

**ACTIVITIES OF THE COMMISSIONER FOR FUNDAMENTAL  
RIGHTS REGARDING VULNERABLE GROUPS IN HUNGARY**

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## PAPER ABSTRACT

Protecting the fundamental rights of the citizens and every human being in one country is more in the focus of attention in a time of need and uncertainty, in the time of the financial crisis when intolerance toward diversity and tensions between ethnic groups may increase. The minorities and vulnerable groups are more affected by the consequences and influences of the insecure economic environment. Therefore, the human rights organisations, bodies and agencies have an increased role and duty to protect the fundamental rights of the persons affected and in need. The Ombudsmen hold a special responsibility, who act as a civil mediator and can raise public awareness for certain troubling situations as well.

In Hungary, important and essential changes have been occurred by the adoption of the new Fundamental Law of Hungary in April 2010. The new institutional framework provides a more effective and proficient way of work and protection of fundamental rights of vulnerable groups in Hungary. The mandate of the Commissioner has been enlarged by new competencies protecting children's rights; national minorities, people hit by disasters and environmental damages, pollution, and socially marginalised as homeless persons. Furthermore, the Hungarian government's intention is to give the new Office the task of being the control mechanism of the UN Treaties and Conventions in Hungary on the fields of OPCAT; people living with disabilities and on children's rights issues.

Since the start of my mandate as Commissioner since 2007, I have launched a new working method related to vulnerable groups and social problems. We determine every year what topics are especially important for the society and the enforcement of rule of law and have a particular significance from the point of rights and freedoms. Therefore, the projects for 2012 are "the child-friendly justice", which is the topic of the thematic year of the EU; the "losers of the crisis- in the trap of the incomplete paragraphs"; and one project is on the "dignity of labour vs. new law on working relations". We focus on these subjects generally in Hungary; moreover we also concentrate on the marginalised border-region close to Slovenia and Austria, where we investigate environmental damages and cross-border garbage-issues; the rights of the local Slovene minority, and issues related to welfare, especially cases of handicapped people, whom are sent to an old-type huge institution in a small town far from Budapest, where mentally-ill people are located as well. Our previous projects have also included the homeless, the handicapped and patient's rights, the migrants and prisoners', as well as the children's rights; and the problems related to the rights and recuperation of the biggest industrial disasters of Hungary in 2010.

## **Activities of the Commissioner for Fundamental Rights Regarding Vulnerable Groups in Hungary**

The ombudsman institutions in Europe and elsewhere have the right and duty to focus on maladministration and different human rights issues in the 21st century. Freedom, Equality and Solidarity were the 'classical value triad' in the French Revolution of 1789 and form the basis for mankind for its emancipation from hierarchy, inequality and tyranny. The Universal Declaration of Human Rights and other UN and international human rights documents on rights and freedoms and on their implementation, (e.g. the 'Paris Principles') form a considerable range of human rights issues on the agenda of ombudsman institutions all over the world. It is the character of the given institution's general or special mandate, maladministration and/or human rights, whether it is bound to complaints or not, reactive and/or free to launch *ex officio* inquiries which determine the 'window of opportunity' for the given institution to focus on the special human rights issues of the different vulnerable groups.

In this paper we try to give the profile and development of the Hungarian ombudsman institution based upon the experience since its establishment in 1996. Hungary, as a post communist country, shared the fate of others during the authoritarian decades in the Eastern Bloc from the Second World War to 1989, an era of non-violent revolutions of the 'Third Wave' of democratization (Samuel P. Huntington:1991), *The Third Wave. Democratization in the Late Twentieth Century*. Norman: University of Oklahoma Press). However, the fast change to constitutional democracy did not mean freedom and equality all of a sudden. Old inequalities persisted and new ones came into being during the process of democratization, transition to market economy, the creation of a new welfare state and Europeanization. The post-communist democracies facing the new challenges established ombudsman institutions to protect citizens against maladministration, to act as messengers of 'good administration' and at the same time as defenders of human rights.

These difficult tasks were carried out based upon the experience of established democracies and recommendations from the UN and other relevant international organizations, in the case of the post-communist Europe especially the European Union, the Council of Europe, especially its Venice Commission and OSCE. However deep was the influence of these already existing organizational forms and methods, there were many innovative attempts in

post-communist Eastern Europe at renewing the model of the ombudsman institution and its activities towards vulnerable groups. The definition of 'vulnerability' itself was also redefined in his region; to the already known list of children, women, handicapped persons and patients, as well as homeless people, national minorities were added owing to the multi-ethnicity of the region, as well as refugees. The Hungarian ombudsman institution included an independent commissioner for ethnic and minority rights from 1996 until 2011, when the task was assigned to a specialized deputy of the general human rights commissioner.

As of 2007, I have been elected to the general human rights Commissioner in the Hungarian ombudsman system. My innovative approach was based on my experience as a researcher and team leader in different fields of social sciences. My approach is to select certain conflicts or problems as a leading theme for a calendar year. The activities of the office are based on the assumption that the different vulnerable groups may not all and always be treated with the same energy and dedication due to the scarcity of the resources of the Hungarian institution. On the one hand, the relevant Act of Parliament obliges the ombudsman institution to inquire into each and every complaint so every issue coming to the institution as an input is given attention. On the other hand, we had to realize that the well-known cases and causes of vulnerability did not always produce a relevant number of complaints. In Hungary and elsewhere we face the phenomenon of the '*reverse pyramid*', meaning that the most vulnerable groups of society are less 'assertive' in the expression of their needs: according to our analysis the complaints of the more well to do middle classes dominate the picture. Using the metaphor of the reverse pyramid, the bottom is silent and the upper levels are more eloquent and expressive regarding their problems. We have to turn that pyramid upside down, which is a slow and demanding procedure, taking much time and resources. To realize this strategy we have developed certain methods and techniques, which I will shortly enumerate. Of course, these are not new in absolute terms, they have been used in Hungary and elsewhere before, but their strategic combination produced national and international attention, which is partly the reason why I have been invited to speak in this panel of the World Conference.

