

Report
on the Activities of the
Parliamentary Commissioner
for Civil Rights
in the Year 2009

J/11903

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ISSN 1416-9614

Published by: Office of the Parliamentary Commissioner
1051 Budapest, Nádor u. 22.

Phone 475-7100, Fax: 269-1615

Internet: www.obh.hu/allam

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The volume was designed by Zsófia Kempfner

Printed by Etoprint Nyomdaipari Kft.

Responsible manager: Ms. Árpád Magyar

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Commissioner's welcoming address

During the past year the pro-active project method, wishing to move towards problems and citizens' complaints was successfully continued and further developed together with receiving complaints on the spot and in regions. The essence of the so-called project method is that we organise investigations focusing on some selected problems in the given year, we organise workshop discussions involving representatives of the civil society, the academia and of public administration, and finally we publish information in the form of a project bulletin about all the work done. We wished to offer assistance primarily to those by locally accepting complaints for whom submitting complaints is more difficult due to their age, the complexity of their cases, or who are hindered in the use of the internet and cannot access our homepage suited also for receiving complaints, and who have difficulties in wording their complaints, in writing letters and cannot travel to Budapest to personally make their complaint. Both solutions serve the purpose of reducing the distance between the Commissioner's institution and the potential plaintiff (citizens in need of legal remedy) in the given topic or area by greater attention and better access. According to our data we have succeeded in accomplishing this aim both in the given topics as well as in the counties visited, for the number of complaints has visibly grown by the utilisation of both channels.

In 2009 the rights of people living with disabilities, of those participating in public transport as well as the legal tools for the reduction and prevention of violence among children and against them were put into the foreground (in 2008 the rights of assemblers, the homeless and of children were in the focus of our attention). Recently the prize "For the Homeless" was awarded to acknowledge the results of our project analysing the way of becoming homeless, homelessness and the possibilities of ways out of that condition. Our project making children's rights known has been widely familiar and appreciated by the professional circles

of children's protection offering regular topics to the relevant professional journals. Our associate heading investigations related to events organised in public spaces was awarded the memorial plaque "For Human Rights" founded by the Minister of Justice and Law Enforcement in 2009. It was an important feedback related to our work that as the only non-police organisation we can participate in a major international project related to the safety arrangements of mass events. According to the testimony of several empirical surveys the authority and acceptance of the Ombudsman's institution has been unbroken which is also indicated by the growing number of citizens' complaints.

In both years we have dedicated special attention to the legal position of captives as well as how public service strikes affect the exercise of citizens' constitutional rights. In 2010 we would focus on the health, social and public safety condition of the elderly, we would also study the legal position of the victims of the credit crisis, the effects of changes touching upon citizens' finances on the control activities of the state as well as its banking and supervision of banks. Further on we would study the rights of children living in families as well as of those who receive family substituting services. A large part of our publications on the 2008 projects has run short, and the publication of the bulletins on our 2009 projects is in progress.

Similarly to the pervious year we have visited counties six times, and on those occasions we also visited five local and national law enforcement institutions. In 2010 we will have to suspend temporarily our working visits to counties so that we may process the large number of citizens' complaints received. I was forced to make this decision because our budget has been cut while I repeatedly requested the increase of our staff at several places so that the increased number of complaints could be processed but my efforts were without success.

In Europe the feedback of the Ombudsman institutions of various types and competencies prove that the number of citizens' complaints has significantly grown. In Hungary, following a temporary stagnation, the complaints have been reaching the Office of the Parliamentary Commissioner for Civil Rights like an avalanche since 2008 on. The majority of complaints are of economic, social and financial nature and possibly it can be related to the financial and economic crisis largely hitting our country as well. The nature of submissions and the result of efforts at

their processing can be characterised by the expression “the crisis of crisis management”: the number of complaints has been increasing while there is an ever decreasing resource that can be dedicated to the exploration and management of its causes.

The effects of the crisis can be mitigated and made more tolerable by mechanisms operated by the state and civil society, such as social assistance, education and training, child protection, etc. and not by the Ombudsman. Recipes and methods do exist for the purpose, but the same is needed to it what, according to Montecuccoli is needed to war, namely: money, money, and money, and this is either missing or its value keeps on falling. There is need for labour, financial resources, space and information so that the institutions may be able to assist more effectively. Instead we close down some more prisons and reproduce over-crowdedness, which is the major element of conflicts inside the walls of law enforcement institutions, thus endangering work of an educational nature helping to lead inmates back to society. We just have no money so we fix a tablet of “Full” on the child protection institution, disregarding the fact that the demand for it has been steeply growing just these days.

Based on the experiences of working visits to counties and of the projects I can see the unfolding of such a situation threatening with a downward spiral which is characterised on the one side by a dramatic growth of economic, social and cultural needs and troubles that may even move in the direction of a minor humanitarian catastrophe. At the same time it is just those institutions getting into crisis in respect of their basic activities that could mean some kind of help and refuge to those in need (such as healthcare, guardianship, education or even the receipt of complaints by the Ombudsman). The reasons besides acute shortages of money are the continuous reorganisations and new organisations of institutions without a uniform concept and a pile of situations deficient of resources due to them and asserted by them. In this respect and on the basis of experiences gained by processing citizens' complaints today I regard healthcare, the social care system, education as well as law enforcement as fields of shaky ground.

Today there is need for a serious and responsible policy of the branches, for brave and innovative steps, and the consensus of all the social and political organisations as well as their joining of forces so that we may not slip into the trap set up for us by the “crisis of crisis management”: if we

drift into it getting out would be rather difficult. The exclusivity of the attitude of financial balance may be possible temporarily in a financial crisis but its cultural and social cost may lead to tangible economic losses in the longer run. This danger appears in every area investigated by us. The pressure of enhancing state revenues and of reducing expenses often produces solutions and regulations that are legally not pure just as it was pointed out as an example of warning when the Constitutional Court annulled the passage of the Act on Property Tax pertaining to immovable property in early 2010.

Several of our investigations have spotted a series of awkward practices and regulations related to the procedures and handling of cases by the State Revenue Authority and the Hungarian State Treasury that affect a broad circle of citizens. We are of the view that this is only the tip of the iceberg because we have no 'submarines' for the investigation of the part under the water, and the unfolding of a citizen-friendly culture of our financial and revenue administration may be adversely influenced by techniques and bureaucratic tactics serving short-term maximisation of revenues.

In a crisis, however, it is not only economic and social rights that are endangered. Conflicts becoming sharper, the loss of goods and services enjoyed earlier may strengthen even the various forms of deviance, whereas a public security policy of 'zero tolerance' can endanger the rights to freedom. We tried to call attention to it in our investigations focused on assembly, the problems of public transport as well as on law enforcement. While the procedures of the police have definitely become more refined in the field of assembly, special tasks related to the extremities of politics shifting to the right, such as their procedures related to the Hungarian Guard bore on themselves the children's ailments of swift, campaign-like regulation and over-hasty introduction difficult to overcome.

Law enforcement, another agent besides the police that manifests growing security demands in the crisis, has to face the fact that the advantages gained by the new and better quality spaces as a result of developments of the recent years would be lost due to over-crowdedness produced by a more rigorous penal policy, particularly because of the growing burden on infrastructure and on the staff mostly in the detention institutions and those in the eastern part of the country. While the

police could stabilise and develop its activities due to the objective and personal resources as well as some more favourable procedural environment, law enforcement seems to lag behind in these respects. All this presents arguments for developments and/or a liberalisation of penal policy, the implementation of fewer and shorter verdicts of incarceration, for enhancing house arrest and prohibition of leaving residence as well as the role of special systems of control.

