Report
on the Activities of the
Parliamentary Commissioner
for Civil Rights
in the Year 2011

J/7386

Report on the Activities of the Parliamentary Commissioner for Civil Rights in the Year 2011

Office of the Commissioner for Fundamental Rights
2012

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ISSN 1416-9614
Published by:
Office of the Commissioner for Fundamental Rights
1051 Budapest, Nádor u. 22.
Phone: 475-7100, Fax: 269-1615
Internet: www.ajbh.hu
Responsible editor: Dr. Máté Szabó
Edited by: Ágnes Balajti
Translation revised by: Gábor Somogyi
The volume was designed by Zsófia Kempfner

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1. The Commissioner's Introduction

The State of Human Rights in Hungary and the Transformation of the Hungarian Ombudsman System

Last year, in 2011 we saw a continuation of the tendencies of crisis that emerged both in Hungary, in Europe and in the whole world and manifested themselves both in the enforcement of fundamental rights and in problems concerning the stability of democracies. Managing the crisis became an absolute priority in Hungary and in the European Union, whose presidency was also held by the Hungarian government during last year. The crisis and the reactions to the crisis resulted in numerous domestic, European, Euro-Atlantic and global discussions that are important for the interpretation of fundamental rights.

Global crisis – facing challenges for democracy and for a healthy society

The challenges of the global crisis manifest themselves in the field of freedoms (freedom of assembly and freedom of expression), economic and social rights (right to work, access to welfare services or the right to housing) and also in the field of third generation rights (the right to a healthy and sustainable environment) as well as in the field of freedom of information and data protection. These discussions defined serious challenges concerning the situation of different social groups, especially groups in need in crisis-ridden democracies, which, unlike western democracies in 1989, can no longer be referred to as impeccable examples to follow. On the tendencies of crisis in western democracies let me quote from Claus Offe, a globally known and highly esteemed German sociologist:

'Casual narratives on the crisis of democracy include economic globalisation and the absence of effective supranational regulatory regimes; the exhaustion of left-of-centre political ideas and the hegemony of market-liberal public philosophies, together with their anti-statist implications, and the impact of financial

and economic crisis and the ensuing fiscal starvation of nation states which threatens to undermine their state capacity.'[1]

A healthy society, a healthy reaction of the social system to the crisis puts forward different regenerating immune systems of society and calls attention to their ability of creative renewal. Such an ability of social renewal can be described with the metaphor 'quest for a healthy society'.

Therefore, it is not a coincidence that the systematic examination of improprieties relating to constitutional rights in the field of health care was one of the priorities of the Ombudsman in 2011, together with the supplementary examination of children's health care. In our third project, the examination of the institutional and legal background of disaster management, we wanted to find out the criteria of a healthy society's ability to react in the different branches of law. Our health care system can still be described as 'ill', due to the financial problems presenting the risk of emigration of medical staff and to continuous reorganisations and system corrections, which critical state has in fact been regenerated and even aggravated the by the global crisis. Disaster management in 2011 in Hungary, however, could receive a much better evaluation. It is admittedly easier and definitely faster and more successful to create a rapid reaction social defence mechanism based on a consistent concept and centralised funds than to remodel health care in line with our European expectations and the requirement of sustainability in the long run.

Reasons for remodelling the Hungarian Ombudsman system

Why was it necessary to remodel the Ombudsman system in Hungary in 2011? Previously different Commissioners were established at different times, out of different legislative intentions, and their cooperation was not satisfactory. In Hungary it was unclear how many and in what cases people turned to the different Ombudsmen and to other authorities accepting complaints. Even though the four Ombudsmen had a common Office, there was no uniform procedure for or classification of complaints, not to speak of the ones submitted to the Equal Treatment Authority or to the Independent Police Complaints Board. The state of

[1] Claus Offe: Crisis and Innovation in Liberal Democracy: Can Deliberation Be Institutionalised? In: Czech Sociological Review 2011 Vol. 47. No. 3.; p. 457.

human rights in Hungary cannot be reconstructed from any of the annual or long-term reports of any authority or civil society organisation, as the precondition of such a report would be the interconnection and systematic processing of the databases. In the absence of such information one cannot see tendencies of development, not even those decision-makers who are committed to make changes.

Without proper information and sources that are available to everybody, the evaluations were one-sided and biased. Now a balanced and regular flow of information between different authorities may increase the effectiveness and precision of legislation and decision-making.

Another problem was that the great global and European international treaty systems of the last twenty years (e.g. on the rights of children, persons with disabilities or women) do not yet have independent control organs in Hungary that would monitor the implementation of these international standards in our country. This would require money from the central budget and the support of new civil society organisations having the right to access and control. Government organs in Hungary were unwilling to establish such independent control organs, although the country had committed itself in these treaties to do so. Also, our accession to the Optional Protocol to the UN Convention on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) had been delayed for a long time. Accession would commit Hungary to operate a national monitoring authority within this optional international system; said delay was already criticised in the report of the parliamentary subcommittee which investigated the human rights violations of 2006. In 2011, the decision was made to accede to the OPCAT system and it was also decided that the main institution operating the control mechanism in Hungary would be the Commissioner for Fundamental Rights from 2015 on.