#### The project method

Focusing on the selected group, we choose an appropriate method to have an input from the group or its members for the inquiries based on complaints or started *ex officio*. We use local or special hearings as in the case of the 'red sludge catastrophe' (red sludge is a side product of aluminium production, it was collected in a huge basin, broke through the dam

unexpectedly and caused 10 human deaths, many injuries and the loss of the homes and properties of hundreds of people, causing huge damages to the public in October 2010 in Western Hungary). We use the inputs from social workers in the case of homeless people, of teachers and parents' associations in the case of schoolchildren, of victims' associations in the case of the ill and of disabled people. We go beyond the individual complaints and include as plaintiffs as well as consultants NGOs, different civil society and professional associations. This way the ombudsman institution is becoming a mediator on the selected policy field between different NGOs and governmental as well as parliamentary organs like the committee of health or of education of the Hungarian Parliament. The appearance of a 'new player' in the field may accelerate new thinking and issues which have been looked upon before the ombudsman's intervention as fiscal issues or issues of employment will be considered, due to our activities, as serious maladministration and/or human rights issues. The complainants and their associations will be provided with a new vocabulary based upon international and national human rights instruments. This way the ombudsman institution may become an accelerating factor in the overall process of 'human rights revolution' (Michael Ignatieff(2000), *The Rights Revolution*. House of Anansi Press Limited.Toronto.)) or of 'taking the rights seriously' (Ronald Dworkin(1978), *Taking Rights Seriously*. Harvard U.P. Cambridge.Mass.) in regions and countries where civil society is less developed and, because of the scarcity of resources and of experience, is unable to organize itself for public articulation. Our method includes a series of meetings, discussions with the actors in the field and a concluding publication containing the material of the inquiries, the former Hungarian and European ombudsman's practice, and relevant international documents or relevant social and legal studies in the field. On average, we launch three or more projects in a calendar year; some are more comprehensive, than others. Financing is beyond the budget provided by the government, so we mobilize special resources from governmental organizations and from the NGOs, which cover the costs of publication and dissemination, while the inquiries themselves are carried out within the framework of the normal duties of the staff. I have to emphasise that my colleagues are enthusiastic and dedicated to project work, they consider this type of work efficient and fruitful and they certainly devote lots of unpaid efforts to activities related to the projects.

*The main task of the Parliamentary Commissioner for Civil Rights is to inquire into any violations of constitutional rights and to initiate general or particular measures for their redress. The Ombudsman is solely accountable to Parliament. As for the legal status of the*

Ombudsman, in conducting proceedings he has to be independent and is subordinated only to the Constitution and Acts of Parliament. The Ombudsman enjoys the same immunity as Members of Parliament.

Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights, when describing the competency of the Ombudsman, states that anyone can turn to the Parliamentary Commissioner if, in his/her assessment an authority or organ performing public service has violated the fundamental rights of the person presenting his/her submission, provided the available opportunities of legal remedy available in public administration have been utilised with the exception of the judicial review of a public administration ruling, or if no legal remedy is ensured for the complainant.

As Parliamentary Commissioner I launched a new working method and way of thinking after my election in September 2007. I *determine every year what topics are especially important for society and for the enforcement of the rule of law, and have a particular significance from the point of view of rights and freedoms.*

Within these defined fields, I initiate special projects which are given particular focus and consideration within the Ombudsman's Office (initiating particular inquiries, etc.), in the media and public opinion.

Since there is no independent parliamentary institution for the protection of the rights of children, the Commissioner for Civil Rights operates during his whole mandate also as an ombudsperson for children's rights.

The so-called 'Human dignity' projects are as follows:

- Human dignity of the homeless (2008);
- Rights of people living with disabilities (2009);
- Dignity of the elderly (2010); and
- Dignity of people in detention (correctional institutions and refugee camps; 2012).

There were projects on children's rights every year, due to the fact that in Hungary there is no specialized commissioner for children's rights:

Rights awareness of children (2008);

Violence against and among children (2009);

Children's rights within the family and of children without a family (2010)

Children's health care (2011);

Child-friendly justice (2012).

Beyond that we had every year selected special issues as projects:

Freedom of demonstration (2008);

Free movement and citizen's rights in the transportation system (2009);

Financial autonomy of citizen as an issue of financial law (2010);

Rights of citizens and disaster management (2011).

Let's make a short introduction to the findings of our projects from the last year following a short summary of the present 2012 projects.

### **PROJECT ON CHILD HEALTHCARE, 2011**

The task of the Parliamentary Commissioner for Civil Rights' is to inquire into abuses affecting the constitutional rights of children whenever he becomes aware of them and to initiate general or specific measures for their redress. Since there is no special ombudsman for children's rights in Hungary the general ombudsman acts as one on the basis of the Child Protection Act of 1997.

Within the framework of the Children's Rights Project each year the Commissioner defines a special area of interest: rights awareness-raising among children in 2008, violence against children in 2009, children in care in 2010.

In 2011 the ombudsman concentrated on the health of the children. According to the constitutional right to health, and to Article 24 of the UN Convention on the Rights of the Child (UN CRC), every child has the right to the highest attainable mental and physical health.

The special issues to be examined were:

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

#### *Inquiry into child prostitution*

The sexual exploitation of children is not only a real danger in every country, but it means a form of cross-border crime, too. The child protection alert system does not respond adequately to the suspicion of sexual abuse and the evidence arrives usually only delayed. The system could fight neither against child prostitution, nor for the protection of children properly because there is no internal cooperation, professional guidance or rules of procedure – stated the ombudsman in a comprehensive *ex officio* inquiry's report. Another *problem is that the police handle child prostitutes as perpetrators, not as victims*. The ombudsman does not approve of the hesitation, inactivity and lack of knowledge of professionals. The report states that a mere suspicion of abuse is already a good reason to initiate measures with child protection actors or to look for the reasons of risky behaviour.

*Those mostly at risk are 14-17 years old girls who live in disadvantageous financial and social circumstances.* Generally, there is no strong family behind them and most of them have been victims of sexual violence perpetrated against them previously.



The ombudsman requested participants in child protection alert system (police, family care centres, child protection services) in Budapest and in six counties to share their experience.

#### *Inquiry into school healthcare services*

The ombudsman initiated a comprehensive inquiry into access to different school health care services provided by school nurses, school doctors and school psychologists. He requested answers not only of heads of (private-, state-, church-owned) schools in Budapest and in different counties, but also of the ministries.

It is clear that there is no 'minimum measure of providing healthcare services', e.g. it is not regulated how much time they need to spend in schools, where is the border between basic service and special services, etc. Moreover, the professionals in school healthcare are underfinanced; they are strongly overburdened and often burned out; and there is a considerable lack of communication and cooperation among parents, pupils and the professional staff.

The ombudsman noted as a significant problem that *under the current legislation it is only a possibility for schools to employ school psychologists and child-protection professionals and not necessarily full-time ones, with the result that schools without any of the above-mentioned professionals* have a difficult task to prevent aggression and conflicts in schools, violence against and among children, and to help also the teachers and other staff.

#### *Inquiry into sexual abuse of children in care*

Available data suggest that one in five children in Europe becomes a victim of some form of sexual violence. It is estimated that in 70% to 85% of cases, the abuser is somebody the child knows and trusts. Child sexual violence can take many forms: sexual abuse within the family circle, child pornography and prostitution, corruption, solicitation via the Internet and sexual assault by peers. Sexual violence is still the most invisible form of abuse, and children in care or in other categories of risk are more vulnerable.

In his *ex officio* inquiry the ombudsman requested information from child care institutions, the head of the National Police, the Prosecutor General, the relevant ministries, the European Network of Ombudspersons for Children, and NGOs and external experts of the field.

