of the relevant government action plans.

In the general opinion, it was mainly those five goals that came to the focus of attention which will be in the center of the review at the 2018 session of the UN High-Level Political Forum that supervises the execution of the Agenda: Goal 6 on clean water and sanitation, goal 7 on energy, goal 11 on cities and other communities, goal 12 that requires the elaboration of sustainable consumption and production patterns, as well as goal 15 on continental ecosystems. Each of these goals is closely related to the activities and expertise of the Ombudsman.

The summary of the recommendations defined in the Ombudsman's reports may contribute to making the implementation of the Goals more specific in Hungary, focusing on those areas where urgent and efficient steps should be taken to improve the living conditions of the most vulnerable groups of society. Because of all this, the Ombudsman's proposals concerning legislation and legal practice may also provide useful support with the preservation of the natural heritage of the future generations, who depend on the decisions made by the present generation.

In harmony with the list of global indicators related to the Goals, the general opinion also proposed such specific Hungarian indicators which make implementation visible and thus, measurable from the aspect of the individual, i.e. from human rights aspects.

Environmental health

As regards the protection of the health of the present and future generations, it should be highlighted that in the course of technical developments and their implementation, the preliminary research into and the subsequent testing of their impacts on human health is often missed, and the members of society are faced with the harmful consequences rather than apply prevention. The Ombudsman, in expressing his opinion on the laws, always drew attention to the necessity of the latter, requesting that the impacts and justification of the changes be presented.

The Ombudsman welcomed the government's specific new rules on the safe collection of asbestos-containing residential slate waste. However, the replacement of residential roofs is but the first step, as further programs will become necessary to prevent the health and environmental hazards and damages caused by asbestos-containing construction and demolition waste.

The Ombudsman highlighted, both in the parliamentary committee debate of the bill and in his statement, that it gives rise to concern that compulsory and regular smoke testing has been eliminated in the case of detached houses, as smoke testing ensures the protection of both human life and air clarity. Wrong practices of residential heating have by now become the key factor of air pollution, their role is much more significant than that of industrial and transport-related emissions. Compulsory smoke testing may contribute to identifying those households in which inappropriate fuels are used, as well as to taking the necessary actions to be performed by the relevant authorities, this is why it is a safeguard for enforcing the right to a healthy environment, as well as to physical and mental health. The Ombudsman stressed the non-regression principle, i.e that the state should not withdraw from its institutional protection obligation represented by the regular smoke tests with reference to the citizens' voluntary compliance with the law.

Environmental liability

An ex officio inquiry was launched to establish how the execution of the EU environmental liability directive (Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage) contributes to the fulfillment of the universal obligation stipulated in Article P) of the Fundamental Law of Hungary, as well as to the enforcement of fundamental rights. Such problems surfaced in many individual complaints as well. This came to be the topic of the spring conference organized jointly with the Association of Hungarian Administrative Judges and the discussion of this topic is ongoing as the environmental liability directive is currently under review at the initiative of the European Parliament. Also, this debate was continued by the conference entitled "Should the Next Generation Pay?", where Greenpeace drew attention to the contaminated areas still to be remediated in Hungary. Also with regard to the problems disclosed by the ex officio inquiry, the Ombudsman for Future Generations decided to facilitate the more efficient enforcement of environmental liability and the polluter pays principle by proposing some codifications and the amendment of certain laws in order to improve the condition of the

The Deputy Commissioner at the on-site visit at Kiskunhalas organized by Greenpeace Hungary (August 3, 2017)

environment, to prevent contamination, as well as to avert the consequences thereof.

Hungarian environmental law has already required that an environmental guarantee be granted and an environmental insurance policy be taken out for two decades by now, and also created a legal opportunity for setting up environmental provisions, therefore the Ombudsman encourages that a government decree necessary for clarifying the system of environmental guarantees be adopted as soon as possible. Furthermore, he proposes the establishment of certain funds from the contributions of those pursuing activities with harmful impact on the environment, which would allow them to cover for the costs of an urgent intervention in case of an emergency, not affecting those users of the environment which themselves take care of establishing their own environmental liability reserves.

