"I would desire to see all denizens of our homeland if not rich, high-standing, but at least free!"

'To Sámuel Garas' by István Széchenyi

"… amidst the postulates of legal policy often diametrically opposed to each other, there are three manifesting ultimate justice: all human beings exist primarily for themselves, all human beings are equally free, and all human beings are equally fallible. The first excludes intervention by the state as soon as such intervention would reduce certain individuals or groups to helpless instruments of the interest or will of others; the second elevates individual freedom and success to the ranks of key legal policy objectives; the third reminds legislators of the fact that they are also human and, therefore, their creations are imperfect and clumsy, so they had better be aware of the strict limitations of their abilities and not regulate more than what is inevitably necessary."

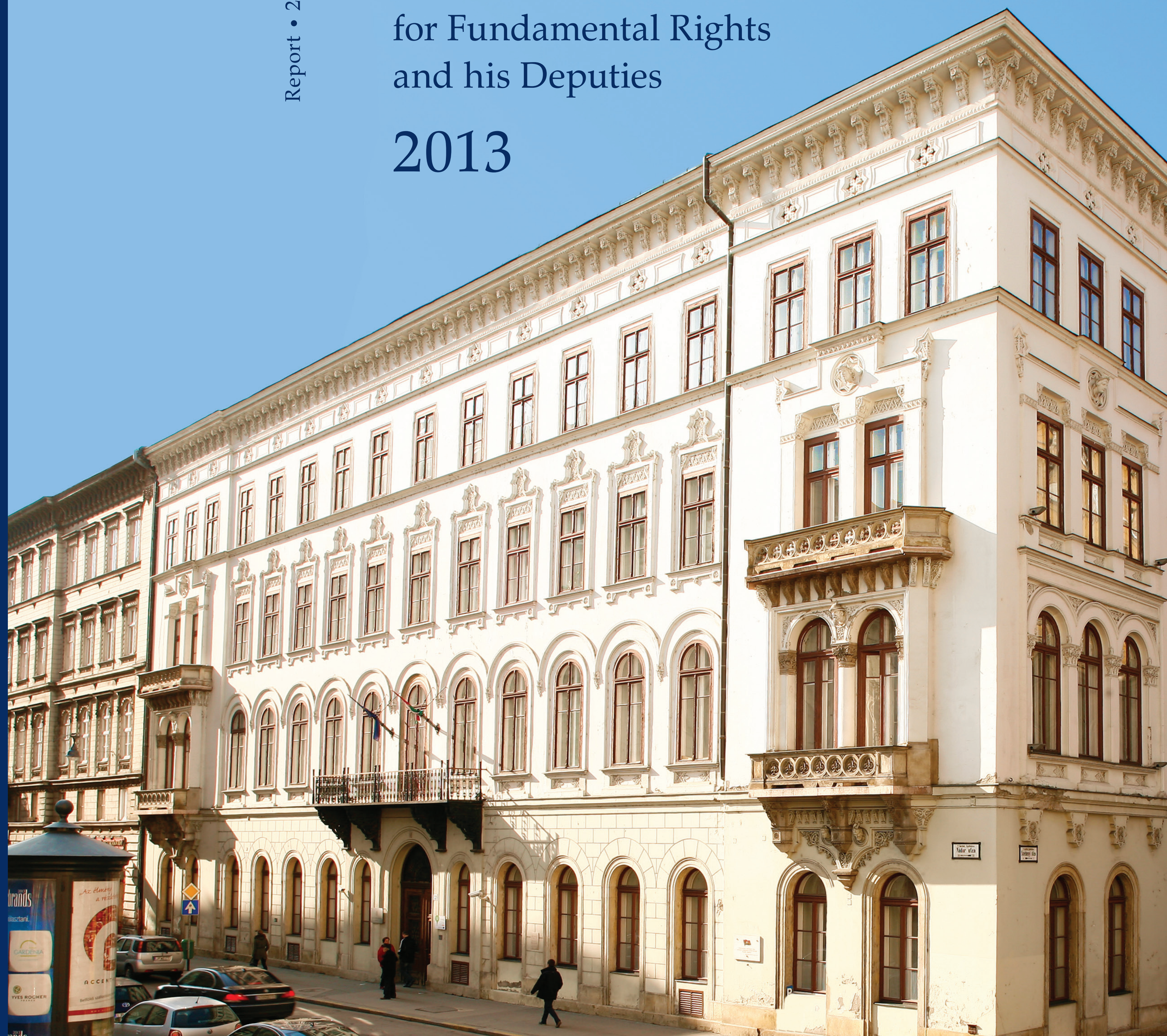
'Legal Policy' by Artur Meszlény

Report • 2013

Report

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

2013



Report

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2013

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Introduction

Dear Reader, a warm welcome to my annual report. I am László Székely, I was elected the Commissioner for Fundamental Rights for six years by the Parliament of Hungary. This report on the activity of the Office in 2013, reflects, consequently, in a three quarter ratio my predecessor, Máté Szabó's activity, and it would not be proper to boast with someone else's merits. Last year, this time, my predecessor wrote the following in his introduction: *"I am confident that in 2013, upon completion of my 6-year tenure in office, the President of the Republic will be able to appoint my successor as the new head of a well-structured and significantly strengthened institution with rich investigative experience."*

Well, dear Reader, I hereby would like to confirm Máté Szabó's statement by my declaration that I inherited a well-structured and significantly strengthened institution with rich experience, equipped with excellent and prepared staff, who are invariably dedicated to doing their work. This made my integration into my new office much easier, which has remained even now a huge but at the same time a wonderful challenge in my professional career.

I have endeavored to put the emphasis on permanence and continuity since my inauguration and not to cause the least shock in the well-structured operation of the Office. Organisational restructuring of minor significance remained this way for the year 2014, and this was also justified rather by the new duties and the creation of the possibility of a more powerful appearance of the Deputy Commissioners than by any existing operational anomaly or dysfunction.

My smooth integration into the life of the Office was largely assisted by the fortunate circumstance that I had managed to establish an above the average level collegial relationship with both the Deputy Commissioners and the Secretary General and the climate of confidence facilitates the sometimes burdensome duties of the management to a great extent. By the way, I have felt the confidence and the collegiality from all members of the staff towards me and I felt that it was appropriate to thank you for this under the present framework as well.

Now I will get back to the report. If, unleashing my imagination, I were to contemplate about what the ideal annual report would be like, a single

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http://www.ajbh.hu/en/web/ajbh-en/laszlo-szekely

page document appears in my imagination, on which merely one sentence would be just written, saying that the Commissioner and his Office did not do anything, since there was nothing to do. There were no complaints that should have been inquired into, it was not required to proceed ex officio, either. There was no reason for giving work to the Constitutional Court and the Curia, either. Nothing happened at all during the whole year. This would be the rule of law optimum.

Unfortunately, dear Reader, this volume in your hand is proof to the contrary, it is an exact imprint, a quasi-sociology of the state of our national rule of law. It is an instructive reading for all those who really want to know the Hungarian reality, almost the entire cross-section of society, State and law. Life itself, if you will. Please, keep it in mind, dear Reader, that of course behind the cases, there are always human destinies, mainly in their own vulnerability. Searching solution for these and alleviating the problems are the most important duties and occupation of the Commissioner and his colleagues.

László Székely

1. International Relations

1.1. Delegations received in 2013

Cooperation with international partners played an important part in the international activities of the Office of the Commissioner for Fundamental Rights in 2013 as well. In this field, relations with diplomatic missions and heads and colleagues of international organisations proved to be particularly important.

The Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe visited Budapest on 25-26 February 2013. The objective of the visit of the Monitoring Committee was to exchange views with Hungarian authorities, civil society organisations and to gather information with regard to the petition submitted in the meeting of the Parliamentary Assembly of the Council of Europe held on 25 January 2011 which initiated a monitoring procedure as a consequence of the Hungarian political and constitutional developments. The Ombudsman provided information on the Fundamental Law and a number of new statutes to which the European public opinion paid particular attention (e.g., Media Act, Church Act).

On 3 April 2013, the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment visited Hungary for the fifth time. Each time they examined different types of institutions. This year they focused on prisons and police establishments. The Committee was informed that annually about 200-300 complaints are received by the Office of the Commissioner for Fundamental Rights from detainees, including persons in pre-trial detention. The Ombudsman talked about the timing and the current state of tasks related to the preparation for the performance of OPCAT duties.

On 25 April 2013, an informal consultation on the possibilities for extending bilateral cooperation took place between Deputy Commissioner Marcel Szabó and Secretary General Bente Angell-Hansen, State Secretary for Administration of the Norwegian Foreign Ministry, within the framework of the Norwegian/EEA Fund. Norwegian Ambassador Tove Skarstein also

participated in the meeting. In the course of the consultation, the following issues were raised: the support scheme of the Norwegian/EEA funds, the application possibilities for our Office, the framework of a closer cooperation in the future, and the presentation of our projects and our work in the fields of the protection of nationalities and environmental protection. The heads of the delegation praised our institution, the independent and proactive work and they were thankful for the regular information on our activities.

On 11 July 2013, staff members of the EU Agency for Fundamental Rights (FRA) were on a working visit in Hungary, in the course of which they visited the Office of the Commissioner for Fundamental Rights. The objective of the visit was to obtain information on the inquiries conducted by the Office in relation to racism, xenophobia and intolerance. The FRA indicated that it considered gathering information with regard to fundamental rights and carrying out data analysis in relation to the phenomena of racism, xenophobia and intolerance related thereto as an important task. During the consultation, the project "Losers of the Crisis" and the projects on hate speech were presented in more detail from among the ombudsman's projects concerning the subject of the meeting. These projects examined the situation of all vulnerable groups and dealt with the phenomena of hate speech as well.

Between 23 September and 2 October 2013, the UN Working Group on Arbitrary Detention made an official visit to Hungary. In the framework of the visit, the Working Group carried out on-the-spot inspections in several penitentiary institutions, institutions constructed for the accommodation of illegal migrants and psychiatric institutions, and consulted with the competent Hungarian authorities, professional organisations and civil society organisations dealing with the legal, professional and technical aspects of the penitentiary system, and also had talks in our Office on 30 September. Our colleagues briefed the Working Group on two ombudsman's projects from the previous year, connected to the subject: on the lawyer's and on the penitentiary project, in the framework of which our Office had conducted investigations in 12 penitentiary institutions. In addition, members of the delegation were informed of the preparatory activity related to the establishment of the OPCAT Bureau, as a result of which an independent organisational unit consisting of 10 people is expected to operate in our Office as of 1 January 2015; their duties will be to visit and inspect institutions that enforce measures restricting liberty (e.g., penitentiary institutions).

On 14 November 2013, organised by the Central European Representation of the United Nations High Commissioner for Refugees, the representatives of the Kazakh, Kirgiz, Tajik and Turkmen Republics visited our Of-

fice to obtain information on the subject of the prevention of statelessness and learn about the work of the Hungarian Ombudsman's Office.

In addition to those indicated above, in 2013, a number of international organisations that have representation in Hungary, foreign partner institutions, staff members of NGOs and student groups from foreign universities were our guests.

1.2. Cooperation with International Organisations

In the field of international relations, participation in the events and consultations organised by the European Parliament, its Civil Liberties, Justice and Home Affairs Committee (LIBE), its Human Rights Subcommittee (DROI) and the UN High Commissioner for Humans Rights meant a new area and new relations.

On 23 April 2013, the European Parliament hosted a meeting of the European Ombudsman entitled "It's our Europe: Let's get active". The objective of the conference was to set out guidelines for European citizens as to how one can successfully intervene in the operative mechanisms of the European Union, how one can mobilise groups by means of local initiatives and successfully achieve local community objectives. Then Commissioner Máté Szabó participated in the meeting held under the patronage and in the presence of the President of the European Parliament. The review of the new challenges and duties that the institution of the European Ombudsman faces was given special relevance by the forthcoming retirement of European Ombudsman Nikiforos Diamandouros, who had been in office since 1 April 2003 and had been re-elected in 2005 and 2010.

Between 14 and 17 February 2013, the UN High Commissioner for Human Rights organised a seminar entitled "Strengthening Cooperation in the field of Human Rights" in Geneva, in which Commissioner Máté Szabó participated. The objective of the organisers was to encourage the experts of UN Member States, UN specialized agencies and the representatives of the civil society to engage in further vigorous discussion in order to exchange their experiences and to provide information on all those good practices that allow for strengthening international cooperation in the field of human rights.

Geneva was also the venue of the 26th session of the annual meeting of the Coordinating Committee for the National Human Rights Institutions of the UN High Commissioner for Human Rights between 6 and 8 May 2013, in which Commissioner Máté Szabó and Deputy Commissioner Marcel Szabó

participated. The topic of the opening event of the annual meeting was "The right of participation in public affairs, prominent role of publicity in the field of enforcement of human right," as publicity takes a prominent role in the operation of UN national human rights institutions. Namely, the freedom of association and the freedom of expression are fundamental elements of public participation in public affairs. One of the objectives of national human rights institutions is to raise awareness of and to develop these rights.

During 2013, there was intense cooperation between our Office and the European Union Agency for Fundamental Rights (FRA) as well. Commissioner Máté Szabó took part in the VI. Fundamental Rights Platform held between 24 and 26 April 2013. The conference focused on anti-discrimination and hate-crime, theoretical and practical experiences of victim assistance. In the framework of the 4th annual symposium held on 6-7 June, organised by FRA, entitled "Promoting the rule of law in the EU", the participants examined the key fundamental rights elements of the rule of law, including its appropriate operational indicators.

On 7-8 October 2013, FRA, together with the European Network of National Human Rights Institutions (ENNHRI), the Equinet and the Council of Europe organised a conference entitled "Strengthening fundamental rights protection together in a changing human rights landscape". In this conference our Office was represented by Éva Hegedűs, Deputy Secretary General of the OCFR. The speakers of this conference were mainly looking for an answer to the question of how human rights organisations should facilitate the enforcement of human rights and equality at national level; what the impacts of the current economic situation are; what roles national organisations have in the mitigation and monitoring of the consequences of restrictions; what proposals may be submitted to governments in the interest of mitigating the impacts of the crisis that would be favourable with regard to human rights and would ensure equality.

The Equinet, the network of the European organisations responsible for the enforcement of equal treatment, regularly organises trainings, exchanges of views for its member organisations. The objective of these meetings is to increase the efficiency of the work done in order to facilitate equal treatment by means of thematic exchange of experiences or the involvement of the experts of the field. The professional training held between 18-19 March 2013 focused on the forms and types of discrimination, disability discrimination (at workplace) and gender equality. The participants, among them our colleague, Tímea Csikós, enhanced their knowledge on the practice of European courts in their anti-discrimination cases. The objective of the meeting held in Brussels on 16 May 2013, organised by Equinet, was to facilitate the monitoring activity of the Commission with respect to Directive

2000/43/EC (the so-called Racial Equality Directive) and Directive 2000/78/EC (the so-called Employment Equality Framework Directive). In the meeting our Office was represented by Katalin Szajbély.

The special task of the Equinet training held in Lisbon on 18-19 September 2013 was to deepen the members' knowledge in the field of gender equality at workplace, in particular in the field of the equality of wages, in order to prepare the activity of a new Equinet gender equality working group.

In the course of our international activities, we attach great importance to the facilitation of our colleagues' professional development. In addition to the training possibilities offered by Equinet, we are regular participants of the international seminars and trainings of the Academy of European Law (ERA) which provide invaluable theoretical and practical information on the European framework rules on equal treatment, cases of the European Court of Human Rights and anti-discrimination directives.

1.3. The Office of the Commissioner for Fundamental Rights as a National Human Rights Institution

The meeting of the European Network of the National Human Rights Institutions (ENNHRI), organised by the Office for Democratic Institutions and Human Rights (ODIHR), took place in Budapest between 13-15 November 2013. In the course of the meeting the participants discussed the strategy of the network and its operational methods, the possibilities for practicing civil rights better and more efficiently, and exchanged views in the area of the protection of human rights. Commissioner for Fundamental Rights László Székely received the participants of the discussion in the building of the Office of the Commissioner for Fundamental Rights, being under monument protection.

1.4. European Children's Rights Cooperation

Our participation in the European Network of Ombudspersons for Children is an important area of our international activity. The Office of the Commissioner for Fundamental Rights is regularly represented by Ágnes Lux in its events. In 2013, the theme of the organisation was "Children on the move: Children first!", i.e., the issue of unaccompanied minors. Between 29-31 May 2013, at the invitation of the Catalan ombudsman, the working group

of ENOC held a meeting in Barcelona, where the participants reviewed the international legislation on the topic and discussed certain questions with regard to unaccompanied minors (age identification, reception conditions, child trafficking and guardianship issues). On 25-27 September 2013, the Annual Conference and General Assembly of ENOC principally focused on the unsolved problems of children on the move. In the section meetings, the participants could learn about the findings of the inquiries conducted by the Hungarian ombudsman in 2012-2013, on the subject of unaccompanied minors.

The Commissioner for Fundamental Rights was invited to participate in the work of Eurochild, the European children's rights-childcare umbrella organisation. He was represented there by Ágnes Lux, who also participates in the work of the Policy Expert Group. The organisation held its discussions in Brussels on 1-2 October 2013. Among the main items was the exploration of how children's rights can be put on the agenda of national and European policies in the European Parliamentary election that would take place on 22-25 May 2014. The series of events on children's rights was closed by the European Union Children's Rights Forum on 17 December. The objective of the meeting in Brussels was principally to summarize children's rights activities and the achieved results of the previous year, but certain questions of policy documents under preparation were also put on the agenda, e.g., the preparation of the directive on the protection of child victims.

1.5. The GODIAC Project

In the year being reported on, we continued our active participation in the international project led by the Swedish police and co-financed by the European Union.

On 29-31 January 2013, the management of the GODIAC international project organised a research seminar in Stockholm summarizing the results of the scientific researches launched in 2010, aimed at developing new directions with regard to handling political demonstrations by the police. In the seminar, our Office was represented by Barnabás Hajas, Ágnes Lux and László Tóth, the first two also held presentations. This January programme was followed by a series of negotiations in Barcelona, Budapest, Stockholm and Berlin. The results of the project are set out in publications, in whose compilation our expert group also took part. Our colleagues' contributions are available following these links:

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http://polisen.se/PageFiles/321996/Field_study_Handbook_2013.pdf
http://polisen.se/PageFiles/321996/GODIAC_Anthology_2013.pdf
http://polisen.se/PageFiles/321996/GODIAC_BOOKLET_2013_2.pdf

1.6. Regional Cooperation

The ombudspersons of the Visegrád Countries and Western Balkan countries established an expert network, whose inaugural meeting took place in Warsaw on 14 March 2013 at the invitation of Ombudsperson Irena Lipowicz and the Polish Foreign Ministry. On behalf of Hungary, Deputy Commissioner Marcel Szabó participated in the discussion entitled "The biggest challenges of ombudsmen in the 21st century". The next meeting of the ombudspersons of the Visegrád Countries took place in Časta Papernička, in Slovakia, on 10-12 April 2013. The subject of this meeting was the ombudspersons' role in the development of good governance. The Hungarian Commissioner for Fundamental Rights actively contributed to the discussion.

After the European Year for Active Ageing and Solidarity between Generations, the Polish ombudsman organised a conference in Chorzow, in Poland, on 16 September 2013 with the aim of contributing to the development of the Polish old age policy in cooperation with civil society organisations and developing a coordinated old age strategy with the participation of those concerned from a wide range of stakeholders. Our Office was represented by Eszter Bassola, who talked about the results of the Hungarian ombudsman's Old Age Project (2010).

On the 10th anniversary of the operation of the civil rights defender appointed in the Serbian town of Bačka Topola (Topolya in Hungarian), on 8-10 May 2013, an international discussion took place with the support of the Organisation for Security and Cooperation for Europe. Our Office was represented by László Fórika.

1.7. Civil relations

The ombudsman's fundamental rights protection activity is, in essence, a borderline activity: it needs to determine its identity, balancing on the borderline between constitutional and civil legal protection; an indispensable element of this self-determination is the feedback that allows for the maintenance of the balance.

The non-profit civilian sphere exists between the State's and the market's sphere, its actors' legitimacy comes from their identity, self-image and the self-determination based on its relation to these. The situation is the same in Hungary, too, where the State, adapting itself to the similar trends arising elsewhere in the world and becoming more and more prominent in the European Union, hands over a certain part of its activities to the NGOs while simultaneously providing state subsidies, thus, evidently, establishing a certain dependency between the non-profit organisation and the powers that be. When summarizing the year 2013, it is also worthwhile to consider those experiences which appeared in the lives of both the civil society and the ombudsman institution as a consequence of the changes in legal rules in 2012.

The new Non-profit Act repealed the existing legislation on associations and non-profit organisations and, at the same time, terminated the National Civil Fund and replaced it with the National Cooperation Fund. In the new Act the legislator, interpreting non-profit activity in a narrow sense, states that the subsidized public duties of civil society organisations shall be listed in their deed of foundation using an exact legal reference. 2013 was the first when the affected organisations operated in an environment transformed by the abovementioned changes throughout the whole year.

The legal rule on the reorganisation of the ombudsman institution, Act CXI of 2011 on the Commissioner for Fundamental Rights stipulates, as part of its tasks and responsibilities, that "In the course of his or her activities the Commissioner for Fundamental Rights shall cooperate with organisations aiming at the promotion of the protection of fundamental rights." The content for the framework of this statutory obligation is provided by the civil experts of a given field, through the involvement of non-profit organisations, consultations, workshops, conferences, exhibitions and agreements on strategic cooperation.

The numbers, the statistical data and the results justify this strategy, whose objective is to strengthen human rights protection activity, close intellectual and professional cooperation with the civil society organisations, thinking together and to develop a partnership through merging resources. In 2013, 129 complaints were lodged by civil organisations with the Office of the Commissioner for Fundamental Rights. The Ombudsman launched inquiries based on 45 complaints.

A significant part of the professional programmes and events organised by the Ombudsman's Office was connected to the civil society as well: on the one hand, on the grounds of its subject and theme and, on the other hand, with regard to those invited, the participants. A certain level of connectedness to the civil society can be noticed in each programme's case. It

can be well seen that, similarly to the previous year, contact were the most efficient, in 2013, too, with the associations and civil society organisations of such profile where civilian presence is, anyway, powerful, where civil associations inherently have a more significant role and more possibilities (e.g., children's rights, community employment, persons with disabilities, care for homeless people, educational and national minority issues, environmental protection or economic crisis management, victims of financial and credit-institutions).

In addition to the above, it can be established that by 2013, the transformations of the preceding year affecting the institutional system had proven themselves; managing the network is concentrated in one hand as a result of the activity of the civil contact coordinator. In the institutional system, the civil relations of the former special ombudsmen (deputy commissioners in the new system) strengthen the efficiency of the operation of the new institutional structure in an integrated and uniform way. This is justified by the fact that (almost) all the civil relations detailed in the previous Annual Report of the Commissioner for Fundamental Rights continued to work in 2013, too; professional cooperation has been continuous and successful for many years in all fields.

The colleagues of the Commissioner lead professional consultations with the experts of the Foundation "Give a chance for children of disadvantaged situations" in the issues of segregation law suits and Roma educational issues. The Ombudsman and the European Roma Rights Centre, the Tom Lantos Foundation and Kurt Lewin Foundation also informally brief each other on the results of their respective activities and share professional information with each other.

In addition to the fact, that the civil society organisations are represented in a significant number in the professional events of the Ombudsman's Office, the Ombudsman and his colleagues often receive invitations or are often requested to participate in the events and conferences of the civil society.

The Ombudsman regularly receives invitations to the club events of certain national minority self-governments and civil society associations (e.g., Transylvanian Armenian Cultural Association), to the programmes of Védegylet – Protect the Future, the Hungarian League of Nature Conservationists, associations whose activity concerns persons with disabilities (MEOSZ, SINOSZ), care for homeless (Shelter Association, Public Foundation for Homeless People). In addition, the Ombudsman and his colleagues are regular guests of the civil programmes on EU issues, organised by the Europe House and Europe Point.

The most noteworthy civil society event in 2013 was the official visit of

the Moldovan civil society leaders to our Office in November. In the framework of the project "CIVEX Moldova" supported by the International Visegrád Fund, the Institute for Democratic Transformation received 14 Moldovan civil society leaders for a study trip for 4 days. The study trip had a number of objectives, for example, sharing with them the experience of the Hungarian civil society and learning about the institutions that are in close relationship with the civil society. The civil society leaders, who visited our country, intend to improve principally the Moldovan women's association. During their study trip in Budapest, they met several organisations and visited several offices, among them, the Hungarian Ombudsman's Office, that is, the Office of the Commissioner for Fundamental Rights.

Likewise, the strategic agreement between our Office and the National Committee Hungary of UNICEF was also a very significant step, especially with regard to the long-term cooperation between the two organisations. A prominent publication is the volume entitled "Civil Society Report on Children's Chances, 2011" that was published by the Children's Chances Public Association at the beginning of 2013. The sociologists, who prepared the report, analysed how the amendments of legal rules in the last two years could have affected poor families and children. From among the revised 29 legal rules affecting families, the family child benefit had a significantly positive impact, other than some minor helps and the lengthening of the maternal leave. However, the poor, especially the poor with many children are left out of this (60 per cent of them could not use the benefit). Furthermore, almost two thirds of the investigated provisions evidently had an unfavourable impact on the poor, especially those who live in extreme poverty. Examining the tendencies of the last two years, the researchers highlight: an ever larger proportion of children belonging to families with a better social situation are likely to get in unviable situation.