*The report states that it is a serious problem in all its forms and it exists in care institutions too, though only a few cases will be published, and few children ask for help, due to many reasons: e.g. the lack of sensibility of child protection alert system, the lack of a complaint mechanism, the low level of awareness not only of rights, but also of the inviolability of the body, and the different forms of abuse.*

There is a great need to give professional guidance and to implement protocols and educational awareness programmes on child sexual abuse.

*A discrimination case:*

A child who was infested by hepatitis B (HBV) was sent home from the kindergarten for fear of an epidemic. Though the child had a medical certificate proving that he presents no health danger to the community, the head of the kindergarten insisted on a special medical report issued by an epidemiologist. The relevant Education Authority declared its lack of competence on this matter and asked the parents to turn to the mayor, who referred again to the interest of the majority compared to the single interest of the infected child.

After examining the case, the Ombudsman stated that the head of the kindergarten acted in discriminatory way by sending the infected child home. According to the official opinion of the health authority, no isolation was justified in this case.

## PATIENTS' RIGHTS PROJECT, 2011

The Ombudsman launched a comprehensive project on the issues of the right to health and on the functioning of the healthcare system. The project refers to the findings of the former ombudsman practice relating to patients' rights and to the European and international standards and requirements as well.

### *The Care of HIV patients in Hungary:*

*The care of HIV patients is not satisfactory in the country.* Although the new legal regulation appointing the responsible institutions came into force in January 2010, in reality patients can only find an appropriate social- and healthcare in Budapest, and *no special care in the countryside.* The local institutions appointed were not even informed on their new tasks and they were not capable at all to fulfil their new duties even several months after the regulation was enacted. Although the new regulation aimed at ending geographical discrimination, the situation has not changed in the practice. The Ombudsman called the decision makers' attention to the fact that they should have done a performance analysis study during the preparation phase of the regulation. *The present situation puts an extreme burden on this vulnerable group of patients:* therefore steps must be taken to improve their situation and possibilities.

### *The rights of patients: tasks not performed, uncertain legal background, weakening protection*

The protection by the authorities of patients' rights is not ensured either from a formal or a contents point of view – underlines Máté Szabó. According to the Parliamentary Commissioner for Civil Rights his inquiry has not uncovered any such exceptional

circumstances that would justify a decrease in the level of protection already achieved in the protection of fundamental rights.

On the basis of complaints, the ombudsman started a comprehensive inquiry in order to find out whether, after the changes of the relevant legislation, the rights of those availing themselves of healthcare services can be enforced. The Commissioner has come to the conclusion that *the present system, which was modified several times, is not suitable for replacing the former rights protection mechanism of the authorities*. The report emphasises that in *the absence of procedural guarantees and of legal remedies* the public health administration organs of the counties may 'cherry pick' among the complaints, may conduct proceedings in some cases, and not in others, which presents the danger of an arbitrary and unpredictable application of the law.

The final conclusion of the Ombudsman's analysis, which has covered the domestic regulation and practice as well as the international requirements, is the following: in the interest of an effective enforcement of the rights of patients, *it is necessary to set up and operate an institution of a non-judicial type which has the competence of authorities, is impartial, has an independent legal status and specialised expertise, examines the individual complaints of patients, and whose decisions may be contested in court*.

The report deals with the present status and legal situation of representatives of patients' rights as well. In this respect the Commissioner underlines that the complete uncertainty and the lack of regulation of the legal status of representatives of patients' rights – a legal institution having the nature of a guarantee from the point of view of information and representation – results in an improper legal situation. In his report, the ombudsman points out that a high-level protection in the field of patients' rights is in the public interest. Consequently, the Ombudsman has made several proposals of a legislative nature to the Ministry responsible for healthcare and has requested the national medical officer to review the legal practice.

#### *The Ombudsman on health care provision to patients with a disability*

In spite of increased financing, the question of dental care provision to autistic patients and patients with other disabilities is not resolved, and there are important regional differences.

The Parliamentary Commissioner has requested the help of the Minister responsible for national resources.

*Although financing has been increased, it is still inadequate to meet the needs in terms of equipment, the necessary infrastructure for complying with minimum requirements and the additional time required for the dental treatment of persons with disabilities.* It is partly for this reason that for these patients capacities are under-utilised, although the legal background for the financing is in place – says the report of the Ombudsman’s inquiry.

The Parliamentary Commissioner for Civil Rights considers that it would be necessary to designate health care providers that meet the professional operational conditions to satisfy the special needs of medical provision, including dental treatment, of persons with disabilities. It is a further problem according to the Commissioner that *doctors, dentists and other persons working in the health sector lack the necessary skills to communicate with patients living with disabilities or to treat them appropriately.* Therefore, the Ombudsman has called attention to the importance of introducing more information on autism and other disabilities in the undergraduate programme and specialist training, as well as in the system of further education.

The Ombudsman has requested the Minister responsible for national resources to take the necessary measures to eliminate regional inequalities in health care provision in order to ensure better access to health care provisions. He also proposed to the Minister to review existing contracts for the financing of dental care and designate, in cooperation with the National Health Insurance Fund, new healthcare providers, and to ensure a financing that gives the right incentives for service provision.

*Alarming conditions in the central hospital of the penitentiary system – the Ombudsman requests the help of the competent Ministries*

The building has not been renovated for fifty years. You have either heating or hot water. The still usable hospital wards are overcrowded. In the one and only elevator one carries sometimes the food, sometimes the dead. The Parliamentary Commissioner for Civil Rights has conducted an inquiry into the conditions of the central hospital of the penitentiary system in Tököl and has drawn up a long list of improprieties.

Máté Szabó continued the series of inquiries of prisons in the Central Hospital of the Penitentiary System, in the special institution where the coordination of preventive and curative as well as special penitentiary activities requires significant attention and the cooperation of different professional fields. This is often hindered by the fact that the hospital, while performing national tasks, is not independent from a financial and management point of view: it operates as part of the Juvenile Correctional Institute operating in its vicinity, which does not meet the requirements of the rule of law.

In conclusion, the Parliamentary Commissioner for Civil Rights has found that *there is a simultaneous infringement of the principle of the rule of law and of the rights to human dignity, to fair proceedings and to a healthy environment*. He was satisfied, however, that detained persons had no complaints at all about the lack of personal contacts. What is more, fathers may visit their children born in the prison-hospital every Sunday, which is an example of the realisation of the right to human dignity and to the protection of marriage and family.

Máté Szabó informed the Minister for Public Administration and Justice of the above, proposing to him, among others, to *issue binding regulations on the number and the conditions of detainees to be held in one single cell, as well as the security standards of prison-vans where prisoners are transported*. He requested the Minister of the Interior to consider the complete renovation and reconstruction of the hospital (first scheduled for 2002) as an urgent priority task. The Minister should think over the possibility of making the hospital independent of the Juvenile Correctional Institute also in the performance of its financial and management tasks, and as a consequence increase the number of posts for supervisory and educational staff, and create a post for a psychologist in the prison-hospital. The Ombudsman has sent his report to the National Commander of the Penitentiary System with the request to install medically approved sports equipment in the prison-yard, to have the heating system repaired and to ensure the accuracy of the central register of the penitentiary system. With the general director of the hospital the Commissioner has initiated that he should *take steps to ensure that detainees under medical treatment have more varied possibilities to spend their free time*.