As long as the entity in question is not willing or able to eliminate the danger that they have caused, or the environmental damage that they have incurred, quick action by the authorities will become necessary in order to prevent the spreading of environmental damages. In order to substantiate this, the Ombudsman proposes that a separate fund for averting damage, as well as damage compensation be set up from the fees and contributions charged for environmental impact, as well as from central budget resources. Such a fund may solve the grave problem caused by the fact that in the liquidation proceedings, there are often no funds left for the remediation of areas, as ordered by the authorities that are contaminated with hazardous materials. Furthermore, the Ombudsman urges that those who suffer the environmental and the ensuing health damages should be named in the liquidation procedure as the entities enforcing the creditors' claims and that no liquidation procedure should ever be concluded without the settlement of the potential environmental damages, which also highlights the responsibility of the acting authorities in this process.

Energy efficiency

When taking office, the Ombudsman expressed his conviction that energy efficiency should be assigned a primary role, irrespective of the applied energy mix. The broad and reasonable application of energy saving, the improvement and encouragement of energy efficiency are effective and tangible tools for strengthening sustainable consumption and production habits related to energy, as well as for reducing the related environmental impact, especially the emission of harmful substances, thus it is also one of the keys to combatting global climate change. In Hungary, 40 percent of all the energy is used in our buildings, some two thirds of which is used for heating and cooling, where heating is often done with lignite or other poor quality solid fuels (sometimes waste), which signifi-

cantly deteriorates the quality of the air, which substantiates the requirement of energy efficiency, which also arises from the Fundamental Law of Hungary. Energy efficiency plays an important role in enforcing the requirements set out in Articles P), XX and XXI of the Fundamental Law of Hungary.

In the spirit of this, the Ombudsman organized a roundtable discussion on the issues of energy efficiency on November 27, 2017. Energy scarcity is a serious social issue in Hungary too, to the alleviation of which energy efficiency may well contribute.

Cooperation with social and professional organizations

The Ombudsman, in compliance with his statutory responsibilities, pays special attention to the idea expressed in Article P), i.e. that protecting, maintaining and preserving the common heritage of the nation for the future generations is not only the obligation of the state but that of everybody. Thus, the Ombudsman regularly monitors how the members of society can meet this obligation, how the different public and private interests are compatible, how the social organizations can use their authorizations. In order to provide as broad and transparent information as possible, this year, the Deputy Commissioner created his own homepage within the homepage of the Office – http://www.ajbh.hu/dr.-bandi-gyula – and he also launched his own Facebook profile (under the title Jövő Nemzedékek Szószólója, i.e. Ombudsman for Future Generations).

The Ombudsman and his colleagues find the work done by the different professional civil society organizations very important, they have a fruitful cooperation with a number of green NGO's.

Annual tree planting day at Szigliget (May 6, 2017)

The Ombudsman called the attention of the National Office for the Judiciary to a statutory option available to the Commissioner for Fundamental Rights, according to which, during the judicial review of the administrative decisions related to the condition of the environment, he can take part in the lawsuit as an interferer and he asked the courts to draw the attention of the parties to this at their own discretion.

County visits, in the framework of which the Commissioner and his deputies pay on-site county visits twice a year, are important means to establish contact.

The Ombudsman also visited the National Radioactive Waste Repository based in Bátaapáti, which is for the disposal of low and medium activity radioactive waste from nuclear power plants. It is also the best interest of the future generations to dispose of and store the already existing waste with the highest possible security. Unfortunately, the devel-

opment of the conditions of waste management was not sufficiently focused on in the initial phase of the utilization of nuclear energy.

Visit to the Bátaapáti National Radioactive Waste Repository (June 8, 2017)

The visit paid by the Ombudsman to the Paks Nuclear Power Plant was part of the Tolna County visit, as well as visiting the Temporary Storage Facility for Spent Fuel, where he found out about the way of managing nuclear waste, as well as the present and future of the nuclear power plant.

During his visit to Veszprém County in November 2017, the Ombudsman, among others, paid a visit to the area of the Kolontár red sludge depository, where he found out about recultivation.

In 2017, the Ombudsman gave a number of radio and television interviews, and he also appeared in the printed and online press. There were as many as 537 interviews, articles and statements that were published about his activity as a Deputy Commissioner.