From the long list of the Commissioner's events concerning civil society and his participation in their programmes, it is worthwhile to note his activity as member of the Human Rights Working Group of the Ministry of Public Administration and Justice. By passing Government Decree 1039/2012 (of 22 February), the Government established the Human Rights Working Group as a proposing, reviewing and advisory body whose main duty is to monitor the enforcement of human rights in Hungary. In order to do this, it consults with various organisations and facilitates professional communication with regard to the enforcement of human rights. Members of the Working Group are the state secretaries of various ministries in charge of human rights-related issues, its president is the State Secretary of the Ministry of Public Administration and Justice responsible for public relations, its Vice-President is the State Secretary of the Ministry of Administration and

Justice responsible for justice. The government decree stipulates that the Working Group shall operate a Human Rights Round Table whose objective is to have consultation with civil society, associations, professional and constitutional organisations that investigate the enforcement of human rights in Hungary and to formulate recommendations in relation to the activity and duties of the Working Group. Among the members of the Round Table one may find the Commissioner for Fundamental Rights, the president of the Equal Treatment Authority, the president of the Hungarian National Authority for Data Protection and Freedom of Information and members of constitutional and civil society organisations who are asked to participate and reflect on the issues.

2.
Assessment of the Situation of Constitutional Rights

2.1.
Priority inquiry areas

In compliance with the provisions of the Ombudsman Act and its spirit, the Commissioner for Fundamental Rights paid continuous and increased attention to the five priotity inquiry areas, the cases concerning children's rights, the rights of nationalities, the protection of a healthy environment, the protection of rights of people with disability and the most vulnerable groups.

2.1.1.
Protection of the Rights of Children

It is set out in Article XVI of the Fundamental Law that every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. The Act on the Ombudsman stipulates that in the course of his or her activities the Commissioner for Fundamental Rights shall pay special attention, especially by conducting proceedings ex officio, to the protection of the rights of children. In the traditional ombudsman's tool box, the Commissioner examines the abuses of the constitutional rights of the children of which he becomes aware and proposes general or special measures for their remedy. Traditionally, more emphasis is put on the use of publicity – as the "most powerful weapon" of the ombudsman institution – as a proactive defence tool in the field of the protection of children's rights. Just as in previous years, the inquiries conducted in the field of children's rights in 2013 concerned the proceedings of the guardianship authority, the field of the child protection authority proceedings, the problems that can be noticed in the child protection signalling system, children's right to health and mass catering. In addition to this, the Ombudsman also dealt with the situation of the children with disabilities and the operation of children's homes, the situation of child-friendly justice and the field of public education on the basis of complaints as well as ex officio.

Just as in the previous period, also in 2013, what was typical is that the

complaints received by the Commissioner reported of the failures of the child protection organs and child welfare organs. In the cases closed by a report, these failures caused not only the infringement of the requirement of legal certainty, due process and the right to remedy, but indirectly or directly the infringement of children's rights as well. According to a submission received by the Office in the autumn of 2012, the father indicated the endangerment of the child being brought up in the mother's household to the notary, however no measures were taken. Pursuant to the notary's reply received by the Office nearly 5 months after the petition to the Commissioner, there is a lawsuit on changing the placement of the child, therefore, the Court asked for an environmental study from the office. The environmental study was prepared by the notary in October 2012, however, the notary failed to comply with his procedural obligation in connection with taking the child into care (it means the child has not been taken out of the family yet) in spite of the Ombudsman's request. Pursuant to the report, the notary failed to comply with its obligation when he had not examined the complaints in merit. Therefore, the Commissioner asked the head of the guardianship office for applying the procedure of taking the child into care and the head of the office was asked to take the necessary measures. The head of the office complied with this initiative.

The Commissioner concluded that the complexity of the legal rules on the proceedings preceding taking a child into temporary care, as a result of which the bureaucratic procedure and the late decisions infringe upon fundamental rights. In a concrete case, a foster parent turned to the Ombudsman in the case of six minors taken into child protection. The complainant objected the delay of the proceeding conducted in the subject of the review of the temporary placement of the minors and that the children were taken from her without having received the decision on this from the guardianship office. The child protection centre acknowledged the delay of the inquiry. The indicated problem was not unknown for the Commissioner for Fundamental Rights, since in the course of his comprehensive inquiry concerning the care of those between 0-3 ages being brought up in child protection special care, he experienced that the children spent longer time than prescribed by law in temporary care, which infringe on the rights connected to legal certainty as well as children's rights. The Ombudsman came to the conclusion that the totality of the legal rules on the proceeding preceding taking a child into temporary care is unreasonably complicated. The Commissioner made a proposal for amendment in order to tackle the acute problem appropriately.

In 2013, a report pointed out the shortcomings of the child protection signalling system. In the case, a complainant mother's child missed school

a lot; he also had serious behavioural problems as well as psychic problems. The mother could not check him because of her work. The complainant would have liked to place her child in a dormitory, for which she asked for help from the guardianship office, the child was taken into care, the review of which was due in May 2013. The Commissioner for Fundamental Rights asked for information, however, the child welfare service responded only after the repeated requests of the Commissioner and did not attach documents. In the absence of documents, it could not be established if an educational care plan was prepared or not and if the child welfare service did family caring or not. The conclusion of the inquiry was that the authorities deemed and obliged to protect the child merely noted the lack of the family's cooperation, the child falling out of sight of the authority and by doing so, they caused impropriety. The Commissioner asked the head of the guardianship office to review the proceeding of the guardianship office and the child welfare service that proceeded in the first instance and to take the necessary measures serving the best interest of the child. The head of the office complied with the initiative.

In connection with a complaint, shortcomings were found in the cooperation of the child protection signalling system. In the concrete case, the special care could not provide for the care suitable for the condition of the 14 year old child requiring special care. It turned out that the child welfare service came into contact with the family in the summer of 2008 because of the minor offence committed by the child. The child disturbed the classes, he did not want to learn, he was away from home for days without his mother's permission, police took him home. In the autumn of 2010, the family caregiver deemed because of the absence of signals from the school that the child no longer required even the primary care, therefore, the boy practically had been out of sight of the child protection primary care until spring of 2012 when the mother asked for help. The Ombudsman highlighted that the child concerned had not received real help, of which the shortcomings of the care system is also the cause.

In one of the most controversial children's right case of 2013, the Ombudsman conducted an inquiry based on a press article. In the report, he concluded that the paediatrician did not comply with his signalling obligation set out in the Act on Child protection in the case of the baby starved to death, being brought up by the "light eater" parents who lived under good financial circumstances in Agárd but in isolation from the outside world. In this case, the Commissioner investigated the activity of the child welfare system, the childminder and the general paediatrician. Since the social bureau and the guardianship office as well as the public health service with respect to the health care service providers had also launched

an inquiry, the Ombudsman asked for information on the result of their inquiries. With regard to the proceeding of the childminder and the family assistant, neither the higher authorities nor the Commissioner for Fundamental Rights found failures. The paediatrician practicing as an entrepreneur cared for the child until his age of 9 months, he gave vaccinations to the child. Following this, the doctor talked to the child's grandfather twice on the phone, and then the family did not contact him. Although, the paediatrician found the interruption of the connection was of concern, he did not comply with his obligation set out in the Act on Child Protection. In addition to concluding the concrete serious impropriety, according to the Commissioner, this case also showed that members of the child protection signalling system may encounter such phenomena unknown for them, for whose solution methodological recommendation has not been prepared, either.

In the case of kindergarten catering of her child with special dietary needs, the complainant turned to the Commissioner because both the kindergarten caring for the child with food allergy and the local government had refused to provide the child with adequate three daily meals and with reference to this, the mother cannot even let her child stay in the kindergarten in full opening time, only for 3 hours a day. This rendered the complainant's employment impossible and she is unable to ensure adequate meals, because of her little income. The head of the kindergarten offered to the parent that she may bring her home-cooked meal until the certificate about the food allergy is received. However, the parent refused that with reference to her financial situation, therefore, the child could not use the full day kindergarten service. Finally, at the beginning of December 2013, the parent provided the kindergarten with the certificate stating that a gluten- and lactose-free diet is recommended for the child. According to the information provided by the maintainer, there is no such qualified expert in the kitchen of the company delivering to the kindergarten, who could prepare the food suited for special dietary needs, but, they are sending one of their cooks to a diabetic training. The Commissioner has already established in his previous report that the catering suited for the health condition of the child is the duty of kindergartens and schools. The adequate solution must be found by the public educational institutions. The solution for catering children with special needs must not depend on the goodwill of the institutions, finding the solution is not an optional task for the institutions.

Several complaints were received by the Commissioner in 2013, stating that public educational institutions failed to ensure full range discounted catering for the entitled children. In the Commissioner's view, children's healthy development may only be served by such regulation that ensures

the physiologically necessary meals and not only lunch but also small meals, thereby addressing the child's best interest.

Every year, the Commissioner for Fundamental Rights pays special attention to the enforcement of the rights of children with disabilities and their parents, owing to their increasingly vulnerable situation, and he monitors the operation of special homes providing care for children with disabilities.

The Commissioner launched an inquiry regarding a parent's complaint on the placement of her son with autism in an educational institution. According to the complaint, the institution that has cared for the child with disability declines to continue to do so with reference to a change in legislation, because the child goes to a development training four times a week. The complainant held the legal rule causing this situation incomprehensible, since it excludes those children from institutional care who are in the greatest need of that. She could not ensure her child's placement and consequently she could not work. According to what the complainant stated, the provision adversely affects several hundred children with disabilities. A ministerial decree in force at the time when the comprehensive inquiry was ordered regulated that children under three years of age may not be cared for in daytime institutions for people with disabilities. After the report, the Social State Secretary promised to correct the provision at issue, and he complied with his promise. As a consequence of the amendment, pursuant to the provisions of the ministerial decree currently in force, the child who participates in early development and care or in development education in a public educational institution, he or she may also be cared for in the daytime institutions for people with disabilities.

The follow-up investigation of the Commissioner for Fundamental Rights on special children's home showed improprieties related to several fundamental rights. In order to have these improprieties terminated, he turned to the Minister of Human Resources and the head of the children's home concerned. In recent years, the Commissioner conducted inquiries in individual cases in several child protection institutions that provide special care for children with dissocial symptoms and children who struggle with psychoactive drugs, and he also investigated this care system comprehensively. The Commissioner ordered follow-up investigations in four children's homes providing special care in order to check the implementation of his previous recommendations. In addition, he also examined the health care provision and catering for the children cared for. The Act on Child Protection provides for the restriction of a child's personal freedom if the child with special care needs conducts a behaviour that poses a severe threat to himself or herself or to others, by ordering educational supervision. The decision on this is made by the guardianship office, how-

ever, the decision on the maintenance or termination of this supervision is made by the court.

The investigation showed that in practice the institutions themselves decided on the use of camera surveillance systems suitable for the surveillance of the neighbourhood of the institutions, on the installation of grilles, on locking the rooms, passage boundaries or locking the whole institution or the non-application of all these. Law prescribes that a so-called seclusion room for safety grounds, that is suitable for separating children representing a threat to themselves or their surrounding, must be established. However, one of the investigated institutions received an operating authorisation without time-limit irrespective of the fact that the room had not been completed. Arguing that the children sent to the children's home may get psychoactive drugs easily via the internet, the children's home did not permit internet use, the children could not even have an MP3 player with them. The heads of special children's homes try to solve the educational duties on the basis of their professional experience, in compliance with the schools' capacity. Since, in the case of children requiring special care, it is of particular importance that their education should be personalised, in the Commissioner's view, that would serve the best interest and the enforcement of the right to education of the children cared for if methodological materials were prepared on the basis of experience gained in this area. The investigation also showed that in two institutions children were placed disregarding the permitted capacities. In some of the institutions concerned, catering does not fulfil the requirement of a healthy diet. One of the children's homes indicated the lack of children's hospital psychiatric care. In the end, the investigation established that fluctuation resulting also from the lack of financial recognition, lack of supervision, selection of the personnel out of necessity, on the basis of a quasi residual principle, had caused the infringement of the rights of the children cared for, in particular, the legal obligation on the increased protection of children requiring special care.

In order to explore the current practice of the education of correctional institutions for youth, in the first half of 2013, the Ombudsman conducted a comprehensive follow-up investigation. The investigation was not without any precedents, the Commissioner's staff had been to three correctional institutions for youth in Debrecen and Budapest. Positive experience of the on-site investigation is that no coercive measures were applied, exclusively pedagogical means were used in dealing with minors. The mission of the institute's staff is to keep ties, human relationships. The majority of the young people are received in a very bad psychic and health condition by the institutes, and because of the lack of hygiene they often need to be freed of parasites (scabies, hair lice and ringworm).

The teenagers received by a correctional institution have a difficult background, more than 50 per cent of them have already tried some kind of drugs, 10 per cent of them are regular drug users; many of them are dependent on medicine (tranquillizer).The teenagers can also talk about their problems in the course of individual therapies. The entire professional programme of the institutes and, based on this, their functioning focuse on the correctional education and personality development. There are some programmes that specifically deal with aggression treatment. These programmes include, but are not limited to: individual therapies, group cognitive programmes led by psychologists, peer group mediation, art therapy, animal-assisted therapy (with dogs, horses), theatre therapy, creative craft workshops and sport activities. Unfortunately, the majority of the youth from the correctional facilities are left behind with learning, they typically reach 4th-5th grade of primary school. About 30 per cent of the students are functionally illiterate, but some of them absolutely cannot read and write. The currently operating four correctional institutes provide altogether 218 beds for carrying out pre-trial detention and 188 beds for correctional education. With the entry into force of the new Criminal Code on 1 July 2013, the number of juvenile offenders subject to criminal proceeding is expected to increase by 100 capta annually by decreasing the minimum age for criminal liability from age 14 to age 12. Accordingly, the need for correctional care is predicted to cover 50 more people. With this in mind, the Ombudsman welcomed the institutional development.

The Ombudsman highlighted deficiencies in the regulation on unaccompanied minors. Last year, the number of foreign children unaccompanied by parents or adults, reaching Hungary, significantly increased. Even the European Union is concerned about the problem set out in the Ombudsman's report. The Commissioner also took part in the meeting of the European Parliament Committee on Legal Affairs, in which the preparation of the EU directives was on the agenda. Police caught 700 unaccompanied minors only between 1 January 2012 and 30 September 2012. Among the minors caught, there were also some children under 14. Several young people were sent back to Serbia where they had come from, others were, though, placed in a designated children's home, however, two of every three children soon disappeared without a trace, nothing has been known about them since then. The Ombudsman inquired into the case of Afghan children between age 5 and 15 ex officio, who had been caught by police at the green border in the region of Röszke in September 2012. The inquiry revealed the deficiencies in legal rules. An essential element is that an expert opinion must be requested provided that doubts arise in connection with the age of the minor without documents. Age identification is carried out by a police doc-

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tor. It is, however, of concern that the approval of the legal representative or the curator is required in one of the laws applicable to the situation, but it is not required in the other law. Pursuant to the Act on the Admission and Right of Residence of Third-Country Nationals, the aliens policing authority may expel those from the country who have illegally crossed the border or who do not fulfil the conditions of residence in the country, with exceptions specified in the Act. This is only possible in the case of minors if family reunification or state or other institutional care is properly ensured in their country of origin or other host country. However, the legislation in force at the time of the inquiry did not include any specifications as to how the aliens policing authority shall verify the existence of the condition.

The Ombudsman also pointed out that pursuant to the Convention on the Rights of the Child, a child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the State. Contrary to that, the national children's homes designated for temporary placement were unwilling to receive one third of the unaccompanied minors of the present inquiry, with various reasons also detailed in the report, in spite of free capacity. According to the police officers interviewed in the course of the inquiry, it is not rare that the minor handed over to the authorities of the neighbouring Serbia is caught again during illegal border crossing. A children's home tutor said that many of the returning unaccompanied minors claimed: the paid human smuggler agreed to attempt to cross them through the green border in the event of failure. Although, the unaccompanied children crossing the border illegally claimed that they had got to Hungary with the contribution of human smugglers, in connection with this no criminal proceeding was started. According to the Ombudsman, it is evident that the vulnerable situation of the children and their resulting grievances can also be related to crimes, however, the aliens policing authorities are not obliged by the legislation to notify the authority responsible for victim assistance.

The Commissioner for Fundamental Rights asked the Commissioner of Police, the Minister of Human Capacities and the Minister of Public Administration and Justice to take measures in their competence, to amend and complement laws. Pursuant to the Act, a minor may only be expelled if family reunification or state or other institutional care is properly ensured in their country of origin or other host country. The implementing rule related to the quoted legal provision was brought into force on 1 July 2013 by the legislature upon the Ombudsman's recommendation.

The Ombudsman pointed out that the early mother-child relationship and the breastfeeding are essential for both the child and the mother, even in a detention facility. With this in mind, the Ombudsman turned to the

Minister of Public Administration and Justice, recommending that a child until age 1 should be placed with his or her mother in the penitentiary institution, even if the child was born before the commencement of the detention. The regulation ensures common placement of the child born during the time of detention and their mother in the penitentiary institutions. This possibility is, however, not given if the child is born before the commencement of the detention. In the concrete case, the complainant's child was three month old when his mother was placed in pre-trial detention.

The draft of the new Sentence Enforcement Code was adopted shortly after this, with regard to which the Ombudsman repeatedly proposed reconsidering the conditionality of the common placement of mother and child, in the end, this did not happen, as a consequence of which neither the Sentence Enforcement law-decree currently in force nor the new Sentence Enforcement Code entering into force in 2015 does not allow the placement of the child, born prior to detention, with his or her mother.

A typical area of the cases and complaints related to children's rights is public education. Submissions in connection with the proceedings and failure of educational institutions are regularly received from parents, exceptionally from the children themselves. In December 2012, the Commissioner ordered an inquiry based on a report that in the high school of Balatonalmádi, the students and teachers were interviewed in the Principal's office, demonstrations and strikes for higher education were discussed and minutes were prepared about the conversations. Regarding the Principal's proceeding, the Ombudsman established several significant problems concerning fundamental rights. The case began when an anonymous parental complaint, which turned to be unfounded, accused one of the teachers of occupying himself with politics. The Principal received an instruction from the county maintainer of the institution based on this anonymous complaint. He interviewed teachers and students randomly under formalised circumstances but without prior notification and he recorded the content of their answers. The Ombudsman concluded that the method of the inquiry and the manner of the implementation violated the right to due process of those concerned. It also turned out in the course of the Ombudsman's inquiry that the Principal had wanted to verify the political opinion of the pedagogues and the high school graduates, which is of concern in connection with the prevalence of freedom of expression.

The Ombudsman stressed that the practice is of evident concern that qualifies manifestations in public issues to be inquired into, extending the justified prohibition of party politics of the Act on Public Education. The Commissioner pointed out that it is dangerous to exclude public issues from school (this is neither possible nor desirable) as well as to indirectly or direct-

ly compel a student or a teacher to make party political confessions. According to the Ombudsman, a professional resolution related to the prohibition of party politics in school is worthy to be reconsidered, which would take into account the freedom of expression of those concerned and the function of the ideologically neutral public school. The State Secretary responsible for Public Education did not agree with the Ombudsman's establishments.

From the other cases concerning children's rights, it should be highlighted that the Ombudsman launched an inquiry ex officio in the interest of exploring the efficiency of the baby box program and the situation of women who have got in a crisis situation. The basis for the investigation was that according to press news, the number of newborn left in the baby boxes placed in front of hospitals has not decreased. The Ombudsman's investigation found that the legal rules laid the foundation for the support system maintained by the State, they specified the available forms of support in a crisis situation and the educational and imparting knowledge tasks. According to statistical data, however, the number of unwanted pregnancies, abortions is still high, infant murders and child abandonment are an existing problem. The Ombudsman stressed that in the interest of prevention, great emphasis must be placed on awareness-raising education. Baby boxes were situated in front of urban hospitals, but those concerned could become aware of their existence and availability only after thorough search at random. The investigation found that the information available in an anonymous way is incomplete, which leads to an impropriety concerning fundamental rights.

In 2013, a follow-up investigation was conducted with regard to the situation of domestic child labour, in which the Ombudsman sought to review if the recommendations set out in his previous report issued in 2010 have been implemented in the field of labour inspection, if the adverse inspection practice violating children's rights has changed and if children's illegal employment shows an increasing or decreasing tendency. According to the information provided by the Director General of the National Labour Office, in 2010-2011 only two-two such cases were found by the Labour Authority, in 2012, illegal child labour was registered 6 times, principally in the areas of seasonal agricultural work, catering services and construction industry. The investigation found that in addition to employing children for night work, hazardous work activities adversely affecting the child's physical development are also present, moreover, the authority has encountered several times such cases in which children with foreign nationality were illegally employed. It occurred that the child himself turned to the appropriate local government in his place of residence for help, because he did not receive his salary from his employer.

The Ombudsman emphasised that a labour authority shall comply with

the legal provisions and it shall always signal employment of children under 18 to the child welfare service, since it may only make a decision in the light of this signal if measures are needed to be taken in the interest of the child or not. According to the Ombudsman, the age group between 15 and 18, still very sensitive and in need of protection, are treated as adults by the public entities and also often by the professionals responsible for the protection of the child and adult behaviour is expected from them, in spite of the fact that they have only restricted discretionary ability for conducting their affairs. However, due to lowering compulsory education to age 16, this age group may possibly appear in a greater number in the labour market, to whom, however, special labour law rules shall apply, that must be complied with during their employment. The Commissioner raised the attention to that the signalling obligation of the labour authority also exists in that case in which the employed child is not a Hungarian citizen. Since, children's rights are not attached to their nationality, but children are entitled to these rights because they are children. In the case of foreign children, the authority must also take care of that the child is entitled to the right of the use of one's mother tongue, as a consequence of which an interpreter shall be ensured in the course of the proceeding. The Commissioner took the initiative at the General Director of the National Labour Office that they should in any case comply with their signalling obligation in the case of illegal child labour identified by their inspection. In addition to this, he also initiated that the manual governing labour inspections should be complemented as to what procedures and professional protocol shall be followed by the inspectorates in the cases in which the illegal employment of a non-Hungarian citizen child is noticed.

2.1.2.
Protection of the Rights of the Nationalities

A priority for the Commissioner for Fundamental Rights is the protection of the rights of the nationalities set out in Article XXIX of the Fundamental Law, with which he shall comply by means of conducting ex officio proceedings as well. The task plays a crucial role also among the priority tasks because of the very nature of the field of law, since it is related to the other tasks, too, therefore, the priority protection of children's rights and the obligation of taking action against the infringements affecting Roma children show a great overlap. Within children's rights, the protecton of the right to learn, the right to the national minority language and the right to education also have common intersection.

The field of environmental law, also being a priority task in the ombudsman's work, is connected to the protection of national minority rights, for example, through the equal opportunities for the access to public utilities by Roma. Whereas, the tasks of the legal protection of the most vulnerable social groups and the Roma population with multiple disadvantages show overlap, for instance, because of the poverty indicators of the Roma population. National minority right qualifies to be an "intersecting" field of law not only among the ombudsman's priority tasks, but also otherwise, because of its fundamental nature. While about 10 per cent of the population counts as nationalities, the Ombudsman inquired into relatively few national minority complaints in 2013. At least five reasons can be mentioned that account for this.

The law enforcement ability of the Hungarian nationalities in the traditional sense is good, because of their social inclusion and acceptance, they rarely need the ombudsman's help. If they still turn to the Ombudsman's Office, they do it specifically within the scope of national minority cultural rights and national minority self-government rights, and often they only turn to the ombudsman for a resolution.

In contrast to this, the complaints submitted by clients of Roma origin and most of the time with disadvantages, are not considered to concern national minority right under the National Minority Act. They typically turn to the Commissioner for Fundamental Right with a different type of infringement and most of their complaints fall outside the ombudsman's competence, because they ask for help to obtain social allowance, housing support, firewood, and so on. The complaints reflect little legal knowledge. The complainants often do not exhaust the administrative remedy possibilities, they do not know about the possibility of an appeal or they miss the deadline for it. People of Roma origin often formulate their requests and complaints orally in the offices, the subsequent proof of which is almost impossible. The ombudsman's legal protection is, therefore, typically restricted to providing information in these cases.

The "engines" of national minority law enforcement is, typically, the national minority self-governments. This is a well-functioning mechanism in the case of the Hungarian nationalities in the traditional sense, whereas in the case of Roma not. In addition to the lack of legal knowledge, one of the most important reasons for this is that a significant proportion of the Roma national minority self-governments have become personally dependent on the administration of the local government. The chair whose employer is the mayor (as working in public employment) has no proper negotiating position and may not even have one.

In addition, the members of the community often turn to the Roma na-

tional minority self-government with unachievable requests that are not related to national minority law issues and the Roma self-government is unable to help in the absence of social and other administrative competence and financial resources. It should be noted here that the local government's support (that may be given by the local government exercising its discretion) is indispensable for the real activity of the national minority self-governments and the absence of own resources is mostly characteristic for the Roma self-governments. The national minority self-governments receive the personal-professional infrastructure and also the material infrastructure for the self-government operation from the local government. For all these reasons, the relationship between the Roma national minority self-governments and the local governments may be principally characterised by a multiple dependency. Owing to this, the Roma national minority self-governments turn to the ombudsman also rarely and principally only if their relationship with the local government has become extremely hostile and has completely deteriorated.

While a unique living culture (both legally and socially "supported difference" in the same rank with the culture of the other nationalities) is only characteristic for a fraction of the Roma, the difference in status, affecting the vast majority of the national Roma, is not or not sufficiently supported (by offsetting the disadvantages), further aggravated by social prejudice. Social prejudice and its (partly "active") manner, discrimination, however, remain mostly latent. Nevertheless, the extremely low level of legal awareness of the Roma population is not surprising, as other parts of the Hungarian population do not take actions against the discrimination affecting them, either and those concerned belong to the layer of the Hungarian society that is least capable of enforcing their interests.

In 2013, the inquiries of the Commissioner for Fundamental Rights, regarding the national minority self-governments were mainly connected to the issues of internal audit of the national minority self-governments, the changes of legal regulation and the cooperation of the local and municipal national minority self-governments.