## DISASTER MANAGEMENT PROJECT, 2011

According to the constitutional doctrine elaborated by the Constitutional Court of the institutional life protection obligation of the State, the State has an institutional life protection obligation towards its citizens, hence it is bound to set up and operate the necessary legal institutions and a state and public administration organisation in accordance with its current load bearing capacity.

Disaster management generally becomes the centre of attention of the public and of the scientific community when a devastating natural or industrial disaster occurs and the topical questions of prevention, effective management and reconstruction are raised again.

The proactive action of the Commissioner, however, makes it possible to conduct a comprehensive review of this subject-matter. Proactive action is not without precedent, this is partly done by way of comprehensive, already proven proceedings started *ex officio* since according to the legal regulations there are ample possibilities to conduct such proceedings.

### *Presentation of the disaster management project*

During the past ten years the ombudsmen repeatedly encountered the improprieties related to the performance of the activities of State, most often of the authorities, in the field of the prevention and forecasting of natural disasters, and the relief and elimination of their consequences. In the interest of remedying these improprieties they have drawn up several measures, recommendations and legislative proposals.

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

In the light of the above, the Ombudsman examined in 2011, within the framework of an autonomous fundamental rights project, among others, the following range of subjects: follow-up inquiries of previous comprehensive ombudsman inquiries, so for example on the

fire brigades; psychological services provision at the law enforcement organs; cooperation of law enforcement and public administration organs and of local governments during emergencies and thereafter; professional management in the event of disaster situations; direction and organisation of the fire brigade and its communications with the organisation for disaster management and with civil protection; timeliness of intervention of certain emergency services and the existence of technical resources for rapid and expert intervention; practice and legal regulation of the mitigation of damages and of repairs and reconstruction, as well as the procedural guarantees related thereto, and certain questions of the reconstruction by the State in the aftermath of the red sludge catastrophe.

*Findings of the Ombudsman's inquiries into the handling of disaster situations*

The Parliamentary Commissioner for Civil Rights examined disaster management from a fundamental rights protection point of view first starting from the issue of protection against floods and internal waters (on agricultural lands). In the course of his inquiry he found that, taking into consideration the rules of law in force at the time of the inquiry, the legal regulation needs revision. In general the Ombudsman pointed out that legislation relating to the prevention and management of disasters should, as far as possible, be unified, simplified and their number should be reduced. This applies especially to legislation relating to the management of disasters. As a result of the subject-matter of the regulation it is not possible to avoid a multi-level regulation affecting the competence of several organs of public administration, however, in such legislation one should as far as possible avoid a parallel regulation of identical subjects or regulations relating to the same subject which are different or contrary to each other.

The Ombudsman's reports also indicate that in the event of a disaster a very complex management mechanism operates which is regulated in multiple regulations. Though relations between the several levels and special fields are partly regulated, but this does not help in every respect the rapidity and effectiveness of the application of the law which is indispensable in such situations. Regular and real training would be necessary for mayors and their specialised staff for them to be able to perform their tasks to the full.

The report on the deaths occurring in the course of the firework on 20 August 2006 mentions also the issue of informing the public in disaster situations. Informing the public was



and is a legal obligation of the disaster management organs, therefore such information must be given in a professional way and using such terminology which is in line with the terminology used in weather reports. Citizens can only adequately cooperate in the prevention and management of situations of danger or of disasters if they are aware of the given threat. For this purpose we need appropriate information material which gives comprehensible information to the public.

This year we introduced a new type of 'Dignity project' following the changes of the ombudsman institution according to the new Hungarian Fundamental Law and the Act on the Commissioner for Fundamental Rights of 2011 which entered into force on 1 January 2012. According to the new regulation, the Hungarian ombudsman institution which was based on four different ombudspersons, general, data protection and freedom of information, ethnic minorities and environment; became a unified institution with two specialized deputies for nationalities and environment, while the data protection and freedom of information is now supervised by a new independent agency. To integrate our resources with those of the environmental and the nationalities offices now forming part of the unified institution, we developed a comprehensive new project which contains both new pillars of the renewed office:

#### 'Losers of the Crisis – in the Captivity of Legal Regulations'

The basic idea is that the economic and fiscal crisis that hit Europe and Hungary severely is a stress for the human rights system and the administration as well. The law should help citizens and citizens' groups to react in a flexible way to face the crisis – the legal system, however, reflects the 'world of yesterday' and sometimes it is the legal regulations, institutions and procedures themselves that constitute the barriers against an up-to-date and efficient individual and collective crisis management. We have chosen some subfields in our relevant fields to show these problems: homelessness and welfare; hate crime and hate speech; garbage management and energy regulation. We have started to identify a specific region that we have not covered in our former projects and where we are able to inquire into a local community and its administrative network. We consider every aspect of our project according to the local situation, which does not present the very same problems as the central project, but related ones. Based upon former ombudsman inquiries we have found a local area near the common Austrian, Slovenian, Hungarian border. The biggest psycho-social

institution of the country operates here with 800 patients: it should be decentralized and transformed into small, transparent, community-type units. There is also environmental pollution coming in the river from Austria, plus a plan for a huge waste incineration plant on the Austrian side of the border; and it is the centre of Slovenians in Hungary where their institutions of culture and education are seated. We will follow the project both on central and local levels and try to synthesize both types of findings.

References:

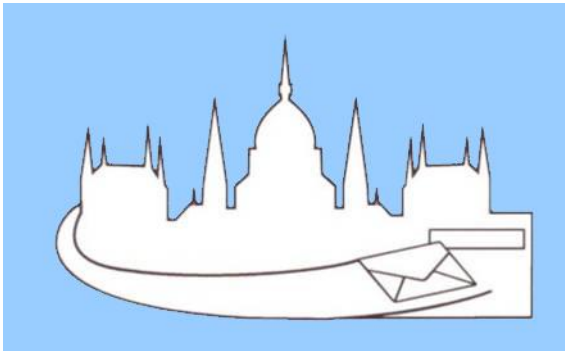
[1] Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights

[2] Act CXI of 2011 on the Commissioner for Fundamental Rights

[3] The Basic Law of Hungary

(It was adopted by the Hungarian Parliament at its sitting on 18 April 2011; and entered into force on 1<sup>st</sup> January 2012)

