

# REPORT

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

2018



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ISSN 2064-2547

Publisher: Office of the Commissioner for Fundamental Rights

1051 Budapest, Nádor u. 22.

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

Publisher in charge: Dr. László Székely

Editor: Dr. Zsolt Kovács

Translator: Györgyi Sárík

Page layout: Mondat Kft.

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## Lectori salutem...

You are reading a report on the 2018 activities performed by the Commissioner for Fundamental Rights and his deputies.

This is already the sixth summary to be submitted to the National Assembly on the activities that I have performed as an Ombudsman in the interests of the protection of fundamental rights.

Although the Ombudsman is a “one-man institution”, no one can claim that the operation of the commissioners and their deputies, the quantity and the quality of the work done are not substantially determined by the professional staff that functions as “a group of consultants” at the Office of the Commissioner for Fundamental Rights, which we will briefly refer to as AJBH (the Hungarian acronym) in the report.

I would hereby like to recommend the summary of the past year to the reader but this year, I would also like to point it out that we find it justified to review the laws that define the conditions of the operation of AJBH, of performing our tasks at several points.

Budapest, March 2019

*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 a national 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, 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 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 as well as the one dealing with the UN Convention on the Rights of Persons with Disabilities (CRPD), furthermore, 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.

The Office also participated in the training session called NHRI Academy, which was held in Helsinki, Finland in 2018 and was organized by ENNHRI and OSCE ODIHR (Organization for Security and Co-operation in Europe – Office for Democratic Institutions and Human Rights). The subject of the training program was the significance of the role of national human rights institutions in legislation, as well as that of the non-governmental organizations involved in the protection of human rights.

The Office is regularly represented by the Deputy Commissioner for the Rights of National Minorities at the UN Forum on Minority Issues, while the Deputy Commissioner for Future Generations participates in the events organized for the achievement of the UN Sustainable Development Goals (SDGs).

The national human rights institutions pay special attention to compliance with the human rights obligations set out in the UN’s human rights treaties and the related optional protocols. By now, Hungary has ratified 7 treaties and 9 additional protocols from among the UN documents. Two of these 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 activities related to the Convention in Chapter 1.3.

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 supported the work of the UN Special Rapporteur on the Rights of Persons with Disabilities, whose mandate was renewed by resolution No. 35/6 of the UN Human Rights Council, on several occasions in 2018, by sending her professional materials.

The Office was represented by Deputy Commissioner Gyula Bándi at the annual conference entitled *The Rights of Persons with Disabilities and the Role of National Human Rights Institutions*, which was held as part of the 2018 annual general meeting of the Global Alliance of National Human Rights Institutions (GANHRI) in Geneva, Switzerland.

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 Office was represented at the ENOC general meeting held in Paris in 2018 too, where the key topic of the following year (Digital Rights) was decided upon, and three position statements (Position Statement on Intercountry Adoption, Position Statement on Child Mental Health in Europe, as well as Position Statement on the Right to Education of Children on the Move) were adopted.

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. The strategic plan of the organization for 2019–2021 was adopted by the members' meeting held with the participation of the expert representative of our Office in Brussels in April, in which EUROCHILD placed the focus on child poverty, social exclusion, child welfare and child protection systems, as well as the rights of the child.

Our Office regularly cooperates with 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 joined the campaign launched on the 70th anniversary of the adoption of the UN's Universal Declaration of Human Rights, as well as the one organized for the 25th anniversary of the establishment of GANHRI, as follows:

- In the first half of the year, the Office ordered a billboard with the official logo and communication message of the international campaign, which was used at the entrance to the Office building all through the year, as well as during the relevant events held at the Office.
- In order to make the message of the Convention available as widely as possible, with barrier-free accessibility, the Office ordered the preparation of a Hungarian sign language video recording and then displayed it on its homepage.
- For the 70th anniversary of the adoption of the Convention, an online collection of studies written by the experts of the Office was published.
- A festive conference was held for the anniversary on November 20, 2018.
- Related to this anniversary, the Office organized a billboard exhibition on human rights, for which the materials were provided by the Office of the United Nations High Commissioner for Human Rights.
- Furthermore, the Office invited a competition for higher education and doctoral students on the academic level presentation of the significance of the Convention.

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

*Conference  
on the 70th anniversary  
of the adoption  
of the UN's Universal  
Declaration  
of Human Rights  
(November 20, 2018)*



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.

Fulfilling this obligation, in 2018, the Office hosted the senior staff members of the UNICEF Hungarian Committee Foundation, as well as the delegation of the Geneva UNICEF headquarters. The key topics of the discussion were child trafficking, child prostitution and international child abduction. The Deputy Commissioner for Future Generations received the delegation of the Food and Agriculture Organization of the United Nations (FAO), with whom a discussion on wasting food was held, which is a problem becoming more and more severe.

## 1.2

**Cooperation with international organizations,  
visits of delegations, international events, international secondments  
of the experts of the Office, data supply**

In addition to the events arising from Hungary's UN membership, as well as the Office's title as a status 'A' National Human Rights Institution, which were discussed in the previous section, the following events of international nature took place at the Office in 2018.

### **European Network of Equality Bodies (EQUINET)**

The Office's international relation with the longest history is the cooperation with 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. Equinet is one of the key international partners of the Office, in several working groups, professional consultation forums and conferences of which the experts of the Office actively and regularly take part.

On September 18-19, 2018, the Office hosted the second half-year meeting of the Equinet working group involved in communication strategies and practices. This year, the experts of the Office also participated in some other meetings of Equinet working groups organized abroad, such as those on communication, gender issues and policy formation. In addition to the working group meetings, Equinet also holds regular events, mainly seminars, workshops and conferences addressed not only to the experts of the member organizations but also, to a broader professional audience. The experts of the Office attended the following events:

- May 31 - June 1, Brussels: expert meeting on the draft Horizontal Anti-Discrimination and Equality Directive in Europe, as well as a conference entitled "Investment in the Future"
- October 16-17, Brussels: seminar on the under-representation of women in employment, organized with the help of the European Commission
- November 8-9, Brussels: seminar on the issues of ethnic profiling
- November 14, Brussels: workshop discussion on the housing and health situation of the Roma, organized with the help of the European Roma Information Office (ERIO)
- November 19-21, Rome: seminar on combatting hate speech

### **Cooperation with EU institutions**

In 2018, 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.

One of the most outstanding of these bodies is the European Union Agency for Fundamental Rights, i.e. FRA, which 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). A one-day bilateral meeting was held between the Agency and the Office on April 25, 2018. This meeting was initiated by FRA Director Michael O'Flaherty at the Vienna headquarters of FRA, and was aimed at learning about the operation of the two organizations and exploring the opportunities for a future cooperation. The five-member delegation of the Office was led by Deputy Commissioner Gyula Bándi. At the meeting, the protection and promotion of Roma rights, the rights of LGBTIQI persons, the implementation of Sustainable Development Goals (SDGs), with special regard to the role of NHRIs in this process, the different roles and competences of the national preventive mechanisms, the NHRIs, the equality bodies and ombudsmen, as well as the promotion of the EU Charter of Fundamental Rights were discussed.

The delegation of the European Parliament's Committee on Women's Rights and Gender Equality visited the Office of the Commissioner for Fundamental Rights on February 13, 2018 as part of its introductory meetings in Hungary.

On June 28, Deputy Commissioner Gyula Bándi received the director of the European Environmental Agency (EEA) Prof. Hans Bruyninckx at the Office. After a meeting in a narrower circle, the Director of EEA gave a speech to the staff members of the Office on the operation of EEA and on which issues are regarded by the European Environmental Agency as the most critical environmental questions of our days.

## Council of Europe

During 2018, the Office directly or indirectly cooperated with the Council of Europe on several occasions. On September 12, Deputy Director of the Office of the Human Rights Commissioner of the Council of Europe Claudia Lamm paid a visit to the Office.

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 Ombudsman for the Rights of National Minorities took part in the meeting of the Ad hoc Committee of Experts on Roma and Traveller Issues of the Council of Europe, i.e. CAHROM in Strasbourg, France, as well as in the Belfast session of the Operational Platform on Roma Equality (OPRE), which is jointly run by the Council of Europe, FRA, ENNHRI and EQUINET.

At EMMI's (Ministry of Human Capacities) request, the Office made some additional remarks on questions in its competence to some of the elements of the questionnaire on the protection of children from violence sent by the Committee on the Rights of the Child of the Council of Europe.

At the May 25, 2016 session of the Committee of Ministers of the Council of Europe, Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities Elisabeth Sándor-Szalay was elected a permanent member of the Advisory Committee of the Framework Convention for the Protection of National Minorities. Her mandate is for four years, beginning on June 1, 2016.

Also, Head of OPCAT NPM Department Gergely Fliegau was elected a member of CPT (European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Council of Europe) by the Committee of Ministers of the Council of Europe from the end of December 2017.

## Organization for Security and Co-operation in Europe (OSCE)

On February 27, OSCE High Commissioner on National Minorities Lamberto Zannier and his delegation paid a visit to the Office. During his meeting with Deputy Commissioner Elisabeth Sándor-Szalay, the High Commissioner reviewed the situation of the national minorities living in Hungary.

On March 20, senior officers of the Limited Election Observation Mission of the Office for Democratic Institutions and Human Rights (ODIHR) Douglas Wake and Meaghan Fitzgerald paid a visit to the Office. On March 6, ODIHR officially opened its Limited

*Visit of the OSCE-ODIHR delegation (March 20, 2018)*



Election Observation Mission for the Hungarian Parliamentary elections of April 8, and as part of its official agenda in Hungary, the experts also met with the Commissioner for Fundamental Rights. Douglas Wake asked the Commissioner and his deputy about the extent and method of control of the Ombudsman on the Hungarian election process. The Commissioner gave a detailed explanation on the space of manoeuvre of the Ombudsman's institution in this respect, as well as on the very low number of complaints that he had received on this subject, at the time of the previous elections. The Deputy Commissioner for the Rights of National Minorities in Hungary gave a detailed account of the preferential national minority mandate, the system of setting up national lists, as well as the current election situation of the Roma and German national minorities.

### **Ombudsmen's networks**

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

On February 22, the experts of the secretariat of the Deputy Ombudsman for the Rights of National Minorities took part in a workshop discussion on complaint handling in Bratislava, Slovakia, which was jointly organized with ENO and the Slovakian Ombudsman's Office.

At the annual Brussels-based conference of ENO on March 8-9, Deputy Commissioner Gyula Bándi represented the Office of the Commissioner for Fundamental Rights. At the plenary sessions of the conference, questions on the future of the European Union, as well as the importance of the cross-border protection of EU citizens were discussed, while in the different working groups, ideas were exchanged on the use of social media, the situation of minorities, as well as the migration crisis.

Between October 1 and 3, it was again Gyula Bándi who represented the Office at the IOI anniversary conference in Brussels.

On October 22-23, a senior legal advisor from the Office took part in the professional event of the European section of IOI in Belfast, Northern Ireland.

The ombudsman's institutions take turns in organizing the annual meetings of the Ombudsmen of the Visegrád Group (V4) countries, which cooperation now has a long history. Deputy Commissioners Elisabeth Sándor-Szalay and Gyula Bándi, as well as the Deputy Head of the Department for Public Law represented the Office at the traditional annual meeting of the ombudspersons of Hungary, Slovakia, the Czech Republic and Poland, which was held in Gdańsk, Poland between September 16 and 18.

On October 5, Deputy Commissioner Elisabeth Sándor-Szalay and Secretary General Miklós Garamvári received the Ombudsman of the Republic of Serbia and his colleagues, on behalf of the Commissioner for Fundamental Rights.

*Visit of the delegation  
of the Ombudsman  
of the Republic  
of Serbia  
(October 5, 2018)*



During the year, many other delegations, researchers and academic experts were received by the Office, in addition to the delegations of the different international and partner organizations. From among these visits, the official visit paid by the Dutch Human Rights Ambassador Kees van Baar to the Office in February is to be highlighted, during which the Ambassador exchanged ideas with the Commissioner on the complaints filed to the Ombudsman's Office, as well as the situation of human rights and the rule of law in Hungary. The end of the year saw the visit of the experts of the US Department of State's Office to Monitor and Combat Trafficking in Persons, who held a professional meeting with the experts of the Office on the Hungary section of the annual TIP (Trafficking in Persons) report.

### 1.3 OPCAT NPM international activities

#### **Introduction**

As the previous years, 2018 also saw a significant increase in the international professional relations and experience of the National Preventive Mechanism (NPM). The main partners in 2018 were as follows: cooperation with the UN's Subcommittee on Prevention of Torture (SPT), cooperation with the South-East Europe NPM Network (SEE), cooperation with 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 other NPMs, furthermore, liaising and exchanging ideas with various other organizations.

#### **Cooperation with SPT**

On December 8, 2017, the UN's Subcommittee on Prevention of Torture (SPT) sent the Office its report on the operation of the NPM. In the accompanying letter, SPT Chair Malcolm Evans set June 7, 2018 as the deadline for giving a response and he emphasized that the measures taken should also be reported. The Hungarian version of the draft response was prepared by the Deputy Head of the Office's OPCAT NPM Department by May 14, 2018. The English version of this text was checked by the Office on May 30, 2018 and the reply signed by the Commissioner was posted before the deadline. On June 12,

2018, the Commissioner informed SPT that he had displayed his response to the report on his homepage.

In late 2018, as consequence of the publication of the report, it became possible for the NPM to apply for the fund specified in Article 26 of OPCAT. At the December 4, 2018 session of the Civil Consultative Body, the NPM informed the representatives of the civil society organizations on the tender options.

### Cooperation with SEE

The head of the NPM Department attended the conference assessing the impact of NPMs in Slovenia on April 17-18, 2018.

At the initiative of the Slovenian Ombudsman's Office, the Commissioner and the experts of the OPCAT NPM Department traveled to Celje, Slovenia on May 24-25, 2018 for the purpose of OPCAT NPM cooperation and exchange of ideas, where they visited the local juvenile prison. The Commissioner for Fundamental Rights invited the staff members of the Slovenian NPM to a visit to Hungary in the autumn of 2018.

On May 29-30, 2018, the annual meeting of SEE was organized in Podgorica, Montenegro, in which the Deputy Head of the OPCAT NPM Department took part and gave a talk entitled *"Suicide prevention in the Hungarian places of detention"*.

Commissioner for Fundamental Rights László Székely and his colleagues, as well as his Slovenian partner, Slovenian Deputy Ombudsman Ivan Šelih, fulfilling the responsibilities of the Slovenian NPM and his colleagues paid a visit to the Zala County Remand Prison on November 13-14, 2018, where they met with the acting prison commander. During the visit, the guests were informed of the operation of the institution and they had the chance to visit the dormitories of the inmates, their workshops and the kitchen.

*SEE annual meeting in Podgorica (May 29-30, 2018)*



On December 12, 2018, the Commissioner and the Head of the OPCAT NPM Department visited the correctional institution in Eisenstadt, Austria, where they met with the representatives of the Austrian NPM for the third time. At the meeting, the possible forms of further cooperation, the common problems related to the inmates with psycho-social disabilities were discussed and the dormitories, prison wards, workshops and exercise area of the institution were visited.

### **Cooperation with CPT**

Gergely Fliegau, already as an independent member delegated by Hungary, attended the plenary sessions of CPT on March 4-9, July 2-6 and November 5-9, 2018, and he also took part in the Convention's visits to Georgia (September 8-22) and Russia (October 18-30).

On November 19, 2018, the delegation of CPT met with the Commissioner for Fundamental Rights and his colleagues at the beginning of their control visit in Hungary. The last CPT visit to the Office took place in October 2017. The members of the delegation were familiar with the comprehensive annual report on the 2017 operation of the NPM, so they asked questions about the Commissioner's 2018 visits to Hungarian places of detention. The final talk of the visit was held on November 29, where the NPM was represented by the Head of the OPCAT NPM Department and his deputy.

## 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 2018 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. The ex-officio follow-up investigation launched by the Commissioner (No. AJB-1485/2018) dealt with the protection of the rights of children who became victims of prostitution and the possible means of prevention. According to the report, it gives rise to concern that even now, those children in coerced situations who are caught performing acts of prostitution are threatened by infraction proceedings and sanctions. The Commissioner thinks that rather than pushing police proceedings, the staff working in the child protection system should be strengthened, as well as better prepared for recognizing endangerment in due time and for taking meaningful actions against it. In addition to proposing a high number of legislative and practical measures, the report called attention to the best practices as well.