According to the Fundamental Law, the previous Commissioner for Data Protection ceases to operate as a separate Ombudsman from 1 January 2012; his or her tasks are to be performed by an independent authority established by a cardinal Act ('Freedom and responsibility', Article VI, paragraph 3). The previous Hungarian system was exceptional in Europe: the protection of data and freedom of information were not performed everywhere together within one institution, and that institution was not in every case an ombudsman institution. Until 31 December 2011, however, due to their common Office, the Commissioner for Data Protection was tied to the other Ombudsmen dealing

with completely different subject-matters. According to the new Act, the data protection authority is given certain public powers, like registration or even the power to impose heavy fines. Such powers, however, are hardly compatible with the competence of European-type Ombudsmen, whose competence is restricted to making recommendations. Therefore, the cardinal Act had to establish a new authority for the exercise of these new public powers. The regulation pertaining to the new authority called National Authority for Data Protection and Freedom of Information, operating as of 1 January 2012 is under consideration.

As laid down in the provisions effective as of 1 January 2012, the transitional provisions designate the former Commissioner for Civil Rights, to fill the office of Ombudsman in the new, unified institution. I find it my duty therefore to do my best in this new system. I will endeavour to promote the successful development of the institution in cooperation with the other (also remodelled) constitutional institutions and with the specialised Deputy Commissioners. I presume the remaining almost two years might be enough to form the new institution's practices and to make suggestions to the law-maker for the correction of practical problems. Legislative changes have affected almost every part of our constitutional system, and they were also adopted according to a relatively hurried schedule, so it should not surprise us that this body of legislation is going to produce a series of problems that stem from internal incoherencies and which could only be partly overcome in practice.

Changes are neither 'good' nor 'bad' in themselves. They should be justified by their results, about which I am optimistic. Not only the unification of the different Ombudsman's offices but also the very significant enlargement of the Ombudsman's competences open up wide perspectives of development instead of the dead-ends of the former fragmented system. However, results should be achieved in a 'suboptimal' and crisis-ridden climate. Therefore, organisational effectiveness should be optimised in a suboptimal environment, which is not easy, but it is not impossible either.

We have been given quite a lot of means and tools to fulfil our mission. These are our new competences, the advantages of a unified management, the benefits of the integration of the formerly fragmented fields, the help of a civil society interested in working with us because of our competence to turn to the Constitutional Court. Furthermore, the

possibility of exceptional inquiries into the fundamental rights related improprieties of private organisations, and our widening competence in the institutional monitoring of the implementation of international treaties as national institutions of human rights, and mediation between domestic and international law.

Budapest, 1 March 2012

Prof. Dr. Máté Szabó

Curriculum Vitae of the Commissioner

Prof. Dr. Máté SZABÓ
Parliamentary Commissioner for Civil Rights, Hungary

He was elected Parliamentary Commissioner for Civil Rights by the Hungarian Parliament for six years, which position he has been holding since September 2007. He now continues his role as the ombudsman of Hungary. Since 1st January 2012, Prof. Szabó has been *Commissioner for Fundamental Rights*.

He received his law degree at Eötvös Loránd University, Faculty of Law in Budapest in 1980 and got a job as a journalist. From 1984, he worked as a scientific associate in the Political Science Department of Political Science of Eötvös Loránd University's Faculty of Law. As of 1990 he continued as an associate professor. In 1987, he defended his PhD. on social movements in Western Europe, and was awarded the degree 'Doctor of Political Science on Social Movements in Hungary' by the Hungarian Academy of Science in 1996.

He is a founding member of the Hungarian Political Science Association and the Hungarian Humboldt Association; furthermore, he is an active member of the Political Science Committee of the Hungarian Academy of Science and several international associations of sociology and political science.

Since 1980, he has carried out several research projects on various subjects of political and social science.

- Between 1991 and 2007, he received several fellowships from the Alexander von Humboldt Foundation in Hamburg, Berlin, Bremen, Mainz and Frankfurt an der Oder in Germany.
- He was a visiting fellow at the Netherlands Institute of Advanced Studies, Wassenaar, in 1995.
- In 2000, he was a research fellow at the European University Institute in Florence, Italy.

He is specialized in civil society, social movements and political protest and the theory of law and politics as well. He has published more than 300 scientific contributions in Hungarian, English, German and in several other languages. He is a regular participant at conferences on political science, law, and political sociology in Europe and around the world. He teaches political science and European studies. Since he was elected ombudsman, he has been an active member of the International Ombudsman Institution and the European Network of Ombudsmen and was elected as board member of the European Ombudsman Institute in 2010.

Awards:

- The 'Erdei Ferenc Prize' of the Hungarian Sociological Association for young talents in 1988.
- The memorial medal 'For Hungarian Higher Education' of the Ministry of Education for his teaching career in 2006.
- The 'István Bibó Prize' of the Hungarian Political Science Association in 2007, as an acknowledgement of his life work.