The Ombudsman established in the case No. AJB-6683/2012 concerning the internal audit of the national minority self-governments that the local government violated the rights of the municipal Roma self-government, when it decided on conducting an internal audit exceeding and evidently violating the framework of the cooperation agreement. The autonomy of the national minority self-government without an economic entity is not only framed but also protected by the cooperation agreement concluded with the local government.

In the course of the population census, one can voluntarily make a decla-

ration on belonging to a national minority. At the time when the data were recorded, it was not yet well-known that these data would also be used for the purpose of election. In 2012, the Commissioner turned to the Constitutional Court because of the raised constitutional concerns; however, the Court deemed that this regulation is not contrary to the Fundamental Law. In 2013, another inquiry was conducted by the Ombudsman, which verified that the use of census data alone cannot rule out the possibility of electoral abuse. The inquiry also proved that in several settlements where the establishment of a national minority self-government would be justified by the representation of the Roma, Slovakian, Slovenian or other national minority communities, the establishment of this self-government would not be possible.

The enforcement of the right to national minority education is a quintessential question for the existence of a nationalities community, for the future of the existence of nationalities will increasingly depend on the efficiency of national minority education because of the progress of assimilation. For this reason, the Ombudsman held it important to compensate for the missing element of a series of inquiries presenting the full scale of the national minority public education and to carry out an analysis of the national minority secondary schools in an ex officio proceeding. In addition, in 2013, upon the Deputy-Commissioner's request, the Ombudsman investigated the current situation of the Bulgarian complementary national minority education.

The Commissioner also launched an inquiry ex officio into the enforcement of the rights of the children living in settlements, whose priority (accordingly the most detailed) aspect was the issue of Roma children's segregation at school. The inquiry showed that in the case of a certain degree of concentration of children with multiple disadvantages, good technical conditions, integrationist pedagogical methodology, the teaching staff's efforts and the currently available scholarship serving equal opportunity purposes (but only received by the best) are not suitable even jointly for giving a real career and life chance for the students.

National minority mother tongue is used less and less as a result of assimilation. The protection of language rights maintains the possibility of language revitalisation; therefore, it is a particularly important task. The Ombudsman fulfilled this task by conducting two inquiries ex officio. The Ombudsman established that considering the deficit areas of national minority pedagogue training and the restricted support for guest teachers, within the scope of ensuring the national minority language rights, it is the obligation of the State to establish the objective possibility of the accredited language examination recognised by the State and free of restrictions, for the Bulgar-

ian, Polish, Armenian, Ruthenian and the Ukrainian languages and to support the language examinations from the other national minority languages.

In 2012, the Ombudsman launched a comprehensive inquiry reviewing the enforcement of the national minority language use, which was closed in 2013. The purpose of the inquiry launched ex officio was to explore how the national minority self-governments could live with their language rights ensured by the Acts and if there were such factors that made the application of justice more difficult. The Ombudsman also investigated how those people belonging to a national minority could enforce their right to language use ensured by Acts in the course of civil and criminal proceedings and in administrative proceedings.

From among the nationalities, hate crime concerns almost exclusively Roma people. Unlawful patrols also belong to this circle. Regulating prohibited patrols is required for two reasons. On one hand, in a democratic state governed by the rule of law, it is the State that is entitled to the monopoly of maintaining order; exception may only be established by law. Criminalisation of actions without state control, contrary to the abovementioned, is considered to protect this value. On the other hand, it was also necessary to provide for the application of means of criminal law against the activities aiming at the intimidation, collective stigmatisation and offending the dignity of the domestic Roma community. In the inquiry, launched ex officio, the Ombudsman and his Deputy investigated the enforcement of legal rules prohibiting the organisation and conduct of unlawful public safety activity. According to the report, law enforcement is primarily prevented by the regulation that makes it possible to prove infringements that form the basis for law enforcement. Therefore, the Commissoner and his Deputy proposed the Minister of Public Administration and Justice to amend the legislation.

A great proportion of the Hungarian society is considered to be poor, but from among the domestic nationalities only the Roma community needs special social equal opportunity measures because of their employment, social and educational situation. In the disadvantaged social layers in an almost hopeless life situation, the proportion of Roma national minority citizens is in excess of their number, related to the Hungarian society as a whole. Part of the Roma people in a peripherical social situation and suffering from prejudice are often not able to live with the possibilities offered by the, in principle, available equal opportunity system, either. Their integration seems almost hopeless, while the subsidies for improving the situation of Hungarian Roma people and their advancement have multiplied since the democratic transition and the subsidy system and support programs have become more and more complex.

As an independent investigation area of the children's right project, the Ombudsman analysed the enforcement of the rights to equal opportunities, protection and care, physical and mental health and a healthy environment of the children living in segregated part of settlement or a settlement-like environment. The investigation is intended to analyse the enforcement of "general" children's rights principally, but it also had some national minority right implications owing to the characteristic social-ethnic base of the settlements. The settlement investigation covered the issues of child protection, child welfare, public education, health care, employment, public employment, settlement-rehabilitation program, the road network, drinking water- and sewage network, waste shipment, public health- and epidemiological situation as well.

On the basis of the large data base of the investigation, the Commissioner for Fundamental Rights drew the attention to the fact that those living in extreme poverty and social exclusion are unable to change their life circumstances on their own, due to their extremely complex problems. Consequently, in the interest of the protection of human life and dignity and ensuring equal opportunities, the State has additional obligations in relation to the improvement of the situation of those living in segregates. Among the domestic nationalities, almost exclusively the Roma are affected by social prejudice and the consequent discrimination.

In another investigation, the Ombudsman came to the conclusion that a local government's provision on restricting the use of public wells, in June, violated the right to healthy drinking water and the provision also led to discrimination based on Roma origin. In compliance with the decision of the assembly of the local government at the end of June, as of the beginning of July, the water discharge of 62 public taps was restricted and 27 were turned off. Since in the town about one thousand households do not have running drinking water, a number of press releases were published in which it was stressed that long queues were formed at the public wells as a consequence of the water restriction. This measure principally and particularly negatively affected the inhabitants living in certain settlement-like environment, considered to be in a socially disadvantaged situation, most of who were of Roma origin. The reason for water restriction was to encourage the inhabitants to more economic water consumption and to discourage illegal use that cannot be verified by data. The joint report established that the local government's provision on restricting the use of public taps apparently applied to all legal entities equally, but the measure affected a well-definable group of the inhabitants, characterised by Roma national minority origin, in a significantly larger proportion than other groups of the population.

Pursuant to the Fundamental Law, the Deputy Commissioner responsible for the protection of national minority rights shall defend the rights of nationalities living in Hungary. The Deputy Commissioner can only perform her duty "through" the Commissioner for Fundamental Rights who has general authorisation for the inquiries into the improprieties in connection with fundamental rights. Consequently, cooperation is an obligation for the Commissioner and the Deputy Commissioner equally. However, the joint responsibility and the legal obligation will become the possibility for a more efficient work performance only if there is mutual and total professional confidence between the concerned persons. The year 2013 brought on a significant change in this respect as well: the professional confidence between the new Commissioner and the new Deputy Commissioner clearly increased the efficiency of the common work.

2.1.3. Protecting the environment and safeguarding the interests of future generations

Within the Fundamental Law of Hungary the concept of common heritage of the nation can be found in the articles of the Foundation: according to Article P natural resources, in particular arable land, forests and the reserves of water, biodiversity, native plant and animal species, as well as cultural assets form the common heritage of the nation. The constitution renders it the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations. Article XXI of the Fundamental Law declares the right to a healthy environment, its wording does not differ from the earlier Constitution, however the "polluter pays" principle, as well as the prohibition to import pollutant waste for the purpose of disposal appear as new features. Protection of the environment can also be traced in Article XX of the Fundamental Law: Hungary shall promote the application of the right to physical and mental health among others by an agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, as well as by ensuring the protection of the environment.

As in previous years, the Office of the Commissioner for Fundamental Rights has received a significant number of ambient noise related citizen complaints in 2013, too. Noise has a prominent place among environmental harms and a large part of the population lives in areas loaded by noise stemming from transport, industrial or recreational activities. The operation of restaurants and pubs can be the source of serious conflicts: in addition to the loud music services the street bluster of arriving and departing guests

and the increased vehicle traffic may also disturb nearby residents. In connection with the operation of stores established in apartment houses the Commissioner for Fundamental Rights pointed out the shortcomings of the Act on apartment houses, highlighting the importance of peaceful housing of the residents. The Commissioner drew attention to the fact that in the majority of cases the main function of these condominiums is ensuring home, housing. The complaints show that if in a building used primarily for the purpose of housing another production, service function appears mixed with the residence function, this results in the emergence of conflict in most cases. The rest of many people can be disturbed by certain outdoor events as well. The most important finding of the Ombudsman's comprehensive investigation was that it is justifiable to elaborate such a framework-type central legislation that creates the missing unified set of rules on administrative licensing, inspection and sanction in respect of outdoor events, and at the same time reserves the freedom for municipalities to develop a regulation appropriate to the local interests.

A likewise characteristic field of investigation was in 2013, and a number of individual complaints affected the public service of waste transportation. In this area, a significant change was generated by the new waste law that entered into force on 1 January 2013. The local governments' legislative powers related to the mandatory waste treatment public service are regulated in detail by the law. In relation with the regulation of several local governments the Commissioner for Fundamental Rights established that it involves an infringement, if no waste receptacles of less capacity than 110-120 litres are provided for the residents, who require the transportation of less waste. It also represents an infringement, if the local regulation does not contain rules regarding the suspension cases by the user of the property.

Based on the UN Convention on the Rights of the Child, adopted in 1989, States Parties shall pursue full implementation of children's right to the best attainable standard of health, in particular shall take measures – among others – in the context of the provision of drinking-water. In regard to the increased state responsibility concerning the protection of children's rights a comprehensive investigation was launched with the title "Can a child drink tap water when thirsty?" Ensuring the right to safe drinking water means that the stock of water, as a finite natural resource should be given horizontal protection, and the citizens should be provided with drinking water of appropriate quality and quantity. Proceeding from the title of the investigation the Commissioner concluded that children can not drink tap water when thirsty in all cases, that is the rights of the child may be violated. This may be due to the fact that in the settlements supplied with temporary drinking water, the concentration of arsenic, boron and fluoride

excesses the limit laid down in the legislation. The temporary supply of drinking water was established, because hereinafter the EU does not allow Hungary to deviate from the limits set out in Directive 98/83/EC, and the program to improve drinking water quality is not yet completed in certain municipalities affected. In this situation it depends on the households' decision, whether until the completion of the investments carried out within the program to improve drinking water quality – as expected no later than 2015 – they continue to consume the tap water that is qualified to be unhealthy on the basis of the laws, or they invest more time and effort to avail of the temporary supply of drinking water. The State complies with its obligation of institutional protection stemming from the right to a healthy environment by ensuring the operation of Hungarian Air Quality Network to measure the level of air pollution load. It results in an infringement connected to the right to a healthy environment, as well as to the right of access to information of public interest, if the State terminates or pauses for a longer period sampling at certain points of the network, and/or fails to disclose updated environmental information.

The Ombudsman's Office has received several complaints related to the phenomenon that catering facilities – in response to the regulation of the Act on protection of non-smokers and on certain rules of consuming, distributing tobacco products – designated smoking areas, but thus embittering the life of those inhabiting the neighbouring building. The Commissioner for Fundamental Rights considered it important to emphasise that tobacco smoke is toxic in any case, it has no safe health limit. The Ombudsman stated that it leads to an infringement related to the right to health and to a healthy environment, that the law does not provide the authority for the possibility of action in order to prevent those living close to the entertainment, catering public institutions, from suffering health harm due to others smoking areas designated in non-closed airspace. In his response the State Secretary for Health informed the Commissioner about examining the possibility of amending the law.

In case of two complaints the Commissioner and the Deputy Commissioner for Future Generations summarized their findings in joint reports. Investigating the decision of a local government restricting the use of public taps, they established that limiting the quantity of water used for subsistence and public health purposes caused an infringement related to the fundamental right to health – even despite the intention of preventing illegal water usage. Since the municipality suspended the implementation of the resolution limiting water consumption, and withdrew the decision constituting the basis for restriction, the Commissioner and his Deputy made recommendations to avoid similar violations. In the second case the

petitioner complained about the procedure connected to the tenders announced by the National Fund Managing Organisation, and related to this about certain provisions of the Act on the National Fund, as well as of the Government Decree on the detailed rules of the utilization of land fragments belonging to the National Fund. The Commissioner and his Deputy stated that the environmental values that have come into being over the past decades as a result of organic farming are worthy of constitutional protection.

They also stressed that rationality and the constitutional value of common national heritage requires that in civil legal relationships connected to the National Fund the institutional protection obligation of the State should be fully enforced. The legislation relating to the lease of state-owned land has to ensure the full enforcement of the requirements connected to the common heritage of the nation described in Article P of the Fundamental Law, it has to take into account the environmental values resulting from organic farming. In their joint report the Commissioner and his Deputy have asked the Minister of Rural Development among others to develop a strategy, an action plan, which fully ensures the institutional protection needed to protect and maintain the common heritage of the nation named in Article P of the Fundamental Law, in course of the land use activities of the National Fund Managing Organisation.

In the investigation launched based on a submission complaining about the lack of government actions, respectively their insufficiency related to rag-weed, an allergen plant species, no infringement connected to fundamental right has been established by the Commissioner, however to make the control of rag-weed more effective and efficient he recommended the Government to promote the smooth cooperation of ministries affected by establishing an interdepartmental committee, and to initiate the drafting of a single, unified and comprehensive law on controlling rag-weed. To provide the most efficient possible information and to disseminate the technical knowledge, he asked the Minister of Interior to consider developing a – municipal level – strategy prepared with the involvement of professional organisations.

Another complainant asked the Commissioner for Fundamental Rights to call the attention of those concerned to the importance of protection against ticks. Although in the report the Commissioner did not establish infringement, he invited the Minister of Human Resources to consider the possibility of launching the complex campaign suggested by the National Centre for Epidemiology. To have the widest possible circle of the population informed, educated, he recommended the ministry to prepare and publish as many flyers, posters as possible, and to disseminate these in

health and educational institutions, as well as in the mayor's offices of local municipalities.

Looking at the clean-up procedures the Commissioner noted that although conducting such a re-mediation process takes longer also in itself, the documents attached to the complaints revealed that in the cases objected the technical interventions might not have been carried out over several decades. The unduly protracting re-mediation procedures can cause infringement in the context of the right to a healthy environment.

The Commissioner conducts his examinations by focusing on the *sustainability* requirements. The findings, proposals are aimed at creating a harmonious relationship between society and the environment. Taking note of the fact of industrial development, the need for various projects, he stresses that the long-term interests of the environment should by no means be ignored.

2.1.4. Protecting the fundamental rights of persons with disabilities

After ratification of the UN Convention on the Rights of Persons with Disabilities the situation of people with disabilities can and should be addressed even more energetically, the field of fundamental rights needs to be made clear by ombudsman tools and constitutional arguments. In recent years almost all disability groups appeared on the Commissioner's horizon, and on the basis of either a targeted project or of a specific individual complaint, he has monitored this social group of – together with their families – nearly one million people in the broadest spectrum possible, from education to the whole support system. In the year 2013, in course of performing his key monitoring duty the Commissioner surveyed, related to the protection of the rights of people with disabilities, the anomalies of finding place in the world of work, respectively mainly the problems of the support system.

At the beginning of 2013 the report ascertained findings of high importance, the basis of which was the disability allowance or the lack of awarding it, but in connection with the Ombudsman's investigation the definition of disability came into focus quickly. The president of the National Aphasia Association complained that lacking legal provision the appropriate support, attendance of persons with aphasia (a communication disorder that covers the individual's competence), and in connection with this the promotion of rehabilitation adjusted to their current condition and needs is not solved. And the Hungarian Transplant Association conveyed the problem of a complainant with an organ missing, who does not qualify as disabled under the current legislation, and thus is not eligible for disability assistance.

Already in previous reports the Ombudsman pointed out the problem that there is no unified definition to specify "persons with disabilities" in the domestic legal system, the diversity of concepts comes from the dissimilarity of individual legal and professional disciplines. Thus the Commissioner extended the scope of examination to the revision of the concept of disability applied in the Hungarian legal practice, given that the basic problem of both complaints stems from the narrower interpretation of the circle of disability, which differs from the UN Convention. Beyond the Ombudsman's reports, the things explained in a parallel account on the UN Convention prepared by the Hungarian Disability Civic Caucus also confirm the findings of the investigation. This parallel account stresses that in the Hungarian legal environment the single definition of disability, and of a person with disability are missing, different definitions are used by various laws. According to the parallel account the statutory definition does not comply with the provisions of the Convention in several respects.

First, the law provides an exhaustive list, contrary to the Convention, which gives an illustrative enumeration, in line with the developing interpretation of disability. Second, under the Hungarian law psychiatric patients with (chronic) mental damage are not qualified as persons with disabilities. Third, the Act takes the medical model of disability as a basis, inasmuch as it considers that the disadvantage of disability and public participation is rooted in the lacking abilities of the person. Finally, it provides for a threshold condition, where the inability has to be substantial or complete to fall within the scope of the Act. The Convention does not recognise such a threshold, with respect to non-discrimination it does not distinguish between "mild" and "severe" disabilities.

The report notes that in accordance with the preamble to the UN Convention the States Parties recognise that disability is an evolving concept and that disability is the consequence of the interaction of disabled persons and attitudinal, environmental barriers, which hinders their full and effective participation in society, on an equal basis with others. For this reason, in order to promote social integration, it is of primary importance that the definition of the concept should be able to follow the emerging needs, changes, and to this end the legislator is bound to create the conditions for the appropriate professional conduct of the review. The Hungarian regulation differentiates on the basis of lack of abilities, and thus makes distinction among the visually or hearing impaired, physically or mentally handicapped, autistic and multiple disabled persons. The UN Convention on the other hand highlights the limitations of social engagement, and defines the concept of a person with disability on this basis.

The Commissioner's report concluded that alignment to the UN Conven-

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tion is a fundamental and doctrinal base condition, which stems from the international legal obligations of Hungary as well. The support system can be established only after this, with this in mind and within this framework, furthermore in course of setting up the system the legislator has extensive discretion based on multi-faceted professional consultations, but the doctrinal exclusion of certain groups (such as the ones indicated also in the complaints, persons with aphasia, or organ missing) due to taking into account the equalization needed for participation in society – as a major aspect – is contrary to the constitutional requirements.

The Commissioner highlighted in his report that the legislative environment in force at the time of the investigation did not satisfy the principles of law and concept definition laid down in the UN Convention, the legal harmonization of the domestic and UN disability definitions is missing, and this malpractice brings forth and maintains an infringement related to the requirement of legal certainty stemming from the principle of rule of law, and of ensuring equal opportunity, in respect of those concerned. The Commissioner for Fundamental Rights therefore asked the Minister of Human Resources to initiate the amendment of the law in order to comply with the Convention, and then the review of the support scheme, and during this to pay particular attention to the findings revealed in the report. According to the Minister's response to the report the law was amended in the meantime, and the new definition of a person with disability is aimed at creating consistency with the notion of person living with disability applied in the UN Convention.

2.1.5.
Protecting the rights of the most vulnerable groups in society

In context of the legal protection of those in need, of the vulnerable people the ombudsman's fundamental task is to outline a logical, consistent set of criteria, proceeding from the constitutional provisions. The Ombudsman Act itself expects the respective Commissioner to pay special attention in respect of all the vulnerable social groups in need, highlighting specifically the protection of people with disabilities. The social groups that can be ranked in this circle may qualify as vulnerable for different reasons (i.e. their existential status, age, health, mental condition), however because of this situation they are vulnerable to all state and public authority intervention.

Not only in terms of the 2013 investigations, but also *for theoretical reasons* it has to be pointed out that the social and legal opinion about homelessness is mixed, acceptance and inclusion can be perceived on the surface,

the focus of the analysis being vulnerable. The increased protection of the rights of persons with disabilities could be addressed vigorously after the ratification of the UN Convention, when the new field of Fundamental Law could be made clear with the ombudsman's means, constitutional arguments. The condition of the patients, disabled persons may be temporary or permanent. The history of evolution of patients' rights draws a classical arc in the European dimension, but it represents a slow adaptation in respect of domestic health care. Old age, as a status resulting in neediness, vulnerability, is a specific Eastern European phenomenon. Since the subject is not clearly an issue of fundamental rights, but primarily of social science, at times the investigations, researches tried to capture a much broader picture, than the one that can be expected at all from the role of the ombudsman.

The problem of homelessness was in 2013 as well one of the Ombudsman investigations' priority, the quality of life of those suffering from the circumstances of homelessness required the Commissioner for Fundamental Rights to perform several investigations. The quick and easy "eradication" of homelessness, the State endeavours concerning "tidying up", "elimination" of the homeless question the functioning of the mechanisms of rule of law, as they announce fight against the "problematic persons", not against the problem itself. Homeless people constitute a weak social layer with barely any law enforcement capacity, which is extremely vulnerable to the slightest legal limitation. Habitual use of public space has introduced a new terminology, creating the status-misdemeanour of homelessness, the criminalization of this situation.

The quick report issued for the third time in 2013 can also be considered as a warning notice, which summed up the operation of the homeless care system in Budapest in time of crisis, after the period of freezing. In his report the Commissioner for Fundamental Rights warned of a severe legal uncertainty. Simultaneously with the examination of the situation of homeless care in the capital, the Ombudsman assessed the status of two big cities (Győr and Kaposvár) as well. In the report summarizing the experiences in addition to the functioning of institutional system, the official sanctioning practices applicable on public premises were also analysed. The experiences of field investigations in Győr and Kaposvár also confirm the previous view of the Commissioner, that in the reintegration of homeless into society individualized attendance and social care are of great importance. To his opinion neither the authority action, nor the norms determining the use of public spaces, certain types of conduct are not able to manage in themselves the visible symptoms and hidden causes of homelessness and the public order, public health, general condition problems associated

with it. Social issues can only be addressed with social responses based on social solidarity. This is a universal obligation of the political community in a constitutional state, the task of the current government and the leaders of municipalities.

One investigation revealed that the closure of Budapest's only homeless disinfectant bathing place may result in the development of a public health emergency affecting the society as a whole, as untreated patients may increase the probability of further spread of diseases and infection. The situation is further exacerbated by the fact that the law does not specify clearly, who is in charge of the operation.

Related to the protection of *patients' rights* it should be emphasised that the Commissioner monitors certain aspects of health care continuously for many years, he examined the ongoing structural changes in health care, the domestic situation of psychiatric care, or the uneven quality of the training of health care assistants. In the field of health care the Commissioner's investigation revealed the problem of diagnosing and monitoring of chronic viral hepatitis (infectious hepatitis). The treatment and monitoring of patients suffering from chronic viral hepatitis is regulated by mandatory professional protocols for the physicians. The Commissioner takes the view that in the case when the State has decided that a rule, a procedure to be followed should be applied in a compulsory way for a defined scope of legal entities (doctors) in certain cases of legal relations (the treatment of all patients affected by this disease), then later on it is obliged to provide for the tools – in this case, adequate funding – enabling the enforceability of the rule.

The Ombudsman took a stand on a similarly serious issue, relating to vulnerable patients in the case of a complainant infected as a child by HIV during blood transfusion. The Commissioner did not want to commit himself based on the information of medical professional nature made available to him, but wished to draw attention to the fact that it is an explicit obligation of the legislator to promote the chances of people living with long-term illness also in the respect that they can benefit from certain lifesaving interventions or ones greatly affecting the quality of life.

The situation of a specific vulnerable group, *psychiatric patients* is special in several ways – primarily due to the right and liberty restrictions affecting them optionally. The Commissioner for Fundamental Rights has called attention already several times to the special situation of psychiatric patients, whether they are using the services of health or social security system. Their situation is also unique because in respect of people on the borderline of disability and illness, Hungary included this group into the legal protection mechanism of persons with disabilities only through a 2013 legislative amendment, although the personal scope of the UN Convention

on the Rights of Persons with Disabilities is extended to persons with psycho-social disabilities.

The circumstances and consequences of issuing a psychiatric expert opinion were also examined by the Commissioner, who emphasised that he finds it unacceptable to prepare a specialist opinion without carrying out a personal examination in a question affecting so much the ability to act of the person concerned, like mental sanity, state of mind, or ability to handle private affairs. With regard to psychiatric patients the legality of restrictive measures, respectively their application in a way offending dignity are significant issues.

The Commissioner stressed that the significance of the guarantee rule is that the person intended to protect the interests, rights of patients in vulnerable situations is informed as soon as possible about this serious restriction of fundamental rights, the limitation of personal freedom, and can ensure the legality of the procedure through its monitoring. Another infringement was established because of the application of emergency psychiatric medical treatment. Full compliance with the seemingly formal legal regulations in case of persons suffering in psychiatric illness has a special significance, as due to their status they belong to one of the most vulnerable group of people. Observing the legal provisions without fail is designed to ensure that any coercive measure affecting their person, their dignity and their freedom – of the occurrence of which these patients are not even aware, due to their condition – is exactly traceable, controllable.

The protection of the fundamental rights of detainees also belongs to this category of vulnerable groups in the broad sense in the ombudsman's practice, although one of the most contentious circle of vulnerable social groups is precisely that of prisoners living in penitentiaries. At the same time, just because of the circumstances and nature of detention, it is necessary to rank the thousands of people serving a sentence to the circle of vulnerable. The investigation carried out in 2013 in the Penitentiary and Prison of Sopronkőhida (a village of North-West Hungary) revealed that it is extremely crowded; inmates spend their long imprisonment in narrow cells, and there are less psychologists than necessary. According to the view of the Commissioner for Fundamental Rights, the detainees' right to human dignity, as well as to physical and mental health is violated by the fact that several of them live closed together in small, narrow cells, built for one person; while the use of three bunk beds is irreconcilable with the prohibition of inhuman and degrading treatment. The report mentions that the prisons try to compensate for effects of congestion by employment, and the institution of family consultation prior to release also exists.