Back in 2011, the Commissioner conducted an ex officio investigation on whether child prostitution exists in Hungary and what measures are taken by the police and the

child protection authorities when they come across this phenomenon. Based on the statutory changes of the past period, the signals received by the Office, as well as other investigative experience, the Ombudsman now reviewed whether the recommendations made in the report had been acted upon, how the European Union and international human rights obligations undertaken by Hungary had been fulfilled, and what results had been achieved in combating child prostitution. The Commissioner asked the workers of the child protection signalling system, the regional child welfare services, some children's homes, as well as the national, the Budapest, the district and county police headquarters for information. It was also confirmed by the follow-up investigation that child prostitution is present in each county that was assessed, as well as in the capital city. However, due to latency, only a small fraction of such actions come to be known by the child protection authorities or the police.

In Hungary, the Lanzarote Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse was announced in July 2015. Child prostitution, according to the definition of the Convention, means using a child under the age of 18 years for any sexual act if money, remuneration or any other allowance is provided or promised as an exchange for the services, irrespective of whether the payment, the promise or the allowance is provided to the child or a third person. The Ombudsman thinks that we should start out from the idea that the act of prostitution committed by a minor cannot be voluntary: the minors are engaged in such an activity as a result of some physical, emotional or economic coercion or threat. Children should thus be regarded as victims even if they do not feel they are victims or if the force that is used is not spectacular, i.e. the act is motivated by obtaining material gains or dependency. It raises concerns that the effective law views the children involved in prostitution as offenders rather than victims, who can only be exempted from liability if they prove that they have performed their action as a result of coercion or threat.

The report says that it is the state's obligation related to the protection of rights to provide efficient support to children who are in such a situation and who thus become victims. However, in the Ombudsman's opinion, all this should be done within the framework of the child protection system, rather than by applying legal sanctions. It can be concluded from the responses given by the assessed authorities that the application of the misdemeanour sanction is not functional: in the case of a child in a coerced situation or under threat, neither general, nor special prevention may work. The problem is caused by that an act of coercion or a threat is very hard to prove, the children do not report the persons inducing them to pursue acts of prostitution to the police, they do not testify against them, and they often withdraw their reports. The Ombudsman concluded that the legal situation in which children between 14 and 18 years of age may be sanctioned for their engagement in acts of prostitution under the Hungarian law on misdemeanour is not compatible with the obligations set out in the Lanzarote Convention and it also causes an impropriety related to children's rights. It was emphasized by the Commissioner that the Lanzarote Convention also requires more efficient support and protection to be provided to the victims, without this, the phenomenon of child prostitution cannot be suppressed in Hungary.

The threat of becoming a victim of prostitution may multiply in the children's homes at the times of leave and escape from the institutions. In grave and recurring cases, the justified but proportionate temporary isolation of the children in question may prove to be a good solution. It raises concerns that at the moment, the child protection institutions feel helpless, while the accountability guarantees for the proportionate restriction of personal

freedom are missing. There are many good practices that are used by the institutions but there is no comprehensive campaign aimed at practical solutions, and no training programs, further training courses, guidelines or protocols, which would make such work easier, are available to the majority of the experts. The Commissioner pointed out that despite some slow progress, no genuine achievements can be made in suppressing this phenomenon, which is due to the lack of a state action package aimed at the elimination of child prostitution and translated into reality, the lack of the targeted further training of child protection experts, as well as the lack of comprehensive preventive measures, i.e. an action plan that is much more intensive than the current one.

The Commissioner proposed that the Minister of the Interior consider the amendment of the act on misdemeanour in order to achieve that a person under the age of 18 years should not be punishable for committing the infringement of prostitution. He requested the Minister of Human Capacities to support the proposals made by the expert working group involved in the suppression of child prostitution threats that affect those children who are under child protection care. The Ombudsman also proposed that a specific action package, an action plan be elaborated, in the context of which general campaigns in which the children are educated on their rights should be organized. He proposed that training programs aimed at helping child protection experts recognize child prostitution be launched. He asked the Chief of the National Police Headquarters to review the protocols on handling the phenomenon of child prostitution, the element of the national crime prevention programs which deals with the issue of child prostitution, as well as to consider the general use of the best practices of county police headquarters, and to make the cooperation between the county-level police units and the child protection authorities, especially the children's homes, meaningful and continuous.

In his response, the Minister of the Interior did not agree with the recommendations but in his counter-response, the Ombudsman maintained his position and recommendations related to the revision of the statutory regulation on misdemeanour. In his response, the Chief of the National Police Headquarters stressed that, in agreement with the purpose of the requests made in the report, an action plan had been prepared for the most efficient practical implementation of the prevention and exploration activities related to child prostitution. EMMI's (the Ministry of Human Capacities) state secretary for social affairs and social development said that the processing and analysis of the research findings of the specific working group, as well as the preparation of the practical implementation of the proposals are still in progress, with a view to taking the necessary measures as part of the comprehensive action plan for combating child prostitution. He also indicated that according to the requirement set out in the Child Protection Act, the cases of child abuse identified by the professional child protection services staff should be investigated into and managed in line with the methodology displayed on the homepage of the Ministry in May 2018. Furthermore, a further training program on the prevention of, and fight against child prostitution and child trafficking has been elaborated.

2. Under case No. AJB-1299/2018, the Commissioner conducted a comprehensive ex-officio investigation on the actions necessary to prevent international child abduction, and to conduct a comprehensive review of the current practice and regulations. It was disclosed by the investigation that incomplete domestic regulations and the authorities' practices based thereon do not properly ensure the prevention of international child abductions, which infringe upon the rights of the parents concerned and their children.

The Ombudsman calls for the revision of the relevant regulations, the training of experts, providing more information to parents moving abroad, and the wider use of mediation. It is mentioned in the report that international child abduction, wrongful removal means that a parent takes the child abroad from the country of the child's former habitual residence, or retains the child in another country without the other parent's consent, violating the latter's rights to custody. The phenomenon of wrongful removal is closely related to the protection of children's rights, it places a heavy burden on the children concerned and their parents as well; the international aspects of this issue make the weaker party even more vulnerable. The Ombudsman's inquiry was prompted by the complaints submitted to his Office indicating that the number of international child abductions is growing, while the staff members of the competent authorities are under-qualified and the parents concerned, living or working abroad, are poorly informed.

The report points out that the international legal standards applicable in Hungary are set forth in the Hague Abduction Convention, in addition, being a Member State of the European Union, the provisions of the Brussels II Regulation, covering parental responsibilities, must also be taken into consideration. In cases of international child abduction, the domestic implementing rules of the proceedings to be conducted are stipulated in a ministerial decree issued back in 1988. The Minister of Justice admitted that the decree was obsolete and incomplete. The investigation also showed that the prevailing regulation raises issues that may not be solved through being interpreted by administrative and judicial organs. Referring to the above, the Ombudsman concluded that the situation is in violation of the requirement of legal certainty, and carries a risk that the principle of due process corresponding to the best interest of the child will be infringed upon. The report also notes that the guardianship authority proceedings aimed at designating the child's place of stay abroad require the obtainment of a home study, which may take considerable time. In many cases, such delays may result in a situation when a parent unwilling to wait for the decision wrongfully takes the child abroad. It turned out that the requesting parent has to enclose with the request a school attendance certificate in the case of moving abroad. However, this may lead to misunderstandings, since requesting a school attendance certificate assumes that the child already does have a home abroad and does attend a school in the given country, which, in itself, constitutes wrongful removal.

In the Commissioner's opinion, the due process corresponding to the best interest of the child would be best served if proper and uniform awareness-raising information on wrongful removal was provided in the course of the decision-making by the guardianship authorities. He pointed out the significance of providing incentives for the parents to effectively use mediation that takes into account the interests of all parties concerned, and the importance of being able to provide such services. It also gives cause for concern that the majority of the professionals concerned may receive professional education and training on preventing wrongful removal only on rare occasions and in a limited framework. In connection with situations potentially leading to wrongful removal and their prevention, it would be necessary to develop a uniform professional protocol and publish an updated handbook for professionals working with children. It is high time to prepare an educational, easy to understand online handbook for potentially affected persons studying, working or moving abroad.

The Commissioner requested the Minister of Justice to consider the comprehensive revision of the ministerial decree on the implementation of the Hague Abduction Convention, and the Minister of Human Capacities to review the regulations specifying

the scope of documents to be submitted to the public guardianship authority by the parent requesting the designation of the child's place of stay abroad, and to revise all professional and educational materials on the efficient prevention of wrongful removal. The Commissioner requested the heads of the county and metropolitan government offices to ensure that the guardianship authorities under their supervision provide awareness-raising information on the regulations related to taking the child abroad, and that the staff members of the guardianship offices under their supervision have continuous access to knowledge and up-to-date information on the regulations related to wrongful removal.

In his response, the Minister of Justice confirmed that the responsibilities of the central and other authorities are not satisfactorily defined by the effective domestic implementation regulations related to international child abduction. At the Ministry, the efforts to draft the law have commenced, one of the aims of which is to broadly ensure the mediation process between the parties, which would already happen in the preparatory phase, with the active involvement of the central authority, in addition to which mediation could also become possible in the judicial and public guardianship authority proceedings. The recommendations to the government offices were accepted. In his response, the state secretary of EMMI (the Ministry of Human Capacities) explained that in cooperation with the central authority, they were in the process of organizing training courses on the child removal proceedings for the first- and second-instance guardianship authorities, as well as the heads and staff of the affected family support and child welfare services, and they were also planning to compile a written publication, as well as an information booklet for internal use on a broader range of topics.

3. Under case No. AJB-75/2018, the Commissioner reviewed the institutional practice of the child protection mediation procedure. In his ex-officio inquiry, he wished to identify those deficiencies and problems which prevent the efficient and general application of the child protection mediation procedures that can be ordered by the public guardianship authorities. The situation is that these mediation mechanisms would be able to promote the joint recognition and enforcement of the best interests of the child in many cases.

The point of mediation is that in the dispute between the conflicting parties representing different standpoints, a mutually accepted and impartial third party helps identify the cause of the conflict, and proposes a potential solution that may be acceptable to each party. This third party, i.e. the mediator makes no decisions but helps the parties reach an agreement. Back in 2012, a comprehensive Ombudsman's inquiry reviewed the application and options of mediation and other alternative conflict management methods in child-friendly justice. Since this inquiry, which was conducted as many as six years ago, several statutory changes have taken place, and the Commissioner has received a high number of complaints concerning the regulation and enforcement of the child's contact with the separated parent. It turned out from the individual inquiries too that in this area, the rights of the child are exposed to increased threats. This is why the Commissioner launched an inquiry focusing on the practical application of the child protection mediation process, which puts an emphasis on reaching a peaceful solution, and at the same time, reviewing the current deficiencies and issues. The key question was whether the current statutory environment provides a suitable framework for the efficient application of the child protection mediation process.

The responses given have shown that the recent years saw a negligible number of cases in which a child protection mediation process was ordered. In 2016, in less than

one tenth of the cases related to visitation, in which a binding decision was adopted, was there a child protection mediation process ordered. The representatives of the government offices explained this by that most of the parties who were ready to reach a compromise managed to reach an agreement before the authorities. It also became obvious that the current statutory environment strengthens the bureaucratic procedures, it does not provide a suitable framework for the efficient application of the mediation process, which thus becomes too time-consuming, financially demanding, and the mediators are only available at times that are difficult to coordinate with the work hours of the parties. Due to the lack of professionals, national-level coverage is not available. The problem is that the application of mediation processes would be most urgent in the very proceedings launched for the enforcement of the contact schedules, where the protracted or repeatedly launched public guardianship proceedings lead to the aggravation of the conflicts between the parents in many cases.

The Commissioner concluded that the contradictory statutory environment prevents the appropriate practical application of the child protection and supported mediation processes. He pointed out that the effectiveness of mediation depends on whether the protracted conflicts between the parties about the contact schedules can in fact be prevented, i.e. whether it is possible to take the case to mediation as soon as possible. Thus, it is justified to give priority to the option of using mediation in primary care, in the family support procedure, i.e. to integrate it in the very process of family care. In the Ombudsman's report, it is proposed that as a kind of first step, participation in a mediation discussion could become the precondition to the public guardianship procedure on the enforcement of the contact schedule.

The Commissioner established that children's rights are currently not part, or are only an incidental part of the training program of mediators. Therefore, the elaboration of the system of quality assurance and professional supervision of the institutes of education and further education will become necessary. It gives rise to concern that no uniform evaluations of the completed proceedings are available, at the moment, there are no evaluations by the clients, there is no follow-up, although making these available would improve the quality of the mediation processes, would strengthen their reliability, and promote a higher level of acceptance. It is mentioned in the report that the criteria of the applicability of the mediation process should be clarified in the case of situations where there are violent actions, and also, during the hearing of discerning children. The Commissioner expressed his concerns about the fact that no methodological guidelines are available on these high-priority issues. In order to promote the use of this method, a higher emphasis should be placed on the easy to understand, campaign-like presentation of the child protection mediation process, which would eliminate misinformation, as well as on supporting the publication of information booklets and brochures for parents and children.

In his report, the Commissioner proposed that the Minister of Justice perform the comprehensive revision of the effective regulation of family law and child protection mediation, as well as the harmonization of the rules on public guardianship procedures. He requested the Minister of Human Capacities to order the quality assurance of the education and further education programs of the institutions training the mediators. Furthermore, he proposed that the mediators' register be updated as soon as possible. The Ombudsman requested that the Minister of Human Capacities take care of the preparation of professional methodological guidelines and ensure the participation of

guardianship officials involved in cases of custody in basic-level and further free of charge mediation training courses, other professional training programs, and that he support the campaigns aimed at promoting the mediation process, as well as the preparation of easy to understand information materials.

The Minister of Justice informed the Commissioner for Fundamental Rights on the establishment of a Mediation Work Committee on October 15, 2018, at the initiative of the Ministry, which revises the current situation of the mediator's profession, the 15 years that have passed since the adoption of the Act on Mediation, and defines the directions to be taken by the profession. The goal is to make mediation more popular and accessible, to increase awareness in this regard, to reduce the work load of the courts, as well as to ensure an efficient, long-term resolution of conflicts between the citizens, and to reduce the number of enforcement procedures. The presentation of the official statistical data in a separate sub-page is in progress.

EMMI's (the Ministry of Human Capacities) state secretary informed the Commissioner that the Ministry had also been faced with the fact, during the management and supervision of the public guardianship authorities, that child protection mediation proceedings had been ordered much more frequently in the period preceding January 1, 2016. It turned out that there had been general procedural law regulations that excluded the possibility of suspending the public guardianship procedure underlying this phenomenon, so the Child Protection Act was amended with effect from January 1, 2019. According to the state secretary, it is important to set a deadline for the mediator, in order to ensure that a meaningful decision is adopted as a result of the public guardianship procedure as soon as possible. The state secretary said that methodological guidelines on custody cases were in the process of preparation. It was indicated that he had proposed that the Minister of the Prime Minister's Office elaborate a targeted training and further training content and organize a training program for the government officials who fulfill guardianship official's positions.

### 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. In case No. AJB-316/2018, the Ombudsman learnt from the press that according to the requirements of Magyar Posta Zrt (Hungary Post), registered mail can only be delivered to visually impaired persons in the presence of a witness. It was disclosed by the report that, by virtue of the Government Decree on Postal Services, registered mail may be delivered to an addressee or to any other entitled recipient who cannot write or does not know the Latin alphabet, or who, due to any reason, is writing impaired, only in the presence of a literate witness of full age. This stipulation is included in the General Terms of Contract

of Magyar Posta Zrt; according to the President – CEO, the Company has proceeded in accordance with the prevailing legal regulations and by taking into account the legal and economic interests of the persons who send consignments to this circle of persons.

It is also pointed out in the report that visual impairment does not affect a person's capacity or cognitive abilities, this is why visually impaired persons may also make independent legal statements if they undertake the responsibility and reckon with the consequences thereof after considering the circumstances. The Ombudsman agreed with the proposal made by the civil society organization concerned that the possibility of decision-making should be provided by the law to the visually impaired. In other words, those visually impaired persons who take responsibility for their actions and are also capable of writing should be given the possibility to sign their own statements on their own behalf, while those who do not undertake this responsibility should be entitled to use a witness or supporter. The prevailing regulations and judicial practices infringe on the requirement of equal treatment and do not meet the requirements specified in the CRPD either. The Commissioner for Fundamental Rights has called attention to the fact that the use of postal services, including the delivery of registered mail, shall be ensured independently, in a barrier-free manner to blind and partially-sighted persons as well.