# Protecting ethnic minorities, immigrants, and other vulnerable groups in times of economic uncertainty



The Office of the Commissioner for  
Fundamental Rights



**Prof. Dr. Máté SZABÓ,**  
The Commissioner for  
Fundamental Rights, Hungary

# Hungary in Europe and the World (cca. 10 million inhabitants)

## Accession of Hungary to International Organizations:

The UN: 1955

OSCE: 1975

Council of Europe: 1990

OECD: 1996

NATO: 1999

EU: 2004

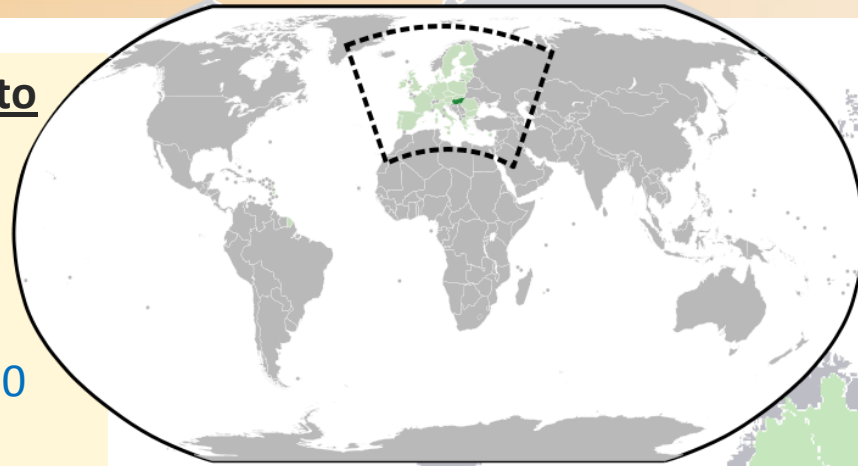
## To Treaties/Conventions:

Geneva Convention  
relating to the Status of  
Refugees: 1989

Convention on the Rights  
of the Child: 1991

CRPD: 2007

OPCAT: 2012



# FOREIGN VISITORS ON OUR WEBSITE:

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

Country/Territory	Visits
<b>Visits (Total)</b>	<b>44,365</b>
% of Total: 100.00% (44,365)	
1. <a href="#">Hungary</a>	41,066
2. <a href="#">Germany</a>	467
3. <a href="#">(not set)</a>	351
4. <a href="#">United Kingdom</a>	275
5. <a href="#">United States</a>	239
6. <a href="#">Belgium</a>	222
7. <a href="#">Austria</a>	218
8. <a href="#">Romania</a>	139
9. <a href="#">France</a>	127
10. <a href="#">Netherlands</a>	85
31. <a href="#">Australia</a>	19
81. <a href="#">New Zealand</a>	0

# The Hungarian Ombudsman System:



## History-Generations:

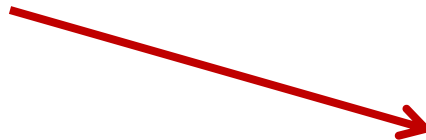
- **1995:** First Human Rights ombudsman starts her work:  
**1995-2001:** Dr. Katalin Gönczöl
- **2001-2007:** Dr. Barnabas Lenkovics
- **2007- 2012:** Prof. Dr. Máté Szabó

## Legal Background:

- **1993:** Adoption of the Act on the Parliamentary Commissioner for Civil Rights
- 2001: CC decision on the scope of authorities the Ombudsman can examine (*courts are excluded*)
- **2007:** Amendment to the Ombudsman Act: Commissioner for Future Generations established
- The Basic Law of Hungary entered into force on 1<sup>st</sup> January 2012. *Article 30* of the new Basic Law contains new provisions on the unified ombudsman system with two deputies.
- The new Act on the Commissioner for Fundamental Rights (cardinal law: CXI/2011)

# Changes of the Hungarian Ombudsman System in 2012:

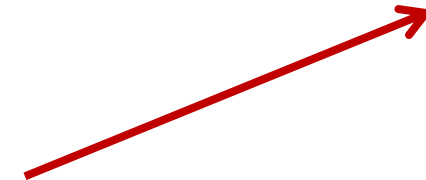
The Office of the Parliamentary Commissioner for Civil Rights



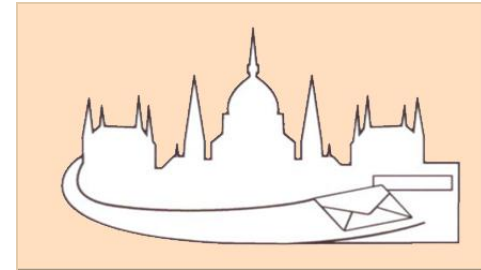
The Office of the Parliamentary Commissioner for Future Generations



The Office of the Parliamentary Commissioner for National and Ethnic Minorities Rights



The Office of the Parliamentary Commissioner for Data Protection and Freedom of Information



**The Office of the Commissioner for Fundamental Rights**

*One Commissioner and two Deputies: one responsible for interests of **national minorities** living in Hungary; and one responsible for the protection of the interests of future generations, e.g.: **environmental law***