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The Headquarters of the Parliamentary Commissioners –The Office

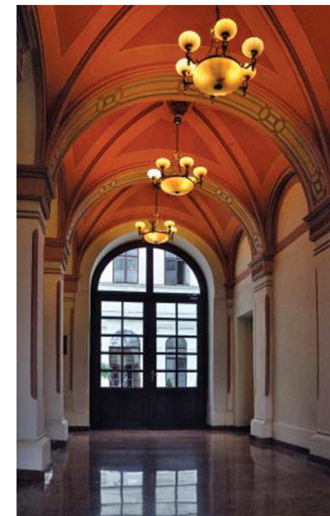
The history of the building

The construction of the building at 22 Nádor Street run between 1846 and 1848 following the plans of architect Lőrinc Zofahl. It was built in a Romantic style. In 1851, the building was rebuilt according to the design of Frigyes Feszl.

Originally it was an apartment house owned by the Oswald brothers; however, in 1864 it was transformed into a hotel (called Hotel Continental). Later on, in 1917, its function changed again, and from that year the building served as an office building for a bank.

In 2001, 22 Nádor Street became the headquarters of Hungarian Ombudsmen. During its recon-

The "22 Nador Street" ▸
The doorway ▾
The complaints office ▸▾

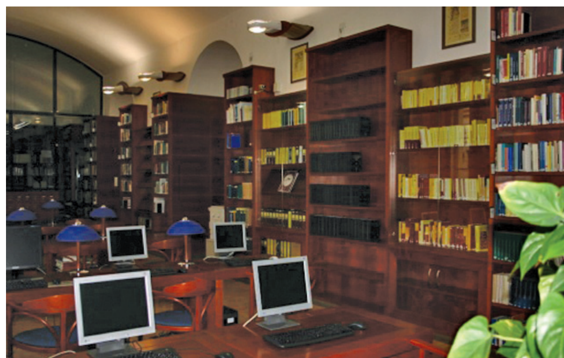


The Conference Room ◂
Venus
by Karoly Lotz, 19. century ◂ ▾
The Library ▾

struction, the architects broke with the stereotypes according to which offices should be grey, dusty and impersonal.

As to its function, the Office can be divided into three different areas: the first floor is open for the public with a hall, library, complaints office and the gala yard.

The second part is a semi-public area on the second floor: the forefront of a gala room with the reception desk, a gala room (or conference room) and executive offices can be found there.



The third area is the so-called backstage, which is a complex of offices and service rooms.

The banquets of the *Petofi Society's General Assembly* took place in the gala room on the first floor between 1876 and 1944.

In 1908 in the café of the Hotel Continental (nowadays the library) the *Journal Nyugat* was founded, which opened a new epoch for Hungarian literature.

The Head of Office and Senior Staff Members of the Common Office of the Parliamentary Commissioners

Dr. Attila Péterfalvi

He received his law degree at Eötvös Loránd University Budapest, Faculty of Political Science and Law, in 1981.

Between 2008 and 2011 he was the *Head of Office* of the Parliamentary Commissioner' Office.

During the period of 2001–2007 he was the Parliamentary Commissioner for Data Protection and Freedom of Information.

Ms. Ágota Hanser

In 1983 she received her degree in economics and accountancy at Marx Károly University of Economics, Budapest. Between 1996 and 2011, she was the head of department and the general financial manager of the Office of the Parliamentary Commissioners.

Ms. Éva Heizerné-Hegedűs

Ms. Heizerné-Hegedűs graduated as an economist from the State University for International Relations, Faculty of International Affairs, Moscow, in 1989. Since 1997 she has been working for the Office of the Parliamentary Commissioners. Between 1997 and 2007 she was appointed head of the Department for Documentation and International Affairs of the Parliamentary Commissioner for National and Ethnic Minorities and from 2007 till 2011 she was Head of the Department for Organisation and Client Services.

2.
Public Relations and the Most Important Events of the Year

2.1. Our International Relations

The year of 2011 saw our accreditation as a national human rights institution. National human rights institutions operating under the auspices of the United Nations Organisation supervise, in a representative manner, the human rights situation in a given country; to obtain this status, in the course of strict accreditation proceedings they have to prove that they function in an independent and effective manner. The request for accreditation was sent to Geneva on 11 October 2010 (the operative organ of the accreditation proceedings is the *ICC Sub-Committee on Accreditation).* This organ was scheduled to deal with the Hungarian application at its sitting of May 2011, so according to the statutes, the application and the relevant documentation had to be submitted to the president in writing and in an electronic format four months before the sitting.