The Chief Legal Officer of Magyar Posta Zrt informed the Commissioner that the prevailing laws do not allow disregarding the requirement of the presence of a witness in the case of the delivery of registered consignment to blind and partially-sighted persons. The Chief Legal Officer also informed the Commissioner of the practice followed in the individual member states of the European Union and on that he thought that allowing visually impaired persons to make their own decisions on whether they needed the involvement of a witness was an appropriate solution, according to the report. The Minister of Human Capacities indicated that the lack of the ability to read and write was not a general characteristic feature of visually impaired persons, who follow a different practice of self-determination. He promised to get in contact with the organizations concerned, in order to achieve that a regulation applicable for appropriately ensuring the right to self-determination of visually impaired persons be drafted. The Minister of Postal Services informed the Commissioner that the current postal regulations were compliant with the general civil law requirements regarding written legal statements, they cannot be disregarded. However, he found the proposal made in the report progressive. In his opinion, the inclusion of the freedom to decide based on self-determination in the general terms and conditions that govern the postal services will only become possible after the modification of civil law regulations that define clear terms concerning the validity of written legal statements, which underlie the regulations for this sector, for which he thinks that further professional coordination will become necessary.

2. The Ombudsman's Office has dealt with the anomalies of the operation of residential care homes for several years. Consequently, it is the so-called de-institutionalization that is in the focus of attention these days. However, until the lengthy process of de-institutionalization is fully implemented, all the institutions should operate, and the quality of such operation continues to be highly varied. In case No. AJB-653/2018, the Commissioner investigated into the Darvastó unit of the Veszprém County Integrated Care Centre as the most significant, central social institution of the region, in the context of a comprehensive series of inquiries meant to assess the institutional system of Veszprém County from the aspect of fundamental rights.

Through de-institutionalization, a process has begun which may certainly guarantee a more full-fledged exercising of human rights and more independent living to those concerned, and also, to a high number of persons with disabilities who still live in care homes. The report calls attention to that the circumstances at residential care homes with a high number of beds are all in all suitable for generating the suspicion and the possibility of the occurrence of cases in which equal rights to human dignity, the requirement of equal treatment, as well as the priority obligation of the state to protect persons with disabilities are violated, i.e. where improprieties with regard to the persons with disabilities may occur. As in the case of all the Ombudsman's investigations into residential care homes, the report again highlighted that, in the course of the actions to be taken on the basis of its long-term de-institutionalization strategy, the Ministry of Social Affairs should pay special attention to the guarantees of ensuring the personal, physical, operational and professional conditions of the social institutions. In his response, EMMI's (the Ministry of Human Capacities) state secretary pointed out that the strategy for 2011-2041 on the de-institutionalization of care and nursing homes affecting persons with disabilities had been defined by a government decree. On the other hand, in another government decree, the long-term concept of de-institutionalization of care and nursing homes affecting persons with disabilities for 2017-2036 was determined. In 2017, the de-institutionalization of institutions with more than 50 beds commenced from EU development funds of HUF 35 billion, while in March 2017, the government earmarked a further amount of HUF 53.5 billion for this program, which will be used by 2023, by relying on the Human Resources Development Operational Program (EFOP) Hungary. As regards the remaining institutions, a modernization budget between HUF 30-100 million is available.

### 2.1.3

#### Protection of the rights of 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 2018 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 defenceless against all state and public authority interventions. At the same time, in their case, it may have severe and direct consequences if the state – through one of its institutions – does not perform 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.

1. Cold weather and the increased challenges of the winter crisis period require extra attention from the staff and maintainers of homelessness services, as well as the advocacy groups monitoring such activities each year, with a view to protecting the lives, health and safety of homeless persons. As it happened in previous years as well, the Ombudsman conducted an investigation on this subject again this year, under case No.AJB-809/2018.

He concluded that the majority of the homelessness organizations working in the capital city took adequate care of homeless persons with social needs at the daytime warming shelters and night shelters, as well as temporary shelters that these organizations operate. When the red alert was ordered, the homelessness services had an appropriate number of beds for providing safe placement for persons in a critical condition, however, in many cases, there were no uniform protocols regulating the cooperation between the call centres and the street care services that are in direct touch with the clients.

According to the report, the lack of transparent, system-level, cognizable and, as the case may be, accountable care and service protocols that are necessary for the effective operation of the chain of emergency measures, the difficulties of applying the existing statutory frameworks (e.g. some statutory definitions of infractions and the relevant sanctions), as well as the inflexibility of the limits of competence act against the efficiency of the funding of homelessness services. In the long run, the system-level problems that have been identified lead to operational anomalies in the social welfare system as a whole. All this results in an impropriety with regard to fulfilling the state's obligation to protect life and dignity and the requirement of legal certainty arising from the principle of the rule of law, while it carries the direct risk of the violation of fundamental rights of all the players of homelessness, including the clients and the service providers, the official and health care providers.

EMMI's Secretary of State agreed with the observations made in the report. Independently from the call from the Commissioner, coordination talks were initiated with the representatives of the regional call centres, the experts of the Ministry of the Interior and the Directorate of Disaster Recovery in order to apply the rules of procedure for periods of red alert in the summer season, with regard to the heat. The State Secretary requested the General Directorate of Disaster Recovery, Fővárosi Vízművek Zrt (the Budapest Waterworks) and the municipalities to let the affected citizens enter the open, air-conditioned premises in their areas without any limitations and conditions in hot weather seasons and to designate such facilities. They proposed to the Budapest Waterworks that they pay special attention to homeless persons when the misting systems are installed and water distribution is organized at the time of ordering the summer red alert periods. In order to ensure adequate care to homeless persons with mental disorders and multiple needs, it was deemed necessary to establish an expert working group, since proper care to be provided to homeless persons with psychiatric disorders is a recurring problem. After the assessment of the existing needs of the system, the capacities in community care were expanded, which will be reviewed if need be.

2. Related to the inquiries into the operation of old-age homes, the investigation into case No. AJB-477/2018 should be highlighted, in which the anonymous complainant complained of the operation of the Patalom unit of the Somogy County Dr. Takács Imre Social Care Home Park, the treatment of the residents and the conditions at the care home. The person filing the submission complained that there was an inadequate number of nurses, the residents were untidy, there was a lack of medication and there were also parasites in the care home. The nurses talk to the residents in a rude, humiliating tone, and the complainant mentioned that instances of abuse also occurred in the care home. In the petition, it is mentioned that the corridors are dirty, that it is the care staff who do the cleaning and the washing-up at the weekends, which means that they cannot provide proper care to the elderly residents, they are also intimidated and are afraid of losing their jobs.

The Ombudsman ordered an inquiry into this case and requested the director of the Somogy County Unit of the Hungarian Directorate-General for Social Affairs and Child Protection in its capacity as the supervisory authority, as well as the appointed government official of the Somogy County Government Office to conduct the proceedings. As the Ministry of Human Capacities also proposed that an investigation be conducted in this case, the Commissioner also asked for information on the outcome of such inquiry. The authorities clearly see the roots of the deficiencies and infringements in institutional operation in the lack of expert staff, the low qualifications of the existing staff, as well as their high workload and lack of motivation. The care providers are compelled to perform activities that are beyond their competence; furthermore, in several sections of the building, it is the female care provider staff that does the washing-up and the cleaning too, in addition to performing the care and nursing tasks. From the experience gained from the inquiries, it can clearly be concluded that the above-described circumstances deteriorate the standards of professional work, the care and nursing activities at the institute and they jeopardize the safety of professional work as well, i.e. the care providers cannot perform their work on the required standards.

The Ombudsman established that both the lack of staff at the care home under review and the professional deficiencies in care and nursing, which are the consequences of the former issue, and the system-level lack of experts in the social sector on a nationwide basis cause and maintain an impropriety in relation to a fundamental right, i.e. the right to human dignity of the residents of care homes. In his report, he requested the Minister of Human Capacities to review, by involving the professional organizations, how the pressing shortage of expert staff in the social sector can be remedied, what kind of measures should be taken in order to make this profession attractive and motivating for qualified employees, as a result of which the social care homes could perform their socially indispensable tasks at the required level.

3. The investigation conducted in case No. AJB-344/2018 explored that in addition to using efficient legal remedies, currently there is a high number of guarantee elements missing or damaged during the ordering of emergency psychiatric treatments, as a result of which the rights of those concerned cannot be enforced. The Commissioner for Fundamental Rights proposed, to the heads of the ministries, that they reinforce the laws, professional background, rules of procedure and infrastructural conditions that refer to the judicial reviews at several points: without these, the current control mechanism will become pointless and formal. The investigation was preceded by a report that examined the enforcement of the right of persons subjected to emergency psychiatric treatment to legal remedy, which was published by the Commissioner in February 2017. The report identified a high number of improper elements: the actual efficiency of the legal remedy is a subjective concept in these cases, as when the second-instance decisions are adopted, the patients concerned have already been released from hospital in most cases and for example, on the basis of an incomplete expert opinion, it is almost impossible to establish subsequently whether ordering the compulsory medical treatment of the patient had been justified there and then. The court decision on such order contains court-ordered supervision that means the strictest restriction of the affected person's self-determination and personal freedom. The consequences of disproportionate and unlawful measures are irreversible, ensuring prevention would be of key importance.

Some other legal concerns have also emerged in the practice of emergency psychiatric treatment, so the Ombudsman launched an ex officio comprehensive inquiry, in the context

of which there was also broad professional coordination. In his report, the Commissioner pointed out that the practice in which the judicial reviews related to emergency hospitalizations, and the ordering and maintenance of compulsory medical treatments are held at two predefined times every week, gives rise to concern. It was disclosed by the investigation that there was no such central register which would be accessible to the courts and would contain the names and contact details of the patients' guardians. All this prevents the court from their being able to notify the guardians in the case of malpractice or lack of information from the part of the applicant health care institution. The Commissioner said that state-of-the-art best practices that limit the rights of persons with psycho-social disabilities to a lesser extent should be introduced. The Commissioner drew attention to the fact that it was also an improper situation that the minimum conditions that determine the lawful frameworks of the operation of the psychiatric departments of the health care institutions were incomplete, so they did not allow high-quality professional work. It was also mentioned in the report that the establishment and operation, with adequate capacity, of acute, high security psychiatric departments had become imperative. Furthermore, the sites of the judicial reviews should be established, and the system and rules of procedure thereof should be elaborated in accordance with these. However, an appropriate "transitional" statutory background should be created for ensuring the judicial reviews until such departments are available. In practice, it also causes problems that at the moment, there is no methodological letter ensuring a more efficient judicial utilization of the forensic psychiatrist's expert opinion related to emergency hospitalization and the ordering of compulsory medical treatments.

The Commissioner requested the Minister of Justice to take action for developing special rules of procedure for establishing whether emergency hospitalization was justified and also, for cases of compulsory medical treatment. He proposed to the Minister of Human Capacities that he prepare a methodological letter on the forensic psychiatrist's examinations related to the judicial procedures meant to establish whether emergency hospitalization was justified, as well as those related to the ordering of compulsory medical treatment. He proposed that, in connection with the notice from the court, the minimum elements of the petition be stipulated in a law, which would allow informed work for the participants of the proceeding. The Ombudsman also proposed that the relevant law be amended, i.e. that in the case of ordering deprivation of personal freedom, the expression "existence of disability" should be omitted from the text. He asked the Minister of Human Capacities to take action for the elaboration of a new statutory environment regulating closed psychiatric wards and to take care of ensuring the conditions of judicial hearings, i.e. the personal and physical conditions that guarantee the appropriate level of security, as well as the availability of appropriate premises.

In his response, the Minister of Justice explained that he found the regulation appropriate, and that the special procedural rules for the cases in question were defined in the Health Act. He supported that the content requirements of the application be defined in the Health Act (Hungarian acronym: Eütv). He agreed with that the judicial proceedings should be conducted in due time, to ensure that the document by which the proceedings were launched contains those fundamental circumstances which support the reasons for filing the application. He pointed out that professional coordination talks on the establishment of a uniform system of registration that jointly contains the data of the dependents and their legal representatives, were necessary, with the involvement of the National Office for the Judiciary, which maintains the records. It may be examined whether it is

justified, in spite of all the above, that full procedural capacity be ensured for the party in a non-litigious procedure. It was explained by the Secretary of State for Health that the premises for conducting the reviews, and the conditions for the uninterrupted review proceedings were available. He called the attention of the health care providers to ensuring the uninterrupted performance of the judicial reviews. He explained that the development of a uniform system of registration had been on the agenda for a long time, however, the structuring of the system raised many questions, besides the lack of resources, especially in the area of information security, he promised results for the end of the year. The Commissioner is expecting the outcome of the coordination efforts.

4. In case No. AJB-1256/2018, the Commissioner reviewed the questions and problems related to the option and conditions of the hospital stay of parents whose children need hospital care. From his inquiry, he found out that the conditions of the placement of parents with their hospitalized children were highly varied and they sometimes contained unjustified restrictions, which give rise to serious concerns.

It was pointed out in the report that there were still no minimum rules governing the circumstances of parents' stay in hospitals in the Health Act, it is the individual health care institutions that may decide on such rules by themselves. The situation is that the provision of the Act which says that the right of keeping contact may be restricted but may also be exercised depending on the conditions that exist at the in-patient hospitals, by respecting the rights of the other patients and ensuring uninterrupted medical attendance, so this stipulation provides a broad space of manoeuvre for the hospitals and clinics for defining different specific and general limitations in their own competence, with reference to the disruption of medical attendance. After reviewing the legal material, it can be concluded that none of the initiatives aimed at remedying the precarious situation disclosed in an earlier report and addressed to the Minister of Health was fully realized. The Commissioner said that the failure to act upon the recommendations made earlier, the lack of uniform legal requirements that ensure the parents (legal representatives) uninterrupted contact (overnight stay) with the children at health care institutions, the lack of financing solutions that guarantee the minimum requirements for the levels of comfort, i.e. the existing legal situation continues to cause improprieties related to the requirement of legal certainty, as well as the right of the child to protection and care

After getting familiar with the practices and regulations of the individual health care institutions and departments under review, the report disclosed and recorded that the right of staying with a child under age and uninterrupted contact between the parent and the child should not depend on a doctor's permission by default, except for those extraordinary, special situations in which staying in the hospital is not allowed to anyone (risk of epidemic). This right should be ensured free of charge even if the parent does not wish to use any services for which a fee is charged. The higher standard services for which fees are charged are regulated by law, however, the overnight hospital stay of parents cannot be dependent on the payment of a specific fee in itself. Parents have the right to stay with their children free of charge even if there are currently no minimum rules governing the circumstances (levels of comfort) of free of charge placement, in lack of relevant legal regulations, as discussed above. In principle, all this may mean sitting on a chair next to the child's bed, and the use of a bathroom available for visitors outside the department in question, located in a different section of the building. The Commissioner concluded that a restriction that makes the parents' stay with their children dependent on permissions

from the health care institution concerned, or on the payment of a fee, as defined in the house rules in question, runs counter to the provisions set out in the Health Act, it violates the principle of the rule of law, it is incompatible with the principle of procedures in the best interests of the child, furthermore, it causes an impropriety related to the child's right to protection and care. He again pointed it out that the exclusion of male relatives from staying in the hospital with the children caused an impropriety related to the requirement of equal treatment. Similarly, it is also an impropriety when a hospital ensures free of charge stay in the hospital for its employees as parents, providing higher standard services, for which any other parent is charged fees. When services beyond patient care, for which fees are charged, are provided, a hospital may not proceed arbitrarily when it defines the exceptions from the rule, i.e. in which cases such services can be provided free of charge. Any such distinction (preferential treatment) should be based on sound reasons. The Commissioner thinks that such a sound reason definitely exists when the parent of a chronically ill child stays in the hospital with his or her child free of charge, as the protracted illness of the child puts permanent stress on the family as it is, and the significant amount of money to be paid for the services in the case of longer term hospitalization would be very hard to pay in many cases anyway.