**The Hungarian National Authority for Data Protection and Freedom of Information**

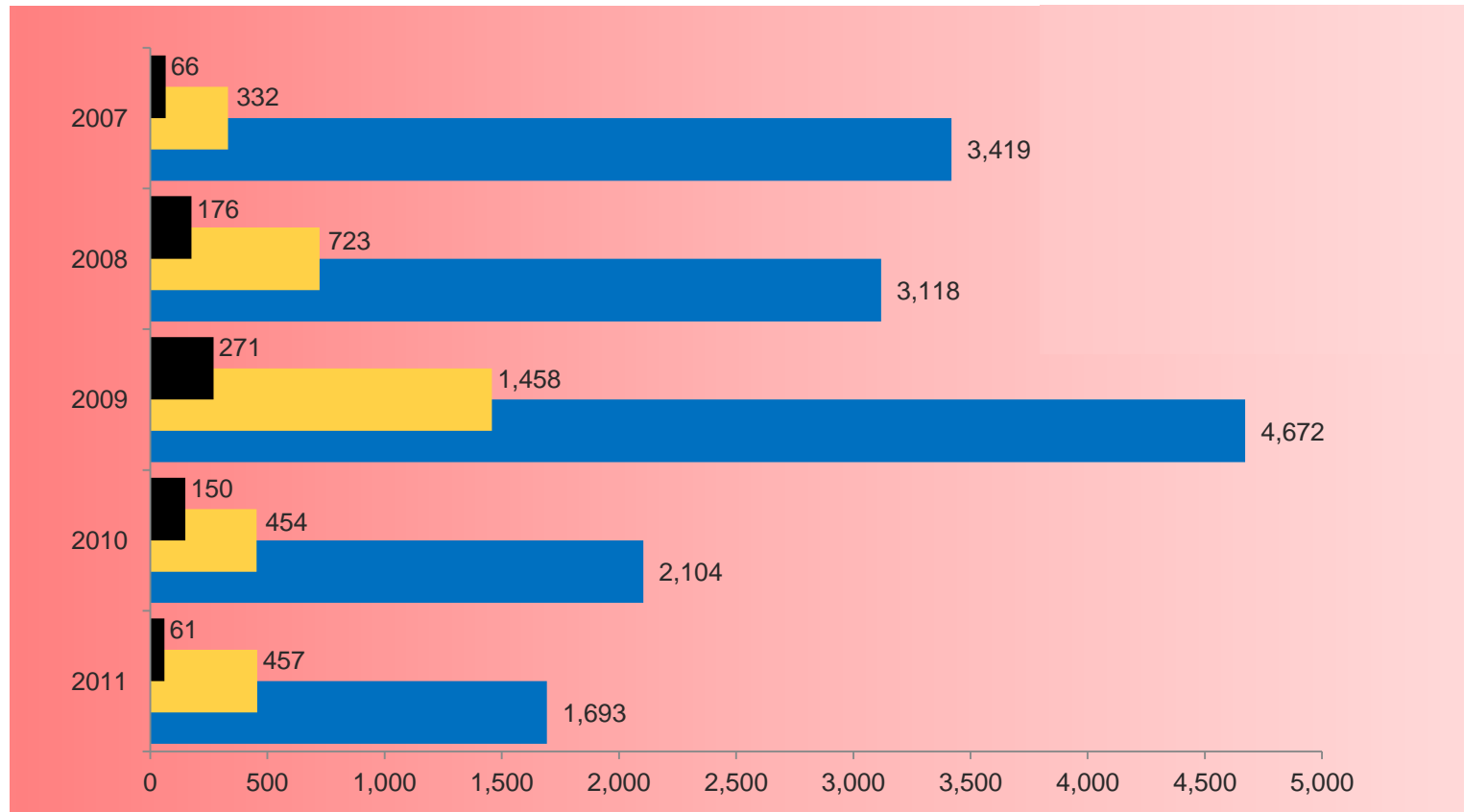
# Ex Officio Investigations in 2012

- On children's rights – A **CHILD-FRIENDLY JUSTICE**
- On **PENITENTIARY SYSTEM**, reformatory institutions and **ASYLUM CAMPS**
- On the situation of **LAWYERS IN CRIMINAL PROCEEDINGS**
- On **PUBLIC WORK** and **UNEMPLOYMENT BENEFITS**
- On the issues of **HATE SPEECH** and local **ETHNIC CLASHES**



# Number of Refugees and Asylum Seekers

Number of asylum applicants in Hungary:

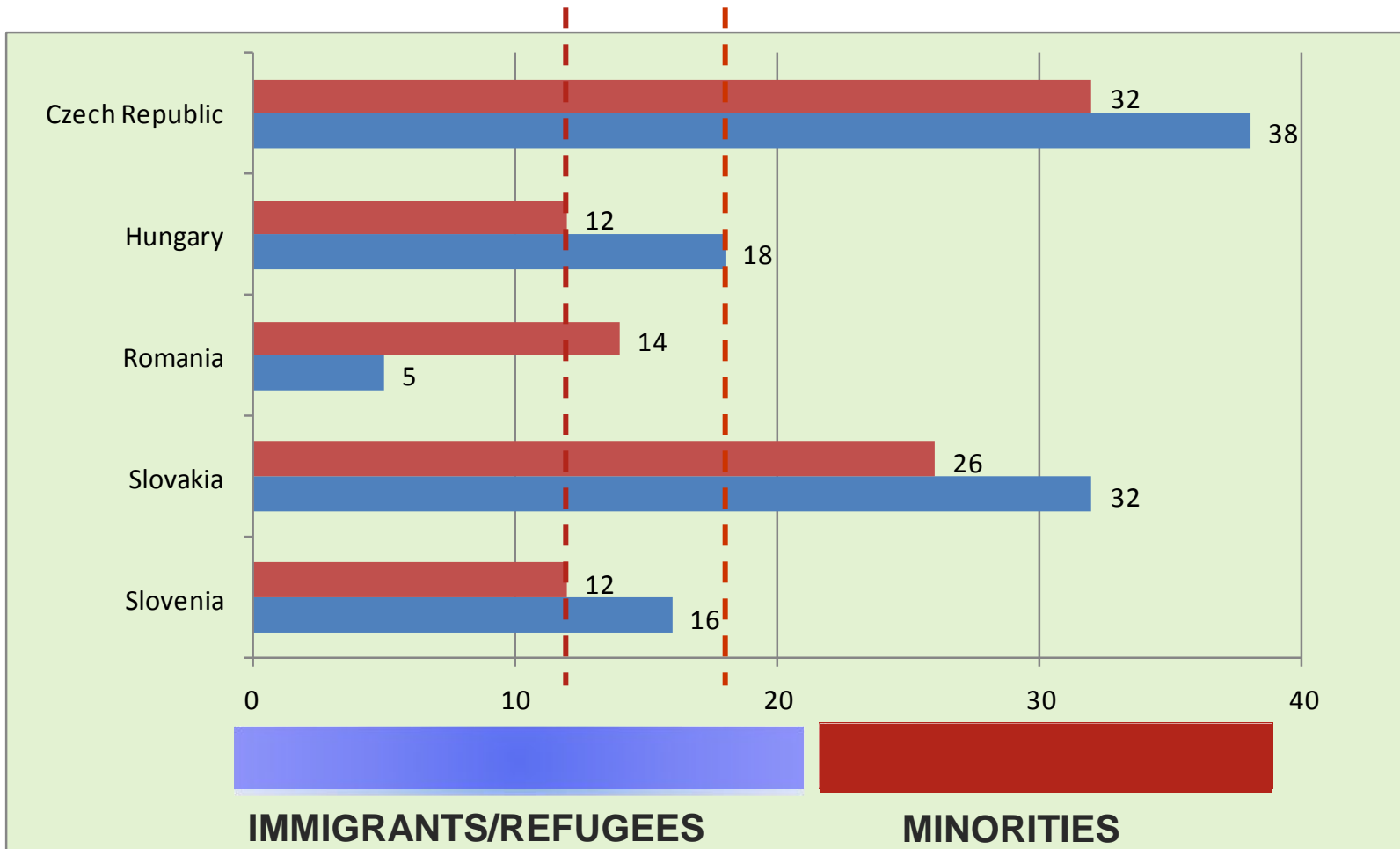


Unaccompanied minor  
asylum applicants

Total number of  
minor asylum applicants

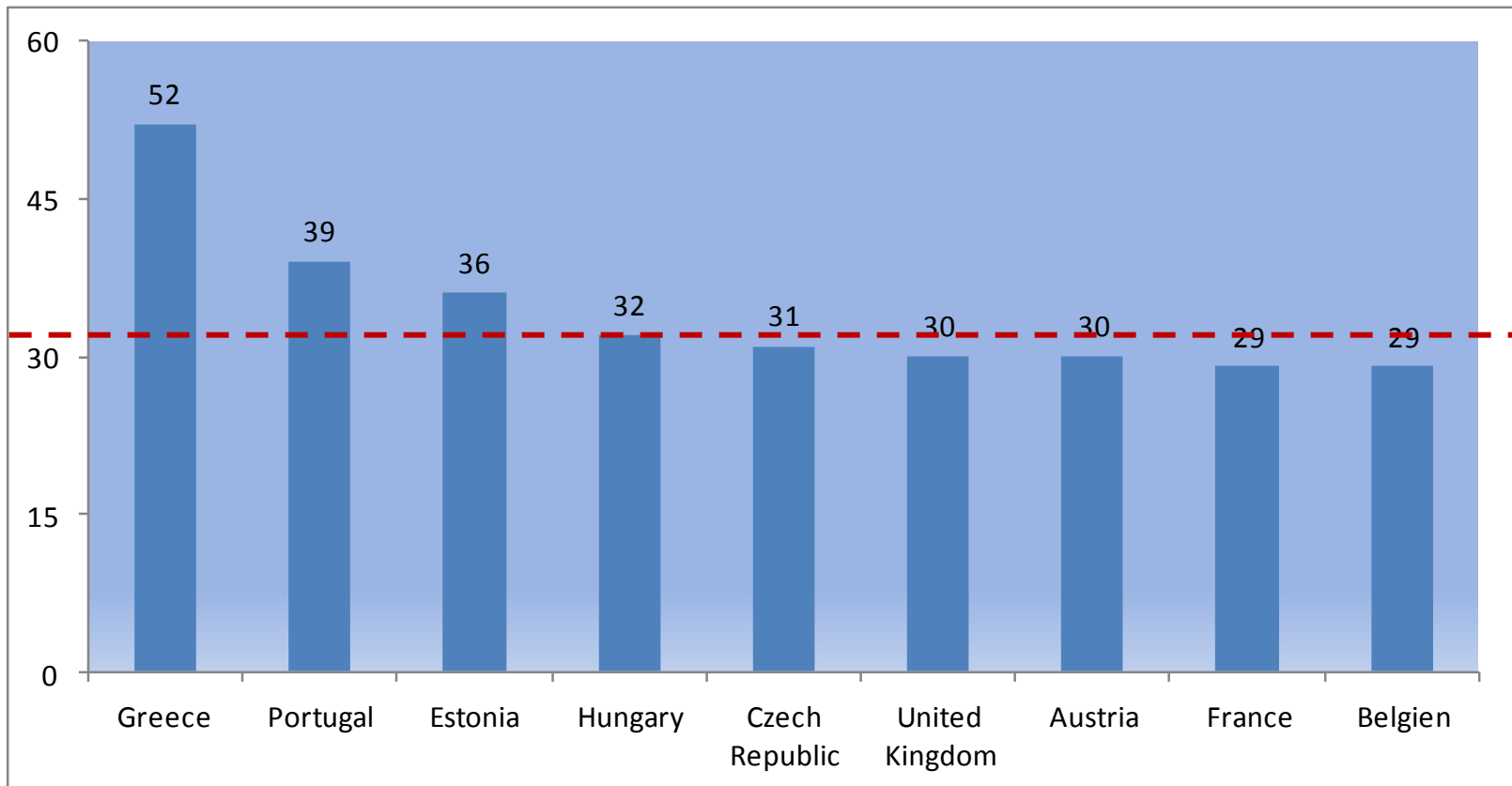
Total number of  
asylum applicants

# Immigrants/refugees endangering the country's security and peace (Eurobarometer, 2005)



# People who accept that "immigrants are harmful"

(Eurobarometer, 2005)



# Refugees and Asylum Seekers

**Number of complaints on refugee affairs :**

2008: 13; 2009: 3; 2010: 11; 2011: 4

- **Ex officio Ombudsman investigations (2012):**
- On a temporary hostel of restricted access (Nyírbátor)
- A Special Children's home & juvenile reformatory institution (Fót)
- Children in immigration detention (Békéscsaba)
- Unaccompanied minors from abroad in Hungarian children's homes (Fót)

# Case Study I.: On a temporary hostel of restricted access- Nyírbátor

- At **Nyírbátor temporary hostel** of restricted access, mainly single men, illegal migrants coming from countries outside of Europe are held in custody for a period no longer than 12 months.
- **On-the-spot inspections of the ombudsman**
- Findings: *"WORSE THAN A PRISON!"*
  - **Buildings in terrible conditions**: the building „A” is practically similar to **a prison**; while for those accommodated in building „B”, the present circumstances are **unsuitable for detention**.
  - Most of the **staff members** of the temporary hostel of restricted access **speak no foreign languages**.
  - **continuous verbal violations of human dignity of the detainees**
  - **At night, plastic bottles used instead of toilets**.
  - In building „B” it is **prohibited to open cell’s windows**.
  - There are only **three public phones available** for more than **200 detainees**.



# Case Study II.:

## Children in immigration detention



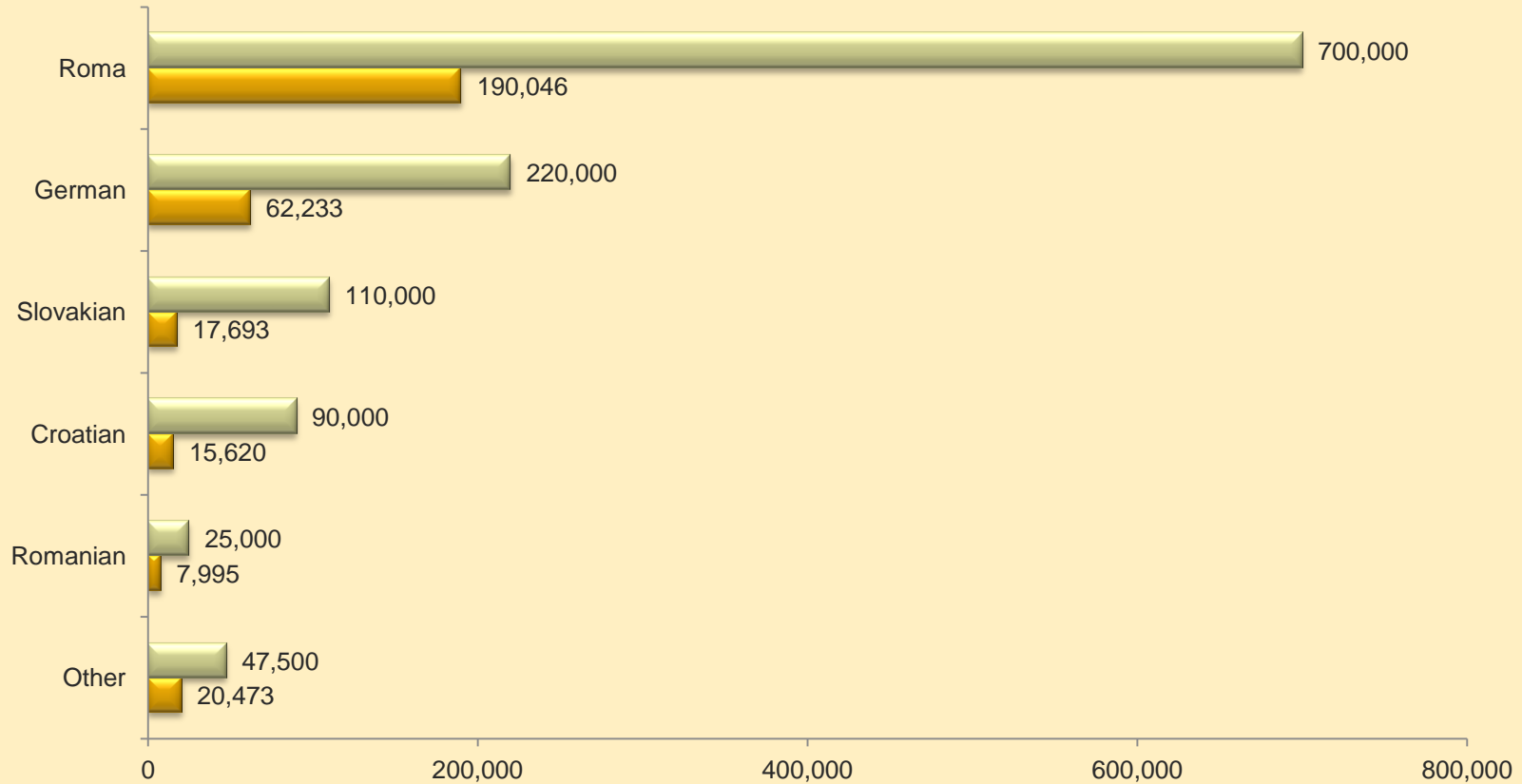
- **THERE IS NO LEGAL BASIS AND THERE ARE NO LEGAL GUARANTEES FOR THE DETENTION OF MINORS.**
- An **unannounced on-the-spot inspection** at the Temporary Detention Facility of **Békéscsaba** in order to examine the enforcement of the fundamental rights of **families with children** who live there.
- With a view to deportation, immigration authorities may **take into custody for up to 30 days** foreign nationality **children together with their adult family** members for illegally crossing the state borders of Hungary.
- For small children who are unable to comprehend the cause of the detention and estimate its length, 30 days in custody **causes a mental stress incompatible with childhood.**
- Consequently, this measure does in **no way serve the best interests of the child** as laid down in the UN Convention on the Rights of the Child.