HBLF roundtable discussion (Gyula Bándi, Katalin Sulyok, Csaba Kőrösi)

Roundtable discussion entitled "Europe Ambition 2030" co-organized with the Hungarian Business Leaders Forum (HBLF) as part of the 25-year anniversary week of the latter (October 10, 2017)

Waste management

The economy is a priority area, more precisely, the lifecycle of the waste generated during production, the reduction of the quantity of waste, lengthening the life of the products, the improvement of durable consumer goods, as well as the recycling and utilization of products. In his proposals and comments on the laws, this is what the Ombudsman highlighted. In the area of waste management, we also need a stable and foreseeable legal environment, as a result of which both the consumer and the economy will be encouraged to produce as little waste as possible and that the waste producers should pay the total costs of the pollution that they have caused.

4.3
Protecting the common heritage of the nation

Nature protection activities

At the request of the Constitutional Court, the Ombudsman explained his professional view during the ex-post norm control procedure launched because the areas that do not qualify as protected natural areas but belong to the Natura 2000 network had been transferred from state ownership to private ownership. He emphasized that the Natura 2000 areas specifically serve biodiversity protection purposes, without these, biodiversity in Hungary cannot effectively be preserved, this is why these areas are directly related to the implementation of the state task set out in Article P). He also reminded everyone that the biodiversity of Hungarian agricultural areas has shown a downward trend in the past ten years, and he added that the considerable deterioration in the condition of natural values and resources will have an adverse effect on the environment as a whole and thus, the weakening legal protection of natural values will also jeopardize the maintenance of the level of protection of a healthy environment. He also argued that it would also mean a step backward concerning the right to a healthy environment if the efficiency of complying with some requirements of nature protection or that of its control decreases.

In decision No. 28/2017 25. X.) of the Constitutional Court, in agreement with the position taken by the Deputy Commissioner, it is stressed that in the case of the privatization of the Natura 2000 areas, some very important statutory safeguards are missing, and the control of the observance of the existing requirements is not properly ensured either, which will in combination result in less efficient protection.

Protection of the cultural heritage

The Deputy Commissioner expressed his concerns regarding the MOL headquarters under construction in a statement, in which he said that the landscape values protected as the World Heritage of Budapest, as well as the unified landscape of the capital are jeopardized by this step. The historic landscape is a part of the common cultural heritage of the nation, as well as that of the cultural world heritage under international protection. Nothing should threaten the UNESCO World Heritage ranking of Budapest,

it should not be risked that our capital is put on the List of World Heritage in Danger, or that its World Heritage status is withdrawn. The Deputy Commissioner urged that the building, which will significantly impact the image of the capital in the long term, should only be erected after a professional discussion of the emerging concerns with the competent experts of UNESCO and after eliminating these concerns.

Water protection

Blue Planet interview (March 14, 2017)

The Deputy Commissioner opposed those proposed amendments of laws which were meant to allow the building of wells to a depth of 80 meters without a reporting and permit obligation. The Deputy Commissioner stressed that it is a critical criterion to the performance of tasks by the state that the state should be aware of the extent, time and place of water use. Changing the system of authorizations in a direction different from this involves the danger of the contamination and long-term exhaustion of our groundwater and drinking water supplies. After coordination talks with the professional organizations, the Ombudsman summarized the professional arguments and the constitutional concerns in his general opinion issued on the protection of groundwaters. He also expressed his view in the committee debates of the bills.

Soil, forest and landscape protection

The Deputy Commissioner stood up against the soil sealing, which causes the reduction of the quantity of arable lands and is destroying the existence of a complex ecosystem, with regard to the priority constitutional protection of arable lands. He urged at several forums that brown-field investments be preferred to green-field ones.

The Deputy Commissioner turned to the affected Parliamentary committees in a letter, asking for the elimination of these constitutional concerns. In his views, the planned amendment contains such significant changes, from a nature protection aspect, which imply a violation of the non-regression principle. The contents of the bill suggest that the priority of the nature protection purpose of protected forests will not be ensured, the protection provided to the Natura 2000 areas will decrease, the transfer to continuous cover forestry is declining, the statutory safeguards for the participation of nature protection organs and authorities, as well as non-governmental organizations in the planning and decision-making process, which have existed to date, will be removed. The adopted forestry law contains some further restrictions that raise concerns for the protection of nature. The Deputy Commissioner was glad to learn about the progress made

in the elaboration of the regulation on landscape protection, as this is an important step in the efficient enforcement of the landscape protection requirements. The concept of landscapes should be reconsidered, in order to avoid narrowing interpretations.