The report also discussed the necessity of reinforcing a child-centred approach, emphasizing the significance of the rights of the child. The Commissioner mentioned that it was obviously not possible to define standardized conditions for the parents' stay in the hospital in a law, on account of the diversity of medical services, however, all this does not mean that the legislator is not obliged to take consistent action for the development of a statutory environment that promotes the protection of the rights of the sick child, with special regard to the right of contact, as well as the creation of a statutory environment standardizing the circumstances of the parent's stay in the hospital and making these more humane and dignified. In his view, the personal commitment of the heads or management of the individual institutions, who define the attitudes of the staff, may result in the existence of well-functioning hospitals or departments with regard to placement and contact with the parents but these personal guarantees will not represent an adequate guarantee from the aspect of the rule of law, contrary to an institutional guarantee. The Commissioner requested the Minister of Human Capacities to consider, through joint efforts with the Minister of Finance, that the detailed rules for ensuring the stay of those adults who accompany the children to the hospital (parents, legal representatives and other close relatives) be drafted, that the detailed minimum standards guaranteeing the proper placement of adults who accompany the children to children's in-patient hospitals, as well as the criteria for preferential treatment in the case of exemption from the payment of hospital fees be stipulated in laws. The Commissioner proposed that a financing background which is meant to consistently improve the current situation should be created; furthermore, the scope of the affected persons should be clarified and extended in such a way that the appropriate financing of the hospital stay of the adults accompanying patients under the age of 18 becomes possible. He asked the Minister of Human Capacities to make the report available to the directors of all those state health care institutions that provide in-patient care to children. He called the heads of the hospitals concerned to revise their policies and to terminate practices that violate the law.

In his response sent to the Commissioner, EMMI's (the Ministry of Human Capacities) state secretary indicated that he had requested the Infant and Paediatric Department of the College of Health Care Professions to revise the legal material governing the hospital

stay of adults who accompany the children to the hospital, and based on the latter, to make a proposal for the minimum standards that guarantee the proper placement of such adults. The state secretary promised to review the financing background and to clarify the affected scope of persons. He also mentioned that he had sent the report to the institutions supervised by the National Healthcare Services Centre through the head of the Centre, while he sent it directly to the universities. Also, he called the heads of these institutions to revise their current rules on the placement of parents staying in the hospital with their sick children, with special regard to the requirement that no fees shall be charged for the parents' stay. Finally, the state secretary proposed that the legal material on the financing of the services provided to accompanying persons be revised within the ministry and asked for a proposal on how it can be worded in a uniform law.

## 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 2018 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-978/2018, the Commissioner investigated into the rules of state support granted for the repayment of higher education student debts in the case of having children. Several petitioners turned to the Ombudsman to clarify the scope of persons entitled to receive such support and they brought it up as a problem that full or partial exemption from the obligation to repay the outstanding amount of the debt, which is granted by the law in the case of the birth of the second or third child, only extends to the mother and not to the other parent raising the child together with the mother. Fathers are not entitled by the law to use the exemption from the repayment of student debts even if the mother had no such debt from the start, or she had already paid it back.

In his report, the Commissioner pointed out that this specific rule was aimed at making it easier to have children through reducing the burdens on the families. In the current regulatory framework, the preferential treatment provides exemption for women, mothers with student debts, reducing the burdens of those families in which both parents, or only the mother has repayable debts. However, in the case of those families where it is only the father who has a student debt at the time of the birth of the second or third child, this exemption is not enforced, despite the fact that the amount of the repayment instalment of the student loan puts the same burden on the overall budget of the family in this case as well. It should be noted that the suspension of repayment may be requested with regard to debts of expectant women too.

The Commissioner concluded that the exemptions related to the repayment of student debts given to mothers with effect from January 1, 2018 are means of support that can be interpreted as the state's role undertaken in supporting having children, they show the state's commitment to the protection of families. This form of support is an *ex gratia* allowance, which is granted by the legislator to the mothers with a view to reducing the burdens of the families involved by the birth of children. As a result of the above, the legislator also has wide

discretion in defining the cases of exemption from repayment, however, it is a constitutional requirement to have reasonable causes for making distinctions between the subjects in comparable situations. The Commissioner pointed out that in the case of parents who raise their children together, the total budget of the family is made up of the income and possible debts of the parents, so the mothers who have student debts are in a comparable situation with the fathers who have student debts: their debts put a burden on the family budget, which has already incurred extra costs on account of having a child, so the preferential treatment given to them would also contribute to reducing the financial burdens of the family.

The Commissioner stressed that the outcome of the legislator's deliberation is not in line with the requirement of reasonableness: the support provided to the families varies depending on which parent has unpaid student debts, thus there is an impropriety with regard to the prohibition of discrimination. The Commissioner thinks that a solution, which would also satisfy the requirement of equal treatment, would be in harmony with the legislative goal: if the mother does not have a student debt any more, or she did not have one previously either but the father, who raises the child together with the mother, has one, secondarily, the preferential treatment or the option of the suspension of repayment should also be available with regard to the father's debt. The Commissioner indicated that the prevailing regulations raised concerns with regard to the requirement of equal treatment concerning single fathers or single adoptive fathers, as they are not entitled to receive the exemptions ensured by the regulation from the start. Based on all this, the Commissioner requested the Minister of Human Capacities to amend the rule that violates the prohibition of discrimination. However, the ministry did not agree with the arguments explained in the report and did not support the proposal. The Commissioner maintained his legal position and his opinion on draft legal regulations.

2. In case No. AJB-1232/2018, the Commissioner launched a comprehensive ex officio follow-up investigation regarding the enforcement of the right of disposal over frozen embryos, as well as the regulation and practice thereof. The Commissioner established that the current legal situation, in which the future of the embryos, as well as the legal content and framework of disposal over them are not sufficiently clear to those concerned and to the legislators either, was not in compliance with the requirement of legal certainty. The situation is that in his opinion, it should be a part of the right of self-determination for the parties to be allowed to make such a statement based on which it would be obligatory to eliminate the embryos at the end of the storage period or at any time preceding such end date, with special regard to such cases when embryo donations are not accepted by the clinic. The requirement of legal certainty will be enforced if this possibility is expressly contained by the law, and if this is mentioned as a further option in the annex that defines the content of the above-mentioned statement.

The Commissioner disclosed a difficulty of legal interpretation regarding the option of eliminating unused embryos and a serious practical anomaly, which occurred as consequence of the former. The current situation is that the judicial practices with regard to the donation and deposit of embryos create a very precarious, contradictory situation both for the health care providers and the persons concerned: the problem is that it is not defined who may dispose of the future of the embryos, with what content, and in what form after the expiry of the storage deadline. The uncertainty in the legal interpretation arising from the comparison of the specific statutory provisions and the provision of the Fundamental Law of Hungary regarding the protection of embryonic life generates indecision. The Commissioner con-

cluded that this situation is in violation of the requirement of legal certainty and the right of the affected persons to self-determination. Since several of the respondents explained that, as a result of the development of science and medical technology, and with the right storage conditions, frozen embryos can now be stored for an unlimited period of time, in human dimensions, it had been brought up that the prolongation of the frozen storage period of embryos to be used for the patients' own purposes and those offered for donation was professionally justified. He requested the Minister of Human Capacities to deliberate on the comprehensive revision, then later, the relevant amendment and clarification of the rules set out in the effective laws and decrees regarding the right of disposal over frozen embryos, through joint efforts with the Human Reproduction Committee of the Medical Research Council (ETT) and other professional organizations and institutions, in the light of the conclusions drawn in the Commissioner's report. He asked that, after the relevant modification of the regulations, the maximum storage time of the frozen embryos be prolonged and that the detailed rules on the donation of embryos be elaborated as soon as possible.

3. In case No. AJB-1486/2018, the Commissioner drew attention to the concerns related to a procedure conducted in relation to an incident of school abuse, along with the need to respect the freedom of conscience. The complainant launching the inquiry reported that his child had been strangled by one of his classmates at a Budapest school. This is why the school convened a case meeting, with the participation of the representatives of the public guardianship authority and the children were referred to the school psychologist. The public guardianship authority launched a procedure for taking the abused child into care, although originally the school reported that both of the youngsters were endangered. After the second session, the complainant told the homeroom teacher that he was not going to let his child see the psychologist any more, as the psychologist had been prying into the child's religious education, rather than handling the conflict. The parent also sought help from the education district centre but he received no written response, finally he had to transfer his child to a school in another district.

In his report, the Commissioner stressed that every participant of the institutions of public education had the right to human dignity, including children. A student needs extra protection from the teacher, so if his fundamental rights are violated because of another student's breach of duty, the school should take action without delay. In this case, the only thing that could be clearly concluded was that in the break between the classes, one student physically abused the other one, however, the school staff had not previously noticed any conflicts between the children, and they also failed to clarify the reasons for this subsequently. The Commissioner also highlighted that the school management made an attempt at handling the conflict after the physical abuse had taken place. However, despite the best intentions, the process could not be effectively completed without the availability of a minimum legal framework, procedural guarantees and expert knowledge, so the school community could not find a meaningful solution to the problem. It is primarily the educational methods that are meant to settle conflicts between children, with the involvement of the persons concerned, the teachers, the psychologist and the parents. The Commissioner said that it raised concerns that the school automatically turned to the child welfare agency and the public guardianship authority right after the incident had happened, and it was with the participation of these authorities that the case discussion was held. An institution should consult the child or youth welfare agency or authority if such step is justified by the protection of the student community because the endangering factors cannot be

eliminated by the school, with the pedagogical methods that they have at their disposal. The school principal signalled to the public guardianship authority that both children were endangered, by which the procedure to take the abused child into care was launched; however, nothing of the kind happened in the case of the abusing child. The Ombudsman explained that pursuant to the laws on child protection, the public guardianship authority could not have deliberated on the signal given by the school, and the procedure for taking the children in care should have been launched for both students.

Among others, a school psychologist is mainly responsible for participating in the resolution of conflicts and the handling of violence occurring at school. First, the parents gave their consent to the involvement of the psychologist, then later the complainant withdrew such permission but this was not taken into account at all. As regards the abused child, there had been no earlier reports of any problems of fitting in, or emotional abuse, so legally or professionally, it was not justified to oblige this child to see a psychologist. Thus, the psychologist should have suspended the sessions with the child upon the parent's strong request. The Commissioner thinks that the arguments of the school principal were mistaken: the latter said that the text that was made to be read out by the child during the sessions with the psychologist should be regarded as an analysis of a source text similar to quoting from the Bible during a class. He explained that in a state school, which is ideologically neutral, no psychotherapy session may include any inquisitions into religious affiliations, or any critical remarks regarding religious practice. The requests made by the parent and the child were ignored by the psychologist: she inquired after the child's religious practices, then questioned these. The Commissioner concluded that the ethically disputable action of the psychologist had caused an impropriety related to the child's freedom of conscience and religion, as well as the parent's right to raising his child. The Ombudsman proposed that the worrisome practices be improved and the further improprieties be prevented by contacting the school principal, the education district centre, the President of the Klebelsberg Institution Maintenance Centre, as well as the head of the competent public guardianship authority. According to the responses, the addressees of the individual requests fulfilled the requirements set out in the report.

## 2.3

### 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.

In 2018, the Commissioner for Fundamental Rights provided his opinion on 154 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.

Similarly to the previous years, they sent the motions to the Ombudsman with 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. one third of the motions. The opinion of the Commissioner for Fundamental Rights presented during the preparation of legal regulations has no binding force but it may help the success of codification 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, including the OPCAT Department, cooperate in the preparation of the opinions.

In some 40 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 13 laws, 12 government or ministerial decrees, 4 municipality decrees, while he made proposals for the general review of the regulation in 21 of his reports.

The Commissioner for Fundamental Rights called the attention of the National Assembly to ten of the codification proposals that had been worded in the previous years and had been unsupported by the affected ministries.

The Ombudsman reviewed the legal practice of the nearly past eight years and concluded that the institution of AJBH performed its tasks effectively, in compliance with the statutory regulations that took effect in 2012. However, the strengthening of the protection of fundamental rights, as well as the elimination of the difficulties in legal interpretation justify the clarification and modification of the Ombudsman Act, for a corrective purpose. He sent his respective proposals to the Minister of Justice and he presented these to the National Assembly in the context of the annual report.

## 2.4

### Activity related to the protection of whistleblowers

Act CLXV of 2013 on Complaints and Public Interest Disclosures (Pkbtt) and Act CXI of 2011 on the Commissioner for Fundamental Rights (Ajbt) define different tasks regarding the handling of public interest disclosures. Through his Office, the Ombudsman provides for the operation of the electronic system serving the purposes of making and recording public interest disclosures. In addition to this, the Commissioner also takes action in such cases when, after the inquiry into the public interest disclosure, the person making the public interest disclosure files 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 into 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 whistleblower 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. he may 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 2018, a total of 307 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 81% of the whistleblowers asked that their personal data be exclusively accessible to the Office.

The subjects of the disclosures were really varied, so, without being exhaustive, reports were submitted on the following topics: related to transport: the operation of public transportation companies, the practices followed by BKK (the Centre for Budapest Transport), the inappropriate condition of traffic signs, the insufficient number of available P&R parking lots, parking fees, the practice of controlling parking cards for persons with reduced mobility; financial management and legislation of the municipalities; related to the environment: complaints about illegal waste disposal, contamination of living water / ground water, waste burning, noise impacts; related to the police: online fraud, data phishing, drug possession and drug dealing; related to taxation: reports of tax evasion by companies and private individuals; furthermore, there were disclosures on other subjects as well, such as information security, consumer protection, modernization of heating, the inadequate operation of the free of charge visitation of public institutions, as well as corruption.

The five most frequently addressed acting bodies were: Ministry of Innovation and Technology, Budapest Police Headquarters, Budapest Mayor's Office, National Tax and Customs Administration, Government Office of Vas County.

Approximately 60 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 whistleblowers, 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, 85 applications were received for the review of the proceedings of bodies investigating the public interest disclosures. It happened in 9 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: Ministry of Human Capacities, Ministry of National Economy (legal successor: Ministry of Finance), Székesfehérvár Mayor's Office, National Transport Authority (legal successor: Ministry of Innovation and Technology), Vác and Érd District Office of the Government Office of Pest County, Penc Joint Council Office, Diósd Mayor's Office, Hungarian Directorate-General for Social Affairs and Child Protection, Gárdony Mayor's Office, Budapest Mayor's Office.

In 61 of the closed cases, no fundamental law impropriety was established while handling the public interest disclosures.

## 2.5

### The Ombudsman's OPCAT activity

The OPCAT National Preventive Mechanism started its operation on January 1, 2015, its competence includes some 3000 places of detention and 120 thousand residents, patients or detainees. In 2018, the staff of the OPCAT NPM Department visited *as many as 15 places of detention, on seven occasions*, in which visits, external experts such as medical doctors and nutritionists also participated. These visits were as follows:

	OPCAT NPM visit	Date	Number of places of confinement
1	At the lock-up facility of the Nógrád County Police Headquarters, at the detention unit of the Salgótarján Police Station, and the detention unit of the Balassagyarmat Police Station	January 30-31, 2018	3
2	At the South Borsod Integrated Care Centre	May 22-23, 2018	1
3	At the Chronic After Care Unit of Section III of the Szeged Strict and Medium Regime Prison	June 13-14, 2018	1
4	At the official premises of Section II of the Siklós Police Station, the Central Police Station of Pécs, as well as the Pécs Gyárvaros Police Station, and the police detention facilities of the Komló Police Station	September 17-18, 2018	4
5	In the homes of 4 foster families of the foster parent network of the Vas County Child Protection Centre, Primary School and Regional Child Protection Service	October 25, 2018	4
6	At the Tököl Central Hospital of the Prison Service (follow-up investigation of the 2015 visit)	November 30, 2018	1
7	At the Visegrád Aranykor Foundation's Old Age Home	December 11, 2018	1

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. The 2018 activity of the NPM focused on *the right to contact* of persons deprived of their personal liberty. 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 2018, the NPM **also conducted a follow-up investigation** in accordance with the international requirements. During 2018, the NPM disclosed the following eight reports on its homepage:

	OPCAT NPM report	Date of visit	Date of report
1	On the Debrecen Reformatory of the Ministry of Human Capacities (EMMI) and the Nagykanizsa Unit of EMMI's Debrecen Reformatory	September 13-14, 2016 and September 26-27, 2016	March 23, 2018
2	On the police detention unit of the 14th District Police Station of the Budapest Police Headquarters	December 06, 2016	March 06, 2018
3	On the Central Lock-up Facility of the Budapest Police Headquarters	February 08, 2017	February 01, 2018
4	On the Márianosztra Strict and Medium Regime Prison	March 13-14, 2017	November 28, 2018
5	On Unit I of the Budapest Prison Service	March 28, 2017	December 12, 2018
6	On the investigation into the Nagymágocs Castle Home of the Aranysziget [Golden Isle] Integrated Retirement Home of Csongrád County	September 12-14, 2017	August 13, 2018
7	On the Central Lock-up Facility of the Fejér County Police Headquarters 510_2018	October 19, 2017	October 10, 2018
8	On the South Borsod Integrated Care Centre	May 22-23, 2018	December 15, 2018

The NPM took a total of 190 measures, of which 143 concerned the institution under review, 29 were related to the supervisory authorities, 3 affected the prosecutor's office, while in 15 cases, codification was proposed.