Since 1989 and 2004 Hungary has been increasingly joining the more significant global and European human rights regimes by the ratification of treaties and its entry into international organisations. All these spectacularly positive systems remain only a dead letter for domestic protection of man and citizen until our country does not join the institutions controlling the realisation of these regimes. I try to utilise my experiences gained outside our borders in the better organisation of my Ombudsman's work and in its projection internationally. The reports of our work documented in English evoke serious interest mostly in Europe but even outside it. My view was also received positively abroad that in the long run the possibility for further progress is the implementation of a uniform institution of the commissioner which is spreading globally and not the growth of the number and competencies of parliamentary commissioners specialising in certain themes that would proceed towards a more effective and transparent as well as cheaper work and also in 'Euro-conform' direction.

Whoever wants to play a role as an Ombudsman he/she should endure that political motivation at times would totally push aside autonomous specialised policy and legal expertise, and can thus challenge even the institutional protection of human rights. It is in fact a matter of intentions and attitude whether a kind of captiousness and unpleasantness is seen in the Ombudsman's activities or efforts at creating harmony between the citizen and the public offices and public services, or at least a bona fide attempt at the improvement of cooperation and often a mediator's role. It is a matter of decision whether the work and issues raised by the Commissioner for Civil Rights is regarded as confrontation or a citizen-focused helping exploration of office procedure and behaviour, more difficult to recognise from the inside, even if at times it may seem to be provoking, but in reality the questions put require urgent answers.

In 2009 we continued our committed professional work in the inter-

est of developing Hungarian public administration and human rights, against Kafka-like bureaucratic procedures, institutions and mechanisms operating them, we have stretched our forces in the struggle for citizens' rights and for processing the oppressive and growing flood of complaints under the impact of the crisis. We thank all who have supported me and my associates in this activity and they will not be disappointed in 2010 either.

Budapest, June 2010.



Prof. Dr Máté Szabó



Prof. Dr Nikiforos Diamandouros, European Ombudsman and Prof. Dr Máté Szabó

1.

The Ombudsman's Competency

The Parliamentary Commissioner for Civil Rights investigates individual and collective citizens' complaints. Anyone can turn to him provided in his/her assumption the activity of an *authority* or an *organ performing public service* or its failure to act has violated his/her fundamental rights.

'Anyone' may mean a Hungarian, a foreigner or stateless, a natural or legal entity, or an organisation not having legal personality. The Ombudsman, however, can launch investigation only if the plaintiff has exhausted all the available legal remedies or if the legal remedy was not available right from the outset. The Act on the Parliamentary Commissioner for Civil Rights also allows the Ombudsman to *proceed ex officio*, *without a complaint submitted*, for instance, on the basis of a signalisation received, a statement or even of a news item, provided he assumes that a basic constitutional right has been or may be endangered.

According to law organs performing tasks of public administration as well as others acting in public administration competency are to be regarded as authorities. The Hungarian Armed Forces, the law and order organs (the police, civil defence, customs and finances organisation, the organisation of law enforcement, professional state and local government fire service, and civil national security service), the investigative authority including public prosecution qualify as authorities. Local and minority governments, a public body, the public notary and the county and autonomous court bailiff are also among the authorities.

The law does not dwell upon the concept of an *organ doing public service*; therefore it has been shaped and developed by one and a half decades of Ombudsman's practice. Public services can be performed basically in three forms: it can be performed by public administration itself, by public institutions, and companies in the competitive sphere can be commissioned with the performance of certain public services. The *service provided has to cover a large part of the population: public service is of mas-*

sive nature and usually satisfies a basic need. The Ombudsman's practice regards organisations not qualifying as authorities but performing state or local government tasks, particularly where their number is limited or there is only one of them, namely the applicant has no choice in availing him- or herself of the services of one organ or another. The *Ombudsman's practice considers the following to belong to the sphere of organs performing public service*, without claiming totality:

- Organisations performing certain tasks specified by the Act on Local Governments,
- Organisations participating in the administration of state subsidies,
- Healthcare institutions,
- Public transport companies for inter-town (distance) traffic,
- The universal post service provider,
- Broadcasters in respect of public service programmes,
- Institutions of higher education,
- Insurance companies providing compulsory liability insurance,
- Public utility service providers,
- Operators of motorways.

Thus the Parliamentary Commissioner for Civil Rights can proceed in various cases, but his activities have limitations set by law. His competency does not extend over violations of law caused by private enterprises not doing public service. His *investigative possibility is excluded* in all cases when a court procedure was launched for the revision of a resolution passed by an authority, or a legally valid court ruling was made. The limitation of procedure is valid for the basic case as well as for the court's action. A complaint against a legally valid public administration resolution can be made only within a year of its communication. A further restriction is that the Commissioner can investigate procedures launched after October 1989 only, even if other conditions are met.

2. Complaints – How and How Many?

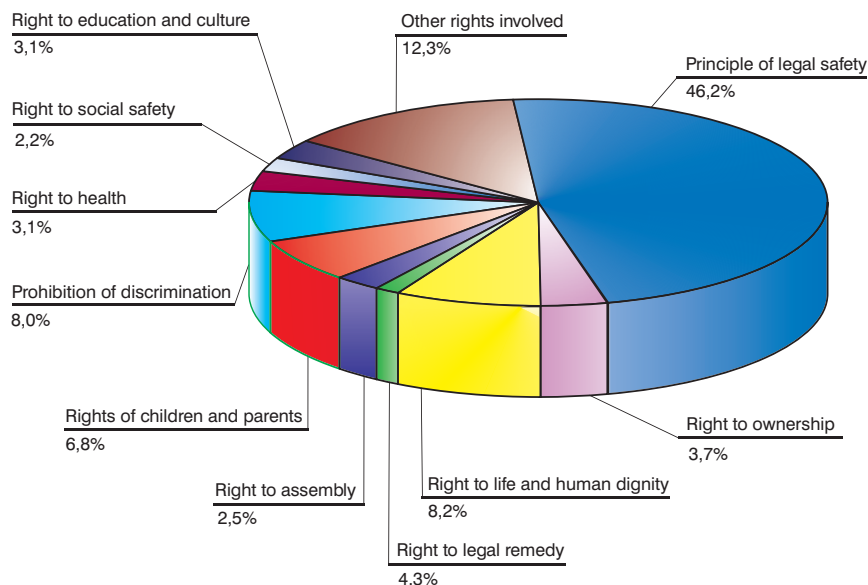
The most frequent of the several forms of establishing contacts between the Parliamentary Commissioner and the citizens is a *letter* or an *electronic message* (in 2009 every second came this way), but anyone may request an appointment for personal hearing by phone or in person from the Information Bureau of his Office, and can inquire about his/her case in progress, or may submit the related documents. At the Office of Complaints the citizens can present their problems orally as well, and can put their questions. Our clients have availed themselves of this opportunity on 7201 occasions last year, but not every case meant also a case of complaint.

In 2009 people turned to us with 6784 complaints, which is a 42 per cent increase compared to the previous year. As a result, though there have been 15 per cent more closed cases due to changes in the work organisation and to great exertion, yet the time of processing has significantly grown. Since the establishment of the institution on 1 July 1995 up to the end of 2009 95,729 cases were registered. The contents of the 6600 submissions in the annual average are examined by highly qualified experts. Naturally, the number of complaints is changing. After the initial phase a decreasing number of people turned to Commissioners of general competency for some years, but during the past two years the number of people requesting advice and support from the Ombudsman has been significantly growing.

In 2009 tax issues and complaints against financial institutions and banks figured in the submissions in the largest proportion (11%). Next stood issues of healthcare and pension insurance as well as labour ones totalling 9.6 per cent. The proportion of complaints related to public utility services (7.5%) and to the administration of justice (6.5%) was significant. Social issues in a narrower sense of the term amounted to 6.3 per cent.