The Ombudsman investigated the case of a complainant sentenced to

custody in the Prison of Jász-Nagykun-Szolnok County. He found that the institution has caused an infringement related to the detainee's right to health by not providing access to dental care for months. The prison made an unlawful failure also by not acting to obtain the social security number of the inmate, and required the prisoner to show this to be entitled for specialist care.

In the context of the period of 2013, the protection of *the rights of financially vulnerable persons* deserves special mentioning. In the traditional sense, in addition to the already mentioned members of the most vulnerable social groups, here belong the poor people living in the margins of society, who can not be considered homeless, furthermore the hundreds of thousands living in extreme poverty. In course of his work the Commissioner meets in several cases, in connection with different issues (cases involving social, health, education and other public services, child welfare care etc.) people living below the poverty line. Any support, care, help for these people may result in daily survival.

The Ombudsman concluded that the regulation deficiency due to which the law does not dispose of the retroactive payment of family support according to the decision made in the process arranging the child's family status, leads to a situation infringing fundamental right in several ways.

A complainant appealed to the Commissioner with the problem that the responsible local authority does not provide adequate assistance in a difficult social and housing situation. The Commissioner has called attention earlier to the fact that in winter seasons several people have died already across the country due to similar reasons, which is unacceptable under the operation of professional service providers and authorities entrusted with running the social net. In the course of its social care activity the local government will comply with the requirements set out in the Constitution, if providing the mandatory forms of care, it judges the applications in a due process. And all this should be accompanied by a preliminary phase of information, as the citizens need to know what kind of care they may require from the local government. The Ombudsman's position proclaims accordingly that a customer-friendly attitude is not only expected, but is an explicit obligation of local authorities, in order to supply the citizen with correct, detailed information about the specific state or local forms of care, and their claiming, using conditions. With particular reference to the difficult life situations caused by the current economic circumstances, in social issues the authorities are positively expected to help people by providing adequate information, and to inform applicants accurately about the other available forms of care.

The Ombudsman's report stated that with regard to its life protection

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obligation declared in the Constitution, the local government is bound to take all measures by which it promotes preventing immediate threat to life, while at the same time in facilitating the performance of state obligation, everyone, so even the one in need is required to cooperate, and without this the practical realization of state commitments may be hindered. In addition to the enforcement of formal equality before the law, it is an obvious fact that those in a bad financial situation live in more difficult circumstances, but their private sphere, human dignity can not be questioned even in the worst condition, in a deteriorated environment.

In 2013, from the aspect of protecting the rights of existentially vulnerable people, two ombudsman investigations had high importance related to the conditions of allocating social firewood and other in-kind aid. The Commissioner has launched an investigation on the initiative of the Deputy Commissioner responsible for the protection of the rights of nationalities, and based on the signal of several non-governmental organisations in connection with the social firewood allocation practices of the "model of Érpatak", as featured on the website of this village of North-East Hungary. The text of the notice on this web-page concerning the claim of social firewood, which was sent to local residents in form of flyers, violates fundamental human rights of the applicants. For example things were listed among the ranking conditions published by the mayor, like the extent to which the claimants worsened the reputation of the village, or with how much diligence and how fairly and reliably they carried out the tasks entrusted to them during communal works. The Ombudsman's report pointed out that by allocating firewood with social purpose the State assists the especially needy people in providing the minimum living conditions. The Commissioner said that in drafting the regulation the local government has not taken into account all the provisions of the ministerial decree containing the general framework conditions of eligibility for support. The report concluded that narrowing the scope of eligibility in the decree of Érpatak, as well as the lack of provisions regarding the form of the mayor's decision and the appeal are both solicitous, they represent a risk of infringing the right to fair procedure and legal remedy.

The Commissioner for Fundamental Rights investigated a complaint from another small settlement, lodged by the local advocacy organisation, based on which it was probable that not all local people in need had access with equal chance to the potato allocated within the social land program, and to the firewood advertised as in-kind allowance. The investigation justified that the potato was really not distributed in a transparent, fair process, complying with the requirement of equal treatment, and the local regulation on purchasing firewood of social purpose did not contain clear

provisions either about the scope of entitled people, or about the deadline of submitting the claim, therefore this has adversely affected the eligible persons in need.

2.2. The Ombudsman's own-initiated projects

Since 2008 the Commissioner for Fundamental Rights focuses his examinations every year on 2-3 areas or sub-fields, where the use of preventive tools of protecting fundamental rights, or instruments beyond law may be appropriate. As a consequence of the Commissioner's role of quasi Children Ombudsman, one of the annual projects always looked at a field affecting the enforcement of children's rights. In addition, to ensure freedoms, to promote equal dignity and to protect vulnerable groups special projects have also been launched each year. Besides conducting comprehensive investigations, these projects traditionally involve organising conferences addressed at all the state and civil professional actors in the field given, to analyse and present the experiences of the Commissioner's examinations. The projects of 2013 surveyed and analysed three complex areas, *the prevention of hate speech, verbal hatred, the enforcement children's right to health and healthy environment, as well as the chances of youth employment, finding job opportunities.*

2.2.1. Children's right to a healthy environment – Children's Rights Project of 2013

The Ombudsman Act highlights among the Commissioner's tasks that of *protecting children's rights*. Since 2008 the Ombudsman performed the role of Children Ombudsman in the framework of a special project on children's rights. The topics of former children right projects were as follows: children's rights awareness (2008), violence against children – with particular regard to school violence (2009); family replacement care (2010); physical and mental health of children (2011); child-friendly justice (2012). The Ombudsman continued his thematic work on children's rights in 2013 too, focusing on the investigation of children's right to a healthy environment.

The works of the Children's Rights Project in 2013 were largely helped by external experts, especially Ms. Mária Herczog (Euro Child) and Ms. Szilvia Gyurkó (UNICEF Hungarian Committee). The fundamental rights

starting point of the project of 2013 is Article XX of the Fundamental Law of Hungary, which provides that everyone has the right to physical and mental health. Hungary shall promote the application of this right by an agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision, by supporting sports and regular physical exercise, as well as by ensuring the protection of the environment. The Fundamental Law declares that Hungary recognises and enforces the right of everyone to a healthy environment, and it also states that natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets form the common heritage of the nation, and it is the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.

Article 24 of the UN Convention on the Rights of the Child recognises the right of the child to the enjoyment of the highest attainable standard of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. States Parties also shall pursue full implementation of this right and, in particular shall take appropriate measures to combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious food and clean drinking-water, taking into consideration the dangers and risks of environmental pollution.

The United Nations held a Conference on the Human Environment in 1972 in Stockholm, which officially recognised the fact of the interdependence of environment and human rights, and confirmed that (natural and built) environment is a relevant factor from the aspect of human well-being and the exercise of fundamental human rights, and even the right to life. The environment has positive and negative effects on human rights. It plays a fundamental role in ensuring human life, in producing the raw materials necessary for food, industry and development. However, some environmental risk factors – such as excessive radiation or contaminated water – may also threaten fundamental right to life.

The European ministers participating in the Fourth Ministerial Conference on Environment and Health, organised right in Budapest in 2004, have adopted the "Children's Environment and Health Action Program for Europe" (CEHAPE), which deals with the environmental risk factors that have the greatest impact on children's health. The Action Program sets out the following four priority regional targets for Europe: to reduce waterborne diseases and provide healthy drinking water; to reduce the number of childhood accidents and establish safe and healthy neighbourhood and home

environments for all children; to reduce respiratory and asthmatic-allergic diseases and to cut outdoor and principally indoor exposure; to reduce the risk of disease and disability arising from exposure to hazardous chemicals and physical agents during pregnancy, childhood and adolescence, as well as from exposure to hazardous working conditions.

It is important to emphasise that the content of the right to a healthy environment is entirely different in the case of children in *severe or extreme poverty*, as for them not only the "higher-level" environmental risk factors (air pollution, chemicals in the environment, lack of organic food) represent the primary threat, but often *the forced deprivation of minimum environmental conditions* – such as proper alimentation, housing and health facilities.

According to the situation analysis of the National Social Inclusion Strategy *21 percent of the children, about 380 thousand kids were living in poverty in 2009* in Hungary. Despite the fact that in terms of the poverty reduction impact of social allowances Hungary is in a favourable position in EU comparison, we are among the five countries in the European Union, where there is the biggest distance between the population and child poverty, at the expense of the latter one. 11% of the children (198 thousand kids) are registered by the guardianship authorities as being at risk, their vast majority due to financial reasons. In a significant number of households with children living below the poverty line, the continuous access to adequate quantity and quality of food is still a problem, and unfortunately it still occurs that the parents – due to infrastructural or financial reasons – can not provide their children even healthy drinking water. In case of children living in segregated districts the right to housing and healthy environment is even more severely violated, since the flats in poor technical condition, often not connected to water and sewer services pose a significant health risk.

The differences in standard and capacity of public services provided by the State also represent a continuing violation of the right to a healthy environment. Due to the shortcomings of institutional and service system, not all children may have access with equal chance to quality supply and service that best meets the needs. For example those affected are at disadvantage in access to quality health care, or to sports and regular exercise, and have more difficulty with engaging in cultural services as well.

Based on all this the project and the related investigations were built on two big pillars: *the right to a healthy environment in schools* (A) education, environmental awareness; (B) access to services; (C) dining (including special needs, organic food, local products); and *enforcement of the rights of children living in extreme poverty, and of disadvantaged children, from the aspect of the right to a healthy environment*.

Each year more than 200 thousand children are registered as endan-

gered. If we look only at the income, about 20-23 percent of the 2 to 2.2 million Hungarian children, nearly 14 percent of the total population live in poverty in Hungary today. According to the results of the research prepared by the Hungarian Committee of UNICEF in 2012, among Hungarian children the rate of those endangered in well-being has increased compared to the year 2009. At present, every second child lacks something in some respect.

The conference presenting and discussing the investigation results of the Children's Rights Project took place on 27 June 2013 in the Office of the Commissioner for Fundamental Rights. In addition to Commissioner Máté Szabó, opening lectures were delivered by the head of the Children's Rights Project and the representative of the Deputy Commissioner for Future Generations as well. A colleague from the Office presented the Ombudsman's investigations on access to environmental education and to clean drinking-water. A senior research fellow of the Hungarian Institute for Educational Research and Development talked about the role of ecoschools in environmental education. Invited speakers were the acting director of the National Institute of Environmental Health, and the head of the WHO office in Hungary. Analysing the second pillar of the project, the conference dealt with the enforcement of the right to a healthy environment of children in need.

Dr Ágnes Lux, Prof. dr Máté Szabó and Dr Judit Pump at the conference on children's right to a healthy environment (27 June 2013)

During the conference the informative publications of the 'SZUNO' project of Real Pearl Foundation of Berettyóújfalu, East Hungary, were available. The Real Pearl Foundation is a public benefit non-governmental civil organisation, whose main purpose is the basic art education, talent management, the development of socially disadvantaged and Roma pupils, family care, and the organisation of vocational training courses. The Real Pearl Foundation launched a special social and artistic innovation in one of the 33 most disadvantaged micro-regions of Hungary, in the micro-region of Berettyóújfalu. The project titled 'Szuno' (meaning dream in Romani language) is an art-based activity assisting the integration, extending over several generations. The basis of the project consists of children's drawings made in the art school of the Foundation.

SZUNO

A young artist of Real Pearl Foundation

The investigation with the working title "Can a child drink tap water when thirsty?" reviewed certain issues of ensuring access to water, in connection with the CEHAPE program of the European Union. As a result of close cooperation of the ministries and other relevant bodies the investments of the national drinking-water quality improvement program are scheduled to be finished by 2015 in the municipalities where the tap water quality does not meet the limit values prescribed. Until then it depends on the households' decision, whether they continue to consume the substandard quality tap water, or they decide to carry home the potable water available at outdoor water distribution spots – investing more time and effort. The Ombudsman's report found that parallel with the program to improve drinking-water quality – due to network reconstruction, iron and manganese components, and harmful material of indoor water-drinking supply systems – it is necessary to develop and implement further comprehensive

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and coordinated measures in order to ensure a water quality corresponding to the limit values. The Commissioner drew attention that the legislative background of levying municipal water using fee is unsettled in case of persons, who cover their needs from public taps, such as street pumps, and also proposed to develop a system of water rate support for those in need.

Healthy dining is one of the conditions of children's health – this was stressed by the Ombudsman when examining the school canteen offerings. State involvement, the protection based on creating and enforcing rules is also essential because the economic interest of canteen operators confronts the children's interest related to health. The operators' aim is to get economic profit: they keep this in mind when assembling the stock of goods, giving preference to the products that children are eager to buy. There are concerns about the missing legal guarantees regarding the school canteens and vending machines to offer healthy food, although the National Institute for Food and Nutrition Science has published its recommendation on this issue already eight years ago. The recommendation is not binding, therefore the canteen operators mostly do not comply with it. It may raise another problem if the goods that will be prohibited to be sold in schools for health reasons could be purchased in stores operating near schools. The Commissioner – agreeing on this as well with the Secretary of State for Health – deems it worth considering that in harmony with the expectations applied for school canteens, the goods offered in groceries operating within a specified proximity to educational institutions should also be regulated. The Commissioner invited the Minister of Human Resources to initiate in the spirit thereof the regulation in accordance with the healthy dining of children, as well as to help the dissemination of knowledge about healthy feeding of children using the opportunities of public media.

According to the finding of the report dealing with environmental education the living conditions of future generations may worsen, if the youth of today are not raised in the spirit of *environmental awareness, sustainability*. The Ombudsman considers creating knowledge-based society as one of the foundations of intergenerational justice, because without proper knowledge and information neither the society, nor the decision-makers are able to enforce the protection of natural resources. In his investigation report the Ombudsman warned that if the children are not educated in the spirit of environmental consciousness, then there is the risk that not only our own living conditions, but those of future generations will worsen as well.

The report noted that the legislation – the national core curriculum and the basic preschool program – provide the possibility that all children get involved in environmental, sustainability education. However, the implementation of the core curriculum and the basic program is ultimately up

to the teachers, as the local pedagogical curricula are determined by the actual educational institution. It is therefore of paramount importance to prepare candidates in the pedagogic training for the teaching practices of environmental education. The Ombudsman's investigation pointed out that it is necessary to resolve several systemic issues: for example the strategy and action plan concerning explicitly environmental education is missing, or there is a lack of wider opportunity to choose "green" kindergarten and ecoschool, and there is no proper professional forum. Therefore the Commissioner asked the ministers concerned to consider setting up an inter-ministerial committee to prepare the comprehensive strategy, plan of action and implementation of environmental education based on the criteria described in the report.

The Ombudsman examined comprehensively the conditions of *children's healthy life start*. By today it has become an established position that the environment has both positive and negative effects on human rights, as it plays a vital role and has fundamental significance in ensuring human life. The quality of the environment for maternity, for the babies to be born and for small children is of determining importance in relation of the adults' future health later on. And this appears as an increased problem in households where all this is associated with hardship, poverty and deprivation. Beyond the prohibition of discrimination the UN Convention on the Rights of the Child lays down the right to health, social security and an adequate standard of living. The 5th Comprehensive Commentary of the UN Committee on Children's Rights declares that States Parties shall ensure all children's access to the best attainable health care and nutrition in the years of early childhood. In the European region almost one third of the total disease burden arising from birth to the age of 18 years is due to the unsafe and unhealthy environment in the child's home and in the wider community, causing significant social and economic expenditure. According to the deprivation survey of UNICEF, published in May 2012, one in three children reckons as indigent in Hungary today. Of the health implications of social exclusion here and now one of the most prominent is that in the respect of health care significant regional disparities manifest themselves. The investigation revealed that a problem related to the right to health of persons living in a given area, particularly children attended in disadvantaged regions, is caused by the disparities of access to health visitor care, its inaccessibility or limited availability, as well as the accidental character of cooperation of health visitors, paediatricians and family paediatricians, who function as members of the child protection notification system. The Government's intention to improve the quality of child care and to make access to it universal is to be welcomed, however it is important to note that institutions operating in terms of the health care

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system should focus at the same time also on equal access of children (and families) – in particular children living in disadvantaged areas. The report revealed that in Hungary eight people out of ten dines a iodine-deficient diet, 80 percent of the population lives in iodine-deficient areas, the state of iodine deficiency was last surveyed in the nineties, and – in spite of having priority in the work of international organisations, such as WHO – there is no organised public awareness campaign to prevent the condition of iodine deficiency. Furthermore the report has assessed that the implementation of the European program focusing on children's environmental health (CEHAPE) is proceeding in a timely manner, but at the same time it would be necessary to prepare several comprehensive surveys concerning the regional objectives and in order to fulfil them. In connection with the findings of the report the Ombudsman requested action from the Minister of Human Resources and the Minister of Interior, moreover related to immunizations from the county government offices affected; the departments concerned accepted the report's recommendations.

The Ombudsman tried to survey *the enforcement of the right to a healthy environment of disadvantaged children living in segregation* in the framework of site investigations. Following the visits to the settlements of Oroszlány, Kázsmárk, Baktakék and Nyírmihálydi the Ombudsman pointed out in his report that – while disadvantaged students are Roma with a 50 percent chance, and it can be statistically proven that out of 100 Roma pupils approximately 75 are disadvantaged – 60 percent of Roma children attend a class where their education requires practically superhuman effort. More than half of the pupils in each class can not cope with elementary reading and comprehension tasks even in the eighth grade. In addition to conditions determined by the abundance of poverty and segregation, as well as by the counter-selection of teaching staff in segregating schools, the teachers' conceptual methodological skills, the scholarships available through tenders, the mentoring system etc. are ineffective. The extremely low competency assessment and continuing education indicators for schools demonstrate that they could not tackle the set of problems arising from the concentration of severely disadvantaged children. The Ombudsman's staff visited renovated, modern facilities on the occasion of site inspections, but in course of the investigation it became clear that beyond a certain level of segregation even the excellent infrastructural conditions do not represent a motivation for teaching and learning. The Commissioner's proposal was aimed at the Ministry of Education's support (reward) providing financial benefits in an automated system for all the success of the teaching-learning process. As an overall experience it was formulated (derived from this non-representative investigation) that the public employment typically does not lead back to the

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world of "normal" work; the people living in slums affected also by regional ghettoization have typically no perspective; without improving the new generation's chances of mobilization the extended reproduction of poverty can be expected; and a new motivational system should be established for teachers teaching in, and pupils learning in segregated institutions.

Carrying a too heavy school bag every day can lead to spinal pains and, in severe cases, to mutations. In 2004 the Ombudsman has already called the attention of the Minister of Education to act resolutely in order to make school bags lighter for all little schoolchildren latest by the beginning of the 2005-2006 school year. The Ombudsman has warned that although since 2004 a law defines the measures required to reduce the weight of bags, the press reports about the same problem at the beginning of each school year. In his ex officio investigation the Ombudsman tested the bags of pupils in several schools and found that the limit is significantly exceeded everywhere. According to the medical professional position this limit – which does not pose a risk yet – is a maximum of 10 percent of the child's body weight. In contrast, the measurements revealed that for example second grade pupils were forced to carry on average 16-18 percent of their body weight, third graders 16 percent, fourth graders 15-16, and fifth graders 14-16 percent of their body weight. What's more, when the five graders had also swimming lessons featured in the timetable, the bag weighed nearly 10 kilograms (22 pounds), which made up 22 to 25 percent of their body weight. The Ombudsman turned to the Minister of Human Resources with the suggestion that the ministry initiates the amendment of the law: it should determine the maximum weight of school bags taking into account the load capacity of children, and the Minister should consider establishing in law the support of purchasing ergonomic school bags.

Monitoring the domestic implementation of the UN Convention on the Rights of the Child is an important part of the Ombudsman's children's rights work, a crucial component of which was in 2013 Hungary's reporting due in 2013-2014, before the Committee on the Rights of the Child in Geneva. So far the Hungarian Government has reported twice before this Committee, based on predefined questions and aspects, first in 1998 and then in January 2006. The next report was due to be submitted in 2012, while the date of oral reporting is September 2014. This is a particularly important period also for non-governmental organisations dealing with children's rights, child protection, as this gives an opportunity for broad NGO cooperation, that is so much needed nowadays, in favour of the most vulnerable group of our society, the children, through preparing a so-called *civil alternative report*, the deadline for which – as for the Government's report – was 2012. The Office of the Commissioner for Fundamental Rights was pleased

Ombudsman László Székely in the Children's Parliament of Kecskemét

László Székely in a residential house of the SOS Children's Village in Kecskemét

to be involved also professionally in this work, by inviting the organisations to participate in this activity, by creating forum for them, and by providing opportunity to present the alternative report (http://www.csagyi.hu/images/stories/kutatas/civiljelentes/civil_angol.pdf) for the public in the Office on 21 February 2013.

On 20 November 2013 the International Day of Children's Rights Ombudsman László Székely attended the Children's Parliament organised by the Hungarian Foundation of SOS Children's Village of Kecskemét, and an-

swered questions of children from orphanages of Battonya, Lajosmizse and Kecskemét. He stressed that "respect for human rights begins with knowing and recognising children's rights."

2.2.2. "With Communication for Equal Dignity – Integrating Speech vs. Hate Speech"

The objective of the project "With Communication for Equal Dignity – Integrating Speech vs. Hate Speech", launched in 2013, was to examine what the various state organs, international and civil society organisations, churches and national minority self-governments were doing in order to facilitate the establishment of an open, tolerant and prejudice-free social environment.

Hate speech, prejudice-driven verbal and physical actions typically affect and threaten the most vulnerable groups of society; however, they have a number of adverse effects at the level of the society as a whole, too. Within the frameworks of his 2012 project entitled "Losers of the Crisis – in the captivity of legal provisions", in section "Guilty of being poor, guilty of being different", the Commissioner for Fundamental Rights paid special attention to the effects of the crisis stimulating prejudice and extreme actions. This issue was approached from another angle in 2013. The starting point of the project was the notion that efficient implementation of prohibitive legal regulations is possible only in a sensible, integrating social environment. A genuine change of attitude of both the subjects and the enforcers of the law is needed in order to curb the manifestations of prejudice and hate. The means serving this end include education and training at every level and in every form, from early childhood to the training of law enforcement staff (policemen, judges and prosecutors).

The inquiries conducted within the frameworks of the project were aimed at examining what role the contents facilitating the formation of an integrating society play at various levels of education. The Commissioner focused on finding out how the competent authorities and state organs performed their preemptive tasks and how they assisted the civil sphere's activities in this field. The individual ex officio investigations concentrated on those areas which, in the Commissioner's opinion, were of key importance in promoting tolerant speech, open, prejudice-free attitude, e.g., public education, media and the justice system.

Within the project's frameworks, the Commissioner contacted in writing more than one hundred state and private organs, institutions. Due to their closely interconnected subjects, the Commissioner summarized the results of

individual investigations in one report. The report aimed less at uncovering improprieties in the individual areas than at giving a comprehensive overview, a wide-ranging analysis of the role of the State and civil society in promoting the establishment of a society based on tolerance and equal human dignity. Therefore, the report is primarily aimed at raising awareness regarding the issues under investigation. The common objective of the inquiries was to examine those good practices, civil initiatives that, working from the grassroots upwards and by means of awareness-raising, aim at fighting prejudice.

Numerous positive efforts have been made in connection with nurturing tolerance and eliminating prejudice in the fields of *kindergarten and public education, training of teachers*. Notwithstanding, the efficiency and effectiveness of the programs, curricula and teaching directives, legal amendments that took effect in 2013 still cannot be measured or evaluated. Beside all of the above, some contradictory tendencies have also emerged: the comprehensive conceptual shift towards renewing the pedagogical ethos and pedagogical toolbox of teachers still does not show in the field of education, while, partly due to the legal regulation, we can witness an ever growing segregation and separation. That is the reason why experts stress the need of a wide-ranging conceptual shift in Hungarian public education. Another problem is that, although the willingness to promote the culture of the Roma and to facilitate their integration can be detected, at least in principle, in the curricula, there are no signs whatsoever of an attitude of acceptance vis-à-vis other excluded groups of society. For instance, sexual minorities, the homeless or people living with disabilities are given little or no attention in the directives, curricula and programs.

Although the universities and colleges training teachers strive to balance the disparity of opportunities and enforce equality before the law, their results are far from satisfactory even by their own standards. According to these institutions of higher education, integrative and inclusive education, the promotion of an attitude of understanding and assistance vis-à-vis societal groups suffering from discrimination cannot be the exclusive task of special courses designed for the duration of a project; they should be an integral part of the basic curriculum of the training of teachers.

In general, it would be important that education policy initiatives would complement and support each other in order to reduce the disparity of opportunities, to turn future generations into open-minded, prejudice-free adults. To this end, in his report the Commissioner requested the Minister of Human Resources to take the appropriate measures.

The mass media is a less consciously utilized but substantial tool of socialization, life-long education, uniformly affecting people of various ages, beliefs and social statuses. Its preventive effect may be outstanding; how-

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ever, it also may adversely influence the outlook of society if it conveys misconceptions and stereotypes concerning some vulnerable groups.

In his report the Commissioner for Fundamental Rights gave a detailed account of what was done by public service and commercial media, self-regulatory bodies, higher educational institutions training media professionals, and civil society organisations in order to transform the mass media from a reproducer of prejudices into a tool of social integration. There are numerous high quality initiatives put forward in this field, and media professionals, at least in principle, are ready to contribute to informing and entertaining the public with publications and programs serving the interests of both the vulnerable groups and society in general. In training media professionals, the individual institutions lay special emphasis, albeit to various extent, on providing an overview, rising above prevailing stereotypes, of the excluded groups, the prejudices and manners of speech existing in their regard.