The English summaries of the reports are accessible on the NPM's homepage (<https://www.ajbh.hu/en/web/ajbh-en/opcat-reports-2018>). The Commissioner prepares a separate annual report on his NPM activities performed in 2018. The annual report is addressed to the National Assembly and the UN Subcommittee on the Prevention of Torture (SPT) but the NPM's annual report is also sent to other Hungarian and international organizations.

On December 8, 2017, the UN's Subcommittee on Prevention of Torture (SPT) sent the Office its report on the operation of the NPM. The SPT Chair set June 7, 2018 as the deadline for giving a response and he emphasized that the measures taken should also be reported. The English version of this response was sent to the SPT by post by the given deadline. On June 12, 2018, the Commissioner informed the SPT that he had displayed his response to the report on his homepage. As consequence of the publication of the report, it became possible for the NPM to apply for the fund specified in Article 26 of OPCAT. At the December 4, 2018 session of the Civil Consultative Body, the NPM informed the representatives of the civil society organizations on the tender options.

On November 19, 2018, at the beginning of their control visit to Hungary, the delegation of CPT (the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Council of Europe) met with the Commissioner for Fundamental Rights and the staff of the OPCAT Department.

In summary, it should be stressed that during the seven visits, the requirements of OPCAT were completely fulfilled, with the exception of one site, the members of the NPM group of visitors had free and unlimited access to the places of detention, to the persons deprived of their liberty, as well as to the documents related to detention at the other sites. The authorities and the maintainers were mostly cooperative with the NPM.

# 3.

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

### 3.1

#### Introduction

From the beginning of my mandate as the Deputy Commissioner for the Rights of National Minorities on October 21, 2013, I have had five complete years and a few months to pursue my activities in the field of protecting the rights of nationalities living in Hungary. In objective terms, half a decade is not such a long period of time, however, it makes you look back and assess the joint professional work performed with and in the interests of the heads of the nationality communities, the nationality experts and the members of these communities. It also gives one good reason to look back that in the year of this report, the legal system of national minority rights in the Hungary after the democratic transformation had its twenty-five year anniversary. It is my honor to have had the chance to serve our nationality communities in my capacity as a Deputy Ombudsman with my colleagues, in the past few years of this quarter of a century.

The 2013 report was still the chronicle of the transition: the chronicle of statutory and institutional changes and transitions, and a mere two months for me in my new position. I would label the year 2014 as my first attempt at filling the framework of the position of the deputy commissioner with meaningful content: meeting the organizations and the heads of organizations of our nationality communities, as well as the elaboration of the methods and tools of the new type of deputy commissioner's institution. The experience gained in 2015, among others, warned me that in order to perform our tasks efficiently, it is worth conveying more information on the existence, situation and rights of the thirteen recognized nationality communities, as well as on the role and tasks of rights protection of the Deputy Commissioner for the Rights of National Minorities to the general Hungarian society, within the current statutory framework but with novel means and methods. Then in 2016, I became aware of more and more contradictions occurring in the laws on nationalities, the system-level unevenness arising from the mutual effects of certain laws, sometimes even of clear-cut deficiencies or the mistakes made in judicial practices and I started to investigate into these. Public awareness of the institution of the Deputy Commissioner for the Rights of National Minorities, and the trust towards it showed a growing tendency in 2017 as well: it is not only the number of complaints and inquiries that grew but the structure of the nationality-related legal fields also changed. This tendency remained in 2018 too: the joint interpretation of the National Minority Act and the law that regulates the responsibilities and competences of the Deputy Commissioner for the Rights of National

Minorities gives cause for optimism: the rights protection of nationalities can contribute to the enforcement of the rights of the nationality communities living in Hungary in an ever more efficient way.

Figures and facts, of which we are trying to give a full view in the report below, are obstinate things, however, the point remains the human factor. The situation is that behind the work of increasing volume and changing structure done by the Deputy Commissioner for the nationality communities, there are human lives: the lives of people who wish to experience and strengthen their national identities but who are sometimes compelled to suffer discrimination on account of their ethnic origins. The 2018 report is a new snapshot of the enforcement of the twenty-five-year-old National Minority Act, i.e. of the law about whose goals and institutions I sincerely believe represent exceptional value. Along with the allocated budget, it provides a wide space to manoeuvre for the preservation of the identity and the development of the self-organization of the communities concerned.

Our work in 2018 was also performed on the basis of those principles and professional convictions, investigation methods, new communication and social platforms which I, in my capacity as a deputy commissioner, regarded as necessary, possible and the most useful in the best interests of our nationality communities. This report gives the reader an opportunity to take a glimpse at the current status of the enforcement of the law related to nationalities: it gives one a snapshot of those issues and challenges that made the representatives and members of the nationality communities concerned turn to the institution of the Deputy Commissioner for the Rights of National Minorities, requesting protection and the representation of their legal interests in 2018.

*Elisabeth Sándor-Szalay*

## 3.2

### The activity of the Deputy Commissioner

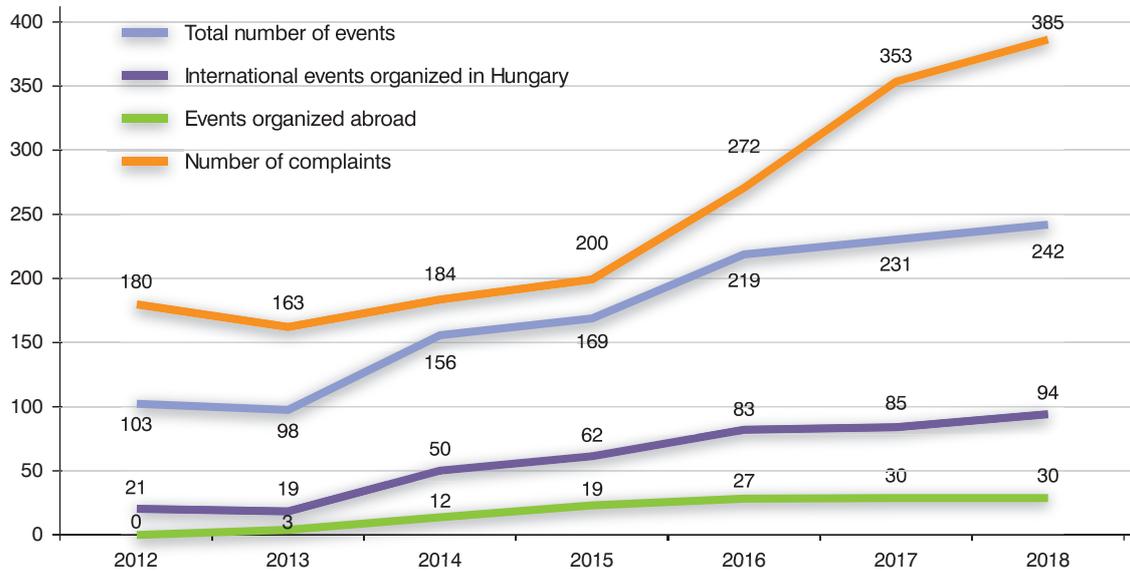
#### 3.2.1

##### General liaising

Continuous liaising within the professional forums, obtaining and processing information are the priority tasks of the Deputy Commissioner, which are the bases for all the other activities and which are critical for laying meaningful foundations for all her professional work. Accordingly, the Deputy Commissioner endeavoured to be present in the everyday lives of these communities and to monitor, collect and systematize the information on the enforcement of the rights of the national minorities living in Hungary, and in parallel, on the current situation and the public life of these communities.

There has been a continuous increase in the number of events organized here since the institution of the deputy commissioner was introduced and the year 2018 was no exception either: the Deputy Commissioner and her colleagues participated in as many as 242 professional and national minority events during this year both in Hungary and abroad. It should be highlighted that the Deputy Commissioner and her colleagues regularly met with the members of these communities in 2018 as well, in the form of direct professional discussions, coordination talks, or through visiting the events of the nationality communities.

*Number and basic types of events at the Secretariat, as well as the number of complaints (2012-2018)*



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. It is obvious from the figure above that as the professional activities increased, more and more citizens turned to the Deputy Commissioner with their complaints and submissions related to national minorities. This correlation is especially noticeable if we take the regional aspects of the complaints into account as well: the number of complaints submitted to the Deputy Commissioner multiplied in a very short time after the Deputy Commissioner's visit to Csongrád and Komárom-Esztergom Counties in 2018. As a result of the complex process, since Elisabeth Sándor-Szalay took office, i.e. since October 21, 2013, the number of both the professional events and the complaints related to national minorities has doubled.

The Deputy Commissioner regularly provides information on the situation of the national minorities in Hungary both to the nationalities themselves and to the members of the majority society. Based on the communication channels established and professional



*Visit at the Christian Roma Special College of Szeged – Szeged, Hungary*

standards laid down in the previous years, she continued her communication on the legal and social issues concerning the national minorities in Hungary towards the nationalities and the members of the majority society in 2018 as well. In line with the practices of the previous years, information was provided and the responses were taken into account, in an interactive form, in the following ways:

- active media presence;
- the Deputy Commissioner's own media platforms: the internet and the social media serving the protection of nationality rights;
- county visits and on-site inquiries; consultations with children; shaping professional and social attitudes, human rights education;
- organization of conferences and cultural programs.



*Interview  
after the Lami István  
Memorial Conference,  
Budapest*

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

### 3.2.2

#### Key professional relations

There was regular cooperation between the Deputy Commissioner and the affected government leaders, especially the Deputy Prime Minister, the heads of the State Secretariat for Church and Nationality Relations of the Prime Minister's Office, as well as the State Secretariat for Social Affairs and Inclusion at the Ministry of Human Capacities, in 2018 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 in the meetings of two specialized consultation bodies, i.e. the Roma Coordination Council and the Anti-segregation Roundtable as observers, 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 2018, complex investigation into housing and school segregation, the phenomenon of intersectionality and the role of local communities and churches in social inclusion were key topics. The Deputy Commissioner also joined the series of professional consultations of the Working Group against Hate Crimes and the special project group of the National University of Public Service involved in the development of a special curriculum, where she took part in the analysis of hate crimes against the Roma and the elaboration of anti-litancy measures. The practical implementation of the integration programs was personally monitored by the Deputy Commissioner, in the context of which effort she met with the members of the civil society organizations and local experts performing practical on-site work at professional consultation sessions and on-site inquiries. On these occasions, it was especially the topics of education, housing segregation, unlimited access to health care services, as well as digital challenges that were focused on. In 2018, the Hungarian Charity Service of the Order of Malta was a key partner again, as through their complex professional profile, practical experience and extended professional network, the channelling of needs and the elaboration of the possible solutions proved to be very helpful.

*Meeting the staff  
of the Presence Program  
of the Hungarian  
Charity Service  
of the Order of Malta –  
Tatabánya, Hungary*



The Deputy Commissioner for the Rights of National Minorities maintains close and continuous professional relations with the representatives of the national minority communities in Hungary, including the heads of the country-level national minority self-governments, the representative of the German-speaking community, as well as the parliamentary spokespersons for national minorities.

The Parliamentary Committee of National Minorities of Hungary became the key player of the representative system of national minorities that was renewed in 2014. Although initially there were many professional and political debates on the substance elements of the regulation, practice has shown that this body had become an efficient institution of the National Assembly, which initiates legislation related to the interests and rights of national minorities, makes proposals, comments and controls the activities of the government. The spokespersons also achieved success in the area of the transformation of funding, the increase of resources, as well as guaranteeing transparency in the first Parliamentary term between 2014 and 2018. The composition of the Committee changed after the 2018 Parliamentary elections.

Imre Ritter, the earlier nationality advocate was elected a full-right MP of the German-speaking community in Hungary, while many nationality communities elected a new advocate for the new term. The Secretariat of the Deputy Commissioner continued to maintain uninterrupted professional relations with the Parliamentary Committee of National Minorities of Hungary, in the meetings of which the staff members of the Deputy Commissioner always participated. The Committee always accepted and took into account the conclusions drawn and general opinions expressed in the joint reports of the Commissioner and the Deputy Commissioner in drafting or amending the laws on the rights of the nationalities.

### 3.2.3

#### Shaping social attitudes and sensitization

In the past few years, several inquiries conducted by the Deputy Ombudsman dealt with the education of nationalities, however, the Deputy Commissioner for the Rights of National Minorities also wishes to contribute to increasing the practical rights awareness of children and young people from national minorities through her activities. To fulfil this aim, she supported the implementation of several children's rights projects of the Council of Europe in Hungary, in several cases through joint efforts with the non-profit company called Hope for Children Hungary. Such key projects included the professional support provided for the preparation of the handbook for the campaign (No Hate Speech Movement) organized by the Council of Europe for young people against hate speech and *Böngésző* (Compass, a Manual for Human Rights Education with Young People), as well as participation in the implementation of the respective Hungarian campaigns.

Working together with children and young people also resumed this year: besides the involvement in training sessions on children's rights, the students of the nationality schools had the chance to get acquainted with children's rights and nationality rights in the framework of special awareness-raising classes from the spring of 2018. In terms of methodology, these classes leaned on the various publications of the Council of Europe on children's rights, especially the professional guideline entitled "I have rights, you have rights, he/she has rights..." as well as the Compass manual. In each case, the staff members shared the experiences gained during these classes with the principals and class masters/mistresses of the institutions, who promoted – on more than one occasion – the insertion of these non-formal, training-like educational elements into the curriculum.

*Special awareness-raising class at the Nicolae Bălcescu Romanian Grammar School, Primary School and Students' Hostel – Gyula, Hungary*



In addition to these special awareness-raising classes implemented in public educational institutions, the Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities attaches great importance to other forms of rights awareness development and training on human rights, too. As such, she has cooperated with the Hungarian National Police Headquarters and the National Roma Ministry of the Reformed Church in the execution of various training programs.



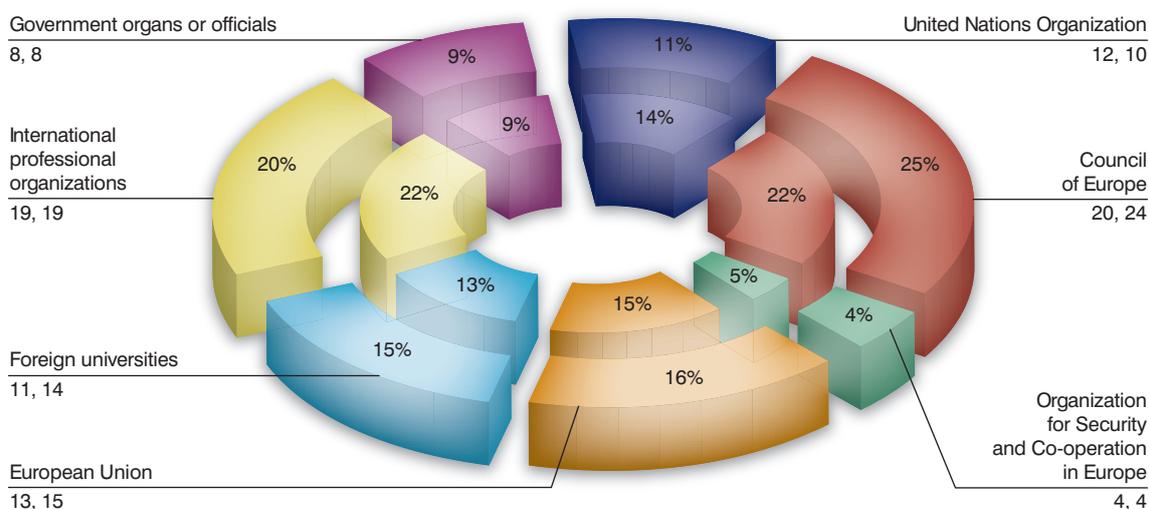
*Lami István Memorial Conference – Budapest*

In line with the practices of the previous years, it also became possible in 2018, with support from the Deputy Commissioner, that one of the nationality communities introduced itself to a wider audience, or celebrated their special events in the building of the Office of the Commissioner for Fundamental Rights.