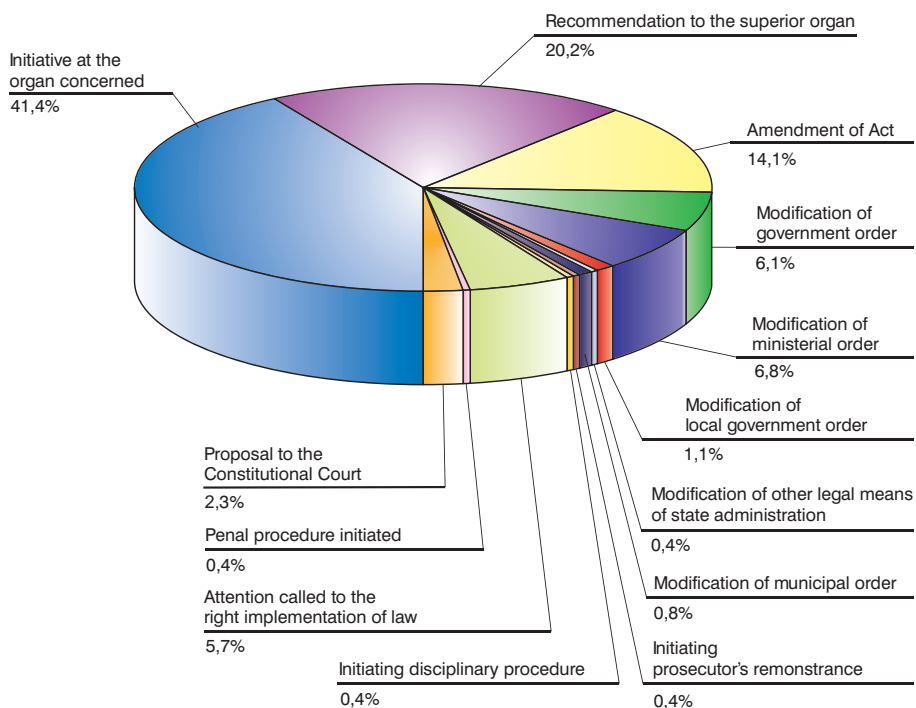
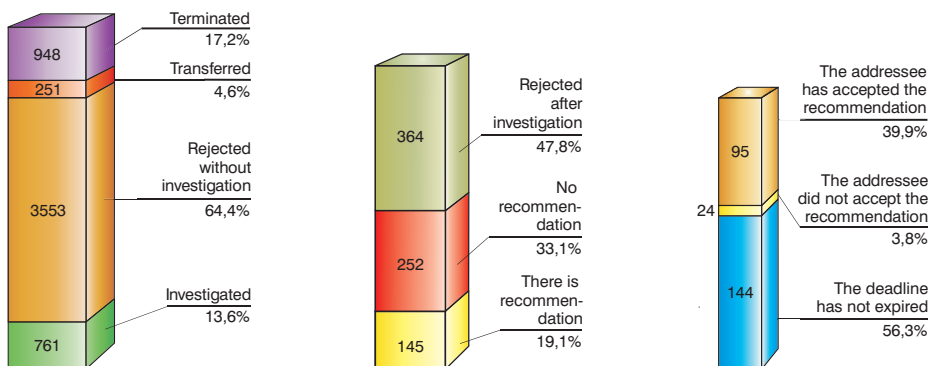


The next diagram illustrates what constitutional rights were violated most frequently by the malpractices explored by our investigations. In almost half of our cases (46.2 per cent) legal security deriving from the principle of the state based on the rule of law and the requirement of fair procedure were violated. We have experienced the violation of the right to human life and dignity in 8.2 per cent of the cases. Findings related to the violation of the basic law prohibiting discrimination amounted to 8 per cent, the violation of the rights of children and parents was 6 per cent, and the violation of the right to legal remedy made up 4.3 per cent of the total. Several issues were related to the violation of the right to ownership, health, culture, assembly as well as to social security. In 2009 the Parliamentary Commissioner issued almost 140 reports and several statements.



As a result of investigations, if the Parliamentary Commissioner finds it necessary, he turns to the authority, public service provider or its superior authority complained against with recommendations and initiatives. The Commissioner's proposal and initiative are not compulsory, but due to the legal foundations of his opinion, his professional authenticity and impartiality as well as to the effect of the total publicity surrounding his work 40 per cent of his recommendations are immediately accepted by the addressees and they did not agree only with 4 per cent of his suggestions. In case the addressees disregard the Ombudsman's opinion the Commissioner can tell it to Parliament in his annual report.

In 2009 the Commissioner initiated modifications of legal norms at various levels of law makers on 77 occasions, and turned to the Constitutional Court on six occasions with proposals.



3.

The Situation of Constitutional Rights

3.1.

The Requirement of a State Based on Law and of Legal Security

Independence, democracy and a state based on law are the starting points and the three closely linked basic pillars of the Hungarian constitutional setup. *The state based on the rule of law* is a traditional basic principle of constitutional democracy: it expresses that the state is under the rule of law and Acts and can operate only within the framework delineated by law. The state is bound by the rules created by itself, and though it can modify them in a relevant procedure, such as by the amendment of Acts but until that modification does not take place it cannot divert from the valid legal norms. The state based on the rule of law can be interpreted as a kind of measure of constitutionalism to which the ‘behaviour’ of the state is compared. One of the indispensable elements of the operation of a state based on the rule of law is the *requirement of legal security*. One may speak about legal security if the totality of law as well as the various legal norms are clear, unambiguous, their effects and consequences are predictable, can be foreseen for the citizens.

Legal security is violated if a state organ acts trespassing on its competency, if it disregards its own legal limitations, or, on the contrary, proceeding would be its duty but it fails to do so; or, if out of over-zealousness or of a faulty interpretation of the legal norm exposes citizens to harassment. Ensuring the right to legal remedy is outstanding among the procedural safeguards: injured parties may turn to another organ or to a higher forum within the same organisation and the authority is obliged to inform the client about possibilities of legal remedy or its non-availability when making its resolution.

The Ombudsman’s institution has been continuously analysing the realisation of the requirement of legal security and of fair procedure on

the basis of complaints, submissions and signalisations ever since it was created. Malpractices, violations of law and mistakes related to organs of public administration and public service are extremely variegated but there are such typical, recurrent problems which regularly occur as the experience of investigations show. Such is the drawn out procedures, the disregard of deadlines of procedures, 'silence' of the public administration organ, the lack of any meaningful answer, the inadequate clarification of the case, and non-compliance with the duty of documentation. An even more serious violation is when the authority, not having proper competency proceeds out of will, disregarding legal safeguards, crosses over the boundaries of its competency and authorisation, or causes legal damage, loss of time and unjustified additional expenses to the clients by a mistaken interpretation of a legal norm, or by the implementation of not the proper legal rule.

In the year 2009 a large number of complaints were received that could not be investigated by the Ombudsman because he had no competency to do so, or due to some other procedural obstacle, or else the malpractice had a minor weight, it could not be proved or remedied. On such occasions the Ombudsman tried to offer help to the plaintiffs by all the non-legal means at his disposal such as information and contacting an organ possessing the respective legal competency.

In 2009 five major areas can be mentioned from the angle of the requirements of the state based on law, in respect of the realisation of legal security and fair procedure. They were comprehensive Ombudsman's investigations into tax issues (methods of the investigation of individuals' acquisition of wealth, the practice of the revenue authority in relation to public interest notifications), the assertion of children's rights (their legal position and the settlement of their citizenship), organs dealing with family support, the procedures of the organs of the treasury and into organs doing public service. Among the comprehensive investigations the following topics of reports should be particularly mentioned: family support system, procedures of some organs of the Hungarian State Treasury as well as the practice of the guardianship offices related to the appointment of guardians to children of minor mothers.