Regarding the detailed criteria under different headings one had to prove with supporting facts the following: *institutional independence, transparency and democratic nature of the proceedings related to the selection and dismissal of the Ombudsman, wide powers, tasks and competences related to the protection of human rights, practice of cooperation with civil society and other rights protection organisations, financial independence and guarantees.*

On 9 July 2011, we received the report of the Sub-Committee on Accreditation stating that they had examined the request of the Parliamentary Commissioner for Civil Rights and on the basis of the submitted documentation and of several phone interviews they proposed granting status B[2]. The comprehensive report proposes the following: enlargement

[2] At present for example the following institutions have status B: the Austrian Volksanwaltschaft, the Slovenian Ombudsman, the Equal Treatment Commission of the Netherlands, the Slovak National Center for Human Rights and the Swedish Equal Treatment Ombudsman

of the powers and competence of the Parliamentary Commissioner, selection of the Ombudsman and his staff from the widest possible segments of society, determination of very strict procedural and substantive legal rules for the regulation of dismissal, and close cooperation with civil society organisations. The report mentions that the new Ombudsman Act will provide a possibility for the fulfilment of the proposals and therefore concludes with a sentence encouraging an eventual application for status A.

Since no one raised objections against this favourable opinion, the International Coordinating Committee confirmed the recommendation of the Sub-Committee, and so the Parliamentary Commissioner for Civil Rights, as of 1 January 2012 Commissioner for Fundamental Rights, has now the official status of national human rights institution granting it additional prestige for the protection of fundamental rights in Hungary. During the screening in the accreditation proceedings the given national institutions specialising in human rights protection can demonstrate their independence, their effectiveness and that their operation complies with the strict international standards established by the United Nations Organisation. This gives in any case additional prestige, protection and a basis for a more courageous advocation of these rights, but of course it requires more and different kinds of activities over and above the work done so far by the Ombudsman (the drawing of a national map of human rights violations will necessitate serious research work, gathering and processing of statistical data). If an institution becomes part of the international bloodstream it also brings practical benefits since the gates (and the relevant funds) literally open up for regular international human rights meetings and trainings on various topics aimed at improving the quality of work. Moreover, European human rights networks (the Fundamental Rights Agency having its seat in Vienna, the Organisation for Security and Cooperation in Europe or the Council of Europe) largely build on the work of these human rights institutions, since they consider them as adequate and reliable partners for the realisation of their objectives.

The Most Important International Events of the Year:

- Cooperation at European level continued in 2011 within the European Union project on the strategic principles of police cooperation and communication (*GODIAC project*). Exchange of experience on the 'knowledge-based protection of law and order' took place on 1 and

2 March 2011 in London and 14 to 16 June 2011 in Barcelona with the participation of Swedish, Hungarian, Dutch, British, German and Portugal experts.

- The *Organisation for European Security and Cooperation* regards national human rights institutions as special partners – on 14 and 15 April 2011 the Hungarian Ombudsman also took part in an experts' meeting organised in Vienna, the subject-matter of which was the protection of human rights by and between national human rights institutions, Ombudspersons, governments and civil society. On 13 and 14 July 2011 he participated in another conference in Vilnius on the details of the relations of the legislative power (accountability, resources), the executive power (mutual responsibility and outcomes, and the judicial power (access and interaction).

- Between 9 and 11 May 2011 in Budapest we organised the *annual meeting of Ombudsmen of the Visegrád 4* (since 2004 this traditional event has been held at different venues).

At the Budapest meeting the main point on the agenda was the international tasks and commitments relating to Ombudsmen's work. The Hungarian, Polish, Czech and Slovak Ombudsmen exchanged their practical experience on the implementation of the tasks related to the Charter of Fundamental Rights of the European Union, to the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)* and to their national human rights institution status.

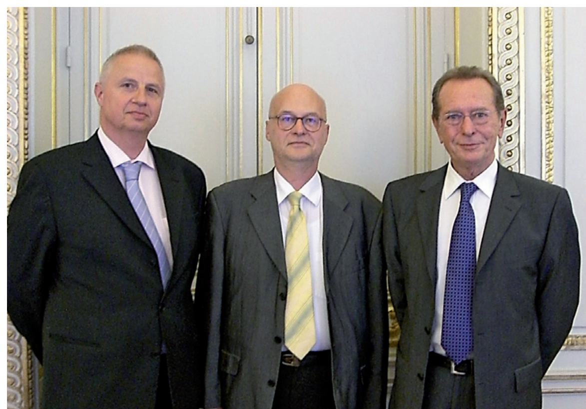
Annual Meeting of the Visegrád Ombudsmen in Budapest (9 to 11 May 2011)

- For the Hungarian Ombudsman the Polish experience in connection with the independent control body of OPCAT was of outstanding importance: in the absence of adequate financial support not even the best intentions can ensure that the controls be implemented.