#### 3.2.4

##### 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 2018 as well, which is well shown by the fact that as many as 94 of the 242 events of the Deputy Commissioner, i.e. 39% of the total number of events were international in nature. In 62% 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 38% 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. This typically meant a series of personal meetings, conferences and university lectures. Comparing the data of 2017 and 2018, it can be observed that the international relations of the Deputy Ombudsman are balanced and lasting.

*The distribution of international relations by partners (2017 and 2018)*

## Tools of establishing international relations:

1. priority international programs or events of international nature organized in Hungary;
2. cooperation with the neighbouring countries in the field of the protection of the rights of nationalities;
3. cooperation between the Ombudsmen of the Visegrád Group (V4) countries;
4. Minority Safepack Initiative;
5. special international mandate.

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 from 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. The

*Participants of the annual meeting of the ombudsmen of the V4 (Visegrád) countries – Gdańsk, Poland*



key partners of the Deputy Commissioner include the European Union, the Council of Europe, the organs of the UN, universities and research centers, as well as the European ombudsman's institutes, especially the ombudsmen of the V4 (Visegrád) countries.

Among our international commitments, we should mention that at the meeting of the Ministers of the Council of Europe held on May 25, 2016, Deputy Commissioner for the Protection of National Minorities in Hungary, University Professor Elisabeth Sándor-Szalay was elected permanent member of the Advisory Committee on the Framework Convention for the Protection of Minorities, with regard to her academic and international legal expert activities in the field of minority protection. 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.



*The members of the Advisory Committee on the Framework Convention for the Protection of Minorities in 2018 – Strasbourg, France*

### 3.3

#### Cases of nationality rights

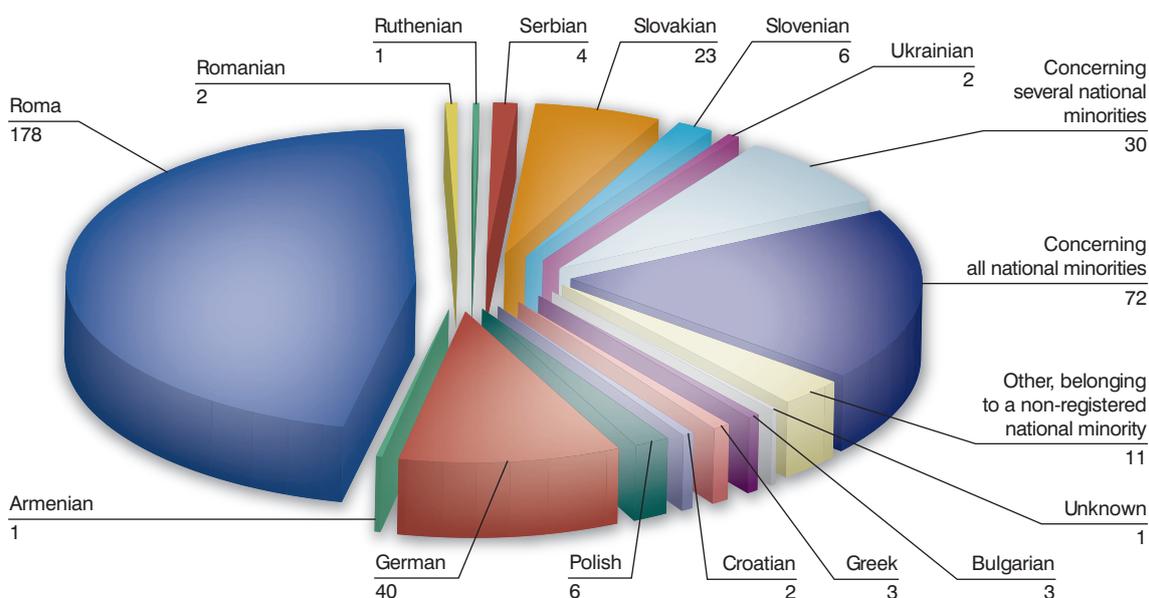
The number of national minority-related cases that belong to the professional competence of the Deputy Commissioner for the Rights of National Minorities (complaints, inquiries launched ex officio) rose from 2017 to 2018. In 2018, there was a total of 385 cases related to nationality rights, while in 2017, there were 353 such cases. The rising number of cases indicates that after the transformation of the Ombudsman's system, the institution of the Deputy Commissioner for the Rights of National Minorities became more and more well-known to, and accepted by the members and representatives of the nationality communities in the recent years.

Public awareness of the institution was also increased by the fact that in 2018, the Deputy Commissioner for the Rights of National Minorities further strengthened her relations and cooperation with the representatives of the nationality communities in Hungary, especially with the new nationality MP and the nationality advocates, as well as with the heads of the national minority self-governments. The nationality leaders concerned pro-

posed that the Deputy Commissioner launch an inquiry in several cases and also, that she take action for the disclosure and elimination of issues and infringements that they had identified. The year 2018 also saw such cases where the conclusions and proposals mentioned in the joint report of the Commissioner and the Deputy Commissioner, or in the general opinion of the Deputy Commissioner for the Rights of National Minorities were specifically discussed by the Parliamentary Committee of National Minorities of Hungary and its Subcommittee on Public Education, Culture and Church, with a view to preventing and eliminating the deficiencies of regulation and judicial practices.

Besides the individual complaints, the number of those cases in which ex officio inquiries were launched by the Deputy Commissioner for the Rights of National Minorities, was also high. Such included, among others, the examination and monitoring of the problems, observations and proposals identified during the county visits, based on the personal discussions with the representatives of the local national minority self-governments and institutions of the counties concerned.

*Distribution of the individual complaints, petitions and inquiries launched ex officio in 2018 by national minorities*



In 2018, similarly to the previous years, the number of cases related to Roma citizens was the highest. In 2018, the Deputy Commissioner dealt with the problems of the Roma community in 178 cases, which was almost the same number as in 2017 (176). The high number of cases, along with their content, indicates that many of the Roma citizens struggle with difficulties in livelihood and housing. The majority of these cases was correlated with the enforcement of the requirement of equal treatment in 2018 as well, or at least the complainants also referred to their Roma origins and/or discrimination in their submissions.

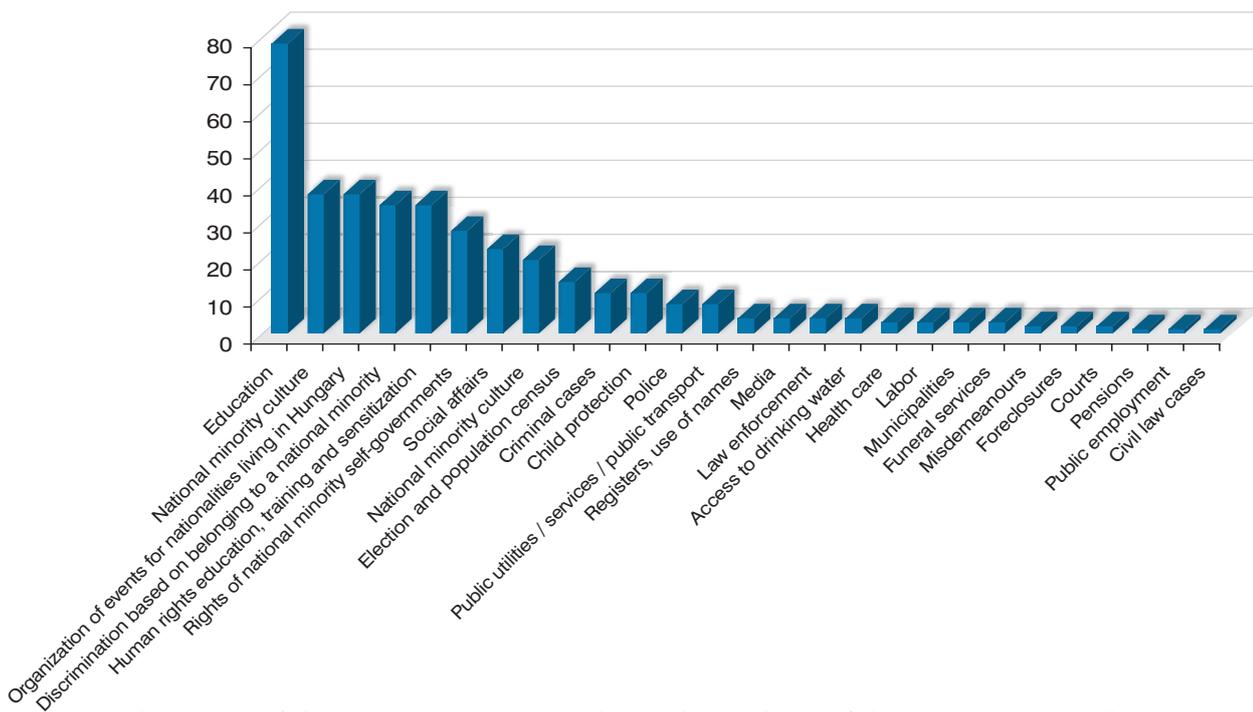
The number of cases affecting the other nationalities also grew. In 2018, the proportion of cases affecting German and Slovakian communities was high, the majority of these were about classic individual and community rights related to nationalities, national minority self-governments, or the nationality institutions maintained by the latter.

The number of cases affecting several or all of the national minorities increased further. What we are talking about here is complaints or nationality rights-related cases inquired

into ex officio, which may have affected the lives of all, or at least several of the nationalities living in Hungary: for example, those related to nationality education, nationality cultural rights, the operation and funding of the national minority self-governments, or the comments on the relevant laws.

The categorization of national minority cases according to subjects gives an overview of the kind of petitions that the Deputy Commissioner received in 2018 and in what types of cases she launched an ex officio inquiry.

*Types and topics of the individual complaints, petitions and inquiries launched ex officio in 2018*



The topics of the year 2018 were mostly similar to those of the previous year. The case type related to discrimination on account of nationality remained, which category includes cases that could also be listed in the category of social issues or problems related to utility providers, among others, in the case of which the suspicion of the official action or procedure's violating the requirement of equal treatment based on belonging to a national minority clearly emerged and this was investigated into by the Deputy Commissioner. In this category, there were mostly petitions filed by Roma citizens and the cases related to social issues, child protection, housing, as well as criminal law primarily also affected the citizens of Roma origins.

We described the cases that concern the general, individual and community nationality rights in narrower categories in 2018 (e.g. registers and use of names), so it could be understood in detail what specific cases are concerned. The majority of these complaints did not concern complainants of Roma origins but they were cases that affected the members or representatives of the other nationality communities, or they were ones monitored or investigated into on an ex officio basis.

**Cases related to education:** Similarly to the previous years, in 2018, the number of cases related to education was the highest in the field of the rights of national minorities. In 2018, continuing the traditions of the previous years, the Deputy Commissioner for the Rights of National Minorities ordered that several significant questions defining the situation of

nationality education be paid special attention to. The highest number of reports came in connection with the problem of teacher training for national minorities, that of the lack of national minority teachers, as well as the inappropriate contents and quality of national minority textbooks. There were several cases that drew attention to the operational difficulties and other problems of primary schools providing national minority education. One of the reports prepared in 2018 disclosed the deficiencies related to the exercising of the right of consent of the national minority self-governments in defining the district borders for the entrance exams to schools. It was also this year that the investigation into preventing the fulfilment of the requirement of compulsory education and the approval of the system of home schooling was completed. In the report, what was primarily examined was the prevention of the enrolment of schoolable children in primary school, i.e. the enforcement of their right to education, and also, the violations of the law and procedural errors committed in the procedure of declaring a child a home-schooled student.

**Community cases related to national minority self-governments and cultural rights:**

Similarly to the previous years, 2018 also saw the influx of submissions and oral reports to the Deputy Commissioner which concerned the operational and funding difficulties of the national minority self-governments. The task-based support provided to the national minority self-governments was subjected to strong criticism in 2018 as well, so the Deputy Commissioner continues to pay special attention to the questions of the relevant statutory regulations and judicial practices. During the county visits, the Deputy Commissioner always held coordination talks with the heads of the national minority self-governments and organizations, as well as cultural and educational institutions operating in the visited county. During the professional consultations, a high number of such problems which arose in connection with the exercising of national minority self-government and cultural rights surfaced in 2018 too. The Deputy Commissioner prepared as many as four policy statements on the cultural and community rights of nationalities in 2018:

1. On the role of nationality communities in the development of the local and regional economy and tourism based on the example of the Slovenian Model Farm (No. 1/2018);
2. On the practice concerning the national minority contents of national value collection (No. 2/2018);
3. The assertion of the cultural autonomy of national minorities in the field of public broadcasting (No. 3/2018);
4. The assertion of the cultural autonomy of national minorities in Hungarian cinematography and film production (No. 4/2018).

**Individual nationality rights case related to the use of names:** On the occasion of the professional discussions and county visits that took place in 2018, there were several reports and individual complaints in connection with the use and registry of names, and the issuance of identity cards in the language of a national minority. Based on these, an ex officio investigation was launched in order to assess the issues related to the enforcement of the right to using national minority names and to thoroughly and comprehensively explore and review the judicial practices, rights enforcement and regulations in this field of law.

**Cases related to discrimination related to belonging to a national minority:** The enforcement of the requirement of equal treatment was investigated into by the Deputy Commissioner specifically in each case in the period under review. In some cases, the fact of

discrimination was not established, in lack of a comparable person or group, or in lack of causal relationships. However, in some other cases, the fact of discrimination was established, where the problems that had been brought up were subsequently partially or fully settled as a result of the investigation.

**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. 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 health care and public services:** In 2018, several complaints in which the procedures conducted by utility providers or health care service providers were complained of were submitted to the Deputy Commissioner. Among others, such petitions related to health care services can be deemed typical in which the complainant of Roma origins complained that although he had a valid social security card, he was refused at the patient reception desk of the outpatient clinic late in the afternoon, as the doctor could not see any more patients. From the internal investigation, the general director of the outpatient clinic concluded that the patient receptionist checked the data, she did not refuse the reception of the patient, however, she informed the complainant of the probably long waiting time and on that it may happen, with regard to the high number of patients who had already had appointments, that he would not be seen to by the doctor by the end of the consultation hours and she also made it clear which hospital offered emergency medical services at that time of the day. From the available documents, the Deputy Commissioner could not clearly establish any improprieties related to fundamental rights.

In 2018, an ex officio investigation was launched into the practice of making out invoices during public passenger transportation services. An excursion for Roma children was organized by a foundation as part of their performing public tasks, however, the company MÁV-Start Zrt refused to make out an invoice for them, quoting that pursuant to the effective laws, no invoice on discounted student tickets may be produced for the foundation. A joint report was prepared about this case, in which the Commissioner for Fundamental Rights and the Deputy Commissioner for the Rights of National Minorities established that the social policy-based fare reduction, which was introduced in order to offset the income missed by the service provider due to the travel discounts provided by the state when regular public passenger transportation services are used, can exclusively be claimed by the transportation provider for natural persons. An exception to this rule is provided by a provision according to which in the case of an institution maintained by

the education district centre, it is the education centre, in other cases, it is the institution or its maintainer that can use a travel discount for a child, a student or a resident who is in a legal relationship with an educational institution or a children's care home. The above-mentioned institutions are entitled to request an invoice of the reduced fare of their students in connection with the performance of their public tasks, while the transportation providers become entitled to claim the fare discount meant to compensate for this based on social policy considerations. The exceptions do not include the non-profit organizations that perform public tasks related to education and child protection. With regard to this, the Commissioner for Fundamental Rights and the Deputy Commissioner for the Rights of National Minorities established that the exclusion of non-profit organizations that perform public tasks related to education and child protection from the exceptions results in unjustified discrimination, so the deliberations of the legislator are not in compliance with the constitutionality standard and this brings about an impropriety with regard to the requirement of equal treatment set out in Article XV of the Fundamental Law of Hungary. In order to remedy this impropriety, the Commissioner and the Deputy Commissioner requested the Minister of Innovation and Technology to consider the extension of the list of exceptions and the amendment of the related laws, with a view for the non-profit organizations involved in the performance of educational and child protection public tasks to be allowed to use these travel discounts lawfully as well.