The Commissioner stressed, however, that the vulnerable groups either still remained invisible, or people were shown a less favourable picture of them irrespective of the aforementioned efforts of the media. It may be due to the relationship between the media and the society: media cannot be separated from society; their mechanisms of action are reciprocal. All in all, the individual institutions have embarked on the right path and they have to proceed steadily: they have to improve their professional and ethical codes of conduct, educate and train their staff members and make them more empathic, to consult the organisations of vulnerable groups and to continuously monitor. To this end, the Commissioner for Fundamental Rights requested the authorities concerned to take the appropriate measures.

The practitioners of law constitute the most part of the *justice system*'s personnel; therefore, it is of major importance how these criteria are embedded in their training. Most faculties of law, in accordance with the profile of legal education, lay emphasis on transferring encyclopaedic, mainly legal, knowledge instead of making students more empathic. We can mention as extremely good practices, however, the establishment of various legal clinics at certain universities. The results of a study conducted among law students, used in the course of the investigation, show us a rather disheartening picture of the students' attitudes (prejudices and exclusion), and legal education's influence thereon.

In his report the Commissioner pointed out that one cannot praise enough the activities of *civil society organisations* aimed at augmenting societal empathy. Their role and the importance of cooperation were stressed by several actors of the justice system and legal education. On the other

hand, the main task of *nationality self-governments* is not to act in the interest of raising society's tolerance but to represent their community, to preserve its culture and traditions, thus serving the formation of positive attitudes. Nevertheless, due to the existence of prejudices in society, they may be forced from time to time to take upon a role when they have to put up a fight themselves with the manifestations of such prejudices.

EU and international programs and subsidies may provide a set of tools for strengthening tolerance. Currently there are several programs and funds available which are designed to strengthen tolerance and eliminate discrimination. These are mostly direct means aimed at raising awareness that reach their target audience but in the form of campaigns, thus being less appropriate to exercise substantial, long-term influence than the activities of those (educational, religious) institutions which are parts of our everyday lives. Notwithstanding, their significance should not be underestimated.

The report pointed out: however successful and effective those individual civil initiatives are, due to their isolation and specific character, without state support, long-term, nationwide and uniform implementation even the best practices are not more than good examples; by themselves, they are able to operate efficiently only in a limited range. Despite their local effectiveness, they cannot substitute for the appropriate state measures in the field of awareness raising; however, they may serve as examples to follow in the course of working out and implementing those state measures.

The findings of the project may be summarized as follows: The starting point of the project "With Communication for Equal Dignity – Integrating Speech vs. Hate Speech" was that the expected and wished for ideals of an integrating society and equal opportunity may only be reached through consistently applying the tools of prevention and life-long education of tolerance. One can see many useful efforts at both state and civil level. However, those efforts do not have the same effect on each vulnerable group: while numerous measures are aimed at reducing prejudice against the Roma, much less attention is focused on nurturing tolerance towards other vulnerable groups, e.g., people living with disabilities, sexual minorities, and the homeless. In his report the Commissioner pointed out: it is important that state institutions project an even stronger and more unified image of themselves through supporting the existing initiatives, remedying deficiencies and eventual contradictions and using the civil initiatives' methodology as an example in order to ensure that hate-inducing speech and actions become isolated phenomena, and integration, tolerance, openness and the acceptance of diversity as a value become a general norm in society.

2.2.3.
"Decent Start – Job Opportunities for the Youth"

The Commissioner for Fundamental Rights launched his series of investigations under the title „Decent Start – Job Opportunities for the Youth" in 2012. He deemed important to inquire into this issue from the aspect of fundamental rights because unemployment among young adults presents a serious problem, a challenge to society not only in the European Union but also in Hungary. Irrespective of the fact that the current generation of young adults is probably the most prepared, most educated generation in human history, unemployment among young people at the threshold of their adult lives makes it more and more difficult for them to establish their independent livelihood and existence, thus rendering them more and more vulnerable. Due to all these reasons and the fact that, in accordance with the Ombudsman Act, the Ombudsman shall pay special attention to the protection of the rights of the most vulnerable groups, the Commissioner considered young graduates seeking for employment as a vulnerable group and deemed it necessary to use all means at his disposal in order to protect and represent their interests.

In the course of the project the Commissioner intended to review the measures that had been and were taken on both the state organs and the employers' part in order to provide employment to and reduce the unemployment of young people, and what tools were used to assist and what obstacles hindered this generation in becoming entrepreneurs/self-employed. Was there any difference between the problems faced by young graduates (ages 18-25) and those having a couple of years of work experience (ages 25-35), and what was the difference between the difficulties affecting graduates of primary, secondary vocational, secondary grammar schools and university or college graduates? A separate inquiry was conducted into the chances of young people living with disabilities to enter the labour market.

When analysing the unemployment of the young, one cannot ignore the fact that their unfavourable labour market position is intricately linked to the educational system. Young graduates with no or little experience can find employment more easily if the school system has provided them with marketable skills and knowledge, enabling them to tackle the challenges of the labour market. In addition to that, it would also be important if, during the years spent in school, young people could acquire not only encyclopaedic but also practical knowledge and some working experience. That is the reason why the project put special emphasis on investigating whether the educational system properly prepares the young for becom-

ing employed or self-employed irrespective of their qualifications. There was a separate inquiry launched into the professional practices of university and college students and into employment within the frameworks of school cooperatives.

In the course of his investigation, in order to ensure the fullest possible protection of the rights of young adults, the Commissioner requested detailed information from the competent ministries and the National Labour Office, and did his best to cooperate with state and civil organisations concerned. In order to learn the opinions of the employers' side, he contacted the President of the Hungarian Chamber of Trade and Industry and several multinational corporations. As to how the educational system prepares young people to being employed, he requested information also from various institutions of middle and higher education, career offices and student self-governments operating in various regions of the country.

In addition to the investigations, the Commissioner attached prime importance to conveying various professional opinions concerning the unemployment of young adults: he organised two conferences on this particular topic. The opening conference of the project was held on 21 June 2013: László Andor, EU Commissioner for Employment, Social Affairs and Inclusion, greeted the conference in a video message. At the closing event, in addition to the Minister of State for Employment Policy and the Deputy State Secretary for Higher Education and Science Policy, the President of the Hungarian Rectors' Conference also delivered a speech on the chances of employment of young people. Beside the leading officials of the competent ministries, these two conferences were also attended by the representatives of educational institutions, employers, civil society organisations, and independent experts.

The first investigation of the project focused on the issues whether the supporting services provided by the labour authorities, in particular the trainings organised by them, are sufficient and to what extent, if any, they help young people to find employment. In the course of the investigation the Ombudsman called upon six government offices operating in various regions of the country. The first part of his report describes the system and implementation of the program entitled "First Job Guarantee", the second presents the supporting services provided by the labour authorities with special emphasis on the system and the conduct of labour trainings, and the third part summarizes the "good practices" introduced and operated in various regions. In connection with the programs aimed at increasing young people's chances of finding employment, the Commissioner did not, might not inquire into issues related strictly to employment policy, especially to its efficiency, financial and economic expediency. The explic-

it goal of the report was to give a wide-ranging analysis of the role of the State and the complementary civil involvement in this field.

This inquiry into the chances of young people on the labour market was closely related to the investigations conducted by the Commissioner for Fundamental Rights in 2012 within the frameworks of the project entitled "The Dignity of Labour". The inquiry established that unemployment is high mainly among young people with low qualification, but the ignorance of school graduates concerning their entry into the world of labour also constitutes a significant problem. In the case of those with a couple of years of experience the major issue was to find lasting, stable employment. Most university and college students work even before graduation, in most cases in areas corresponding to their fields of education; therefore, the number of those who can find employment soon after graduating is relatively high. The majority can find employment within one to six months.

According to surveys conducted by universities and colleges, young graduates work in positions corresponding to their education, and the number of those who get employed by employers where they had their professional practice is also high. The chances of young graduates are also improved by their experience and knowledge gained from various scholarship programs.

The inquiry focused on identifying factors preventing young people from becoming self-employed, and on the accessibility of various forms of support intended for the target group of young people. In this connection, in addition to state organs, the Commissioner also requested information from various organisations of young entrepreneurs, e.g., the Young Entrepreneurs Association Hungary (FIVOSZ), the Association of Young and New Entrepreneurs (EFKE) and the Hungarian Association of Young Farmers (AGRYA). The inquiry established that the unstable and ever-changing legal environment, the heavy administrative burdens and the hiatus of the educational system (it does not prepare students for becoming self-employed) are preventing young graduates from starting up and operating their own businesses.

Another inquiry was conducted on the notion that, in order to promote equal opportunities for young graduates living with disabilities, a greater emphasis must be put on facilitating their access to the labour market. To acquaint himself with their practices and recommendations, the Commissioner for Fundamental Rights contacted institutions and civil society organisations engaging in the education and training, and following the careers of young people belonging to various disability groups.

The Commissioner established that the low employment rate of young

people living with disabilities is the result of their low levels of education, and the fact that certain vocational schools offer qualifications disregarding the requirements of the labour market. In this context, another problem is that most young people are employed in positions not matching their qualifications, which may be attributed to the lack of information and the mistrust on the employers' side. The protective family environment, preferring the social welfare system and protected employers to the open labour market, is also making it difficult for young people living with disabilities to find employment.

In the course of his inquiries, the Commissioner was looking for answers to the question whether linking education with employment is working in the interests of the earliest employment of young graduates, and if university and college students gain knowledge and skills during their professional practice that could be useful for their ensuing employment. He sent the same questionnaire to nine institutions of higher education operating with different profiles in various parts of the country, to the student self-governments of those institutions and to the Minister of State for Higher Education.

From the answers received the Commissioner concluded that, although the institutions are still insecure and interpret the individual issues and legal relationships related to professional practice in different ways, student acquire knowledge during their professional practice that may turn out useful for their future employment. However, paying the students for the period of professional practice may be problematic; that is why employers often refuse to employ students on professional practice.

Those young people who haven't completed their education yet but would like to work while maintaining their student status most often (in average 130 thousand students per year) find employment through school cooperatives. The Labour Code contains special provisions regarding such employment since the basic relationship of the school cooperatives' members is a student relationship, they work only in an additional, secondary relationship. Tax rules are also much more favourable; however, since they do not pay health insurance contributions, they are entitled only to health care but, due to their student relationship, they are not entitled to sick pay and injury benefits, and the time spent on professional practice is not included in the service time required to receive old-age pension. The investigation established that annually tens of thousands of students are deprived of the possibility of such employment since, according the National Tax and Customs Administration's interpretation of the law, only those in active student relationship are entitled thereto. Students who suspend their studies for a while and secondary school graduates who haven't started their university

or college education are not entitled to the benefits of employment through school cooperatives.

2.3. Further investigations regarding the enforcement of fundamental rights

In addition to the monitoring of priority areas and the protection of the rights of extremely vulnerable groups, the Commissioner for Fundamental Rights published several reports on the investigations conducted on the basis of concrete complaints or ex officio in 2013, too. The following part deals with the Commissioner's findings, experiences and actions concerning those cases and the reception thereof, grouped together corresponding to four major areas of fundamental rights.

2.3.1. The right to life and human dignity

The results of the Ombudsman's 2013 inquiries into the enforcement of the right to equal dignity and the State's obligation to protect life clearly show that the complainants, mainly people belonging to vulnerable groups, turned to the Commissioner for Fundamental Rights because of improprieties committed or caused by the proceeding authorities. Tendentious improprieties on the part of the enforcers of the law were disclosed not only regarding human dignity, but also in connection with legal certainty and the right to fair procedure.

One of the cases that received the widest media coverage in 2013 was case AJB-2069/2013, in which the Commissioner analysed the situation after the extreme snow of 14-15 March. The Commissioner emphasised that the authorities participating in handling the extreme snow situation, together with the voluntary rescue teams and civilians, had carried out their rescue activities with the best possible utilization of both personnel and equipment. There had been, however, some serious shortcomings in the course of preparing, alerting and informing the population, and in communications, too. The flow of information in conventional media had not been quick enough, it had not reached the population as needed. Given the fast development of social media (Facebook, Twitter, blogs) and smartphone applications, disaster management bodies cannot rely exclusively on conven-

tional media and conventional means of communication in preparing and informing the population in crisis situations. The adequate use of the new communication channels would have been more suitable for informing the population, it could have helped, at least partially, preventing the crisis or mitigating its consequences and, ultimately, preventing some anomalies, related to the fundamental rights of a large group of citizens, from happening.

The Commissioner drew the attention of the competent bodies to the fact that there had been some glitches in their internal communications making the coordinated management of rescue operations more difficult. The Ombudsman also concluded that rescue operations on the nation's motorways had been significantly hindered, beside the blizzards and the series of accidents, by the motorists' failure to free up rescue lanes as stipulated by the Highway Code for such situations. The Ombudsman also stressed that the problems on Motorway M1 could have been mitigated if the State Motorway Management Company had duly informed the motorists, upon entering or on roadside notice boards, of the motorway's actual serviceableness. In connection with the railway service, the Ombudsman pointed out that MÁV (Hungarian State Railways) had not adequately complied with its obligation to duly inform its passengers, had not been duly prepared to handle the delays, provide its passengers with food and water and refund the tickets. The Commissioner for Fundamental Rights requested the Minister of Interior to review the possibility and probable methods of involving voluntary associations and individuals well-versed in social media communication in the crisis communication activities of their subordinate organisations. The Ombudsman requested the competent ministries to review the possibility of planting protective forests alongside the motorway network. The Ombudsman also suggested that the Director General of the National Directorate for Disaster Management should review the efficiency of the current system of alerting the population and pay bigger attention to preparing the people for crisis situations caused by extreme weather conditions. In their responses all organisations concerned confirmed their agreement with the Commissioner's findings.

The Ombudsman conducted an unannounced inspection in the tent camp for refugees, capable of accommodating 300 single men, established on the premises of the Nagyfa unit of the Szeged Penitentiary and Prison. The Commissioner pointed out that the number of people requesting asylum in Hungary had increased significantly. The inspection uncovered some anomalies in the camp's management. Based on his inspection, the Commissioner did not challenge the fact that the refugees authority had established a tent camp for the temporary placement of the numerous adult

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male asylum seekers, but he pointed out some anomalies in connection with the practical execution and the deficiency of legal regulations. On the day of the inspection, the automated weather station of the Hungarian Meteorological Service outside Szeged registered a maximum temperature of 36.5 degrees centigrade. At this time, the conditions for the cooling and the proper storing of the food and water distributed to the foreigners were not ensured in the camp. It caused anomalies not only in connection with the fundamental right to health, but also in connection with the right to religious freedom, taking into account that it was during Ramadan, requiring Muslims to fast from dawn until sunset. The Temporary Reception Centre would not assume responsibility for any valuables and cash left in the tents; therefore, the lack of legally required safekeeping also jeopardised the implementation of the fundamental right to property. The fact that the minimal nutritional value of the food provided to asylum seekers was not specified could also lead to the infringement of fundamental rights. Acting on the Ombudsman's report, the Office of Immigration and Nationality procured some refrigerators, ensured safekeeping and established the minimal energy value of meals.

The Commissioner pays prime attention to the State's compliance with its obligation to ensure equal treatment and equal opportunity. The Commissioner pointed out that each year more than 200 thousand people become victims of crimes endangering their physical and/or mental health, their right to property; that is the reason why he investigated the operation of the victim support service. He emphasised that the predictability of the state support system and the implementation of the requirement of legal certainty demand that those concerned had early access to all information helping them to choose whether or not to avail themselves of the services of victim support. Nevertheless, the police, irrespective of their legal obligation, do not inform the victims of their options, or they do it belatedly or in an ineffective way. It explains the fact that only 9 per cent of the victims in need and only 4 per cent of the victims of serious crimes turn to the service for help. The findings of the investigation show that it is rather difficult to get support outside the county seats. The Ombudsman pointed out that there are several factors reducing the efficiency of the service's operation and, therefore, making difficult to render appropriate assistance to the victims. Among those factors one can mention the reduction of the number of victim support specialists, the lack of their training and supervision (i.e. "spiritual maintenance"), the separation of professional supervision from the regional services, and the system's organisational division and integration into the public administration. Although it is made possible by the law, the service cannot hire psychologists due to budgetary considerations. Another prob-

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lem is that during the investigative phase of the criminal proceedings the victim may not be represented by an attorney acting as a litigation friend supported by the State.

2.3.2. Communication-related freedoms

In Hungarian fundamental rights practice the freedom of expression *may be considered a primary communication-related right, lying in the foundation of the freedoms of the press, media and assembly*. Compared to the previous period, reports on communication-related fundamental rights showed a more differentiated picture in 2013. The reports on communication-related fundamental rights in 2013 did not focus on a single sphere of investigation; therefore, the fundamental rights significance of the individual reports should be reviewed one by one. The freedom of assembly had been playing a leading part in the practice of the ombudsman ever since 2008. In 2013 there was only one report which could be linked directly to the freedom of assembly. The investigation in the core of the report did not focus on a single event – it inquired into the ways the police had handled several demonstrations that had been held in early 2013. The Ombudsman concluded that the police, when securing those events, had responded in a way facilitating the exercise of the freedom of assembly when they had complied with their legal obligations only afterwards, through carrying out identity checks and filing reports. The police were successful in separating a spontaneous event held by right-wing radicals from a demonstration about which the authorities had been given prior notification. They were flexible in securing the event that started after the demonstration and managed to maintain continuous and intensive contact with the representatives of the event's participants. The police were quick and unhesitant in preventing a potential confrontation when a group of radicals started to march towards a broadcasting crew. The Commissioner confirmed that such fundamental right-friendly crowd-management actions do facilitate the exercise of the freedom of assembly and they are capable of preserving the peaceful character of an event. The Ombudsman drew attention to the importance of cooperation and communication, continuous assistance by the police and to the significance of keeping in mind the requirement of proportionality in police actions.

The freedom of expression in written and electronic media and the *fundamental rights limitations thereof related to the protection of personal dignity* are an extremely sensitive and important segment of communication-related fundamental rights. One of the Ombudsman's 2013 investigations initiated

by his Deputy responsible for the protection of the rights of nationalities living in Hungary received extraordinary attention as a result of a news report broadcast by Hír TV (News TV) in its documentary entitled "Célpont" (Target). The 30 March 2013 edition of "Célpont" contained a report entitled "Felzárkóztató" (Bridging the gap). The Deputy Commissioner responsible for the protection of the right of nationalities found the report prejudicial and stigmatizing the Roma, implying that the Roma community was in fact a group of criminals.

In the course of his investigation the Ombudsman concluded that a documentary is incompatible with the principle of human dignity if, in its asking questions or in its conclusions, it either explicitly or implicitly suggests that there may be a connection between the ethnic origin of the perpetrators and their criminal lifestyle. In the case of an infringement on the right to human dignity, the competent authority, the Media Council is obliged to take all official measures stipulated by the law. The State and its organs have an obligation, regarding the protection of fundamental rights, to ensure the enforcement of the principle of equal dignity. The report points out that it is not the task of the Ombudsman to assess the programs from a technical-editorial point of view; however, it is his duty to consider if the authorities are guardians of the fundamental rights and constitutional requirements with respect to a specific program. The report points out that, as opposed to an approach based on stereotypes and prejudice, factual and clear communication based on presenting facts and contexts capable of giving a more nuanced picture of events and phenomena perceived by society as evidence play an important role in fighting discrimination. Presenting crime and deviation as a Roma issue, the principle of collective guilt may not be accepted in a democratic society in any respect. Not only generalization without exception, based on race and questioning the human condition constitutes an infringement on human dignity. The equal dignity of the members of a given community is also infringed upon if the theme selection of a program or its questions are based on stereotypes and prejudice. The investigated program in its entirety suggested that in the given settlement the Roma are responsible for crime, the problems, even for their own poverty.

According to the Ombudsman, the Media Council caused an impropriety by having terminated its proceedings against the aforementioned documentary with its unreasonably restrictive interpretation of the laws on the protection of human dignity. The Commissioner also stressed that prejudicial presentation incompatible with the principle of equal dignity and programs depicting the infringement of fundamental rights neutrally or favourably are of concern from the point of view of the personality development of minors, too, since they may cause severe moral uncertainty.

The Ombudsman requested the President of the Media Council to proceed in the future with due professional care and caution in the interest of the protection of the vulnerable groups' equal dignity. The Commissioner suggested that the Media Council, under the coordination of the Institute for Media Studies and with the cooperation of a multidisciplinary group of experts, should initiate a dialogue with the representatives of the media and initiate the formulation of such professional-ethical principles as regards the media presentation of minority groups and sensitive social issues that would ensure the protection of the vulnerable groups' equal dignity.

2.3.3. Social rights and the right to property

In addition to the better protection of equal dignity and personal freedom, the ombudsmen of democratic States governed by the rule of law must pay attention to the enforcement of social rights, too. Social rights are uniquely structured fundamental rights that require the State to play an active role in society, provide public services, maintain and operate various institutions, and redistribute the wealth produced by society. A special feature of social rights is that the State may adjust the extent and the quality of the services embodied therein within its own capacity; furthermore, their enforceability is exceptional. History shows us that, without recognising and protecting social rights, the underlying economic order can create such social inequality and tension that may jeopardise the system of fundamental rights in its entirety. Through ensuring social rights, the State is obliged to preserve the existing level of protection that it may modify, if necessary and under the right conditions, while maintaining the proper balance. The protection of social rights requires an approach that is different from that of the protection of freedoms. In the sphere of social rights, the ombudsman has to raise his voice against the unexpected, unprepared and constitutionally unjustified reduction of the level of protection, in order to protect the interests of the vulnerable groups of society. In the Commissioner's practice, direct and stand-alone infringements of the right to social wellbeing are uncommon; indirect, secondary infringements as a result of the failure to observe procedural guarantees and the principles of the rule of law are much more frequent.

Just as in previous years, in 2013 the Office of the Commissioner for Fundamental Rights received several hundred complaints, related to *the social situation of the complainants*, which he *could not investigate due to his lack of competence*. The number and the contents of those complaints reflect the process

of impoverishment that has significantly accelerated in Hungary as a result of the world economic crisis. It is symbolic that, according to some sociologists, almost 40 per cent of the Hungarian society may be considered as being in the process of or threatened by sinking into poverty. The subject of extreme poverty and child poverty, where social exclusion, strong marginalisation and infringement of the rights of the child are also present, must be paid particular attention. In many cases, complaints prompted by housing problems, employment, utility and loan debts, distraint are also related to this rather broad range of issues. Typically, complainants do not challenge individual legal regulations, official proceedings or decisions; they demur against their deteriorating living conditions and the lack of opportunity for individual action. Those turning to the Commissioner as a "last resort" are unable to change their lives without material resources and employment opportunities; the ever shrinking system of social policy instruments won't give sufficient assistance to reducing the problems of those living in extreme poverty, either. When rejecting complaints due to the lack of competence, the Commissioner, in addition to giving a detailed explanation of the legal background, refers the complainants to *social institutions and aid organisations*.

It is very difficult to draw summarizing conclusions on the Ombudsman's investigations and reports related to social rights due to the diversity of this area. It should be stressed, however, that the fast and overhasty transformation and re-regulation of some of the great social welfare systems (e.g., public education, disabled workers' benefits), as well as the complete or partial failure to transform others (e.g., healthcare) generated lots of complaints and ex officio investigations in 2013, too. Reports show that access to state services in the field of fundamental rights and dependence-based benefits was not free of bureaucratic or other obstacles and neglect. Just as in previous years, the Ombudsman's activities in 2013 also were hindered by the non-slowing transformation of the legal system and predictable unpredictability.

The *comprehensive revision and transformation of the disability service and benefit system* was one of the most far-reaching, large-scale measures affecting social care. As of 1 January 2012, the Parliament abolished, among others, invalidity pension, and introduced two new benefits, i.e., the rehabilitation benefit and the disability benefit – the change affected 877,340 people. The Ombudsman's Office received several complaints after the new system had been introduced; some of those complaints prompted the Commissioner to launch an investigation into the matter.

In the course of that major investigation, stretching over to 2013, the Ombudsman established that the terms of reintroducing a rehabilitated person to the labour market and the conditions for efficient rehabilitation had not been worked out properly. The report pointed out that there had been cases

when the people concerned, typically gravely ill and living in extremely poor conditions, had remained without benefit for months, in some cases for more than a year, due to the problems that had occurred during the transfer of duties necessitated by the aforementioned changes. Some of those concerned lived in existential and legal uncertainty even in 2013: they could not pay for the medications required to maintain their health and avail themselves of the benefits and services preventing it from deteriorating. According to the Commissioner, the basic requirements of the rule of law should be fulfilled to a greater extent in the course of such a large-scale transformation of a benefit system affecting a vulnerable group. A duly prepared and substantiated legislative process could greatly contribute to the enforcement of the aforementioned basic principles and prevent masses of citizens from finding themselves in such an inequitable situation.

The Ombudsman also established that the situation at hand had also infringed, albeit indirectly, in connection with providing minimum subsistence, on the right to social safety. He requested the Minister for Human Resources to take care, as soon as possible, of remedying those inequitable situations, created by the transformation of the benefit system, through working out efficient measures in order to handle them at system level. The Minister of State in charge of social and family affairs informed the Ombudsman that the necessary measures regarding care allowance had been duly worked out and implemented. The Minister of State also communicated that the issue of calculating the monthly income of persons on sick leave or sickness benefit had also been settled as of 1 January 2013, and that the amendments necessary for calculating allowances following rehabilitation benefits were in the phase of professional preparation. In the Ombudsman's view, however, it was still questionable how those people whose benefits were established on a lower level before the relevant changes could assert their lawful and equitable claims.

As regards the *right to health*, the State is obliged to operate a network of health institutions and medical care, create the means necessary for taking care of those people whose health and circumstances are expected to worsen, and to organise and maintain a viable social security system. The right to health is closely connected to the *right to life*, and derives from the State's obligation to protect life. By virtue of its obligation of institutional protection, the State has to create guarantees for the proper operation of the system of health institutions which provide everyone the possibility to avail themselves of health services, i.e., no one should be left unprovided for due to the absence of health service providing institutions. The State's obligation means but the requirement to create the economic and legal environment necessary for exercising the right to health and organise the network of healthcare in-

stitutions and medical care. It is important to point out that in healthcare issues the competence of the Ombudsman is rather limited from various aspects. The Commissioner has been monitoring the issues of the system of healthcare institutions for many years now; in 2013 several reports dealt with the structural changes and the current state of healthcare in Hungary. He concluded on various occasions that the undignified working conditions, incomes of healthcare workers and the lack of professionals and professional replacement may be connected to the impairment of individual rights.