Since 2008, Ombudsman Máté Szabó had urged that Hungary should accede to OPCAT, and in 2011 the Government finally took a decision. *Government Decision 1040/2011. (III. 9.) Korm. on the measures relating to the findings of the comprehensive inquiry concerning compliance of law-enforcement institutions with international standards* mandated the Minister of Public Administration and Justice to examine the possibility of accession, and at the end of the year the Bill on the promulgation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was dravn up. On the impact assessment sheet of the submission we can read the following: *'It is a precondition of the implementation of those laid down in the submission that the Commissioner for Fundamental Rights should have the additional financial resources which are necessary for the performance of the additional tasks of operation as a national preventive mechanism pursuant to the Protocol, and to be performed as of 1 January 2015.*[3]*'* The function of the national preventive mechanism will be performed by the Ombudsman together with civil society organisations as of 1 January 2015, since Hungary is going to make use of the three-year preparation period offered by Article 24 of the OPCAT Protocol.

- In the series of exchange of experience with European Ombudsman institutions the meeting in Vilnius on 13 and 14 July 2011 with Lithuanian Ombudsmen Dr. Romas Valentukevičius and Dr. Ausgustinas Normantas represented an important event, in the course of which the Parliamentary Commissioner for Civil Rights explained the main directions of the operation of his Office.
- On the 6th Annual Conference of ECPR between 25 and 27 August 2011 in Reykjavik, the Hungarian Ombudsman held a lecture entitled *'Disobedience and Criticism. The Role of the Ombudsman Institution in the East-European Revolution of Human Rights'* and, on the margins of the conference, met his Icelandic colleague, Ingibjörg Dóra Sigurjónsdóttir.
- At the invitation of the French Ombudsman (*Le Médiateur de la République*) between 5 and 6 September 2011 Prof. Máté Szabó

[3] http://www.kormany.hu/download/c/4c/50000/OPCAT%20kihirdet%C5%91.pdf



Prof. Máté Szabó's meeting Mr. Dominique Baudis, the Ombudsman of France, accompanied by Dr. Sándor Trócsányi, the Ambassador of Hungary (5 September 2011)

held bilateral talks, among others, with Dominique Baudis on the recent experience of the transformation of the French ombudsman system and its impact on society, and with Michel Forst, Secretary General of the *French National Consultative Commission on Human Rights*.

- As a member of the Board, Prof. Máté Szabó took part at the 23 and 24 September 2011 *Novi Sad meeting of the European Ombudsman Institute*.
- The *European Network of Ombudsmen* held its 8th meeting between 20 and 22 October 2011 in Copenhagen, where our Office was represented by the Hungarian Ombudsman, who gave a presentation entitled 'Ensuring the independence of the activity of the Ombudsman.' We attach special importance to our active participation in this network created in 1996 to bring together national and regional ombudsman offices and similar organisations in Members States of the Union, candidate countries and certain other European countries, the Office of the European Ombudsman, and the Petition Committee of the European Parliament.

- *The ASEM Seminar on Human Rights* took place in Prague between 23 and 25 November 2011 and the panel 'National Human Rights Mechanisms' was chaired by Prof. Dr. Máté Szabó.
- On 28 November 2011 under the auspices of Mr. Gottfried Koefner, *Regional Representative of the UN High Commissioner for Refugees,* the Parliamentary Commissioner for Civil Rights and his staff presented in the presence of an audience of foreign experts the English language version of the 2010 Annual Report to Parliament and another English language publication entitled *'Projects of the Parliamentary Commissioner for Civil Rights in Hungary on the Rights of the Most Vulnerable Groups: Homeless, Disabled and Elderly People'*.
- The *12th conference of the Asian Ombudsman Association*, held between 5 and 9 December, was an important event for the diversification of our multilateral cooperation, and Prof. Dr Máté Szabó gave a presentation entitled '*The Role of the Ombudsman in Democratic States Governed by the Rule of Law*' in Tokyo.

At the 12th conference of the Asian Ombudsman Association in Tokyo (5–9 December 2011)

Our senior staff member responsible for international relations in 2011

Dr. Júlia Sziklay

In 1995, she received her law degree at the Faculty of Law at Eötvös Loránd University of Budapest. In 1998, she got her second degree in political science at Eötvös Loránd University of Budapest. During the period of 2009–2011, she was a legal counsel on international affairs at the Office of the Parliamentary Commissioner for Civil Rights. Between 1995 and 2009, she was a legal adviser at the Office of the Commissioner for Data Protection.

2.2.
Civil Advisory Body

The Ombudsman convened the Body in May and October 2011. At the spring sitting the Commissioner shared with the participants the experience of his thematic inquiries of the past year, summarised their findings and presented his proposals for future activities. He mentioned the results achieved so far in current projects and the comprehensive inquiries planned in the future.

He also informed the Body that the Ombudsman institution presented its application for obtaining the status of a UN National Human Rights Institution (NHRI); at the time of the sitting the evaluation of the application was still pending.

At the autumn sitting of the Civil Advisory Body the Commissioner presented a new member of the Body, Peter Nizak, senior program manager of the Open Society Institute (OSI). On this occasion the Body was informed of the changes concerning the Office of the Parliamentary Commissioners entering into force as of 1 January 2012. The Commissioner emphasised the fact that over and above the structural changes affecting the institution there was going to be an extension of the powers of the Ombudsman, too. His tasks were going to be supplemented with the examination of the activities of organisations not qualifying as authorities or public service providers, and with the tasks assigned to it as a consequence of the termination of the institution of *actio popularis* regarding petitions for posterior norm control addressed previously directly to the Constitutional Court.