Early in 2009 the Commissioner initiated the revision of the practice and regulation of the revenue authority of investigations into acquisition

of wealth at the chairman of the Hungarian Tax and Financial Control Administration (APEH). According to the Ombudsman it is the task of APEH to prove that the taxpayer's stated and tax-free incomes do not cover his expenses. At the same time APEH was authorised to inspect such "duties" by law that do not at all burden the taxpayer under investigation. The private individuals involved are obliged but often are unable to prove the real situation. The experience of the investigation was that there was a high probability of taxing a not acquired, non-existent, only supposed income as well. As the organs involved gave answers of refusal the Ombudsman proposed to the Constitutional Court to invalidate the respective regulation so that the constitutionality of the revenue authority procedures may be ensured.

During the course of the comprehensive investigation related to family support the Ombudsman has found that it violated the right to fair procedure when the authorities concerned did not pay sufficient attention to giving proper information to claimants about rules for choice between family support and social security provisions. It was revealed by the study of complaints received that the clients did not have adequate knowledge, and that the regional directorates of the State Treasury and the health insurance funds followed a different practice. The investigation has also revealed that the almost three-month administrative procedure of the authority led to the situation that a young mother of two children, being in a more than average situation of exposure received no provision whatsoever.

In the investigation of recurrent complaints about the operation of shops the Ombudsman has stated that regulation in force did not properly settle the conflict between shop owners and the rights of private individuals living in the locality. The operation of a catering enterprise enjoyed advantage despite the fact that it significantly affected the quality of life of inhabitants in the neighbourhood. Neither opening hours nor the supply of music were linked to permission only to reporting on it. And the current treatment of reporting by the authority does not ensure such an order of procedure through which the neighbours affected by operation could assert their rightful interests as clients.

3.2.

Right to Life and Human Dignity

The *right to life and human dignity* is prominently the first among the inviolable and inalienable basic rights according to the Constitution. The life and human dignity of all is untouchable, irrespective of his/her physical and mental development and condition, and also from how much he/she has realised from human possibilities and why that much. The right to equal dignity ensures that no legal distinction could be made between the values of human lives. Further partial entitlements derive from the right to human dignity such as the right to self-determination, the right to the private sphere, or the right to piety.

The Ombudsman's practice considers complaints related to human dignity and violations of the right to self-determination as of distinguished importance. The Ombudsman has launched the *Dignity projects* in the interest of the enhanced protection of the human dignity of groups in an exposed situation (the homeless, people living with disabilities). The assertion of human dignity is of particularly great importance in the so-called total institutions, such as at the inspection of the operation and the conditions of housing in the law enforcement institutions.

In the winter of 2009 the Commissioner was informed about an elderly couple of about 80 being hospitalised because *there was no heating in their flat* and the elderly lady could not be saved by the doctors. Next several, similarly tragic news items were published, and a number of complaints were received by the Office about the lack of social care. Under the influence of these news items the Ombudsman, asking for immediate action, *requested* the government, organs responsible for disaster management and of the police, the ambulance and local governments in a *statement* to take steps without delay to prevent further tragedies and deaths by cold.

The Ombudsman launched a comprehensive investigation into the performance of the *duty of the state to protect life* in relation to the operation of *the procedure to declare someone as consumer to be protected*. The main aim of this procedure is to stop the switching off of heating in the winter period and thus prevent death by freezing in the homes. The Commissioner has found that the local governments and even consumers relying on their own protection did not have an adequate knowledge about this possibility.

Several investigations were conducted in relation to the violation of the right to piety. The *right to piety* is linked to the right to human dignity: though the legal entity of the deceased ends but does not totally vanish. The fact of death does not mean that the memory of the deceased, the corpse or the tomb do not have any legal protection; the right to piety ensures protection against the violation of the image of the personality preserved and guarded.

In a case investigated the plaintiff found it deleterious that the mother's corpse was autopsied despite the express wish of the family, and one eye of the dead person was left open in the open coffin on the bier because of the inexperienced handling of the body. The Parliamentary Commissioner found on the basis of specialist doctors' opinion that the autopsy was done in keeping with the healthcare law thus there was no malpractice involved. At the same time it violated the right to piety that the dead person was put on the bier in an improper state.

The Ombudsman has also identified the violation of law in another case related to the right to piety. The plaintiffs blamed the undertaker not to have properly arranged for the cooling of the body in summer heat and it started to decompose. According to the Commissioner the public notary omitted the performance of his duty of inspecting undertakers.

The *basic right to personal freedom* also enjoys constitutional protection, and it can only be limited by law, at the same time limitation has to be necessary and proportionate to the constitutionally acknowledged aim desired to be accomplished. Based on complaints or occasionally ex officio the Ombudsman regularly investigates the legality and constitutionality of police measures limiting personal freedom and other basic rights.

Based on a blog note he ex officio investigated under what conditions the police arrested a guest in a rather noisy home party. Several contradictions were revealed in that case: the police report said that the person involved did not stop the petty offence of night-time disturbance whereas according to the police chief of the district he refused to identify himself. The legal basis and necessity of arrest was challenged by the Commissioner: the person taken to custody was not given hearing, and there was no information whether a procedure of petty offence was launched against him. According to the Ombudsman the conditions

of arrest are properly regulated therefore it can never be applied as a punishment brought ahead with 'educational objective'. He found that the procedure of the police was running counter to the right to personal freedom, therefore he recommended the National Police Chief to take measures so that the police reports should contain the real reason and legal basis of arrests.

The *prohibition of discrimination* contained in the Constitution means that law has to treat everyone as equal and as persons of equal dignity. It qualifies as discrimination if the law maker arbitrarily discriminates among persons in the same position without logical and rational reason.

The case which the Commissioner dealt with on the basis of a complaint that regular university and college students above the age of 35 were excluded from participating in the Conference of National Scientific Students' Circles was related to the prohibition of discrimination. He stated in his report that a distinction among students merely on the basis of their age was arbitrary, and violated the principle of equal treatment and had no constitutional justification. The Ombudsman requested the revision of the call for applications which was done within the set time limit.

3.3.

Freedom Rights to Communications

The *freedom of opinion* partly allows for the subjective self-expression of the individual and hence the free unfolding of personality and it offers an opportunity to basically unlimited social communications: this is one of the most important preconditions of democratic functioning. Every basic right comes under the category of rights to communications which ensures the publication of an information or message in any form, such as the right to peaceful assembly. In the constitutional democracies of our days *rallies in public places* primarily manifest and jointly represent the already formulated opinions and positions.

The project on the right to assembly of the Parliamentary Commissioner was in progress for one year and was completed in 2008, but *investigations in relation to the rights to communication were continued in 2009 too*.

The expression of opinion in state events belongs to this sphere together with the clarification of facts related to the circumstances of the event as well as the safety of events arranged by the police.

The Ombudsman in his report objected to the lack of several elements of safeguards from the regulation. Currently there is no rule whatsoever *when earliest the demonstration is to be declared prior to the planned date of the event*. The law maker should prevent the situation in which a public place could be reserved for assembly for certain dates even for years ahead.

In early July 2009 the Ombudsman's associates conducted investigations into the *realisation of the right to assembly* at several venues. In one of the events the police took measures against three people who wanted to fly black balloons representing terrorist heads. The police report says that "what the balloons represented were suited for creating fear and anxiety" therefore the three "culprits" had to be taken to custody for truculence. The police had taken another person to custody for being suspect of the commission of a criminal act because "a hood, anti-police leaflets and a list containing policemen's identification numbers" were found with him. The Ombudsman's investigation, however, concluded that the balloons as well as the leaflets clearly belonged to the protected sphere of the freedom of expression and the possession of those objects by itself would not have offered the ground for the custody of those persons.