When inquiring into issues concerning education, the Commissioner must take into account that, in most cases, the complaints lodged with his Office in connection with the procedures and actions of educational institutions concern not the infringement of the right to education, but some requirements deriving from other fundamental rights or the rule of law. In 2013 most complaints were submitted in connection with the system of admission to institutions of higher education and the reorganisation of primary and secondary schools.

In 2013 the Commissioner paid extra attention to *the state of the system of admission to institutions of higher education* and *the consequences of its transformation* from the aspects of fundamental rights. The starting point was that applying for admission to an institution of higher education is a major decision often with life-long effect, a decision of great responsibility and financial consequences for both the child and the parents: ensuring planning ability and predictability in the admission process is extremely important. The Commissioner launched an ex officio investigation (case AJB-645/2013) into the operation of the admission system with special regard to predictability, equal opportunity and legal certainty. In his report he pointed out that the admission procedure is a very sensitive area where the traditional guarantees of the legislative process, i.e., due preparation and fixed deadline may not be arbitrarily overwritten even if the change results from a regulatory dialogue. The Commissioner concluded that the Minister's decision-making had been disquieting in itself since the Minister had passed the resolution on state-financed types of education and the minimal admission requirements after the deadline and with significant changes. According to the Ombudsman, it infringed on the requirement of legal certainty that the rules providing for the involvement of the Higher Education Planning Board in the preparation of governmental decisions on the admission procedure were inaccurate and incomplete.

The Ombudsman's report also recorded a recurring constitutional issue. Currently the minister in charge of higher education has practically unlimited power: in the case of certain faculties or specializations he may abolish or minimize, in the case of others increase state funding and he may also set

the conditions thereof. That is why the Commissioner requested the Minister to establish and complement the legal framework and guaranties of decision-making relative to the state funding of higher education. The report also states that the admission procedure sets strict deadlines for submitting the applicants' documents while anyone can find themselves in a situation when they have to certify that they have missed the deadline through no fault of their own. According to the Commissioner, the right to fair procedure is unreasonably limited by the regulation that automatically excludes the possibility of certification, ignoring legal guarantees and not allowing even a short deadline. The Ombudsman requested the Minister to amend this regulation.

In the Ombudsman's view, the already precarious balance of the higher education admission procedure has been disrupted, "flexibility" has turned into continuous transformation, the current system of decision-making is not supported by professional and legal arguments, transparency and accountability for the decisions made have been reduced. There are no substantive guarantees that could curb the nonstop and drastic decision-making by the State, unfathomable for those concerned.

In 2013 several reports dealt with complaints related to the *restructuring of the maintenance system of primary and secondary schools*. The local governments' complaints mainly focused on the fact that, in the course of reorganising a given settlement's school, the state maintainer had not asked the opinion of the local government since the maintainer was not compelled by the law to do so. Having analysed this issue, in his report the Commissioner proposed to the competent ministry to let the local governments concerned express their views on the changes affecting the operation of institutions of public education.

The core of the problem is that, as far as the right to property is concerned, *property* as such has some social constraints that, with a view to public interest, make narrowing the owner's autonomy possible. Similarly to social rights, the right to property in the Ombudsman's practice is also characterized by the fact that any infringement thereon may only be detected rarely, indirectly and at system level – individual cases are usually dealt with within the frameworks of the justice system. In this context it is worth mentioning the report prepared concluding an investigation conducted upon the initiative of private citizens, establishing that *the partial curtailment by the State of the proceeds from the voluntary, supplementary deposits* (membership fees) *to private pension funds infringes on the right to property*. In his report the Commissioner pointed out that the protection provided by the Fundamental Law also covers the pension fund members' supplementary deposits and the proceeds therefrom. The intention to increase the State's income may not provide grounds for limiting an entitlement pro-

tected by the right to property. The Ombudsman concluded that the legislator's decision to refund only part of the proceeds (the real returns) had resulted in a fundamental right impropriety. The report emphasises that the partial curtailment by the State of the proceeds from the voluntary, supplementary deposits may not have any constitutionally acceptable, legitimate purpose.

2.3.4.
Guarantees of the rule of law

The principle of the rule of law is probably *the most often referred to fundamental constitutional principle*. It is not a coincidence that it is also the most referred to fundamental principle in the practice of the Commissioner for Fundamental Rights. The rule of law is partly the *basic principle of the State's operation*, meaning that the State is legally bound, i.e., the State may only do what is explicitly allowed by the law, while its citizens may do anything that is not prohibited by the law. The process of legislation itself is also legally bound: new legal regulations may be created only in a fixed form, fully observing the existing legal regulations of higher rank.

The rule of law may be summarized as follows: the law shall prevail over the individual decisions, arbitrariness and will of the State – *the powers that be may get their way only following legal regulations, observing the rules*. In the practice of the Constitutional Court, *the requirement of legal certainty is a decisive element of the rule of law*. The stability and predictability of the legal system derive from legal certainty. The subjects of the law need clear and transparent norms, otherwise they cannot be expected to adjust their behaviour to the rules. Behaviours may not be declared illegal and requirements may not be imposed with retroactive effect. Therefore, legal regulations may impose obligation only for the future. Furthermore, they shall provide enough time to prepare, enabling the subjects of the law to plan on the basis of predictable rules, i.e., legal regulations may not be changed overnight. Rights acquired in good faith and closed legal relationships shall be protected by the principle of legal certainty: stability shall prevail over fairness, i.e., after a certain while the State shall rather give up pressing outdated issues (positive and negative prescription).

It is important that predictability, including the uniform application of the law, and securing procedural guarantees are closely linked to the protection of individual fundamental rights and freedoms. The unpredictability deriving from mistakes and confusion in the application of the law and the failure to observe procedural rules providing guarantees are capable to

paralyze or adversely affect the enforcement of fundamental rights. In 2013, the Commissioner's reports related to the rule of law focused on six topics: (1) enforcement of the requirement of fair procedure; (2) application of the guarantees of the rule of law in public and special administrative proceedings; (3) issues related to misdemeanours and fines; (4) legal certainty in financial matters; (5) infringements of rights related to the authorities failure to act, and (6) issues of the rule of law during the reorganisation and establishment of institutions. The following paragraphs give a short description of the most interesting cases.

The Commissioner investigated *the provisions of Act CXXII of 2013 on the Turnover of Lands used for Agriculture and Forestry*. He established that the authorities' mandatory refusal to approve sales contracts not reviewed by the local land commission constitutes an infringement on the right to due process and fair official procedure. The stipulation unilaterally and automatically attributing the competent organ's failure to act to the blameless client is clearly contrary to the right to fair official procedure. He also pointed out that any decision by the authorities can meet the requirements of the rule of law only in case it has been made on an objective basis.

The Commissioner also conducted inquiries in connection with *the right of a complainant in pre-trial detention to get acquainted with the files related to his case*. The report pointed out that the deadline for getting acquainted with the files should be set in a way that the suspect and his/her lawyer could exercise their right to file a motion within the course of the investigation. The timeframe for getting acquainted with the files should be set with a view to the peculiarities of the given case, e.g., the number and volume of files, the quantity of the data and the facts to study. In the concrete case, the investigative authority did not make possible for the complainant to get fully acquainted with the files of the investigation – three days clearly could not be enough to read through more than 16 thousand pages.

According to the Ombudsman, a hospital, when ordering a personal ID check before letting the complainants enter the premises, created an impropriety related to the principle of the rule of law. Referring to an internal regulation, the hospital's reception service held up the complainants, asked some questions then assigned an escort to them. In the Commissioner's view, if someone disturbs the order and operation of an institution to the extent that, in addition to the enforcement of the provisions of the Health Act, requires the intervention of the police, it may become necessary to notify the competent organisation which, acting under the Police Act, may take the necessary measures meeting the requirements of the rule of law. On these grounds, the Commissioner concluded that any arbitrary, "banning" measure taken in the absence of statutory authorization and

outside the frameworks of lawful procedure constitutes an infringement of the requirement of legal certainty deriving from the principle of the rule of law.

The Office conducted an investigation in the case of *concession tenders on the operation of national tobacco shops*, too. According to the report, in connection with the retail sale of tobacco products it may be established that, in this particular case, the restriction of the right of free enterprise fulfils the necessity/proportionality test; therefore, the state monopoly on the retail sale of tobacco products in itself, due to the special character of tobacco products, does not infringe on the constitutional principle of the right to property. The Commissioner for Fundamental Rights concluded, however, that the evaluation criteria of the submitted business plans had not been clear and unambiguous enough to exclude the possibility of subjective, personalized decisions, which led to the infringement of the right to fair procedure.

In the course of 2013, the Commissioner received several submissions challenging certain provisions of Act on the activities of persons performing police duties and the Ministerial Decree on the education and examination of the private security sector and security guards performing such duties. The petitioners complained that, according to the new regulations, the examinations passed earlier had become null and void; they had to retake those examinations and pay once again the examination fees. The report concluded that the definition of those required to pass an examination did not meet the requirements of unambiguousness and clarity of norms; therefore, it infringed the requirement of legal certainty. The Commissioner also pointed out that this regulation infringed on acquired rights, and that the legislator had not duly justified the differentiation between qualified private security personnel and security guards, either. The report stressed that, as of 31 May 2014, most private security personnel and security guards would not be allowed to continue their activities, which would constitute a direct infringement of their fundamental rights. The Ombudsman requested the Minister of Interior to initiate the earliest possible revision of the legal regulations concerned. He also recommended that the Ministry should review the possibility of how to compensate those security guards and private security personnel who, under the new system, had already participated in the mandatory training and passed the exam. The Minister, however, rejected the Ombudsman's recommendations and did not initiate the amendment of the regulation.

2.4.
Petitions submitted to the Constitutional Court

In connection with the Commissioner's competence in the field of initiating the review of norms by the Constitutional Court, it is important to point out that the increase in its significance is primarily due to the fact that, with the Fundamental Law having become effective, the institution of *actio popularis was abolished, i.e., citizens who are not personally affected may not directly initiate the review of a given norm by the Constitutional Court*. As of 1 January 2012, only a small circle of petitioners is entitled to initiate the ex post review of norms by the Constitutional Court. According to the Fundamental Law, those entitled include only the Government, one-fourth of all Members of Parliament, the Commissioner for Fundamental Rights and, by virtue of the Fourth Amendment of the Fundamental Law, the President of the Curia and the Chief Public Prosecutor.

In 2013, the Commissioner for Fundamental Rights initiated, on the basis of a complaint or ex officio, the constitutional revision of a legal regulation on 13 occasions. The Commissioner has the unique possibility to challenge before the Constitutional Court an already promulgated but yet not effective legal provision, simultaneously initiating the suspension of its taking effect.

In addition to cases when a legal provision contradicts the Fundamental Law, the Commissioner for Fundamental Rights also may turn to the Constitutional Court if, in his view, the challenged provision *contradicts an international treaty*. In case he detects a severe default on the part of the legislator, the Commissioner shall draw the Constitutional Court's attention thereto, and request the Court to examine ex officio whether the given default is anti-constitutional.

A new field of the Ombudsman's competence introduced in 2013 should also be mentioned. As of 1 January 2013, the Commissioner has the right to submit *petitions to the Local Government Council of the Curia* in connection with decrees issued by local governments that contradict other legal regulations. He exercised this right on three occasions. Another novelty is that, as of 1 January 2014, *the Commissioner has the right to request the interpretation of the provisions of the Fundamental Law*, too.

The new type petition rights of the ombudsman were incorporated in the Fundamental Law's final text upon the March 2011 recommendation of the Venice Commission. Under the Fundamental Law, the Constitutional Court shall review laws with regard to their conformity with the Fundamental Law at the initiative of the Commissioner for Fundamental Rights. According to the Act on the Constitutional Court, the ombudsman is not simply a

"forwarder" of complaints, he may also initiate a review if, *in his view, there is a possibility that a certain legal regulation is anti-constitutional*. His petition to the Constitutional Court shall reflect his own professional standpoint and conviction. The aforementioned regulation also provides the opportunity to initiate a review directly, on the basis of a complaint, without conducting his own investigation. In addition to direct petitioning, the Commissioner for Fundamental Rights still has the right, *as a special measure, to turn to the Constitutional Court* in connection with a concrete case.

The right to initiate an ex post review not only provides an exceptional opportunity, but also presents a formidable challenge to the ombudsman institution. The complaints lodged with the Commissioner's Office, challenging certain legal provisions partially or in their entirety, may often require a full-scale constitutional legal examination thereof. In most cases such examinations, even in the case of less elaborated complaints, have to cover whether there is an infringement of a fundamental right or a constitutional principle requiring direct petitioning.

In 2012, upon interpreting the relevant statutory regulations, the Commissioner for Fundamental Rights *issued a specific normative methodological directive* on the aspects of handling submissions requesting petitioning. Under this directive, submitting a petition is especially justified if there is some constitutional concern regarding the enforcement of fundamental rights, constitutional principles and requirements stipulated by the Fundamental Law, particularly in the case of the infringement on the fundamental rights of people belonging to vulnerable groups, the right to healthy environment or if it is justified by the gravity of the infringement or the number of people affected thereby. It is important to stress, however, that a petition submitted by the Commissioner to the Constitutional Court *may not be aimed at the (further) curbing of a fundamental right stipulated in the Fundamental Law.*

The Commissioner may submit an ex officio petition to the Constitutional Court if the legislator fails to comply with the legislative proposal contained in an earlier report; the ombudsman also may submit a petition upon reviewing the draft text of a bill. *As far as the year 2013 is concerned, we can find examples of both.*

There was only one case when an ex officio petition was submitted to the Constitutional Court after a case report had officially been published. Earlier, acting on the Commissioner's petition, the Constitutional Court annulled a provision of the Act on local governments which, allowing the local governments to sanction anti-community behaviour, made the criminalization of *the homeless* possible. As of 1 January 2013, a new regulation on anti-community behaviour took effect. In January 2013 the Ombudsman indicated that that new regulation was also constitutionally challengeable.

Since the legislator had failed to implement the Ombudsman's recommendations, the Commissioner turned to the Constitutional Court.

The Commissioner for Fundamental Rights submitted a petition to the Constitutional Court in connection with the new regulations on *national security inspections* since, in his opinion, they infringed the right to privacy and the principles of the rule of law and separation of powers. In this particular case, the petition had not been preceded by an investigation; it was submitted after having reviewed the draft bill. In July 2013 the Constitutional Court, in accordance with the request in the petition, *suspended the legal regulation's entering into force, then annulled the regulation* itself.

In 2013 the Commissioner for Fundamental Rights received altogether 314 citizen's initiatives, notifications and complaints in which the complainants requested the Commissioner to initiate the constitutional review of certain legal regulations or provisions thereof. Petitions were submitted mainly in connection with the protection of the rights of persons belonging to vulnerable groups.

In 2013 two significant innovations were introduced as regards the role perception and the working method. As far as the working method is concerned, it is worth mentioning the comprehensive monitoring of the new Civil Code: a special working group was established by the Commissioner. After having conducted thorough investigations into the complaints lodged with the office, *three petitions were submitted to the Constitutional Court* regarding (1) the definition of "relative", (2) the protection of the personality rights of public figures and (3) guardianship fully limiting legal competency.

From the aspect of role perception, the petition submitted in connection with the Fourth Amendment of the Fundamental Law was of principal significance. Several submissions asked the Commissioner to request the constitutional review of certain provisions of the Fourth Amendment. In his petition the Commissioner stressed: initiating the review of the procedural rules concerning the creation and the adoption of the amendment is foreign to the public functions and the constitutional role of the Commissioner for Fundamental Rights. Notwithstanding, he pointed out that, in a State governed by the rule of law, the constitutional review of unlawful norms may not become a matter of political decision – in such exceptional cases the ombudsman has a *"supplementary obligation" to protect the Fundamental Law*.

Ever since the establishment of the ombudsman institution, parliamentary commissioners used to pay special attention to the protection of *the rights of especially vulnerable groups*. It is not a coincidence, that the protection of these groups and their members received particular attention in the petitions of the Commissioner to the Constitutional Court in 2013, too. Several petitions dealt with vulnerable groups, including the elderly, people living

with disabilities and the socially disadvantaged, but there were petitions on the issues of LMBT people wishing to live in domestic partnership, and the protection of the rights of the detained, as well.

We can mention as an example the petition concerning the amendment of the personal transportation act, *aiming at enforcing the fundamental rights of persons living with disabilities*. Instead of setting a deadline, the relevant amendment stipulates only the gradual implementation of *accessibility measures in public transportation*. The petition pointed out that this stipulation infringes on the UN Convention on the Rights of Persons with Disabilities, promulgated by Hungary. The regulation also infringes the requirements of human dignity, free movement and free choice of residence. In its current form the act does not guarantee and make enforceable the earliest possible removal of barriers from the means and stations of public transportation.

Participation in community employment and access to social benefits may be crucial for those most in need. The social act empowers the local governments to tie the active population's right to social benefits to the orderliness of their living environment. Local governments may ordain that applicants should keep their houses, courtyards, gardens clean and ensure the proper use, condition and hygiene of their real properties. Benefits may be stopped if beneficiaries fail to keep their living environment in order. According to the Ombudsman's petition, the verification of the existence of such conditions may lead to subjective evaluation, arbitrary implementation of the law, thus infringing the rule of law. The regulation is in conflict with the right to social safety, unnecessarily and disproportionately meddles in the applicants' private lives, also infringing the right to human dignity.

In addition to those protecting vulnerable groups, the Commissioner also submitted several petitions dealing with traditional liberties. For instance, acting on complaints ledged with his office, he turned to the Constitutional Court in connection with the new Civil Code's provisions on criticizing public figures. He pointed out that criticizing the activities of public figures, as long as it stays within constitutional frameworks, is in the public's interests, indispensable for the free forming of public opinion, the operation of pluralistic democracy. The Court expressed its consent.

As of 1 January 2013, under the Ombudsman Act, if the Commissioner for Fundamental Rights concludes, in the course of an investigation, that a fundamental rights' impropriety is caused by a local decree being in conflict with another legal regulation, he may request the Curia to review the given decree's compliance with the legal regulation concerned. In 2013 the Commissioner submitted such petitions to the Curia on three occasions, in two cases as a result of an investigation, in the third case acting upon a complaint. His petition based on an earlier investigation by the then commissioner re-

sponsible for the protection of future generations pointed out that several clauses of the smog decree of a town were in conflict with the prevailing law, their implementation in case of a smog alert would infringe on the rights to health and a healthy environment (according to the decree, the mayor could only ban the use of vehicles with yellow stickers, but not the use of the much more polluting vehicles with red and black stickers). The Commissioner recommended that the Curia should annul the decree: the Local Government Council of the Curia annulled the decree effective 30 October 2013.

The overall conclusion is that the Commissioner made good use of his petitioning right in 2013. Petitions were submitted mainly on the basis of complaints and, in some cases, ex officio. The Commissioner's petitions mainly dealt with the enforcement of the fundamental rights of the most vulnerable groups. He also continued the practice to submit petitions, in addition to those dealing with the infringements of fundamental rights, in connection with the infringements of constitutional requirements and the rule of law. Furthermore, acting under his new competence, he turned to the Curia on several occasions in connection with the unlawful decrees of local governments.

2.5. Legislation-related activities

Through giving recommendations and reviewing draft bills, the Commissioner for Fundamental Rights may exercise substantial influence on the preparation of legal regulations.

In 2013 the Commissioner for Fundamental Rights reviewed 295 draft regulations. During the previous year, he had received 297, an almost identical number of submissions from the governmental organs.

The Ombudsman made substantive comments in about 60% of the reviews, suggesting changes in content or codification, or drawing the legislators' attention to earlier legislative recommendations. In almost 5% of his reviews he notified the competent ministries of his consent.

Although his comments have no binding force in the process of the preparation of legal regulations, they were taken into account by the submitters on several occasions. It is important to mention that all acts directly affecting the Commissioner's tasks and obligations were adopted upon incorporating his opinion and recommendations.

The Commissioner exercised his statutory right of action and investigation on several occasions when legal regulations had been adopted in spite of his concerns formulated in his reviews.

The integrated approach of the unified ombudsman institution was implemented in a complex way in the course of reviewing the draft bills. It was facilitated by the fact that the secretariats of the deputy commissioners concerned also participated in preparing the reviews. Prime importance was attached to examining what influence, if any, legislation may exercise on the fields that, by virtue of the Ombudsman Act, are under the priority protection of the Commissioner, i.e., the right of the child, the interests of future generations and the rights of nationalities and the most vulnerable groups. This extra care is well demonstrated by the fact that more than half of the substantive comments were related to the rights of the child, environmental or nationality rights regulation.

In 2013 the Commissioner for Fundamental Rights made legislative recommendations as a result of 90 inquiries. Almost 35% of the 260 reports prepared in 2013 were concluded with such recommendations. The most part of these legislative recommendations dealt with the rights of the child, environmental or nationality rights or promoted the enforcement of the rights of the most vulnerable groups. Therefore, as a result of the institutional integration, the unified approach to the protection of fundamental rights was implemented in this field, too. The new organisational and operational rules of the office even stipulate the possibility that, in issues related to future generations or nationalities, the Commissioner and the Deputy Commissioner concerned may jointly sign the reports or legislative recommendations on the given issue.

Traditionally, the ombudsman may choose himself what measures he deems appropriate in order to remedy an impropriety. In the most part of his legislative recommendations he requested the amendment of the content of the given act or decree, simultaneously indicating the preferred frameworks of legislation.

When exercising his recommendation right, the Ombudsman requested the Government or the competent ministry to provide for the legislation necessary to remedy the uncovered improprieties. In accordance with the established practice, the Commissioner also sent his reports containing legislative recommendations to the competent standing committees of the Parliament for reference. There were but a few exceptional cases when the reports were addressed directly to the Parliament.

The Commissioner for Fundamental Rights considers it an important task to examine whether the legislator complies with its obligations taken upon the Commissioner's recommendation. In case the Government and the ministers fail to fully comply with their obligation to respond, the Commissioner, in accordance with his statutory duty, shall record such failure in his annual report.

3.
Report of the Deputy Commissioner responsible for the protection of the rights of nationalities living in Hungary

Introduction

It is the first time that I have the honour, in my capacity of Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary, to inform the public of my activities and the enforcement of nationality rights in Hungary in 2013. Section 1, Subsection (2) of the Ombudsman Act stipulates that in the course of his activities the Commissioner for Fundamental Rights shall pay special attention, among others, to the protection of the rights of nationalities determined in Article XXIX of the Fundamental Law and the rights of the most vulnerable social groups.

The Act provides several guarantees therefore, e.g., Section 40, Subsection (2) stipulates that in his annual report the Ombudsman shall give information to the Parliament on his fundamental rights protection activities, presenting in separate chapters his activities promoting the enforcement of nationality rights. When performing this duty, the Ombudsman provides an opportunity to his Deputies to present their views.

The 2013 Annual Report was prepared in the spirit of certain duality: I assumed my office in October 2013, thus I cannot directly report but on two months of activities; however, with the help of my colleagues, I am going to try and give a detailed picture of the preceding period, as well. In certain parts of my report I will have to go back to before the reported period in order to make things easier to understand. There is more to recalling the past than formal reasons. Since the adoption of the Fundamental Law and the new Ombudsman Act, the field of nationality rights and the related areas have gone through such changes that have a fundamental impact on my present activities and future possibilities.

There have been numerous discussions on the directions and the timing of the changes of legal regulations; it is a fact, however, that, in addition to the contradictions and the deficiencies, several new elements have surfaced

in nationality law that were requested earlier by the nationality communities or recommended by previous minority ombudsmen. We cannot leave their evaluation to the future generations as they have a major effect on the everyday lives of the various communities of the contemporary Hungarian society. The effect of some regulations or the lack thereof, is already palpable; we are coming back to those later on.

Due to their delayed effective date, several regulations have just begun to exert legal action, giving plenty of work to those in charge of their enforcement and monitoring in order to learn their efficiency and necessity. We are going to touch upon those changes in regulations which, although not directly connected to nationality law, have major importance from the standpoint of the largest nationality of our country. In 2011 in Hungary 3.05 million people lived in poverty or social exclusion; the majority of the Roma population, some five to six hundred thousand people, still live their lives on the margins of society. It means that while the majority of those living in poverty are not Roma, the majority of Roma live in poverty. The evaluation of the Government's complex policies and the prevailing tendencies in solving this issue is an urgent, priority task of the Commissioner and his Deputy.

From the organisation's standpoint, the most serious challenge of the last two years was the establishment of the status and limitations of the position of deputy commissioner within the new, unified ombudsman institution. My predecessor played a major role in this process, trying to preserve the values of the past and set the goals of the future. By virtue of the relevant provision of the Fundamental Law, the mandate of Deputy Commissioner Dr Ernő Kállai came to a close on 24 September 2013, simultaneously with that of the previous Commissioner for Fundamental Rights, ending an era.

In view of all of the above, we may state that the 2013 report of the Deputy Commissioner responsible for the protection of the rights of nationalities living in Hungary is, from various aspects, the chronicle of transition and, at the same time, the summing up of an entire era. In addition to the past and present situation, we have to have an outlook to the future, as well; in the last part of this chapter we are going to give an overview of our short- and long-term plans which, we do sincerely hope, will efficiently contribute to the wellbeing of nationality communities, thus providing subject matter for the annual reports of the coming years.

Elisabeth Sándor-Szalay

Setting the frames of the post of Deputy Commissioner

In the beginning, the new system of legal protection by the Ombudsman, established as of 1 January 2012, faced several challenges. Those challenges were described in detail and analysed in the previous annual report of the Commissioner for Fundamental Rights, so we are only going to touch upon those specific to the deputy commissioners.