The Ombudsman considered it important to put it on record that the constitutional changes did not affect the status of the institution of the Civil Advisory Body since the special Commissioners cooperate with their civil society network in their respective professional fields, and if in the future the need arose we would certainly create the possibility and a forum in this area for cooperation.

Members of the Civil Advisory Body

Dr. Gáspár Bíró, university professor (Eötvös Lóránd University, Faculty of Law),
Dr. Nóra Chronowski, associate professor (University of Pécs, Faculty of Law),
Dr. Géza Finszter, university professor (National Institute of Criminology),
Dr. Zoltán Fleck, associate professor (Eötvös Lóránd University, Faculty of Law),
Dr. Péter Hack, assistant professor (Eötvös Lóránd University, Faculty of Law),
Dr. György Könczei, university professor (Eötvös Lóránd University, College of Special Education),
Dr. Lehoczky Dr. Csilla Kollonay, university professor (Eötvös Lóránd University, Faculty of Law),
Péter Nizák, senior program manager (OSI-Open Society Institute),
Dr. Miklós Radoszáv, assistant director (Csányi Foundation),
Miklós Vecsei, vice president (Hungarian Maltese Charity Service),
Dr. András Varga Zs., associate professor (Pázmány Péter Catholic University, Faculty of Law),
Dr. Mónika Weller, senior adviser (Ministry of Public Administration and Justice)

2.3. Media coverage

Activities of the Parliamentary Commissioner as reflected in the media in 2011

There was an increase of almost 10 per cent in the number of communications issued by the Commissioner, the number of his media appearances grew by approximately 20 per cent and the presentation in the media of the phenomena and events forming the background of his inquiries rose by more than 15 per cent. It was quite apparent that the online media was gaining ground: in each month of the year it led by far the statistics of coverage of the activity of the Commissioner and of the phenomena inquired into (1881 in 2011 compared to 1315 in 2010).

The media dealt with the activity of the Commissioner following the usual seasonal pattern (peak periods of reporting are the beginning and the end of the year, as well as the beginning of the political season), but there were also outstandingly high numbers of appearances typically relating to issues which were in the centre of interest of public opinion affecting the constitutional rights of many citizens. They basically confirmed the topicality of the choice of priority issues made by the Commissioner according to his project method.

The media followed with special interest two related projects. The Ombudsman has been examining the *enforcement of the rights of children* for the whole term of his mandate, but with a special focus in each year. In 2011 the focus was on the *'Rights of Sick Children'* and on the basis of complaints, inquiries started *ex officio* and the analysis of other problems related to the rights of children the Commissioner issued 30 communications. The other big series of inquiries entitled *'Our Rights as Patients – Healthy Dignity'* with the motto *'The interest of the patient always comes first'*, conducted in parallel and jointly with the previously mentioned one, resulted in 29 communications containing findings and recommendations. Among these topics the following attracted the biggest attention from the media: special rights of psychiatric patients, care for aggressive patients, and healthcare for disabled and homeless persons.

Appearances of the Ombudsman in the media

Media appearances broken down by month						
month	print		online		radio and television	
	ÁJOB*	Topic**	ÁJOB*	Topics**	ÁJOB*	Topics**
January	61	552	221	440	113	203
February	96	218	319	306	172	126
March	48	233	114	276	47	128
April	49	261	174	396	74	177
May	13	295	75	365	41	157
June	69	347	145	545	55	192
July	55	299	103	312	31	133
August	69	303	142	350	81	182
September	54	335	112	401	38	183
October	52	231	89	246	97	132
November	47	263	154	309	69	164
December	103	371	233	597	111	217
	716	**3708**	**1881**	**4543**	**929**	**1994**

appearances of the Commissioner	**3526**	(in 2010: 2619)
coverage of topic in the media	**6719**	(in 2010: 5705)
Commissioner + coverage of his topics	**10245**	(in 2010: 8324)

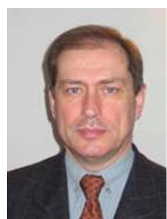
AJOB = The Parliamentary Commissioner for Civil Rights
* Commissioner = media coverage of the report of the Commissioner
** Topics = coverage of the examined phenomenon in the media

The most important types of communications

Children's rights	30
Healthcare	29
Finances, impact of the crisis	22
Law enforcement	17
Rights of persons with disabilities	16
Transport	14
Homeless persons	10
Disaster management	7

A special topic of media appearances in 2011 was the presentation and evaluation from different points of view of the provisions of the Fundamental Law and of Act CXI of 2011 on the Commissioner for Fundamental Rights (*the 'Ombudsman Act'*) regulating the transformation of the ombudsman system and defining its legal conditions. Besides the changes concerning the relevant regulation the media also paid attention to the new tasks assigned to the unified Office of the Commissioner for Fundamental Rights from 2012, i.e. to the tasks related to constitutional complaints and the monitoring of the implementation of international treaties. According to the data supplied by one of the most widely used internet search engine, the preparation and adoption of the Act was referred to 550,000 times.