The Ombudsman also investigated the case when the police took measures exclusively against persons airing opinions deemed "anti-governmental" and not generally people expressing their opinion at the state events held on 15 March at Kossuth Square. The Commissioner has reached the conclusion that the expression of opinion of those who blamed the prime minister and called him to resign did not qualify as a criminal act and not even a petty offence, therefore it did not lend any foundation to police measures. He also mentioned in his report that the sphere of the free expression of opinion was broader in relation to politicians appearing in public such as the prime minister, than in the case of others.

Several plaintiffs mentioned that the court procedures of major interest are usually held in rooms of a small holding capacity and participation is possible by previous registration. No rule made public and accessible to all can be found about the process of registration itself. In addition the law courts often violate even their own "conditions of announce-

ment” when they close registration after a certain number of places are filled but they allow for registration even before it is announced to some people and associates of the press.

According to the Commissioner the problem is that the general and uniform procedural rules covering all judicial procedures define only the basic principles. They do not adequately orient either the judges preparing court procedures in cases evoking great interest, or representatives of the press performing the obligations of information. The Commissioner has stated that law court procedure is such a special medium where a balance has to be created among several laws and constitutional principles. This, however, is unimaginable without legal rules granting a framework. Preliminary registration offers an opportunity for arbitrary legal interpretation and in addition there is no authorisation for its use. The Commissioner recommended to the Minister of Justice and Law Enforcement to develop a uniform legal regulation on the publicity of law court procedures including participation in the court room and of the press.

3.4.

Social Rights and the Right to Ownership

In contrast to the classical rights to freedom, obliging the state to tolerate them the state already takes it as its duty to provide certain ‘services’ in the case of social rights. The state expropriates some part of the material goods and redistributes them among its citizens. The state is obliged to preserve a *certain level of protection* by ensuring social rights which can be reduced only in exceptional cases and conditions, while it ensures a proper balance. The active intervention of the state into the private sphere is necessary to the realisation of economic, social and cultural rights, of social rights in brief. The necessity of state intervention instead of keeping aloof requires an interpretation of the role of the Parliamentary Commissioner that differs from the typical one.

The largest number of submissions is sent to the Ombudsman in relation to social issues, but refusal is also the most frequent in these cases, because the Parliamentary Commissioner for Civil Rights is not authorised by law to investigate into them. In the earlier years manifestations of citizens’ legal consciousness were the most characteristic (objecting to

resolutions and local orders); at present the despair of the poorer strata of the society due to their deteriorating living conditions can be sensed from the tone of their submissions.

Many of our plaintiffs have asked for help in cases of monetary social assistance. The Commissioner has called the attention of the local government involved to the person in need, and *gave information to the plaintiff* on the available social assistance, and in each case he also called attention to the institution of family help available within the framework of basic social care offering also counselling in the personal conduct of life.

Many people have also turned to the Commissioner with *their problems related to healthcare*. The Act, delineating the Ombudsman's competency, however, does not allow for the investigation of all grievances, and particularly not for the legal investigation of medical-professional and ethical questions. The Parliamentary Commissioner cannot take any position in relation to any claims for compensation because those cases exclusively belong to the competency of civil courts. *Problems deriving from the transformation of the healthcare system*, some specific healthcare provisions and services, the modification of the financing of medicines, the new order of the supply of medicines free of charge or the situation of care for psychiatry patients, and the large number of submissions complaining against them raise the issue of a meaningful access to healthcare provision and it means the starting point for Ombudsman's investigations. Reacting upon some of the complaints the Commissioner has ordered a comprehensive follow-up investigation into the situation of the Hungarian provision for psychiatric patients.

Several complaints dealt with a deficient realisation of *patients' rights*, about disregarding the patient's right to self-determination, about the violation of the right to human dignity, to keeping contacts as well as to information. The investigation of the right to self-determination, however, cannot be conducted provided the healthcare institution disregards the patient's request on grounds of protecting the patient's life with reference to 'reasons of the medical profession'.

The complaints reveal that the patients are not given satisfactory information about their condition and their treatment in many cases, further on they are not adequately involved in decision-making related to their ailment and therapy. The fragility of the classical relationship between doctor and patient is not improved by the lack of confidence,

by the contradictory interpretation of the concept of ‘informed agreement’.

The *violation of the operation of educational institutions and of the rights of children and pupils to education* is often due to the lack of the knowledge of rights and the opportunities for the assertion of rights. Consequently malpractices can be repaired often by proper information, because it happens that it is not the children or their parents asking for help in the submissions but heads of institutions of public education try to be ensured that their institutional practice corresponded to the rulings of valid laws. The issues of payments at kindergartens, of ‘voluntary’ offers and the collection of money in classes belong to this sphere. The Ombudsman has explained that the cost of programmes figuring in the educational and teaching programmes cannot be transferred to the parents, and money for covering additional costs can only be collected on the basis of the parents’ previous written consent.

The *right to ownership* can be limited with reference to the interests of the community. Expropriation as well as the observance of the rules of safeguards of certain land registry authority procedures (exceptionality, compensation) has long been recurrent topics of complaints in the *Ombudsman’s practice*. In 2009 many people objected to the conditions of loan contracts with banks offering a basis of debt and court execution or obligations deriving from them. The Ombudsman is not authorised to investigate into these cases but it can be seen from the submissions that it is the economic and financial crisis that is in the background of the ‘caving in’ loans. Even if he cannot deal with the conditions of loans the Parliamentary Commissioner for Civil rights decided on the basis of the large number of complaints that he would start the analysis of the violation of the basic rights of citizens hit by the crisis as one of the outstanding investigations in 2010.

4.

Taking Up a Proactive Role

“We are not only investigating but going ahead of problems”

The Parliamentary Commissioner investigates into individual and collective citizens' complaints and reacts upon them. In addition, in so far as competency limitations permit, he considers it at least as important to contribute to the prevention of malpractices and violations of the law. Therefore the Parliamentary Commissioner specifies such a prominent area of basic rights each year which he wishes to investigate more profoundly. The topicality of the theme is decisive, which can be measured by the complaints and signalisations received by the Commissioner (such as social problems, the impact and management of the crisis), or simply by events of the day (demonstrations, strikes, news related to children's rights, or the destiny of people living with disabilities or of the homeless, etc.)

The project method can be particularly effective if it involves the violation of the basic rights of an exposed social group, unable to assert their rights and even submitting complaints. The Ombudsman's various *Human Dignity Projects* are always launched for the protection of the equal dignity and other basic rights of a circle requiring enhanced protection (such as the homeless, people with disabilities, elderly and ill people).

Work in projects always progresses in keeping with a certain order: a separate working group is formed, it is followed by wording a series of theses serving as theoretical basis and the survey of problems (elaborating a problem map), and next a detailed annual plan of investigation is drawn up. The considerations of the practice of the Constitutional Court and of earlier Ombudspersons related to the topic, citizens' complaints received as well as the occasionally ex officio launched investigations fit into this framework. The aim of the Commissioner is to promote the right legal practice of public administration and even exchange of information and shaping attitudes going beyond it, the promotion of

which encourages cooperation among the authorities, experts and civil organisations concerned.

The organisation of regular consultations and professional conferences is a common feature of projects, as well as that the Ombudsman announces professional and art competitions in the investigated topic, and summarises the results, realisations and consequences in a project bulletin which can be read also on the homepage of the Parliamentary Commissioner: www.obh.hu

In addition to common elements naturally different emphases are asserted in the various projects of the Ombudsman. It is the attitude of the Parliamentary Commissioner protecting the law which is decisive in projects in the sphere of the rights to freedom or in part of the dignity projects. This is supplemented by the already mentioned identification of problems, by promoting and making dialogue more efficient among parties concerned in the field of social rights and equality of opportunity.

4.1.