**Criminal cases and misdemeanours:** The cases concerning the criminal procedure, law enforcement and police actions did not increase in 2018. In such criminal cases, the complainants, in their capacity as the accused party or the victim, typically complained of their court judgments, pre-trial detentions, the rejection of their reports, or the termination of criminal investigations. The Deputy Commissioner informed the complainants of their rights in the criminal procedure, as well as the available legal remedies in detail in each case.

# 4.

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

### 4.1

#### Review of the Ombudsman's responsibilities

Protecting the rights of future generations is one of the key tenets of sustainable development. The idea of sustainability has an ecologic content, in its key focus is the integration that gives high priority to the environmental conditions of the present and future generations in every decision-making process. It is this kind of sustainability that the Deputy-Commissioner for Fundamental Rights, Ombudsman for Future Generations and his colleagues have been working for in the past ten years. The message of the UN Human Rights Committee of October 2018 clarifies the correlations between the rights of future generations and traditional human rights, this is why we think that it is a great stride forward that when Hungary presented a voluntary national review on the implementation of Sustainable Development Goals at the UN's High-level Political Forum in July 2018, the summary prepared by the Hungarian Ombudsman for Future Generations was specifically discussed.

Even now, there are very few institutions in the world whose mission is similar to the mandate of the Hungarian Ombudsman for Future Generations. Although the protection of the environment or the future generations is mentioned in many constitutions in the world, there are very few of them in which all this is consistently enforced from the preambles through the general provisions to the fundamental rights.



*Ombudsman  
for Future Generations  
Gyula Bándi*

The primary mission of the Ombudsman for Future Generations is to remind the state, including all the state organs and levels, of this task and responsibility. The elaboration of a modern and efficient system of responsibility is a kind of job in which everyone participates, from the civil society organizations through the professional-economic advocacy groups to the state. The operation of this unique system of cooperation, the harmonization of interests and viewpoints is such a challenge which can be best met by an independent institution like the Ombudsman for Future Generations.

## 4.2

### Key objectives and tasks

#### 4.2.1

##### The correlations between fundamental rights and environmental protection

The protection of the environment and the enforcement of human rights are interdependent: by now, this statement has become unquestionable both on the national and international levels. A great example for this is the Holistic Approach to Goals defined in the context of Agenda 2030, the list of environmental, social and economic objectives that are intertwined with each other on multiple levels. This is undisputedly in harmony with the mission of the Office, according to which it is the constitutional task of the Commissioner and his deputies to promote the enforcement of the fundamental rights set out in the Fundamental Law of Hungary. The proposed actions defined by the Ombudsman, the findings of the inquiries launched ex officio, the policy statements and awareness raising actions have equally outstanding significance in the implementation of the goals set out in Agenda 2030 in Hungary. Their significance lies in that they propose action plans based on long-term strategic thinking, they draw the attention of the decision-makers and the international public to the correlations between human rights and sustainable development, and this is what was regarded as the basis for their activities pursued in 2018 as well.



UN Sustainable Development Goals

Hungary presented a *Voluntary National Review* on the implementation of Agenda 2030 in Hungary at the UN's High-level Political Forum that was held in New York in July 2018, to which a short professional material was attached, discussing the following five goals: goal 6 related to water and sanitation, goal 7 on energy, goal 11 on cities and other communities, goal 12 on sustainable consumption and production patterns, as well as goal 15 on terrestrial ecosystems.

The Ombudsman emphasized that as part of implementation in Hungary, in addition to the short-term public policies bearing fast and spectacular results, those long-term strategic steps that require more comprehensive modifications and that are independent from government terms should also be prepared. He also drew attention to that Agenda 2030 lays great stress on the measurability of progress, this is why it is important to have accurate data and knowledge on the initial situation and the problem to be solved.

The *European Union Agency for Fundamental Rights* organized a three-day conference entitled *Fundamental Rights Forum* in September 2018. At this conference, the Ombudsman for Future Generations was given the opportunity to organize and moderate his own panel discussion entitled "Means and methods of protecting the environment through human rights and promoting the rights of future generations". There were two questions to be answered by every participant of the panel discussion: (I) who the new players in the protection of the environment from a human rights aspect are; (ii) what the new challenges and opportunities of public participation in environmental decision-making are. The conclusion that was drawn from the discussion was that efficient environmental protection required genuine public participation, which means the involvement of civil society organizations, ombudsman-type institutions, the representatives of the academic sector, religious groups advocating the sustainability approach, as well as the young as the representatives of the future generations.

Another example of international involvement is that in May, the Ombudsman for Future Generations and his staff members took part in the international conference on the topic of Good Environmental Governance, which was organized by the International Ombudsman Institute (IOI). The ninety-minute workshop discussion of the conference entitled *Ombuds Institutions Networking for a Sustainable Society* was moderated by the Deputy Commissioner, presenting the institution of the deputy commissioner and the Network of Institutions for Future Generations, whose secretarial functions are performed by the Secretariat of the Ombudsman for Future Generations. It was an important conclusion drawn by the working group that in cooperation, it is not only the heads of institutions that should keep contact with each other but the experts should also do the same.

#### 4.2.2

##### The enforcement of the rights of future generations in the amendment of the Water Act

Water is one of the basic conditions for life: this is why the Ombudsman paid special attention to the draft amendments of the Water Act in 2018 as well, especially the one that intended to allow the creation of residential wells to a maximum depth of 80 meters without any permit or registration requirements. In protection of groundwater supplies, the Deputy Commissioner stressed that this draft jeopardizes water supplies and deprives the state of the possibility to take timely action. Groundwater is such a public

asset which cannot be replaced by anything else, in the lack of such, there is no life, and this in turn obliges the state to create a legal framework that enforces the principle of precaution and prevention.

However, the bill was approved in 2018. The President of the Republic requested preventive norm control from the Constitutional Court. In his opinion sent to the Constitutional Court, the Ombudsman drew attention to that the system of permits is the guarantee for precaution and prevention, which cannot be replaced by the legal institution of ex-post control and sanctions. In Constitutional Court (AB) decision No. 13/2018 (4. IX.), the Constitutional Court qualified the transformation of the permit system as one that runs counter to the provisions set out in the Fundamental Law of Hungary, voicing the same arguments as the Ombudsman for Future Generations, and in this respect, it annulled the amendment of the Water Act. Among others, the Constitutional Court pointed out that the protection of natural resources for the future generations involves the preservation of choice, quality and accessibility. It was also highlighted by the Constitutional Court that the termination of granting permits affects the accessibility of healthy drinking water, thus also, the right to physical and mental health. The decision of the Constitutional Court confirmed that the action taken by the Ombudsman for Future Generations had been well-founded.

#### 4.2.3

##### Expectations related to the organizational system of environmental protection

The Ombudsman for Future Generations investigated into the continuous transformation of the system of environmental authorities, the effect thereof on the fundamental constitutional rights and he issued a policy statement on his concerns. He concluded that the efficiency of environmental authorities exerted a direct effect on the condition of environmental and natural resources. The Deputy Commissioner called attention to that there was not enough time for preparation either during the 2015 or the 2016 reorganization, the transformations that followed each other very rapidly made the situation of the authorities and the clients difficult. After the independent authorities had been integrated into the government offices, the official decision-making process has no such player whose primary and exclusive responsibility would be the protection of the natural environment. It would be a key guarantee provision if the responses to the special environmental questions were always included in the decisions, along with the reasons for any divergence therefrom, to ensure that all this becomes familiar to the user of the environment and to the society. Finally, the Ombudsman for Future Generations emphasized the importance of the accessibility of environmental information. It is an important problem that as a consequence of the reorganizations, the accessibility and contents of the databases on the environment changed and a part of the institutional knowledge was lost. In 2018, the Ombudsman inquired into the issues of the reduction of the number of experts responsible for environmental and nature protection working for the Ministry of Agriculture and the enforcement of the right to a healthy environment and he stressed that the reorganizational freedom of the government was not unlimited, an adequate system of organizations was critical for the enforcement of the right to a healthy environment, and also, that the environmental interests should be taken into account in the decision-making process of any government at any time.

#### 4.2.4

##### Waste management

Goal No. 12 of the UN Sustainable Development Goals is sustainable consumption and production.

The situation of waste management is of special importance for the right to a healthy environment and for the future generations alike. The Ombudsman for Future Generations regularly monitors the situation of the public service of waste management in Hungary, he issued a policy statement after a comprehensive inquiry, in which it is identified as a key goal that this public service become a part of the circular economy, and that it should be predictable in the long term, irrespective of the state distribution of tasks or the role of the municipality. Related to the enforcement of the principle of systematic action, he reported several anomalies related to the preparation of the National Waste Management Public Service Plan. As regards the participation and responsibility of the population, it should be stressed that sanctioning tools should be replaced by preventive economic incentives. In the course of inquiring into the polluter pays principle, he established that economic incentives played an important role in waste management, selective collection systems should be developed, and the purchase of durable electronic products, as well as the reinvestment of precious raw materials into manufacturing should be encouraged.

We were requested to make comments on several draft laws from the area of waste management: regarding the changes in the waste disposal fee, the Ombudsman stressed that such fee should be paid by the waste producer.

In commenting on the decree on cross border waste transport, the Deputy Commissioner warned that based on the waste hierarchy, the utilization of waste in energetics is the last option, this method can exclusively be used in order to avoid waste disposal.

The Ombudsman agreed with the amendment of the act on environmental product fees, based on which the scope of products subject to fee payment, as well as the extent of the product fee increased. The Deputy Ombudsman emphasized that the increased income from product fees should be deposited in extra-budgetary funds, from which payments could only be made for environmental purposes.

#### 4.2.5

##### Data protection in water management

The Ombudsmen for Future Generations have always paid special attention to the laws and amendments of laws on the collection, handling, preservation and accessibility of data and information. We have an adequate amount of quality environmental information on the conditions of our waters in Hungary, however, the future of these data has become precarious. After the amendment of the law, the same rules were expected to be applied for environmental data as for personal data; i.e. these items of information should be deleted after a predetermined period of time, so these data are not recorded and managed any more. Without the continuous manageability of the data describing the quantity and quality of waters, no well-substantiated decisions can be made on the use of lands, and no proper adaptation to the changes in the condition of the waters becomes possible. It is on the basis of lengthy time series that the condition of waters in a certain region can be determined for everyday planning and official activities.

In order to resolve the issue related to data management, the Ombudsman for Future Generations turned to the Minister of the Interior with a legislative proposal regarding the amendment of data management regulations. The National Authority for Data Protection and Freedom of Information and the Ministry of the Interior gave a positive response to this initiative and the Water Act was amended by the National Assembly according to this proposal.

#### 4.2.6

##### Cooperation with social and professional organizations, as well as municipalities

The Deputy Commissioner continuously monitors how the civil society organizations can take part in the management of environmental issues, and to what extent they can use their right to participation in decision-making. The main forums and forms of cooperation are as follows:

- The Ombudsman for Future Generations created his own sub-homepage within the homepage of the Office in 2017, the English version of which is at: <http://www.ajbh.hu/en/web/ajbh-en/dr-gyula-bandi>.
- During the year, the Ombudsman gave talks at various conferences organized in Hungary and abroad, and he also acted as a patron or gave out awards at different environmental events.
- In 2018, resuming the earlier cooperation, the Deputy Commissioner took part in the investigation conducted by the Self-Regulating Advertising Corporation (Hungarian acronym: ÖRT) into environmental commercials.
- The organization of professional conferences and workshop discussions is of key importance among the activities of the Deputy Commissioner.
- At the workshop discussion on the detrimental effects of air transport, the Ombudsman for Future Generations pointed out that in the organization of air traffic, the fundamental rights to a healthy environment and mental and physical health should be taken into account, and especially night-time traffic should be reduced.
- On the occasion of the twentieth anniversary of the adoption of the Aarhus Convention, the Ombudsman organized a memorial conference through joint efforts with the Environmental Management and Law Association (EMLA).
- The Deputy Commissioner was invited to participate in the professional advisory body established by the Municipality of Budapest involved in discussing the construction of a dam at Római part, one of Budapest's most valued outdoor spaces.
- County visits are important means to establish contact, during which the Commissioner and his deputies pay on-site county visits twice a year, this year they organized professional programs in Csongrád and Komárom-Esztergom Counties.
- The Ombudsman for Future Generations continues to strive to reach as wide an audience as possible, in order to inform the public of his work. In 2018, he took part in as many as 41 press events, he gave interviews on the radio, on national and local television channels, and also, he appeared in the printed and online press.

## 4.3

### Protecting the common heritage of the nation

#### 4.3.1

##### Nature protection activities

Some of our protected natural values are exclusively owned by the state, they are a part of our national assets. During the year, the Ombudsman drew attention to the following several times: pursuant to the Fundamental Law of Hungary, it is the obligation of the owner state, in serving public interests, to ensure the preservation of natural resources and take the interests of the future generations into account. It was in this spirit that he expressed his opinion on the need to protect the Dorog limestone mine, on establishing the zones of the Hortobágy National Park, as well as on the prohibition to change the amount and qualification of the Natura 2000 areas, and he followed the construction plan for a forest railway line that jeopardizes the Csarna Valley in the Börzsöny Mountains. The Deputy Commissioner and his staff got the chance to watch the reconstruction of the water habitats and grass plots, while in the Kiskunság National Park, they could witness the successful cooperation between nature protection and forest management. On both visits, the correlations between water management and the condition of nature were given special attention in the professional exchange of ideas. In connection with the summary on the 2015-2016 implementation of the 4th National Environmental Protection Program, the Deputy Commissioner mentioned that the draft was not in line with the requirements set out in the Environmental Protection Act, as it did not contain any information on how the developments can be assessed in light of achieving the goals, and in the lack of data, one is often not aware of the status of progress.

#### 4.3.2

##### Water protection

In 2018, the Ombudsman for Future Generations and his staff commented on a high number of laws concerning waters and participated in many conferences on this topic, furthermore, they organized many workshop discussions on the protection of waters. Water is a natural resource that often satisfies conflicting needs. Conflicts exist not only between the present and the future generations but also, between the different needs expressed by the present generation. This is why the Ombudsman stressed, in each case, that when decisions on water are made, the stakeholders should be involved and those procedural guarantees which ensure that the different viewpoints are taken into account should be kept. The Ombudsman drew attention to that, although Hungary is regarded as a water superpower, access to water varies in the different regions of the country, where both the water's quantity and quality may be inadequate, so these differences should definitely be taken into account when the regulations are elaborated. It was also highlighted by the Deputy Commissioner that some of the damage caused by the waters could be prevented if land use were adjusted to the natural occurrence of waters. A colleague of the Deputy Commissioner was involved in the activities performed by the work committee on international treaties on the right to drinking water and sanitation, where it was underlined that according to the right to access to drinking water, the

minimum quantity of water required for preserving human dignity is 50 litres per day, as recommended by the WHO. At an event held jointly with the Public Law Subcommittee of the Hungarian Academy of Sciences (MTA), it was emphasized that the primary goal of declaring Lake Balaton a legal entity was to only allow the implementation of such developments affecting the Balaton and its catchment areas which were suitable for preserving Balaton as a natural value and which did not jeopardize the latter.

### 4.3.3

#### Forest protection

In 2018, the Ombudsman for Future Generations reviewed the consequences of the amendment of the Forest Act, as a result of which he initiated a norm control at the end of the year. The Ombudsman requested the annulment of those provisions which on the one hand decreased the level of protection of protected natural areas, strictly protected natural areas, Natura2000 areas, as well as the locally protected natural areas, while on the other hand, those which introduced procedural rules which may bring about such a result. He pointed out that the Nature Protection Act ensures the protection of natural values for all the sectors, and the Forest Act may not reduce this level of protection. The goal of the forest managers is determined by the primary function of the forest, this is why the primary function of the forests in protected natural areas should be one of protective nature, as in this way, the economic function of the forest will not be performed, or only to a limited extent. The amendment of the law prescribed the primary protective function only for the strictly protected natural areas, and not for those natural areas which are “only” protected, i.e. not for the majority of the forests. As a result of the amendment, the level of protection of the forests in Natura 2000 areas has also changed significantly, as it has considerably decreased the level of protection of protected species. The Ombudsman for Future Generations said that this amendment gave rise to special concerns, as it allows pushing the nature protection goals into the background in state-owned forests too, although the primary reason for the nationalization of the protected natural areas was always to attain the nature protection goals, which cannot be overridden by profit-oriented private interests.