# Case Study III.:

## Unaccompanied minors from abroad in a Hungarian children's home, Fót

- **Before** unaccompanied minors seeking asylum had been placed in the refugee accommodation centre of **Bicske**. (**inadequate conditions for providing education and getting to know the country**)
- **Following the ombudsman's initiative**, the Minister for Social and Labour affairs and the Minister for Public Administration and Justice set up the home of **unaccompanied minors in Károlyi István Children's Centre in Fót**.
- The **life circumstances of alien minors are considerably better** than they were in Bicske.
- The new inquiry highlighted **further problems**:
  - danger to the **right to physical and mental health**  
**(No isolation ward where newly arriving youths suffering from infectious diseases or from parasites could be treated and cared for)**
  - the psychologists and the pedagogical support **staff** working in the children's centre are **unable to properly deal with the alien minors** suffering from **'posttraumatic stress disorder'**.

# Estimated number of people belonging to minorities in Hungary (cca. 10 million inhabitants)



**Estimations**

**Census data from 2001**



# Living conditions of the Roma people:



# Ombudsman Activity Relating to Ethnic and National Minorities

**Number of cases** of the ombudsman regarding the rights of national and ethnic minorities:

2007: 738

2008: 1033

2009: 1012

2010: 1064

2011: 1248

## Ombudsman investigations regarding minority issues (2012):

- Use of national minorities' **languages** in the public administration
  - functioning of the **nationality self-government**
  - ethnic and national minority **education**
  - **election** of national minority representatives

## -ROMA POPULATION:

- increasing **social tensions & discrimination**
- long-term **unemployment**
- **segregated education**
- **hate speeches; hate crimes, ethnic tensions**  
( e.g.: Gyöngyöspata in 2011)

# AJB-2709/2012 : Act on the Rights of National Minorities (Act CLXXIX of 2011) – petition to the CC

- Petition is based on the submission of the nationality self-government of a municipality.
- The requirement of equal treatment is not observed in the Act on the Rights of National Minorities: it allows **ONLY** those nationality **ORGANIZATIONS** to have candidates at nationality self-government elections which are legally **QUALIFIED AS OF 'PUBLIC BENEFIT'**.
- Petition holds that **the regulation linking the status of minorities to the data of the national census is contrary to rule of law and violates the rights of minorities.**
- It is a restriction of the right to **use one's mother tongue** that nationality self-governments **MUST DRAW UP MINUTES OF THEIR SITTINGS IN HUNGARIAN EVEN IF THE LANGUAGE OF THE SITTING IS THE MOTHER TONGUE** of the given nationality; this also infringes the obligations undertaken by the State and laid down in the European Charter for Regional or Minority Languages - stated in the petition.
- Another problem is that the **assets of nationality self-governments** which **cannot continue** their activities after the 2014 general elections **will be taken over by the settlement local governments**. But these assets may only be used later for nationality related purposes.
- Another **provision of the Act is contrary to the presumption of innocence**: it holds those **representatives who have not taken part in the decision making responsible for any unlawful utilization** of nationality self-government assets.
- The resources in staff and equipment necessary for the functioning of nationality self-governments must be ensured by the local governments. **NATIONALITY REPRESENTATIVES LIVING WITH DISABILITIES**, however, may request a sign-interpreter **for example** only from the nationality self-government, which has a significantly lower budget. **This constitutes an unconstitutional discrimination and is also contrary to the international obligations undertaken by Hungary.**



# Ethnic Conflicts in Gyöngyöspata (Spring of 2011)



# Case Study IV.: A local ethnic conflict in Gyöngyöspata

- The public order of an Northeastern village of **Gyöngyöspata** was disturbed by groups sympathizing with the ideology of the previously disbanded **extreme-right organization** called *Magyar Gárda (Hungarian Guard)* in the **spring of 2011**, with the intention to take over the tasks of police of **maintaining law and order** against Roma groups and to protest against Roma people living in the village.

- Minority Ombudsman's **findings**:

- neither the local, nor the relevant national policies have had an adequate response to the social problems** enhanced by the financial and economic crisis which resulted in the increased unemployment and social inequality of ROMA inhabitants.

- the segregation of ROMA pupils in school and the ghettoization in the field of housing**, neither of which can be separated from the events that have occurred in spring 2011 in Gyöngyöspata.

- legislative and law enforcement deficiencies**: legislative gaps, missing and/or not adequate mediation procedures of state and local authorities.

- The Ombudsman pointed out the fact that: after the conflict, the situation in Gyöngyöspata has **NOT BEEN RESOLVED**; and **EXTERNAL HELP** is needed to ease the remaining tensions, fears and to restore peace and tranquility of the village and the country which "split into two parts".

THE SYMBOL OF THE UNIFIED OMBUDSMAN INSTITUTION:



Thank you for your kind attention!

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