The domain of nationality rights is a transversal legal area, incorporating elements of other disciplines, e.g., sociology and ethnography. Furthermore, it is, in itself, a multifaceted area of the law. In the strict sense, it is the sum of – substantive and procedural legal, financial and accounting – regulations substantiating and facilitating the cultural autonomy of the thirteen nationality communities recognised by the Parliament. As opposed to the relatively well defined parts of nationality issues, the Roma issue is a stack of complex legal, economic and social aspects: in the case of the Roma, the decades-long dichotomy (being Roma – being poor) still has not been solved, and it is in the centre of attention not only in Hungary, but also in several European countries. Working efficiently in the various fields requires exceptional knowledge and experience from the specialists concerned, simultaneously inferring human rights vision and tolerance. The institutional background means specific organisational and working methods, specific procedural possibilities and possibilities for action. The independent staff of minority ombudsmen used to be an exemplary incarnation of the aforementioned. Highly qualified professionals, some of them with multiple degrees, worked together in a small, fast response professional group, laying emphasis on direct contacts with those concerned and personalized, targeted assistance. They have established a separate methodological system for handling traditional minority issues, solving the complex, social, housing and educational problems of the Roma and problems related to equal treatment. The minority ombudsmen used to be an effective instrument in enforcing rights, but their functions were highly specialized. For instance, compared to the 357 complaints in 1996, the first full year after the establishment of the institution of minority ombudsman, the number of complaints had increased to 1064 by 2010. This increase of almost 298% was still dwarfed by the number of complaints (8051) handled by the Parliamentary Commissioner for Civil Rights in the same year.

As a result of the institutional transformation, a new logistic approach was introduced: differentiated cooperation took over from specialization. The professional community was disbanded, its place was taken over, as a new element, by project-based, thematic cooperation in comprehensive issues. Minority rights came to the focus of attention not only in connection

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with concrete cases – they appeared, either as aspects of investigation or as complex ex officio inquiries, in every project of the Commissioner for Fundamental Rights conducted in 2012 and 2013 where the professional aspects of this legal area could be implemented.

Unification/standardization was implemented not only at the level of cases and procedures: former staff members of the minority ombudsmen who opted to stay in the Office, as well as the ombudsmen themselves, had to find their places in the new institution. Since the introduction of the new model happened before the expiration of the ombudsmen's mandate, they had to decide whether to keep on working under the new circumstances or be replaced by professionals elected under the new conditions. Both Dr Ernő Kállai and Dr Sándor Fülöp opted to stay and started to shape their new professional profiles.

In addition to the provisions of the rather laconic Article 30 of the Fundamental Law, the competence of the Deputy Commissioners is stipulated in detail in Section 3, Subsection (2) of the Ombudsman Act. Under the Act, *the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary shall monitor the enforcement of the rights of nationalities living in Hungary, and*

a) shall regularly inform the Commissioner for Fundamental Rights, the institutions concerned and the public of his/her experience regarding the enforcement of the rights of nationalities living in Hungary,

b) shall draw the attention of the Commissioner for Fundamental Rights, the institutions concerned and the public to the danger of infringement of rights affecting nationalities living in Hungary,

c) may propose that the Commissioner for Fundamental Rights institute proceedings ex officio,

d) shall participate in the inquiries of the Commissioner for Fundamental Rights, and

e) may propose that the Commissioner for Fundamental Rights turn to the Constitutional Court.

It is clear that the Act provides the Deputy with monitoring, evaluating and awareness-raising, i.e., cooperative tools instead of the full arsenal of an independent minority ombudsman. At the same time, the change significantly narrows the scope of measures that could be taken within the Deputy's discretion. Some flexibility was provided and new perspectives were opened up by Section 41 of the Ombudsman Act, according to which the Commissioner for Fundamental Rights may, in the organisational and operational rules, transfer the right to issue to the Deputies. Directive 1/2012 AJB (of 6 January) on the Organisational and Operational Rules of the Office of the Commissioner for Fundamental Rights codified this possibility. The legislator added on more element of guarantee to the procedures:

Section 3, Subsection (3) of the Ombudsman Act stipulates that if a Deputy Commissioner for Fundamental Rights makes a proposal within his/her competence to the Commissioner for Fundamental Rights to turn to the Constitutional Court, the Commissioner for Fundamental Rights shall be bound to act accordingly or to inform the Parliament in the annual report of the reasons for his or her refusal to do so.

The size and the composition of the professional group assisting the Deputy Commissioner was a critical issue. Instead of the earlier 24, the Deputy Commissioner has only four and a half positions at his/her disposal. Furthermore, instead of an independent organisational unit, the staff of the Deputy Commissioner continued their work in the frameworks of a secretariat established according to functional considerations. As it is indicated above, practical professional work related to the nationalities, particularly the handling of cases, was delegated to some staff members of the various organisational units. Their work is coordinated by the Nationality Working Group, comprising all former colleagues of the minority ombudsmen irrespective of their current positions. It is important to note that the level of case handling and legal protection has remained very high as a result of the meticulous and committed staff and the continuous professional consultations.

Dr Ernő Kállai compiled his working plan for the remaining part of his mandate (through September 2013) accordingly, preparing plans that were either independently executable or based on the delegation of functions. Those plans constituted the core of the Secretariat's activities, the first step in shaping the new profile of the Deputy Commissioner; therefore, it seems to be proper to review those processes in their details.

Independently executable tasks comprised those activities that seemed to be executable by the staff of the Secretariat, even without the rights to investigate or to issue, and whose steadfast conduct could be ensured. It required the complex review of nationality rights and the current situation of nationality communities, and the implementation of the relevant measures. The following table shows the number of various measures in their statutory classification:

	2012	First half of 2013
Proposal to conduct an ex officio inquiry	20	4
Awareness-raising	13	7
Commenting	85	47
Professional consultation	34	19
Conferences	22	10
Other events	24	8
Functioning	23	11
Altogether	**221**	**106**
Of those above, cases having international aspects	21	11

The Secretariat's information-related activities (gathering and/or providing information, maintaining contacts) accounted for almost three quarters of the workload in both periods. Attending conferences, in many cases as active contributors, provided an opportunity for our colleagues to establish and maintain continuous dialogue with the members of nationality communities and the staff members of professional organisations. In the field of maintaining contact, we have to mention participation in the cultural and traditional events of nationalities (from festivities through film screenings to concerts), providing opportunities to meet the members and representatives of those communities, to get acquainted with the specific features of minority culture and to have informal discussions. During the professional consultations views were actively exchanged on specific current problems, with specialists, e.g., social workers, teachers and lawyers working "on the ground" on nationality and Roma issues. Coordination was carried out within the frameworks of already existing mechanisms, e.g., during the meetings of various ministries' working groups, professional committees, on coordination forums; some of them were closed meetings convened by the Deputy Commissioner. Dr Ernő Kállai participated in the meetings of the Roma Coordination Council on his own right, as a member. Under the mandate of the Commissioner, he or his colleagues used to represent the Office in the meetings of the Human Rights Committee and at the sessions of the Evaluation Committee of the "Let's Make Things Better for our Children" National Strategy.

The Deputy Commissioner launched the 'Nationality Months' series of events as a program aiming at collecting information and maintaining contact. From March 2012 through June 2013, every month he focused on one of the nationalities, reviewing their circumstances and potentials from every possible angle. This timeframe made it possible to consult the leaders and specialists of the given nationality, to review the activities of the related cultural and educational institutions and to meet people personally. During this period he managed to get acquainted with the situation of ten nationalities. As far as information-related activities are concerned, we have to highlight continuous intra-office coordination and professional cooperation. Since nationality issues were not handled any more within one organisational unit, formulating and consistently implementing uniform criteria became more difficult. Tasks related to minority legal practice, i.e., the enforcement of existing professional standards and the implementation of new solutions, were carried out by the Deputy Commissioner and the nationality working group, which required serious practice analysing. The Deputy Commissioner, in compliance with his obligation stipulated in Section 3, Subsection (2) of the Ombudsman Act, regularly informed the

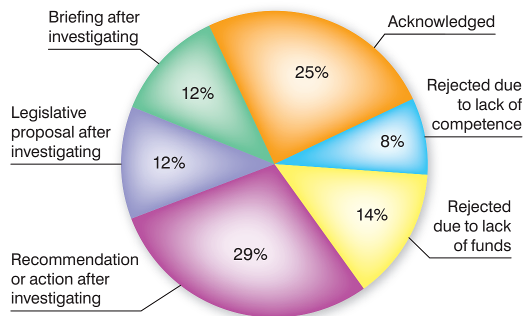
Commissioner for Fundamental Rights of his experiences and his assessment thereof, and, in the spirit of continuous professional cooperation, also shared his experiences with the management of the Office and with his colleagues working in the field of nationality rights. Although in his capacity of Deputy Commissioner he did not undertake any media appearances, Dr Ernő Kállai often reported on the results of his activities on various professional forums. Another area of the Secretariat's activities was to organise his work in connection with planning and conducting comprehensive investigations. Between February and May 2012, the Deputy Commissioner requested the Commissioner for Fundamental Rights on seven different occasions to let him conduct independent investigations, to give him the right to issue, and to allow him to involve colleagues outside his Secretariat in his work. The success rate of these initiatives is shown in the following table:

	2012	First half of 2013
Specific targeted inquiries	7	none

The Deputy Commissioner's requests dealt with comprehensive topics (e.g., the state of nationality cultural rights, the revised practice of financing nationality institutions, the state of nationality radio and television broadcasting in Hungary, measures facilitating the social and educational integration of Roma students in higher education), partially as suggestions for follow-up investigations. The Commissioner pointed out in every case that he could not support the conduct of independent investigations due to the lack of funding; neither could he include these topics in his own working schedule. He promised, however, that he would incorporate the aspects indicated in the Deputy Commissioner's submissions into future projects and comprehensive investigations, and that he will keep them in mind when preparing his reports on individual cases. It was partially done; furthermore, there even were two investigations (on the state of nationality radio and television broadcasting and on the state of nationality secondary education) conducted, albeit without his direct participation, on the basis of the Deputy Commissioner's recommendations. Acknowledging the Commissioner's reservations vis-à-vis delegating of competence, the Deputy Commissioner later on did not request such responsibility; however, he started to avail himself more assertively of the "stronger" instruments specified in Section 3, Subsection (2), Paragraphs b) and c) of the Ombudsman Act.

As it was shown in details earlier, the Deputy Commissioner initiated actions by the Commissioner on 40 occasions in 2012 and on 11 occasions in the first half of 2013. It means that, in addition to his daily activities, the Deputy Commissioner turned to the Commissioner on 51 occasions (almost

in every one and a half week) in the discussed period concerning issues related to nationality communities.



The aftermaths of the Deputy Commissioner's initiatives are also worth mentioning. In connection with these initiatives the Commissioner for Fundamental Rights decided to refuse to launch an inquiry on eleven occasions (22%). Seven of them were referred to special targeted investigations that had been rejected earlier due to the lack of funds; in four cases there were some overlaps. In all other cases inquiries were launched. In most cases it meant the conduct of an actual investigation; they were followed by recommendations or actions, and in six cases the Commissioner made legislative proposals. In six cases no infringement of fundamental rights could be uncovered; the Commissioner briefed his Deputy on these cases in details.

It is important to note, however, that the submissions were handled and investigated in each and every case correctly and at a very high professional level. The reports greatly contributed to identifying and solving the issue in the field of nationality rights. The inquiries helped not only the nationality communities, in many cases some of their conclusions became integral parts of the internal legal practice. In later proceedings they were referred to on many occasions, once even in a petition to the Constitutional Court.

We can conclude that during the period under consideration the shaping of the new profile of the Deputy Commissioner started successfully: the external professional links necessary to performing the tasks at hand were established, and the forms of intra-office cooperation and the conditions of operation were successfully created. The biggest result, however, was not the start of this process, but the preservation of the values of the part, the development of the ability of continuous renewal.

Assumption of office and the experience of the first couple of months

By virtue of the closing provisions of the Fundamental Law, the mandate of Dr Ernő Kállai expired on 24 September 2013, opening the way before the nomination and election of a new Deputy Commissioner. According to

Sections 4 and 5 of the Ombudsman Act, Parliament shall elect the Deputy of the Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary at the proposal of the Commissioner for Fundamental Rights from among those lawyers who have reached the age of thirty-five years, have outstanding theoretical knowledge or at least ten years of professional experience, and have considerable experience in conducting or supervising proceedings affecting the rights of nationalities living in Hungary or in the scientific theory of such proceedings. Section 7, Subsection (4) adds the following stipulation: the Commissioner for Fundamental Rights shall – before making his proposal for the person of the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of the nationalities living in Hungary – request an opinion from the nationality self-governments. Following his consultations with the national self-governments of the nationalities living in Hungary, with their unanimous support, Commissioner for Fundamental Rights Dr László Székely named me, Elisabeth Sándor-Szalay as his nominee. Following the mandatory parliamentary hearings, on 21 October 2013 the Parliament, with 268 votes, elected me as the new Deputy Commissioner responsible for the protection of the rights of nationalities living in Hungary. From the very first day on the job, my goal has been to involve myself actively and creatively in the activities of the Office. Although the Commissioner had acted as caretaker during the vacancy, some requests from the part of professional organisations, nationality communities and the press that could be handled only by the new Deputy Commissioner – I had a lot to do from the very first moment of my tenure. During the two months of transition, parallel to the handover of on-going cases, we started to review the professional working conditions and work out the necessary changes. This process was based on the overview of earlier practices and a series of consultations with colleagues dealing with nationality issues and with the executive officials concerned. The first tangible results of the joint professional work were the documents published jointly by the Commissioner and his new Deputy. In December we published a joint report on the amended regulation of organising and conducting unlicensed public security-related activities (prohibited patrolling), a bit later we issued a joint statement concerning a ministry's submission regarding the Roma integration strategy.

This process was influenced by several external factors. The adoption of Act CCXXII of 2013 on the amendment of Act CXI of 2011 on the Commissioner for Fundamental Rights and Act CLI of 2011 on the Constitutional Court brought about, based on the operational experience of the previous years, several practical changes for the Deputy Commissioners.

In order to ensure the target-oriented, efficient continuation of the activ-

ities of the Deputy Commissioner, based partly on enhanced powers, partly on the elimination of earlier hardships, new guidelines and principles were set, to which the necessary professional and institutional background was also created. In collaboration with the Deputy Commissioner responsible for the protection of the interests of future generations and the senior staff of the Office, the draft amendment of the Organisational and Operational Rules was worked out, promising a major step forward to the Deputy Commissioners. The document, among others, stipulated that the Deputies, after consulting with the Commissioner, may independently issue statements regarding their areas of responsibility; coordinate, under the Commissioner's guidance, trend-setting strategic activities, the preparation of sectoral and sub-sectoral strategies, and may even work out investigation criteria and policy statements as regards their areas of responsibility. A major step forward was the formalization and revitalization of the activities of the Nationality Rights Working Group, established for the purpose of the complex inter-disciplinary analysis of the situation of nationality communities. The increased case burden of the Secretariat of the Deputy Commissioner required its upgrading to department level and the increase of its personnel. The Commissioner accepted without reservations the proposal to amend the nationality-related parts of the Office's Organisational and Operational Rules, so we started the year 2014 with a structurally and professionally renewed organisational unit.

The Deputy Commissioner's plans and vision for the future

An annual report should never be limited to the encyclopaedic collection and assessment of events passed; the presentation of opportunities arising from those events should be an organic part thereof. In this spirit, I would also like to give a short overview of the general objectives of my activities as Deputy Commissioner for the year 2014. As it was already stressed during the parliamentary hearings in connection with my election, in the activities of the Deputy Commissioner two major fields shall be given prime importance in the future: on the one hand, involving young people with nationality background in the activities aimed at preserving and developing nationality communities is a very important task, and on the other hand, the fight against the social issues and discrimination affecting the most part of the Roma community is an obligation of extreme urgency. Furthermore, we will have to deal with several pressing issues in other fields, too. For instance, the general and local elections to be held in 2014 will be a genuine test for the new legal regulation of the nationalities, and we will have to face the current

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issues of nationality education, as well. The Ombudsman's reports issued in the last two years uncovered several problems in the field of nationality rights that are still unsolved. The situation is made even more delicate by the fact that, due to the gradual introduction of some of the provisions of the Act on Nationalities, a part of the current improprieties may become more complicated in the coming period. Therefore, ensuring the follow-up and monitoring the trends in enforcing nationality rights shall be a priority. Naturally, traditional topics, such as the operational issues of nationality self-governments, the problems of educational and housing segregation and the fight against hate speech, shall remain on the agenda.

The frameworks of the annual work plan are set by the human resources and the institutional infrastructure at hand. From this aspect, it is encouraging that we have managed to form a close cooperation with the heads and the staff of the specialized departments, which may facilitate the solution of individual cases, as well as the conduct of comprehensive inquiries.

Concluding remarks

Upon the initiative of the Deputy Commissioner, as the final act of the year 2013 and the first major undertaking of the new Deputy Commissioner, on 17 December 2013 we held a symposium entitled "Nationalities in the Hungarian legal system – 20 years after" commemorating the major milestones of

Speakers of the symposium entitled "Nationalities in the Hungarian legal system – 20 years after" (Gáspár Bíró†, Elisabeth Sándor-Szalay, Péter Kovács, Jenő Kaltenbach)

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nationality-related legislation in Hungary that had been launched in 1993. The key speakers of the event, attended by the representatives of nationality communities, were well-known actors of nationality-related legislation and the protection of nationality rights, including both former minority Ombudsmen Dr Jenő Kaltenbach and Dr Ernő Kállai. The edited version of the presentations were published in the 1st Issue of Volume XXI of the Journal "Barátság" (Friendship) – a summons and a source of inspiration for all those who care about and wish to contribute to the protection of the rights of nationalities living in Hungary. The Deputy Commissioner and the staff of her Secretariat intend to do so using any and all means at their disposal.

4.
Report of the Deputy Commissioner responsible for the protection of the interests of future generations

Article P of the Fundamental Law of Hungary gives constitutional protection to natural resources, in particular arable land, forests and the reserves of water, biodiversity, native plant and animal species, as well as cultural assets, as the common heritage of the nation, the protection, maintenance and preservation of which for future generations is the obligation of the State and everyone. Based on the Act on the Commissioner for Fundamental Rights the ombudsman shall pay "special attention" to the protection of the values determined in Article P, as the interests of future generations.

To this end, the Parliament has created a separate deputy commissioner position to protect the interests of future generations, and in the Act on the Commissioner for Fundamental Rights made it the task of this deputy to monitor the enforcement and protection of the interests of future generations, to inform the Commissioner for Fundamental Rights of his or her experience regarding this, to draw the attention of the ombudsman to the danger of infringement of rights affecting a larger group of natural persons, and to participate in the inquiries of the Commissioner, in commenting the legislation. The Deputy for Future Generations may propose that the Commissioner institute proceedings ex officio, and that the Commissioner turn to the Constitutional Court. In December 2013, the duties of the Deputy Commissioner were expanded, so he or she shall inform the institutions concerned and the public as well of the experiences, and shall draw the attention of these to the danger of infringement, too.

General Findings

Long-term thinking

In course of 2013 the draft of a number of strategic policy documents of great importance from environmental and conservation aspects were completed in Hungary. The Government adopted the National Waste Management Plan, submitted to the Parliament the National Biodiversity Strategy, the ministries started the public consultation on the National Water Strategy, the

National Transport Strategy and the National Environmental Programme. The Parliament adopted the National Sustainable Development Framework Strategy, and the National Development 2030 – National Development and Regional Development Perspective. The Deputy Commissioner analysed the documents sent to him primarily in terms of how the harmony among sectoral interests and environmental protection, nature conservation interests is or can be realized from the aspect of values named in article P, and of the protection of fundamental rights. He examined which solutions are placed in the foreground in the strategies, what kind of underlying studies were prepared, if an investigative analysis was made according to the law, whether the opportunity for public consultation was provided – including the accessibility of documents and the availability of time required to comment on them –, if long-term thinking was successfully incorporated, and whether institutional protection tools could be developed, which respect the interests of future generations.

The achievability of specific strategic goals is significantly influenced by the character of relationships established among documents to be elaborated in different time, and by the extent they rely on one another. Although the interfaces appear more and more frequently in these documents, practice still shows that this is not sufficient to make the strategies work together as a single, coherent system. Consistency at the strategic level among the different sectoral objectives is mostly still successfully created, but in the implementation – that begin mostly with legislation – the integration approach becomes less and less perceptible, because the persons responsible for preparing the legislation are committed to sectoral interests. The Deputy Commissioner experienced that the strategic documents do not provide clear enough guidance to the legislator, or the control mechanisms that would look at the implementation of strategic objectives not only from the perspective of the specific industry responsible for realization, but with regard to overall aims, are missing or are not sufficiently effective. For this reason the Deputy Commissioner's new task to monitor the implementation of the Parliament's National Sustainable Development Strategy, is of particular importance.

Public participation in framing the conditions for long term

Legislation

The protection of the interests of future generations requires the long-term thinking with the involvement of the society as a whole, the reconciliation of interests, getting to know and assessing the benefits acquired by short-term interests and the losses emerging on long-term, as well as making decisions that are just, fair and comply with the sustainability criteria also in

intergenerational relations. Public participation in the process of creating the strategies and the legislation to implement them has special importance in this respect.

The Deputy Commissioner has already previously suggested that in course of public participation in legislation, due to serious anomalies in the determination of deadlines for commenting on draft laws, the provision of one of the fundamental preconditions of institutional enforcement of the right to a healthy environment, namely substantive public participation in the legislative processes affecting the environment, is solicitous. For these reasons, the Deputy Commissioner reviewed and analysed the relevant legislation and legal practice.

Through the commenting practice of legislation concerning environmental protection of the Ministry of Interior and the Ministry of Rural Development the analysis shows that the unlawful determination of the deadline for commenting has become a regular feature, which inhibits substantive public participation.

In case of the 32 draft laws related to environmental issues, which were published on the website of the Ministry of Interior for public commenting from 2012 till the end of 2013, only 13 percent had a commenting period reaching or slightly exceeding the lower limit value of the deadline specified.

In case of the 38 draft laws related to environmental issues, which were published on the website of the Ministry of Rural Development for public commenting in 2013, 16 percent had a commenting period reaching or slightly exceeding the lower limit value of the deadline specified.

Reviewing the specifics of legal environment the analysis points to the problems that are, as a result of the inadequate level and content of the deadline regulation, actual barriers to participation. Thus:

- Instead of determining it on statutory level, the Act on public participation in preparing legislation delegates the specification of the deadline available to the widest public for commenting, to a government decree, the Government's Standing Order, while this affects the enforcement of a right concerning all the inhabitants and NGOs of the country.
- The public commenting process prescribed for the legislation does not apply to government decrees, so those concerned have no say in determining one of the basic conditions, which substantially affects the participation of the whole civil society in the legislation.
- The Government's Standing Order establishes the relevant deadline for the Government. The deadlines that may be sufficient for the government agencies dealing with the comments on a regular basis, as their official duty and in working hours, are not sufficient for the civil sector.

- There are no actual, accountable conditions specified for priority deadline commenting, which would really make the application of this provision possible only in exceptional and duly justified cases. And the experiences of application show that government agencies ask for priority deadline commenting not exceptionally, but regularly.

To create the legislation related to environmental issues, specific international and domestic environmental laws apply as well, in all of which involving the public and determining a reasonable deadline that makes substantive commenting possible play key role. The specifications that can be found here make it even more emphasised, that the draft law should be published in a way providing adequate time to assess the merits of the proposal and to express opinions, in line with the purpose and effect of the draft.

The jointly emerging problems of regulation and enforcement make substantive public participation in commenting legislation extremely difficult, limit it, and in some cases render it even impossible, due to this the Deputy Commissioner proposed to institute proceedings ex officio for the Commissioner for Fundamental Rights. The proposal was adopted, so the procedure started in 2014.

Social relations

NGOs are important reference points for the Deputy Commissioner, who regards them as distinguished partners. The most comprehensive complaints come from them, and these organisations are constantly watching the Deputy Commissioner's work, providing valuable feedback on it. Regular working relationship has been developed with several NGOs, common events were organised many times.

The Deputy Commissioner meets the civil organisations at least twice a year, to discuss his work plan at the beginning, and to present his report at the end of the year, and he attends the annual national meeting of environmental and conservation NGOs. At these meetings the Deputy Commissioner reported on the environmental activities of the Office, and listened to the remarks of those present. The civil organisations have enriched our activities with valuable information, and highlighted important matters, actions to be taken. The Coordinating Council of environmental organisations held its meetings regularly in the building of the Office in 2013, too.

The Deputy Commissioner is invited to many conferences organised by NGOs, and we have an outstanding cooperation with the National Society of Conservationists, we organised joint events with them on the topics of conserving biodiversity, sustainable development and the National

Environmental Program. With the Clean Air Action Group we discussed their experiences related to indoor and outdoor air quality, in particular the effects on children. We have also cooperated with several concerned NGOs on the issue of the mobile dam planned for a Budapest section of the Danube, with their help and participation we organised an exhibition and a debate about the dam construction plans. The program titled "Energy Communities – competing for less energy consumption" of GreenDependent Institute took place in 2013 also under the patronage of the Deputy Commissioner.

Mediator role in harmonising the interests of present and future generations

The Round-table named "Application of the Aarhus Convention in issues related to nuclear energy" convened by the former Parliamentary Commissioner for Future Generations and the Regional Environmental Centre (REC) of Szentendre, Hungary, and the Working Group supporting its activity, work since 2009. The aim of the round-table is to promote the information and participation of the public in the licensing procedures of nuclear facilities in accordance with the provisions of Aarhus Convention. The organisations, ministries, authorities, environmental NGOs involved in nuclear matters take also part in the work of the Round-table and the Working Group. In 2013 the activity of the Working Group was focused on finishing the development of participation protocol facilitating the civic participation in licensing procedures. At the June meeting the Working Group discussed again the draft protocol, but did not accept it because of the remaining disagreement. Due to the lack of consensus and the arrangements for establishing new units for the nuclear power plant, the Deputy Commissioner and the representative of REC initiated to convene the Round-table to decide about the further steps.