Protection of the built environment

The Ombudsman issued a general opinion on the recommendations regarding the municipality regulations aimed at the protection of the municipal landscapes, which were published in the summer of 2017. The recommendations were primarily meant to support the codification efforts of the municipalities, to ensure that the local regulations should not only meet the required deadlines from a formal aspect in the efficient and well-planned codification procedures. Also taking the recommendations of the Ombudsman into account, the legislator prolonged the deadline by a quarter of a year, to December 31, 2017, by amending the Act on the Protection of Municipal Landscapes.

Workshop discussion of the new regulation of municipal landscapes (József Kolossa, Gyula Bándi, Miklós Herke; May 16, 2017)

Air protection

The Ombudsman urged the reduction of air and noise pollution caused by the wood processing plant Falco Zrt in Szombathely several times. In order to facilitate this cause, he also paid a visit to the site and held coordination talks with the government office concerned.

As already mentioned in Section 5.1.2 on environmental health, the Ombudsman is of the view that making regular smoke testing optional in the case of detached houses, which has so far been compulsory, also gives rise to concerns from an air clarity protection aspect, and he issued a statement on this subject, which was already discussed in the section on environmental health.

Visit to Falco (October 25, 2017)

International involvement

As background to the history of the Network of Institutions for Future Generations: the UN Secretary General, in his 2013 report entitled "Intergenerational Solidarity and the Needs of Future Generations" highlighted the Secretariat of the Ombudsman for Future Generations as one of those eight national institutions of the world which uniquely and institutionally represent the interests of future generations. The secretarial tasks of the network of national institutions representing the interests of future generations or those with related responsibilities (www.futureroundtable.org) are performed by the Secretariat of the Deputy Commissioner.

The Deputy Commissioner supported the so-called strategic investigation launched by the Office of the European Ombudsman with his response. The purpose of this was to conclude how the European Union and its member states apply Article 28 of regulation 1005/2009/EC on substances that deplete the ozone layer, which defines the control responsibilities of the European Commission and the member states.

The Environment Directorate-General of the European Commission recommended to the member states the cooperation between the Office of the Commissioner for Fundamental Rights and the Association of Hungarian Administrative Judges, in existence since 2013, as well as the annual conference for judges organized under the aegis of this cooperation, as good practices. At these conferences, the EU and Hungarian legal practices related to the protection of the common cultural heritage of the nation, as well as ensuring the right to a healthy environment are discussed.

Meeting of the Ombudsmen of the V4 (Visegrád Group) countries (September 6-8, 2017)

Participation of the Ombudsman for Future Generations and his colleagues in international events

Date	Topic	Purpose of travel	Location
February 6-7, 2017	Network of Institutions for Future Generations	Annual meeting of the international network	The Hague Holland
March 21-23, 2017	The Value of Water in Today's World	Participation in the Watershed conference	Vatican
May 25-26, 2017	The Protection of Species , or New Challenges of the Environmental Law of the European Union	Participation in the meetings of the Avosetta Group of environmental law experts	Cracow Poland
May 29 - June 2, 2017	How can the human rights approach contribute to the national implementation of the UN's Sustainable Development Goals (SDG's)?	NHRI annual Academy (international training program)	Poznan Poland
June 18-20, 2017	Cooperation of European Ombudsmen, facilitating dialogs and common thinking	Participation in the conference of the European Network of Ombudsmen	Brussels Belgium
September 6-8, 2017	Discussion of the protection of fundamental rights, the current situation and challenges thereof	Participation in and holding a presentation at the meeting of the Ombudsmen of the V4 countries	Brno the Czech Republic
September 20-22, 2017	Annual general meeting of EOI, as well as a conference organized for the 20-year anniversary of the existence of the institution of the Romanian Ombudsman	Participation in and holding a presentation at the annual general meeting of the European Ombudsman Institute	Bucharest Romania
September 23-25, 2017	Environmental law indicators for an efficient environmental law regulation	Participation in the expert workshop of Hebrew University	Jerusalem Israel

5
Statistical data

5.1
The statistical data of the Ombudsman's activities

In 2017, citizens filed 6,058 submissions with the Commissioner for Fundamental Rights. In addition to these, as many as 973 cases were carried over from the previous year. We closed 5,003 of these cases, of which 5,161 were complaints. We had 1,055 unclosed cases at the end of the year.