The Children's Rights Project 2009 – Protection against Violence

Based on the authorisation of the Act on the Protection of Children and Guardianship Administration the Parliamentary Commissioner for Civil Rights is also a Commissioner for Children's Rights. He promotes the protection of the constitutional rights of children by his specific means, he investigates into malpractices violating children's rights, initiates measures in the interest of their remedying, but he also considers it equally important to prevent violations of rights and this is proactive legal protection. The project focusing on the realisation of children's rights was launched in 2008, and would last for six years. The Ombudsman puts into focus a narrower children's rights problem each year. In 2009 the central topic was children and violence, namely how in practice the legal regulation of the protection of children against violence is implemented.

The child becomes a member of the society by socialisation, and meanwhile he/she learns the rules of coexistence, evolves the skills and

social competencies necessary to their implementation. Therefore the project on the young and violence is not only important because hurting a child gravely violates the law, but also because it actually influences children whether they consider violence as a means to accomplish their aims. Thus whatever the legal knowledge of children and their ability to assert their rights and interests are they would be the same in adulthood after ten or twenty years. Parents and experts dealing with the young can be addressed through children and the legal consciousness of the adult society can also be influenced and developed.

If we wished to live in a violence-free world we have to teach our children to respect human rights. For this purpose, so that the set of norms of human rights should become familiar to children, the Parliamentary Commissioner has urged for the joint action of state and civil organisations. In his initiative on “Joining forces for a violence-free world” the Ombudsman invited experts dealing with children, and state and civil organisations to cooperate. He investigated the special children’s homes, the operation of the child protection signalling system, the basic child welfare provision, the situation of children taken into protection because of the commission of a petty offence or crime and also the problem of violence in schools.

During the course of the *comprehensive investigation related to violence in schools* the Commissioner experienced in almost eighty institutions and schools that the educational and teaching institutions pay attention to the definition of tasks promoting the prevention of violence when they renew their pedagogical programmes, plans and house orders. The society of educationists definitely stands for non-violence. The investigation, however, has explored significant differences in access to pedagogical professional provisions on county level as well as in the standard of programmes offered.

The Parliamentary Commissioner for Civil Rights has also found that the progressive recommendations of the Committee for the “Safety of the School”, set up by the Minister of Education cannot be fully implemented because the educational institutions do not have the necessary resources. The Parliamentary Commissioner called upon the Minister of Education to support the effective operation of the system of school psychologists out of his own budget. Targeted resources and a more efficient flow of information are also needed so that the educationists may

be able to avail themselves of extension training facilities in a broader sphere. The basic training of teachers has to be supplemented by such knowledge that is better suited than the current one for the prevention of violence at school and to a successful management of conflicts.

The Commissioner also considered it important to share the results and experiences of the investigations with experts dealing with children, to forward them to children and to their families. The Commissioner and his associates have participated in several professional meetings and workshop discussions, they have initiated several such sessions attracting four hundred teachers and experts of child protection and guardianship to the already traditionally held annual conference of the Ombudsman on children's rights. Those programmes were particularly important where members of the project met personally families and children. There was among them the event called Children's Island, or the Exhibition on Children's World as well as the visit of several groups of the young from the countryside to the Ombudsman's Office where they could get acquainted with the Commissioner's work in a playful manner. In the spirit of direct contact the Parliamentary Commissioner for Civil Rights has created a homepage for children's rights which is unique in Hungary where knowledge contributing to legal consciousness is accessible in a language of the young. (<http://gyermekjogok.obh.hu>).



Members of the children's rights project participated in the preparation of the Hungarian variant of "Small Compass", elaborated by the European Council on the education of children in human rights as well as training in Hungary based on that manual.

4.2.

“Differently with Dignity” – the Rights of People Living with Disabilities

The *basic thesis* of the prominent project launched in 2009 is that no one can suffer any deficiency mainly because he/she lives with some kind of physical, communications or mental disability. The clumsiness of healthcare and social provision for people living with disabilities is commonly known together with contradictions in their employment and training. First of all a real change of social attitude, their acceptance and inclusion would be needed to the solution, just as it is pressed for by the *Madrid Declaration* passed in 2002. People with disabilities would not need charity but a social environment which guarantees equal opportunities to everyone, and acknowledges their needs and their realisation.

It raises constitutional anxiety that the Hungarian legal system has still not properly adapted the UN Convention on the Rights of Persons with Disabilities recording the rights of people living with disabilities and has not practically acknowledged the fact that “the full and equal enjoyment of all human rights by persons with disabilities”, includes their right to law and power of disposal. The Commissioner for Civil Rights is of the view that the assertion of basic rights is primarily not a financial issue, and the multiple disadvantageous situation of children with disabilities is particularly distressing.

The project of the Ombudsman lasting for one year had three professional events (*Public life – differently; Private life – differently; and From residential institutions to venues of custody*) where the social and legal circumstances adversely affecting people with disabilities were discussed. Problems related to the *right to vote* are caused partly by the lack of the freedom from physical obstacles and those in information and partly to the definition of the circle of people entitled to exercise their right to vote. It was stated that society had destroyed the self-assurance of people living with disabilities and made them believe that they were unable to represent their own interests. The decision makers of the political environment have so far not even intended to offer them such an opportunity, and the Hungarian Constitution does not permit people living under guardianship limiting or excluding disposing power to exercise

their right to vote, one of the most important means of taking up a role in public life.

The Commissioner called attention to the fact that the UN Convention on the Rights of People with Disabilities does not mention the institution of guardianship but deliberately uses the term of measures pertaining to the exercise of the power of disposal, which primarily means supported decision making. Upon the initiative of the Parliamentary Commissioner for Civil Rights a *memorandum* was signed which lays down the principles of the realisation of equal opportunities and equality before the law of people with disabilities, the tasks of the state and of civil organisations in order not only to guarantee a life free of discrimination for people with disabilities but also that they may participate in decision making related to them and its implementation as well.

Among the conditions aggravating the daily and family life of people with disabilities such issues figured prominently in the discussions like their self-determination, support of autonomous decision making, the requirement of freedom of obstacles from information and communications, often available only in theory, as well as the social attitude as a consequence of which placement under guardianship sometimes would become a life-long stigma. The institutional employment of people with disabilities, their healthcare provision, as well as the legality and professionalism of measures limiting the rights of people with psycho-social disabilities and the background of monetary allocations were also on the agenda.

The Ombudsman has also undertaken the role of sharing professional and practical knowledge and experience necessary to the interpretation of basic rights and making people conscious of law. For this purpose the working group consisting of his associates has been cooperating with several civil organisations. For instance, they have made a publication together with the *National Organisation of the Deaf (SINOSZ)* entitled *Human Rights Yes* on the legal education of people living with disabilities. The *Centre for the Rights of the Mentally Impaired Foundation* and the Ombudsman jointly study the situation of the child inhabitants of some psychiatric homes from the angle of human rights.

The Ombudsman has found by his investigation launched in early 2009 that the educational system was unable to react upon the *special needs of children living with autism*. According to the report published

there are not enough schools capable of receiving children with autism in Hungary, and there is an insufficient number of properly trained experts. The often talented children who cannot be taught together with their non-impaired peers cannot develop due to the lack of special institutions, they may get into humiliating situations and as adults they would have fewer chances for autonomous life. The Ombudsman has pointed out that it means a great financial burden for parents of children with autism and it may even end in the disintegration of families if there is often no suitable institution near their residence. The state does not adequately perform its constitutional obligation concerning the promotion of equal opportunities.

The follow-up investigation after the *closing down of the National Institute for Psychiatry and Neurology (OPNI)* was completed in 2009, which explored the consequences of the structural change of psychiatric care, the grave and acute shortcomings of psychiatric care for adults and children, the financing difficulties of outpatient care, the territorial inequalities of active and chronic care and the structural disturbances of addictology and care for patients of endangering condition as well as half solutions resulting from a shortage of specialists. The violation of basic rights was also identified by the investigation into the situation and conditions of inmates in law enforcement institutes as well as of those ‘treated’ at the Institute of Observation and Mental Health (IMEI).