Our senior staff member responsible for media relations



Mr. György Bernát
Graduated as economist at the Budapest University of Economy in 1971. Head of the Press and Media Unit (Office of the Commissioner for Fundamental Rights since January 2012), earlier freelance communication adviser at the Office of the Commissioner for Civil Rights (2008-2011). Communication expert of various UN and European Union development programmes in Hungary. Founder news director of the first Hungarian commercial television TV2 (MTM-SBS Corp. 1997-2004), correspondent of the Hungarian Radio and Television in Bonn, Germany (1989-1995). Chief editor of the public service Hungarian Radio's news channel (1988-1989).

3.
Introduction to the Institution of the Parliamentary Commissioner for Civil Rights in Hungary

The main task of the Parliamentary Commissioner for Civil Rights is to inquire into any improprieties related to constitutional rights he/she has become aware of and to initiate general or particular measures for their redress. The Parliamentary Commissioner for Civil Rights is solely accountable to Parliament. As for the legal status of the Ombudsman, in the course of proceedings he/she has to be independent and may take measures exclusively on the basis of the Constitution and Acts of Parliament.

The Ombudsman is elected for a six-year term by a majority of two-thirds of the votes of the Members of Parliament at the proposal of the President of the Republic. The Ombudsman may be re-elected for a second term.

Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights states that **anybody may apply to the Ombudsman**, if they have suffered injury as a result of an action of any authority or organ performing a public service, or a decision taken in the course of action, or omission by an authority that has resulted in the infringement of their fundamental rights, or if a risk thereof exists.

*The Act on the Ombudsman gives an exhaustive list of authorities***.** *These are:*

- Organs or organizations performing tasks of state administration (e.g. town clerks, the Construction Authority, guardianship authorities, customs and excise);
- Any other body acting as state administrative authority (e.g. the Land Registry , the Hungarian Energy Office);
- The police, the armed forces and the security services;
- Local governments, minority self-governments, the office of the mayor;
- Notaries public;
- Court bailiffs;

- Bodies performing a public service (e.g. water, gas and electricity suppliers, social services and health care, educational institutions, parking companies, public service media);

Fundamental rights may be infringed in particular by the following:

- unreasonably long proceedings,
- discrimination,
- provision of inaccurate or wrong information,
- unfair treatment,
- refusal to disseminate information on unreasonable grounds,
- unlawful decision.

A very important aspect of the Commissioner's role is that a complaint may be filed even if the complainant has already exhausted the available administrative remedies – except for judicial review of administrative decisions –, or where no legal remedies are ensured.

Cases where the Ombudsman cannot help:

- If the proceedings have begun before 23rd October 1989,
- If the final administrative decision was made more than 1 year ago,
- If legal proceedings are pending or a final court decision has been rendered,
- The Ombudsman cannot inquire into the activities of Parliament, the President of the Republic, the Constitutional Court, the State Audit Office or the public prosecutor's office (except for the investigation office of the public prosecutor),
- If the plaintiff seeks legal counsel.

The Ombudsman selects him/herself the course of action that is deemed to be most appropriate. Key measures are:

1. To make a request for remedy to the supervisory authority of the body that has infringed constitutional rights.
2. To initiate a remedy request at top management level.
3. To file an application with the Constitutional Court for the examination of the unconstitutionality of a legal act.
4. To initiate (at the public prosecutor office) the lodging of a public prosecutor's protest.
5. To propose that the Law Commission amends or repeals an existing legislative act or that a new legislative Act be adopted.
6. To submit the case to Parliament and request a parliamentary inquiry.

3.1. Main Directions of the New Ombudsman System

The institution of Ombudsman itself is a like a 'ship being rebuilt on water'; similarly to the systems of health care and disaster management. With the making of the new Fundamental Law the Ombudsman system was radically remodelled in such a way as I had been advocating it for years as Ombudsman: one single institution for the protection of rights, with deputies responsible for the fields of the rights of national and ethnic minorities, and environment protection, respectively.

During the parliamentary debate of the Fundamental Law and the Ombudsman Act all the Ombudsmen had the opportunity to express their views.

The new Fundamental Law changed the structure and competences of certain institutions of our system based on the rule of law; among others it changed that of the Ombudsman, an institution of human rights protection with 15 years of history. Instead of the four Ombudsmen established upon the Swedish model, the new Fundamental Law opted for having just one single Ombudsman institution. One reason could be that this system has been chosen by the great majority of European countries, as it allows a unified and interrelated interpretation of human rights, transparency, effectiveness and the concentration of resources to the most relevant issues. In countries having more than one Ombudsman (like Sweden, Austria, Lithuania, Moldova) one of them holds, permanently or on a rotational basis, the office of head of the institution. Such coordination has been missing until now in Hungary.