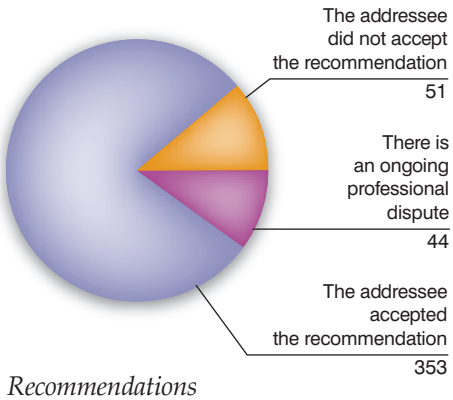
Complaints received	
Filed cases	6058
Closed complaints	5161
Closed cases	5003
Cases underway at the closure of the year	1055

The 5,003 cases that were closed in 2017 should be listed in as many as 96 types of cases but these can be grouped as follows. The majority of these cases, i.e. 1,056, concerned complaints concerning the Ministry of Human Capacities on social, labor, educational and health care issues this year again. The cases concerning the criminal procedure, law enforcement and police actions (837) are at the second place in number. The next large group was made up by civil law types of cases (833), including complaints on contractual pension and health insurance cases, as well as foreclosure. The number of public interest

Distribution of finished cases by case types	
Social, labor, education and health care	1056
Criminal and law enforcement cases, police cases	837
Civil law case, pension and health insurance, foreclosure	833
Public interest disclosures	367
Municipality-related cases	333
Comments on laws, critical remarks on laws from a constitutionality aspect	332
Other cases	318
Cases related to financial institutions, taxes and duties	317
Cases related to children's rights, family law, guardianship	261
Environment-related cases	165
Cases of nationality rights	118
Refugee-related cases	66
Total	**5003**

disclosures was exactly the same as the 367 cases registered in 2016. As usual, the cases related to municipalities also generated many complaints (333), including complaints on housing, parking, transport and urban development. In as many as 332 cases, the Commissioner was invited to provide comments on laws, or to evaluate critical remarks on laws from a constitutional aspect. 317 cases concerning financial institutions, taxes or duties were brought to the Commissioner. The Commissioner for Fundamental Rights places special focus on complaints regarding children's rights, family law and guardianship. He investigated into 261 submissions on these subjects. There were as many as 165 complaints on environmental issues submitted to the Ombudsman for Future Generations. The number of submissions specifically concerning the rights of national minorities was 118. Please, find the detailed analysis of the further submissions from those who belong to various communities of national minorities in Hungary in Section 4. There were as many as 66 refugee-related cases in 2017. The 318 cases listed as 'other' belong to one of the further 86 case types. The table shows the complaints received in the individual case types.

154 reports were prepared for the 266 independent submissions completed with a report, in which we made a total of 448 recommendations. Of these, our proposals were accepted by the addressees of the recommendations in 353 cases, while in 51 cases, they were rejected. When the data of this report were closed, there was an ongoing professional coordination or exchange of opinions in 44 cases.



Recommendations by the response of the addressee

5.2 Customer services report

Customer service tasks are performed by two organizational units of the Office. In 2017, the Information Service received 12,450 inquiries from citizens over the telephone. On previously specified appointments, 1,909 clients were heard at the Complaint Office, who requested a personalhearing in connection with a concrete complaint. In 2017, clients visited one of the customer units of the Office on a total of 14,359 occasions. Of them, 275 still inquired about their data protection case at the Office, though this activity belongs to the competence of the Hungarian National Authority for Data Protection and Freedom of Information (NAIH) from January 2012. 140 individuals acted for the infringement of national minority rights, while 109 persons turned to the Office in connection with the right to a healthy environment.

Phone		Personal				Total
Request for appointment or information	Submission-related	Hearing at the Complaint Office	Submission-related	Submission or review of documents	Request for appointment or information	
7473	4977	998	209	221	481	7473

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