The Ombudsman has invited artists as well to raise the attention of the society. As part of the project *Differently with Dignity* creative artists have also presented themselves at the exhibition installed in the Office of the Parliamentary Commissioner.

4.3.

Project on the Right to Strike

The strikes of the past years affecting large crowds and the broad professional and social debates related to them have shown that the rules of a legal exercise of strike have not yet been adequately elaborated in the Hungarian legal system. During his investigation the Commissioner had to pay attention at least to two conflicting contradictory interests. On the one hand employees are entitled to have the right to strike within

limitations specified by law for the protection of their economic and social interests. On the other hand citizens actively not taking part in the strike but simply 'suffering' it also may need legal protection: in fact the exercise of the right to strike necessarily also entails the limitation of their basic rights.

The Commissioner and his associates have repeatedly consulted labour law jurists and experts as well as labour mediators at strike negotiations as well as with trade unions of branches. The Ombudsman, utilising practical experience, has not only worded criticism but also made constructive proposals.

The strikes that had taken place in companies providing public service and particularly doing passenger transport (Hungarian State Railways, Budapest Transport Company), strikes that have affected the daily life of a large part of the society served as specific justifications for launching the project in 2008. Due to the significant violation of interests and even causing the violation of law the strikes resulted in a number of complaints received by the Ombudsman. The majority of complainants mentioned that they could not go to work, school and healthcare institutions because of the strike, and could not avail themselves of some public service (such as medical care and education). There were some who complained for the loss of income due to the strike and requested the Commissioner's assistance in compensating for the cost of means of transport or accrued loss.

The Ombudsman is not legally empowered to proceed in legal disputes between employer and employees. He can, however, investigate the fact that the strike of the employees of organs providing public service necessarily affects the circle of people using public service. He has stated about domestic legal regulation that the Hungarian Act on Strike deficiently or only in outlines specifies those rules that should be observed during strikes. Most of the problems causing abuse were found by the Ombudsman in relation to the obligation to ensure a still sufficient service, as well as in relation to the obligation to give information on the beginning, end and duration of the strike.

Investigations were conducted in branches specifically 'mentioned' by the Act on Strike, most affecting the population, namely in branches where in theory strike could be exercised only in a way which would not hinder the performance of still sufficient services. Such is public

transport, and railways as well as the organisations of public transport in the capital city, further on education, energy supply and healthcare. He had to state in general that the exact specification of the contents of sufficient service is currently not in the interest of strikers and public service providers in labour conflict and there is no means to force out this accord.

We have checked in a follow-up investigation how the public service provided would satisfy the Ombudsman's earlier recommendations at the time of strike. Our associates went to monitor on the spot before the day of the strike as well as on the actual day at the central railway stations of Budapest in order to survey whether the information of citizens as well as satisfactory service provision were adequate. Though they have experienced some progress compared to the previous investigation attention again had to be called to the obligation to arrange for adequate services for those wishing to travel even during the strike.

During the project the opportunity also arose though at present only in the form of a question that instead of the total ban on strikes of employees in professional service a more flexible mechanism could be evolved which would allow even this group of employees to avail themselves of the opportunity to exercise their right to strike within certain limitations and with the inclusion of proper safeguards. Each investigation was closed by recommendations and the proposals were basically accepted and supported by the organs concerned. Both the law maker as well as the organs implementing law agreed in that the modification and greater precision of the wording of the Act on Strike would be necessary on the basis of practical experience. For a long time no progress was made due to the lack of political consensus. Therefore the Commissioner made a proposal to the Constitutional Court. He requested the identification of unconstitutionality manifest in default due to the deficiencies of the 1989 Act on Strike as well as that the Constitutional Court should oblige the National Assembly to create a new legal regulation containing safeguards of basic rights. According to the Parliamentary Commissioner basic legal norms are missing about the specification of the extent of satisfactory service provision, conciliatory talks, and the announcement of the strike and the regulation of solidarity strike.

4.4.

Project on Transport

In early 2009 we launched the *project dealing with the basic rights issues of transport* with the argument that it touched upon not a single but several basic constitutional rights and requirements. Tasks related to transport presume a significant role by the state and local governments, which make indispensable also the investigation into state activities of a service provision nature.

An approach to transport from the angle of basic rights is also important because every citizen participates in it in some form. Though the Constitution separately does not mention the freedom of transport but the right to free movement does include the freedom to change places by a vehicle or without it. It is not decisive whether the right to free movement in itself is realised but that how other basic rights are realised during movement and travel by transport.

The *investigation into individual transport, particularly by motor vehicle* has explored the characteristics of interference by the authority in the nature of public administration, focusing on whether authority procedures meet the requirements of the state based on law and of legal security. In fact during the administrative, recording and controlling activities of the state such deficiencies may and do emerge which affect every partial area of transport by motor vehicle (such as letting it enter traffic, insurance, taxation, police procedures, use of roads against fees), and problems that are seemingly minor deficiencies may result in serious violations of the law in individual cases and groups of cases.

When investigating the procedure of *parking companies* the Commissioner stressed that the companies in many cases do not properly prove the fact of parking. The Commissioner has found in an investigation related to surcharge that in case of the transfer of the ownership of vehicles, if the owner reports on the change of ownership at the documents office but the purchaser does not the change is not entered into the records, and surcharges continue to be posted to the old owner.

The Commissioner saw a violation to the right of fair procedure when a person limited in movement parked in a place specifically earmarked for people of such disability but he did not have the relevant certificate with him and was charged with a large amount of surcharge, and

though later on he proved his entitlement the company did not waive the payment of the full surcharge because in their view the regulation did not allow for the exercise of fairness.

In his investigation into the *practice of allowing cars* imported from the European Union *in traffic* the Ombudsman has found that the practice of issuing licence for release is not in harmony with Community regulation, the payment of the registration tax is too complicated without justification and it is costly for the state as well as for the client.

A special case was the withdrawal of the licence of the MÁV General Insurance Association (ABE), the obligation of the transfer of contract of its clients and the deriving additional cost was a special one within the framework of the investigation into *cases of the compulsory insurance of motor vehicles*. He Commissioner has explored that the Hungarian Financial Supervisory Authority could not guarantee that the MÁV ÁBE performed the insurance service to its clients and met its financial responsibility in the case of damage caused.

The modification of the Act on Road Traffic in early 2008 introduced the so-called *principle of objective responsibility* in the spirit of which the operator of the car would be responsible for violations of the traffic rules even if he/she did not drive the car. Another change was that a fee of public administration had to be charged within the framework of a 'simplified' procedure in the case of certain violations of rule and simultaneously of the petty offence procedure, and in keeping with the gravity of the act between HUF thirty thousand and three hundred thousand. The Commissioner has found that the basic deficiencies of the principle of objective responsibility as well as the regulation related to fees charged by public administration raise constitutional problems. Therefore he has initiated that the Constitutional Court identify the regulation as running counter to the Constitution which was partly done: in the wake of the ruling of the Constitutional Court several rules of safeguards related to deadlines and proof were introduced.

The Ombudsman's investigation related to the implementation of *zero tolerance applied against drunk drivers* qualified it as punishment brought forward. It means a disproportionate limitation to take away the driving licence even from such a driver on the spot who had consumed only a minimum quantity of alcoholic drink which did not affect him in driving. As a result of another statement of the Commissioner in his report

the National Police Chief has specified checks of drunkenness in an order accessible also to citizens.