### 4.3.4

#### Environmental liability

The Ombudsman resumed his activities related to environmental liability in 2018 as well, including the exploration of the deficiencies and contradictions of the legal frameworks. During 2018, the Deputy Commissioner held coordination talks with the representatives of economic associations, the heads of Greenpeace and the Association of Hungarian Insurance Companies on several occasions, and he also gave a talk on this topic. These coordination talks greatly contributed to achieving that the difficulties of enforcing environmental liability and the possible solutions could be accurately defined. In order to be able to develop an efficient system of liability, the operating guarantees should be clarified, and the range of available insurance products should be developed further. During the negotiations with the representatives of the insurance companies, it became obvious that the profession was ready to extend the available portfolio. The Ombudsman for Future Generations also proposed, among others, that in each case when the system of

guarantees is not adequate, the state will be obliged to prevent any further environmental damages and environmental hazards, based on its underlying responsibility required by the law. On the other hand, for a quick and efficient state intervention, financial resources will become necessary, this is why the Deputy Commissioner proposes the establishment of extra-budgetary funds for averting environmental impacts and damages. In 2019, the proposal will be further discussed by the profession and the public, the experience gained will continue to be exchanged with the ministries concerned, in order to submit this package for deliberation to the legislator.

#### 4.3.5

##### Protection of the cultural heritage

Pursuant to the Fundamental Law of Hungary, “our cultural assets shall form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.” In harmony with this, the Ombudsman for Future Generations consistently deals with the protection of the cultural heritage, including, for example, the municipality regulations on the protection of municipal landscapes, the permission to erect high-rise buildings, or landscape protection. As regards the architectural and heritage protection aspects of high-rise buildings, the Deputy Commissioner emphasized (in an earlier statement of his) that not even the risk of value loss is allowed with regard to the status of Budapest as part of the World Heritage. The legislator responded to the intensifying professional discourse and in the summer of 2018, the law on building permits was amended in order to ensure a uniform regulation for the construction of tower blocks. The changes in the institutional system, the gradual reduction of the government-level representation in heritage protection present themselves as key issues. The unfounded strategic plans of the area, the unsolved educational, vocational training and further training issues, as well as the narrowing international relations also pose problems.

#### 4.3.6

##### Protection of the built environment

The development of the built environment is related to the condition of the environment, and its protection is a part of the activities of the Ombudsman for Future Generations. The Ombudsman dealt with the issue of energy efficiency in 2018 as well, his colleagues took part in the event entitled “Are we rich enough to waste for long?” organized by the Hungarian Energy Efficiency Institute. There was a high number of individual complaints regarding the settlement planning activities of the municipalities, or building permit-related cases, based on the investigation into which the Deputy Commissioner and the Commissioner issued joint reports. In these cases, the violation of the right to a healthy environment and to legal certainty typically occurs.

As regards the law on national landscape planning adopted in 2018, the concerns expressed by the Deputy Commissioner were mainly based on the protective function that cannot be found in the plan, as well as the lack of any preliminary assessment of the potential environmental impacts. At the moment, the amendment of the act reduces the protection of the lakeside areas of the Balaton according to the principle of prevention and precaution, which is contrary to the non-derogation principle. One of the elements

in the building permits-related cases that brings up most of the problems with regard to fundamental rights is the question of the so-called priority investments. The amendments of the law on building permits weaken the guarantee elements, and in the case of those developments which are of priority importance for the national economy, the Government may set the requirements on an individual basis. The Government regularly treats these priority investments as ones that are “beyond the effect” of the relevant laws, which means that the principle of legal certainty is thus violated, as was mentioned in the Deputy Commissioner’s warning as well.

#### 4.3.7

##### Landscape protection

The European Landscape Convention was adopted by the Council of Europe in July 2000, to which Hungary joined in 2005. It is one of the key priorities of the Ombudsman to ensure that landscape protection takes its due place both in legislation and in judicial practice. The Ombudsman regards it as important to have a government decree in place as soon as possible, based on an authorization by the Nature Protection Act, which will provide rules on the protection of the character of the landscape, the natural values, the individual landscape values and the landscape characteristics. As regards local landscape protection, it is a question how and to what extent the municipal landscape handbooks have been prepared, and how the other relevant provisions of the municipalities can be enforced in the future.

#### 4.3.8

##### Air protection

Although air is not specifically mentioned in Article P) of the Fundamental Law of Hungary, it should definitely be classified as an environmental element and natural resource of this category: since clean air is the condition for human life, it is indispensable for preserving health. It is because of this that the Ombudsman for Future Generations paid special attention to the questions related to air clarity. The direction to be followed was defined by the report of the European Environment Agency, according to which air pollution causes the premature death of more than 14 thousand people in Hungary each year, which is the most serious environmental health problem in Hungary. In February, we held an international conference on air pollution caused by residential heating, at which the Deputy Commissioner urged the elaboration of a state program in which the diversity and different types of manageability of problems arising from heating would be taken into account. In November 2018, we held an international conference entitled “Air pollution caused by traffic – legal procedures available for improving air quality and climate protection”. The government and civil society experts of these different EU countries exchanged their experience on how the individual citizens and their organizations may take legal action against air pollution. In his talk, the Ombudsman called attention to that, pursuant to Article P) of the Fundamental Law of Hungary, with regard to natural resources, including clean air, “it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.” Related to the draft material on the national reduction of the emission of the individual air pollutants, the Deputy Commissioner proposed that the presentation of mutual effects be added to this document.

## 4.4

### International involvement

a) The Network of Institutions for Future Generations is a network of international relations, which was established between those national institutions of the world which represent the interests of future generations. The creation of this network was preceded by the issuance of the report entitled “Intergenerational Solidarity and the Needs of the Future Generations” by the UN Secretary General in 2013, in which attention was drawn to the significance of fairness between the generations and to that of those eight national institutions of the world, including the Secretariat of the Ombudsman for Future Generations of Hungary, which uniquely and institutionally represent the interests of the future generations. The secretarial responsibilities of this Network are fulfilled by the Secretariat of the Hungarian Ombudsman for Future Generations. During the year, two topics were given special emphasis: finding out what legal conditions and public participation were necessary for declaring a natural value a legal entity was one of these, while the other one was the national implementation of the UN Sustainable Development Framework. Furthermore, the annual report of the Network was prepared, which contains an overview of the relevant international initiatives and developments.

b) In April, the previous Israeli Commissioner for Future Generations, the Secretary of the National Council for Sustainable Development, a judge from the Constitutional Court, as well as a colleague of the Ombudsman were invited by the Deputy Commissioner to take part in a panel discussion as part of a “tea with the Ombudsman” event entitled *Institutions and Leadership for a Sustainable Future*, which was open to the public.

c) *The Director of the European Environment Agency (EEA) paid a working visit to the Deputy Commissioner in June, the attendants of which event included the director of the Directorate for Environmental Sustainability of the Office of the President of the Republic, the Secretary of the National Council for Sustainable Development, the Hungarian member of the EEA Management Board, as well as two of the staff members of the Secretariat of the Deputy Commissioner. At the meeting following the work discussion, the director gave a speech to the staff members of the Office on the operation of EEA and the key questions of international environmental challenges.*

d) At the request of the German Council for Sustainable Development, the Ombudsman for Future Generations took part in a panel discussion of the 26th year conference of the *European Environment and Sustainable Development Advisory Councils*, in the panel entitled “Environmental Governance: Rethinking Institutions and Policies for Achieving Change”.

e) The Secretariat of the Ombudsman for Future Generations was invited to the 11th International Budapest Human Rights Forum organized by the Ministry of Foreign Affairs, where the head of the Secretariat explained the role of the Secretariat in the preparation of the Voluntary National Review.

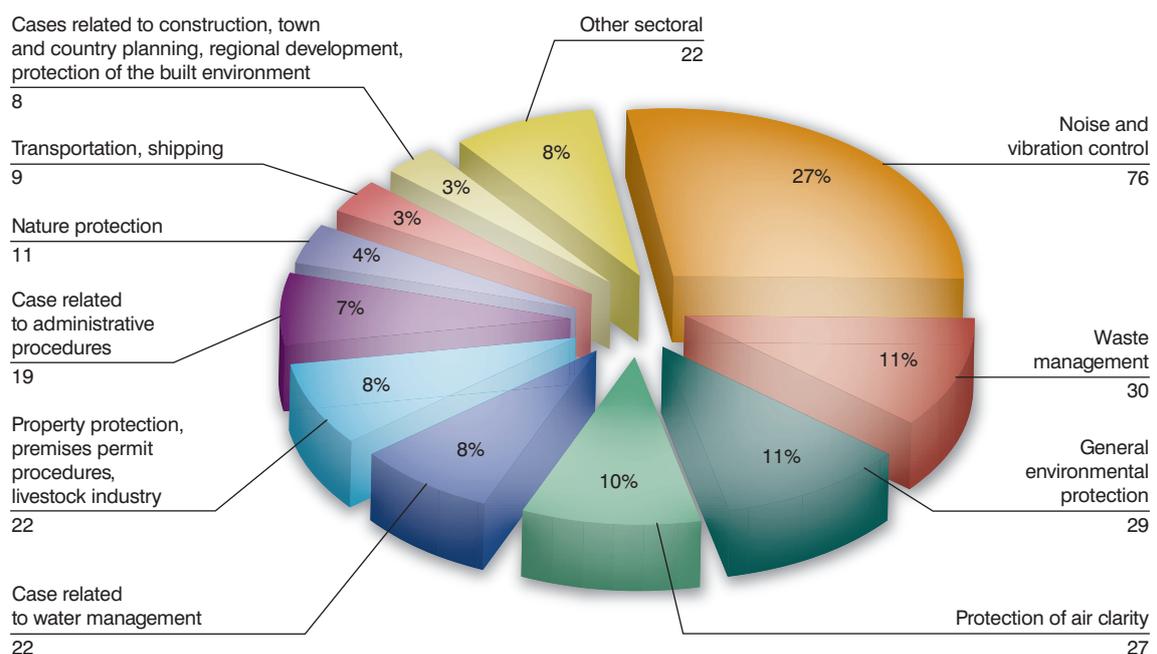
f) Cooperation with FAO on the topic of food waste, including professional support provided for the translation and dissemination of the education material package written by FAO for children aged 5-7 on responsible consumption and food waste reduction.

g) The Ombudsman for Future Generations participated in the following events as the deputy of the Commissioner for Fundamental Rights (see more details on these events in Chapter 1.2 of the report on the international relations of the Office): annual general meeting of the Global Alliance of National Human Rights Institutions, Geneva, Switzerland, February; annual conference of the European Network of Ombudsmen organized by the European Ombudsman, March, Brussels, Belgium; he presented the fundamental rights-related activities of the Office with several of his colleagues to the Vienna-based Fundamental Rights Agency in April; in September, he took part in the meeting of the Board of Directors of the European Ombudsman Institute in Vienna, Austria; in October, he attended the anniversary conference of the International Ombudsman Institute in Vienna, Austria again; and in September, he took part in the meeting of the Ombudsmen of V4 (Visegrád Group) countries in Gdansk, Poland.

## 4.5 Environmental complaints

Pursuant to the Act on the Commissioner for Fundamental Rights (Ajbt), the Deputy Commissioner for Future Generations participates in the investigations conducted by the Commissioner for Fundamental Rights. In the period of the report, there was a joint investigation affecting many fields of environmental law in progress, the proportions and topics of which are illustrated in the diagram below:

*The types and topics of the complaints, petitions and inquiries launched ex officio in 2018*



# 5.

## Statistical data

### 5.1

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

In 2018, citizens filed 4990 submissions with the Commissioner for Fundamental Rights. Of these, we finished 4023 cases.

The overwhelming majority of these cases, i.e. 583 submissions were complaints about the criminal procedure, the prison service and the police proceedings. The second place in the list was taken by the complaints concerning the Ministry of Human Capacities on social, labour, educational and health care issues (532). The next large group was made up by civil law types of cases (522), including complaints on contractual pension and health insurance cases, as well as foreclosure. The number of public interest disclosures was 367 this year again. The Commissioner for Fundamental Rights places special focus on complaints regarding children's rights, family law and guardianship. He investigated into 314 submissions on these subjects. As usual, the cases related to municipalities also generated many complaints (259), including complaints on housing, parking, transport and urban development. In as many as 271 cases, the Commissioner was invited to provide comments on laws, or to evaluate critical remarks on laws from a constitutional aspect. There were as many as 238 complaints on environmental issues submitted to the Ombudsman for Future Generations. The number of submissions specifically concerning the rights of national minorities was 213. Please, find the detailed analysis of the further submis-

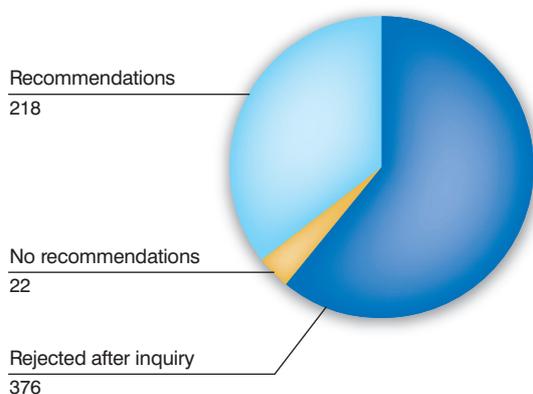
Distribution of finished cases by case types	
Criminal and law enforcement cases, police cases	583
Social, labour, education and health care	532
Civil law case, pension and health insurance, foreclosure	522
Other cases	434
Public interest disclosures	367
Cases related to children's rights, family law, guardianship	314
Comments on laws, critical remarks on laws from a constitutionality aspect	271
Municipality- and other authority-related cases	260
Environmental cases	238
Cases of nationality rights	213
Cases related to public utility providers	154
Cases related to financial institutions, taxes and duties	135
<b>Total</b>	<b>4023</b>

sions from those who belong to various communities of national minorities in Hungary in Section 4 of the report. 154 complaints on public utility providers were filed with the Commissioner for Fundamental Rights, while cases related to financial institutions, tax- or duty-related matters were brought to the attention of the Commissioner 135 times. The 434 cases listed as 'other' belong to one of the further case types. The table shows the complaints received in the individual case types.

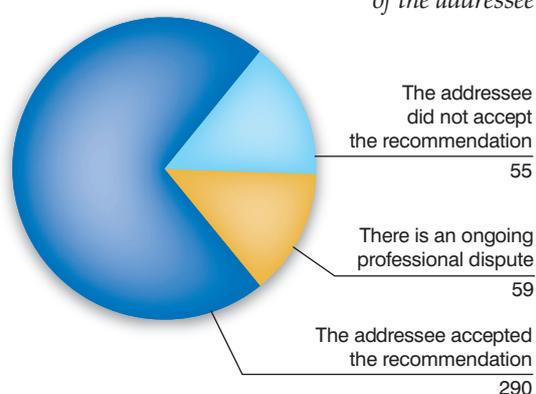
We had to reject the majority of the submissions, i.e. 2326 complaints due to the lack of competence, while we had to terminate the procedure in as many as 1014 cases. We forwarded 115 complaints to the competent authorities.

The Commissioner was invited by the legislators to provide preliminary comments on laws in 152 cases. In 2018, we conducted investigations in a total of 616 cases, of which 376 were closed without preparing a report.

*Complaints investigated into*



*Recommendations by the response of the addressee*



119 reports were prepared for the 240 independent submissions completed with a report, in which we made a total of 404 recommendations. Of these, our proposals were accepted by the addressees of the recommendations in 290 cases, while in 55 cases, they were rejected. When the data of this report were closed, there was an ongoing professional coordination or exchange of opinions in 59 cases.

## 5.2

### Customer services report

Customer service tasks are performed by two organizational units of the Office. In 2018, the Information Service received 11,738 inquiries from citizens over the telephone. 2396 clients were heard at the Complaint Office, based on appointments. In 2018, clients visited one of the customer units of the Office on a total of 14,134 occasions.

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	
6435	5303	906	428	456	606	14 134