At the Round-table meeting the Deputy Commissioner proposed a mediation process to be conducted with the assistance of the Office, which will help the quick preparation of an acceptable version of the text. The Round-table has accepted the proposal. In addition to mediation, the Deputy Commissioner made an investigation proposal for the Commissioner for Fundamental Rights – related also to the follow-up investigation of former reports – to review the regulation of public participation related to the licensing of nuclear facilities, as well as of the environmental aspects of licensing procedures. This proposal was accepted by the Commissioner, so the investigation has been launched.

Long-term thinking and the unification of domestic jurisprudence

Long-term thinking may become more universal, if promoted by convening those reviewing the public administration decisions to discuss the legal issues regularly in forums. The Deputy Commissioner – following former practice of the Commissioner for Future Generations – signed a cooperation agreement with the Association of Hungarian Administrative Judges, in which the parties have agreed in holding professional conferences regularly, where the experiences of legal practice related to protecting the common heritage of the nation and to ensuring the right to a healthy environment are analysed, as well as the effectiveness and problems of legal institutions are discussed, taking into account the law of the European Union and the practice of the European Court of Justice as well. The parties to the agreement have come to an understanding that the protection of the common heritage of the nation can be best ensured, if the administrative decisions relating to them are based on the principle of precaution and prevention, and are predictable for those entitled and obliged by them. The first event was held under the title "Environmental principles of the EU and their impact on the practice" on 14 October, where the participating judges, prosecutors and professionals from ministries, environmental, nature conservation and water management inspectorates, as well as staff of the Office of the Commissioner for Fundamental Rights were discussing theoretical and practical professional approaches and problems. After the event the Deputy Commissioner also contacted the Office of the Prosecutor General, and direct professional consultation has begun between the Prosecutor's Office and the staff of the Commissioner, organised by the Secretariat.

The institutionalization of long-term thinking on international level

The main direction of the Deputy Commissioner's international activities of 2013 was to encourage the creation of an international network of institutions providing for the protection of the interests of future generations under the aegis of the UN. This motion was represented in a number of international professional forums, including the Forum of European Environmental Judges, the meetings of ombudsmen of the Visegrad countries and the Western Balkan countries, the conference organised by the World Future Council and the United Nations Environment Programme, the 9th National Seminar of the European Network of Ombudsmen, the Budapest meeting of the European Network of National Human Rights Institutions (ENNHRI), the conference "Making future sustainable – German and Hungarian Strategies and

Experiences" organised by the National Council for Sustainable Development and the Konrad Adenauer Stiftung. At the session of the UN's International Coordinating Committee of National Human Rights Institutions, in Geneva, it was managed to reach that the Commission highlights as one of its three main development objectives from 2015 the efforts of the organisation for sustainable development and for future generations.

The report of the UN Secretary General published on 17 September 2013 about intergenerational solidarity and the needs of future generations lists the Hungarian commissioner and deputy commissioner system to protect the interests of future generations among the eight national institutions in the world that try to plant the practice of long-term thinking in democratic decision-making in a unique, institutionalized way. The report prompted the Deputy's Secretariat to promote the concept of sustainable development and the representation of the interests of future generations jointly with similar institutions on global level, thus contributing to strengthening the international role of Hungary as well.

Given the above, the Deputy Commissioner's Secretariat has embarked on the preparation of a three-day international conference, to be held in April 2014 with the title *"Model Institutions for a Sustainable Future: A Comparative Constitutional Law Perspective"*. The conference lecturers and its target audience are representatives of national model institutions recognised by the report, the most influential professionals elaborating the theoretical concept of representing the interests of future generations, and organisations dealing with this issue on international level. The conference topics include what legal and social tools help and validate at the individual national institutions the appearance of sustainability elements in the practice of decision-making and legislation, on the other hand, what possibilities do the national institutions have for global advocacy. The Deputy Commissioner's initiative was confirmed by the December amendment of the Act on the Commissioner for Fundamental Rights that made it the task of the Deputy Commissioner to present the values of domestic institutions at the international level.

International activity to protect children, future generations

As part of the Commissioner's project on children's rights, the Deputy Commissioner's Secretariat reviewed the way in which the protection of the interests of future generations is enforced through the commitments signed at the 4th Ministerial Conference on Environment and Health, in the document (Action Plan) entitled "Children's Environment and Health Action Plan for Europe".

The Action Plan identifies four objectives in accordance with the major risks:

- prevention of gastrointestinal disorders and other diseases from spreading, as well as access to safe water;
- the improvement of safe physical environment necessary for the movement of children and the prevention of accidents;
- improving indoor and outdoor air quality;
- reduction of diseases caused by hazardous substances, as well as excessive noise, especially the reduction of workplace-related harmful exposure in young mothers, children and young people.

The ministers signing the Action Plan agreed on creating national action plans by 2007.

Based on examining and analysing the domestic and international documents, as well as the complaints received by the office, the Deputy Commissioner stated that the countries' commitments do serve the resolution of some problems, but they cannot prevent the appearance of new ones. Although since 2004 part of the problems is solved, but especially because of the speed of scientific-technical progress and of practical application of technical developments, the protection of children and thus of future generations can be downgraded. In the lecture at the conference on the children project we have drawn the attention to the fact that protection of the interests of children is a complex task, which requires everyone who makes decisions on the children's behalf, for or instead of children, to become familiar with the environmental and health risk. The Deputy Commissioner elaborates the investigation proposal for the implementation of the national commitments of the Action Plan in 2014.

With regard to the protection of the interests of future generations the Deputy Commissioner analysed the domestic and international regulation and practices concerning the use of embryos in the frame of a prior examination. As a consequence of the results the Deputy Commissioner spoke in favour of limiting the commercialization of human embryos and tissues, cell lines derived from them for business purposes, in Strasbourg, at the meeting of the Committee on Bioethics of the Council of Europe. The European Union has failed to exceed the essentially economic interest community in many ways, however the regulation of the use of embryos on the basis of the protection of future generations and human dignity in general may represent such common value, reaching beyond material considerations, which may contribute to creating the common ethical basis of EU, still lacking in many areas today. It is an important result that Hungary plays a proactive role in this process.

The Deputy Commissioner has prepared a draft recommendation to be submitted to the Committee on Bioethics of the Council of Europe in order to be brought to the Committee of Ministers for adoption. This draft recommendation points out the timelines of legal regulation of industrial exploitation of tissues and cells of human embryos, the relevance of freedom of conscience and consumer protection, furthermore defines the case of industrial exploitation of cells and tissues of human embryos.

Protection of the common heritage of the nation

Protection of water

In 2013 the Deputy Commissioner focused on water, as an important value of the common heritage of the nation, in several ways.

National Water Strategy and related legislation
In connection with the preparation of the National Strategy for Water the Deputy Commissioner concluded that there is no governmental actor who would be responsible in one person for the development and implementation of water-related legislation ensuring complex defence. Instead of strengthening the regulatory and institutional framework to ensure the long-term protection of water resources, in several cases legislation for the enforcement of short-term economic interests was observable. Protection of the interests of future generations requires that based on professional and national consensus the principle of precaution and prevention becomes the foundation of law again.

The Deputy Commissioner concluded about the discussion paper of National Water Strategy that in addition to the forward-looking statements, disparities highlighting certain sectoral interests can also be found in it. From the comprehensive diagnosis of the discussion paper published by the ministry, in course of finalizing the program findings have disappeared that were irrefutable from professional point of view and supported by data as well, which served for the foundation of long-term thinking. It was left out, for example, that *"in water covered areas such agricultural and forestry activity should be performed, which is less susceptible to periodic flooding."* Or *"The use of groundwater has significantly increased also in the field of irrigation, which causes a reduction of the available water reserves."* The following part is also missing: *"We have to decide whether flood protection puts the emphasis on prevention or post-treatment of disasters. Lacking funding ... this focus is inevitably shifted towards disaster management."*

The Deputy Commissioner drew attention to the appropriate professional preparation of legislation, when in connection with the debate on the draft law for the universal abolition of re-injection requirement of thermal water called to consider the rejection of the proposal to the Members' attention. The Deputy Commissioner deems it particularly problematic that since the abolition of the general prohibition, the Government made it possible through modification of the relevant government regulations to *"water recovery allowed with back-feed can also be performed through harmless drainage, allocation of unused thermal water differing from back-feed"* and that the implementation deadline for emission limit values for water pollutants is pushed to 2027. This means that neither the old nor the new facilities have to comply with the limit values, which are to serve the common heritage of the nation.

Hungary's Water-Basin Management Plan features the fact that the significant, focused thermal water extractions without re-injection in parts of the Great Plains lead to continuous fall in the water level of the thermal water reservoir, suggesting overproduction. The amount of water extracted is utilised primarily as bathing water and for energy purposes, the latter largely without re-injection. Due to the introduction of thermal water in the aquatic environment, the risk of quality deterioration of not only groundwater, but also surface water persists. All this may lead to a situation, when achieving good ecological status of waters can become problematic.

To establish the foundations of the regulation necessary for the constitutional level protection of waters, the Deputy Commissioner has turned to the President of the Hungarian Academy of Sciences, asking for a summary of scientific evidences on the domestic thermal water reserves. Based on the professional opinion of the Academy, the Deputy Commissioner started examining what tools are needed for the constitutional protection of thermal waters.

The Deputy Commissioner raised his voice for the protection of water resources, when he suggested the decision-makers not to change the licensing process for the wells drilled so that for up to 80 meters and 50 meters deep wells subsequent notification obligation would replace the licensing process. In terms of the protection of waters he considered it similarly problematic that the deadline for the implementation of the sewage treatment program for small settlements at the Lake Balaton has been modified for 2018. In several cases he drew attention to the necessity of enforcement of the "polluter/user pays principle", in particular for the efficient use of water resources.

The last month of the year, the Government began the complete overhaul of water management administrative, authority system, which has also directly affected the official institutional system of environmental protec-

tion and nature conservation, while none of the strategies and programs prepared in the second half of the year had any indication that changes in this direction, respectively of such a significant extent can be expected in the ministerial division of responsibilities and powers, administrative and official institutional system of the three areas above.

The Deputy Commissioner drew attention to the fact that in 2013 legislative amendments took place which assume the efficient, well-equipped, stable official institutional system, especially given that, contrary to the general statutory prohibitions, the authorities' licensing, monitoring have a greater role (e.g., in the case of thermal water). The Deputy Commissioner considered already the fact in itself problematic that the transformation of the institutional framework for the implementation of strategic programs determining the long-term thinking, developed by the Ministry of Rural Development, did not appear in the drafts. Because of the number of transformations of water management administration in recent decades, and in view of the request of nearly 30 non-governmental organisations, the Deputy Commissioner initiated to launch an investigation to determine whether the reorganisation jeopardises the enforcement of legal certainty and of right to a healthy environment.

Flood protection on the Danube, Budapest, Roman coast

The Budapest Municipality has adopted a version of further planning of the flood protection work planned for the so-called Roman coast section of the Danube, which involves the greatest physical, technical interventions in the most sensitive and valuable area from natural and land use point of view. The decision sparked an intensive debate among those wishing to conserve the existing natural and landscape values of the coast, the coastal property owners and a part of coast users. To promote the right solution, the Deputy Commissioner has called the public and decision-makers' attention to create flood control taking account of the "space for rivers" principle, and the environmental and nature conservation interests. To this end, in May we have organised an exhibition in the office building, in cooperation with the association Danube Charta, and the civil coalition "Keep the trees in the Roman coast". The exhibition presented the landscape and natural features, values and the associated utilizations in photographs that were underestimated or completely ignored when designing, planning the development ideas. The exhibition showed the professional opinions as well, according to which the cultural historical, land use and regional green corridor role of the area is unquestionable, and due to its natural and landscape values it would be worthy of local protection.

Photo by Ferenc Kardos

In order to have an open dialogue needed for the successful negotiation of nature conservation and flood protection considerations, and based on the request of the soliciting environmental non-governmental organisations the Deputy Commissioner organised a consultation in June for the representatives, experts of municipalities and NGOs to promote with the direct dialogue the establishment of a version weighing several factors. The plans of the flood protection work submitted earlier for environmental approval, were adjusted according to the experiences of the June flood. In the new application the number of crop trees was somewhat reduced, but on the section most affected from wildlife and landscape point of view, the plans of large-scale intervention, resulting in a highly unfavourable change in status, have not changed substantially.

The right to safe drinking water as a human right

On domestic and international level, the Deputy Commissioner argued in several cases that everyone is entitled to the right of access to healthy drinking water as a condition for subsistence – due to its human right nature. In 2013, the International Year of Water Cooperation, an important area of the Deputy Commissioner's international activity was the issue of water conservation, in particular the right to drinking water and sanitation. As a pre-event of the Budapest Water Summit the Deputy Commissioner's Secretariat was involved

in the organisation and preparation of two international professional forums. In the city of Pécs we organised a conference together with the Ministry of Foreign Affairs, entitled "Right to water and the Hungarian system of protecting fundamental rights", the lectures of which – supplemented with further invited comments – were published by the Deputy Commissioner's Secretariat in an English volume as well. Then, together with the Swiss WaterLex organisation a professional meeting was organised in Geneva as a pre-event of the Budapest Water Summit under the title "Water and human rights in the post-2015 agenda".

The concept developed jointly with WaterLex is based on redefining the right to water, which may contribute to the protection of natural waters through a human rights approach. The right to clean water is basically a third generation right, which is seriously compromised as a consequence of the growing water shortage, the disparities caused by global water trade, and the rich countries' abuse of their dominant position. However, through these infringements a much more fundamental right, the right to life is also at risk. This causes a problem not only in intra-generational context, but leads to severe inequalities between generations, to which however even less attention is focused in the field of protecting rights. Therefore, the institutions that are to serve the protection of fundamental human rights, should take into account in any case the inter-generational specificities of these issues, and should draw them to the attention of society and decision-making.

The Deputy Commissioner represented this position at the side event of the September session of the UN Human Rights Council, dealing with the review of post-2015 situation of the Millennium Development Goals and Sustainable Development Goals, as well as at the Budapest Water Summit, where a side event was organised together with the WaterLex organisation, entitled "Monitoring water governance". The Deputy Commissioner consequently represented his professional position also in the Commissioner's investigations, in course of both commenting on legislation, and investigations. The investigation started due to the summer blockage of public wells of the city of Ózd drew attention to the fact that access to safe drinking water is not only a problem of the developing countries, but we can also face it in Hungary. The Deputy Commissioner, in his joint report with the Commissioner, took the position that in a way that can be derived from the international law and the Fundamental Law of Hungary, the access to water needed for life, as a human right recognised also internationally, as well as the fundamental right to physical and mental health, should be guaranteed to all, even if an individual can not pay for it.

Forest protection

The provisions of the Act 37 of 2009 on forests, protection of forests and forest management (Forest Act) are especially important for the enforcement of the issues listed in the Fundamental Law of Hungary, thus to protect the common heritage of the nation, and to enforce the right to physical and mental health and to a healthy environment. The planned amendment of the Forest Act in 2012 would have changed adversely the provisions for the protection of nature. For all these reasons, the Deputy Commissioner had worked out a detailed concept for strengthening the Forest Act from conservation point of view. The concept states that in case of forests belonging to the common heritage of the nation, the obligations affect mostly the state and those entitled to dispose of the forest, with the provision that the complete and absolute freedom of disposing of the property should be replaced by the use realizing responsible and sustainable forest management. The concept explains how the regulatory environment, the legal institutions and the institutional system determining the level of protection should be changed, improved to achieve this goal.

The Forest Act proposes the following changes:

- a more marked representation of the consequences resulting from the change of forest functions, and their enforcement independently from the form of ownership;
- replacing forestry policy with complex forest policy, transforming the incentive system of forest management;
- making tangible and intangible services of forests measurable in a uniform basis;
- exemplary management of state forests, satisfying the social demand for services of forests;
- full enforcement of conservation requirements in forest planning.

The draft concept was discussed in a workshop by the conservation and forest management experts invited by the Deputy Commissioner. He gave the concept finalized based on the comments at this meeting to the Ministry of Rural Development in June 2013, and he also drew the attention in a press release to the fact that preservation and expansion of continuous forest cover, the suppression of clear-cuts and healing the “wounded” earth belong among the most important tasks, furthermore that incentives are necessary which motivate the managers of forests and decision-makers to preserve the natural conditions and to expand the forest area.

A further submission on the amendment of the Forest Act was sent out for public administration consultation by the Ministry of Rural Develop-

ment in October 2013. Regarding its content a positive change was in the draft that part of the modifications in the earlier versions, which were raising constitutional concerns – such as the elimination of the requirement of continuous forest cover for the lowland forests, narrowing the overall clear-cut prohibition, changeability of the primary function of conservation, compensation opportunity in state forests – were not included any more.

However in several points the amendment proposal put forward continued to be a step back. Especially problematic was the amendment which would have limited the both in time and space moderate pace performance of the requirement of transition to continuous forest cover in case of forests of conservation purpose, belonging into the three highest natural grade to a significantly narrower scope than the current regulation, while continuous forest cover is one of the basic conditions of the proper functioning of forest ecosystem. Due to the significant narrowing of the requirement of transition to continuous forest cover, the possibility of a major step back from the already achieved level of institutional protection serving the conservation of nature remains, which is not justified by the major infringement of any other constitutional interest, therefore we proposed to maintain the current regulations in force. The expansion of the circle of exceptional cases allowing clear cutting in forests characterized by high species richness, means also the alleviation of nature conservation limitations. We proposed the reconsideration of the terms of clear-cut on the basis of an analysis that takes into account ecological criteria as well.

On the initiative of the Deputy Commissioner in November the Commissioner for Fundamental Rights informed the relevant ministries of the issues raised in a special letter calling their attention, and asked for their cooperation and effective actions to get a bill to the Government and the Parliament, which settles the constitutional concerns raised in a satisfactory way.

Protecting the land

The Deputy Commissioner examined the anomaly raised in course of the practical application of the regulation relating to the protection of the land together with the Commissioner, in the wake of the complaint concerning the ecological farm of the village of Kishantos. As a consequence of Hungary's natural endowments the land is a key element of our national heritage, a condition for the existence of man and the natural ecosystems. Both the National Sustainable Development Strategy of the Parliament and the Government's National Rural Development Strategy focus specially on

the necessity of halting and reversing the negative trends affecting the land. The Deputy Commissioner emphasised on several forums that in respect of protected values Article P of the Fundamental Law of Hungary *has raised the non-regression principle on constitutional level*, by extending the obligation not only to the protection, but to the *"maintenance"* as well. In its resolution 28/1994. (V.20.) AB the Constitutional Court emphasised that *"the degree of institutional protection of the right to environment is not arbitrary. In addition to the doctrinal particularities of the right to environment […] the level of protection is crucially influenced by the subject of environmental protection as well: the finite character of the natural foundations of life, and the irreversibility of a large part of environmental damages, and finally the fact that all these are conditions of the survival of human life."*

Organic farming pursued for many years, adjusting to the natural conditions and respecting them is able to reverse the process of degradation of natural values, and improve, restore the ecosystem services. With regard to the Fundamental Law *it is the task of the State to create the institutional protection guarantees, whatever the ownership of natural resources is*. This means that it is the obligation of the State to ensure through legal regulation related to the lease of land owned by the State, the safeguarding of the land under constitutional protection and the maintenance of a more favourable state developed as a result of the ecological farming.

The Deputy Commissioner considers it important to emphasise that in addition to land, among the values of the common heritage of the nation, the constitutional level protection of a number of other values is also a state duty, and there is a direct link between the protection of the land and the enforcement of fundamental rights. Therefore the institutional guarantee for the protection of the land must be in place at all levels so as to protect the rest of the values, and through this to enforce fundamental rights as well.

There is a strong relationship between the fundamental rights to education and culture, and to a healthy environment, as well as to the physical and mental health. In shaping the environmental conditions necessary for the enforcement of these latter ones, human activity and the underlying knowledge have a determining role. *The responsibility outlined in the National Avowal of the Fundamental Law* also requires that *the knowledge* about our natural environment and about the impact of our activities on it *become more general*. Article P of the Fundamental Law made the protection of the values belonging to the common heritage of the nation mandatory for everyone. An individual is able to fulfil this obligation, if through the right to education he or she has the opportunity to acquire the necessary knowledge, to have access to them, irrespective of his/her age. A means of enforcing the fundamental right to education is to ensure the operational conditions of

people's high schools, adult education, which also means a kind of a guarantee that more people are able to comply with the obligation formulated in Article P, on the other hand that the intellectual knowledge is passed down to the future generations.

Protection of biodiversity

Monitoring, examining activities that affect the safeguarding of biodiversity, and promoting progress has a special place in the work of the Deputy Commissioner. In this spirit he took part in the 2013 renewal process of the National Biodiversity Strategy, where he emphasised the importance of this area in preserving our natural heritage at several events as an invited speaker. The Secretariat of the Deputy Commissioner took part in organising round-table discussions about the Strategy, and our Office hosted the meetings on two occasions.

When commenting on the draft strategy we considered it particularly important to present the measures that help to solve the problems encountered in the investigations of the Office, such as the regulation of works related to urban green spaces, the integration of aspects for conserving and developing the biological and landscape diversity into the policies, the further growth of forest areas managed by natural forest management practices. We proposed to supplement the Strategy with pursuing

Round-table discussion on biodiversity

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organic farming being a key evaluation criteria in the Hungarian decision-making system, such as the granting of land leases, because this ensures the preservation of biodiversity in the areas under agricultural cultivation. Concerning the development of the knowledge base we proposed to invest more weight to create the social acceptance of conserving biological diversity, as well as to collect and preserve the knowledge, information about the harmony of humans and natural environment, existing in the older generation.

The Deputy Commissioner's activity regarding the Normafa project is also related to the conservation of biodiversity. The Ministry of Interior put forward a bill to establish the Normafa Park (Normafa being a hiking area at the periphery of Budapest) with a very short commenting deadline, without social discussion, and the draft of the government decree concerning to declare it an issue of high priority. The proposal showed that the implementation of a large-scale development program, involving the attraction of traffic and growth of construction is planned in an area that is part of the Danube-Ipoly National Park and a Natura 2000 site as well. The bill wished to make possible individual deviations from several fundamental laws essential from nature conservation aspect. The nature of certain elements of the outlined developments, and the sensitivity of the site has raised the possibility of endangering the natural values, thus the common heritage of the nation. The proposal did not address the analysis, optimal solution of this land use conflict. Taking the nature protection aspects into account – including carrying out the Natura 2000 impact assessment – was postponed to a future planning and decision-making stage.

We also drew attention to the fact that an environmental assessment – including an impact estimate for the Natura 2000 site – should have been prepared already for the bill, because it is qualified to be a development program subject to environmental assessment obligation. We proposed that the draft should be submitted to the Government only after conducting the missing assessments and the public consultation. The draft law was submitted to the Parliament without the required assessments and consultation, essentially with the same content and the Parliament accepted it with only minor environmentally favourable amendments. In October, members of parliament submitted a petition to the Commissioner for Fundamental Rights, asking him to initiate a subsequent legislative control of the Act on Normafa Park at the Constitutional Court. The Commissioner has launched an investigation based on the complaint.

Protection of landscape heritage

Upon the initiative of the Deputy Commissioner the venue of the travelling exhibition entitled "Landscape heritage preservation", related to the 2012 national competition of the Landscape Award of the Council of Europe was the Office of the Commissioner for Fundamental Rights in November. The exhibition fit into the series, which allows one to get to know a special field relevant from the aspect of preserving the whole common heritage of the nation. The exhibition related to the implementation of the issues covered by the European Landscape Convention of the Council of Europe. The explicit purpose of the Convention is to promote the protection, management and planning of the landscape. The Landscape Award of the Council of Europe was established to encourage this. The award is allotted to local or regional authorities and non-governmental organisations, whose landscape protection, management or planning activity may serve as a European example. Before awarding it a national competition is organised in the individual countries, and the entries are presented in a travelling exhibition.

The exhibition of 2013 has shown what to do and how to act to preserve our landscape heritage, and what its broader context in Europe and Hungary is. The exhibition drew attention to the tools serving the enforcement of a fundamental principle of environmental protection, i.e. prevention, and helping to resolve conflicts in land use. The exhibition presented four such outstanding and exemplary performances:

- landscape protection and management performed in the Gerecse Naturpark, and in the valley of Által-creek;
- rehabilitation of the aquatic environment of Kurca valley, especially the Szentes section;
- protection of outstanding natural and cultural historical values of Bükkalja;
- implementation of a complex landscape and nature management program in the Zámoly Basin.

The identity, importance, method of conservation of landscape heritage as a unique synthesis of natural and cultural heritage is a less known area outside the relatively narrow circle of specialists. It is similarly poorly understood, how this can be linked to the enforcement of fundamental rights serving the protection of the interests of future generations. In order to proceed, after the opening of the exhibition, representatives of ministries responsible for safeguarding landscape heritage and implementing the Convention, furthermore experts of scientific research and practical ap-

plication, planning discussed some important issues of the preservation of landscape heritage in a panel debate.

The panel discussion has discussed:

- interpretation of landscape heritage and its relation to the items listed as the common heritage of the nation in Article P of the Fundamental Law;
- carrying out the tasks determined in the European Landscape Convention for the protection, management and planning of landscapes;
- fulfilment of the measures formulated in the National Environmental Program to protect the landscape structure, landscape character and landscape potential;
- the place of planning and thinking together with local communities in the landscape protection, landscape development and landscape settlement processes;
- the need for the creation of a national landscape strategy.