In his transport project the Parliamentary Commissioner for Civil Rights also studied *public service transport* basically affecting the population and has found *procedures violating human dignity in the practice of checking tickets, surcharges and in the occasional assertion of demands* at the various local and distance *public service transport providers* (such as the Budapest Public Transport Company, and companies operating railway passenger transport and coaches). The overwhelming majority of complaints objected to the rude, at times unprintable style they were spoken to. It happened that even a child travelling alone, without escort was removed from the train because he had no ticket. The Commissioner expressed his opinion that this sanction could be applied by the railway company only to a limited extent: a child travelling without parents or an escort cannot be removed from a train at a place different from his/her destination when the child cannot be put under a proper supervisor.

The travel voucher of state employees can be easily forged and its originality cannot be unambiguously identified, therefore the ticket inspectors suspect several passengers without justification, and even demand surcharge from them. In an investigation launched on the basis of a citizen's complaint the Parliamentary Commissioner called it awkward that the Budapest Transport Company *charged a disproportionately high fee for the subsequent presentation of season tickets* and since that fee does not only cover the costs of the service provider it also figures as a kind of punishment. Later on the order was modified and the fee was reduced.

Passengers travelling by coaches have regularly complained against the sale of more tickets than seats available in certain routes in the rush hours even if there was no special place developed for standing in the buses. Many people may travel even several hundred km on the motorway at high speed without a seat or proper handhold. The Ombudsman has warned that the passengers are exposed to the danger of accident and of life due to the lack of the basic conditions of safety.

The Commissioner's projects occasionally met in the various topics. Such a joint investigation was carried on within the framework of the transport and the disabilities project into *safeguarding the equality of opportunity of citizens using community transport*. According to the Ombuds-

man's position it cannot be considered satisfactory if people with disabilities can use the service specifically organised for them only at limited intervals of time, as the planned use of buses carrying people impaired in their movement has to be reported in advance because the specially designed vehicles follow a route agreed upon in advance.

In Hungary the majority primarily identify the concept of *freedom of obstacles* with the satisfaction of the needs of people limited in their mobility. The principle of equal access, however, is not only and not exclusively valid for people with disabilities: it also means the safe and autonomous movement of people with perambulators and small children, or others who are aged or move temporarily with difficulty due to an accident, reminded the Commissioner for Civil Rights.

In 2009 *two workshop talks* summarised the experiences of the investigation into individual and community transport from the angle of the Ombudsman as well as of the transport service providers. The Parliamentary Commissioner and representatives of the participating organisations have *worded a joint appeal* for the reconsideration of the Hungarian law on transport for changes so that it may meet the requirements of the transport and traffic conditions of the 21st century. Administrative procedures are costly, take a lot of time and are complicated; the contradictory nature of regulations does not encourage drivers for law-abiding behaviour. A clear, transparent, life-like and absorbable regulation and transparent, simple and cheaper procedures should be needed in order to enhance the sense of responsibility of participants in traffic for the voluntary observance of traffic norms so that the safety of traffic should improve

4.5.

The Rights of Convicts and Law Enforcement

The convicts and detained are not objects to law enforcement but are such subjects who have rights and duties. The democratic principles of the state based on law also require that the implementation of the loss of freedom should be humane, teaching and educational, and to lead back to society. Legal treatment is an indispensable element of efficient law enforcement, and it cannot be accomplished that people limited in

their personal freedom should respect and observe legal rules when they are released without an exemplary behaviour of the authorities and without the assertion of human rights. The over-crowdedness of penitentiaries has a contrary effect because conditions of housing may have a detrimental influence on the realisation of the convicts' rights, on the preservation of their human dignity, their self-esteem, the security of their keeping, and the legality of treatment.

Therefore the Ombudsman considers it indispensable and important to let problems related to the realisation of basic rights surface and be solved. For this purpose the Commissioner and his associates have inspected penal institutions in person, even without prior information. The Commissioner visited in person the law enforcement institute for juveniles at Szirmabesenyő, the 'Star' Prison of Szeged, and the prison in Venyige Street of Budapest, the National Prison of Szombathely and to the one of Veszprém County. He did not only ask for information about conditions of custody from the respective commanders but he also visited cells and made convicts also speak.

Though convicts did not complain against physical violence in any of the prisons during the on the spot investigations in 2009 the Ombudsman repeatedly called the attention of the government that an independent control mechanism should be set up, in keeping with the practice of several Union Member States on the basis of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in which the Parliamentary Commissioner for Civil Rights should also play a role. The Ministry of Foreign Affairs expressed its agreement in principle; however, the Ministry of Justice and Law Enforcement did not give a clear answer.

The right of convicts to receive visitors may have an important role in contacts between the world of the prison and the society as well as in adjustment after the punishment is completed. It offers an opportunity for keeping up the convict's interest in the outside world and contributes to the preservation of his/her personality, self-assessment and self-esteem. In his report the Commissioner has pointed out that it serves no purpose of penal law and has nothing to do with prevention if he/she is denied of receiving visitors on holidays. After the Ombudsman's report the National Commander of Law Enforcement ordered that the convicts may receive visitors more frequently and for longer durations of

time, visits on Mothers' Day, at Easter and Christmas should be made a general rule and the relatives should be informed about the date of visit by phone.

The Parliamentary Commissioner has *ex officio investigated into the conditions of the detention of young people*. His associates conducted on the spot investigations in the penal institutions for juveniles (at Tököl, Kecskemét, Szirmabesenyő and Pécs). The institution at Szirmabesenyő is over-crowded. There is hardly any opportunity for isolation. The cells were extremely worn at the time of the inspection, and the danger of accident and fire by the electrical network meant a serious problem. In the institution of Tököl, the oldest one in use since 1963, there were only two psychologists for 700 adult and juvenile inmates. The Commissioner has pointed out that grave violent acts took place only in institutions keeping many people and there were no such cases in Pécs and Kecskemét offering better conditions. The realisation of rights in keeping with the special position of juvenile detainees can be best ensured in small institutions where people are housed in cells of two or three.

Based on the Commissioner's recommendations the Minister of Justice and Law Enforcement had an action plan made for the legal keep of juveniles, moreover, its implementation has largely been accomplished. By regrouping convicts and their transfer to other institutions the crowdedness of the institutions at Tököl and Szirmabesenyő could be reduced, which was personally experienced by the Ombudsman at the Szirmabesenyő institute together with other positive changes.

The Parliamentary Commissioner also surveyed *ex officio* and on the spot the *realisation of the constitutional rights of women convicted and of the staff*. Female convicts can be placed only in three penal institutions of the country in Eger, Pálhalma and Kalocsa, usually far from their place of residence which makes contacts with their relatives rather difficult. All the institutes were over-crowded, as 115 to 140 convicts shared 100 places in each institution.

The Ombudsman has found that the possibility of daily bath, corresponding to the hygienic needs of women was available only at Pálhalma, where showers were installed in the cells. In the institution of Heves County no psychologist was employed at the time of the investigation, and medical care was deficient at Pálhalma, where water caused problems in the high security disciplinary cells. In Kalocsa the number

of security staff members was low, and even the breaks at work could not be allowed to them.

Having seen all this, the Ombudsman recommended to the Minister of Justice and Law Enforcement to elaborate a medium-term action plan for the solution of the problems, and to attempt at producing the necessary financial resources. According to the Minister's intention the new code for law enforcement would offer two occasions per week instead of the one for women to take showers. At Pálhalma they employ yet another GP and have started to install running water at the disciplinary cells.

It did not avoid the attention of the Parliamentary Commissioner that the number of people taken to detention has been continuously growing. Though the Minister of Justice and Law Enforcement informed the Commissioner that he would take measures to reduce the saturation of the detention houses, somewhat later he had the facility at Gyorskocsi Street belonging to the Municipal Institute for Law Enforcement closed down where almost 300 detainees were kept. According to the experiences of the Ombudsman at the investigations and to the growing number of complaints the conditions of those taken into custody have already been intolerable in several institutions and over-crowdedness has been enhanced to an intolerable degree with the new measures introduced.