The Fundamental Law ('The State', paragraphs 1 to 5 of Article 30) stipulates two specialised deputies within the single Ombudsman system (both were separate Ombudsmen until the end of 2011). They have now taken over the functions of the former Commissioners for National and Ethnic Minority Rights and for Future Generations. The latter was established by the amendment of the relevant Act in 2007 and started operating in 2008. The designation 'Commissioner for Future Generations'

is misleading, as many countries in Europe and throughout the world operate as a separate Ombudsman for protecting the rights of children, and the general meaning of 'future generations' refers primarily to this function. In Hungary, however, protection of the rights of children has always been the competence of the general Ombudsman and the 'rights of future generations' has meant in reality the institution protecting the rights laid down in the Act on Environment Protection. Consequently, the Commissioner for Future Generations was the 'green' Ombudsman. Therefore, the previously autonomous Ombudsmen operated last year on the basis of the Minorities Act and the Environment Protection Act, as the specialised Deputy Commissioners do as of 1 January 2012. Their competence and procedures, just like the general Ombudsman's, are laid down in the Ombudsman Act (Act CXI of 2011 on the Commissioner for Fundamental Rights).

In accordance with the Fundamental Law, the single Ombudsman institution has been established, in which the Ombudsman and his or her two specialised deputies are elected for a term of six years by a two-thirds majority of the Members of Parliament. The institution has been renamed; the designation 'Parliamentary Commissioner for Citizens' Rights" has been replaced by 'Commissioner for Fundamental Rights'. More emphasis is laid on its task to turn to the Constitutional Court for *ex post* review of norms, as the possibility of *actio popularis* ceased to exist; citizens and their organisations can turn to the Constitutional Court only via the Government, one-fourth of the Members of Parliament or the Ombudsman (paragraph (2)e) of Article 24).

Similarly to other institutions of public law and fundamental rights, the new Fundamental Law has not divested the institution of Ombudsman of its original character but left it unchanged; the Ombudsman is still an independent institution which aims to uncover improprieties endangering the enforcement of fundamental rights and makes recommendations to the Government, public administration or Parliament for redress. The institution, which is now undergoing unification, is expected to become more effective, to have a clearer policy and to enforce fundamental rights in their context; also, according to the decision of the makers of the Fundamental Law, the institution will pay special attention to the rights and interests of nationalities and of environment protection, which are now represented by the specialised deputies. At present the Ombudsman's control does not cover the activities of the courts and of the prosecution service; neither can he or she conduct inquiries into private law entities unless their operation endangers the fundamental rights of many citizens.

Where can we see further possibilities for improving the protection of fundamental rights in our more and more unified institution? In order to support the activity of the High Commissioner for Human Rights in Geneva, the United Nations started to build a network of National Human Rights Institutions in the 90's that has became a global network by now. Previously there had not been such an institution in Hungary; therefore, in 2010 we submitted an application of accreditation to the coordinating office of the UN Human Rights High Commissioner. The application was decided favourably upon in 2011.

National human rights institutions operate in various structures, and in Europe this task is often performed by the Ombudsman. The activities of the institution are varied but it mainly contributes to the enforcement of the Universal Declaration of Human Rights and of the great international treaty systems (rights of children, women, refugees, persons with disabilities etc.) with the regular monitoring of implementation, with uncovering the obstacles and with recommendations to international organisations, governmental organs and parliaments. These UN accredited institutions cooperate with civil society's rights protecting organisations. They take part in human rights education and the gathering, classification and processing of information on human rights. In the future this function will be performed in Hungary by the unified Ombudsman institution. This may provide an opportunity for playing an intermediary role between governmental and non-governmental organisations (NGOs) in order to establish and develop our human rights culture.

Unaltered role of protecting fundamental rights

The effective Ombudsman-type protection of rights has proved to be one of the *basic cornerstones* of guaranteeing fundamental rights since the first Ombudsman entered office in the summer of 1995. In accordance with the Fundamental Law, Parliament adopted an Act on 11 July 2011 on the unified Ombudsman system in order to create an effective, coherent and full protection of fundamental rights. Based on previous provisions of the Constitution, Article 30 of the Fundamental Law clarifies that the Commissioner for Fundamental Rights performs a *general fundamental rights protection* task, and that anyone can initiate proceedings with the Commissioner. As in the previous period, the Commissioner's primary task is in accordance with the *classic role of Ombudsman*: he or she inquires into the improprieties relating to fundamental rights or has these improprieties inquired into, and initiates general or specific measures for redress.

During the process leading to the adoption of Act CXI of 2011 on the Commissioner for Fundamental Rights (Ombudsman Act) the legislator considered several aspects: first the practice of the last 15 years, secondly the experience of the application of the previous Ombudsman Act, thirdly the processes of the Ombudsman-type protection of rights, and finally examples of success in other European countries. Due to the advantages of a unified system, to the new features of the regulation and to the differentiated procedural rules, the new Ombudsman Act (applicable as of 1 January 2012) may *increase the level of protection of fundamental rights*. Furthermore, it is essential for the Commissioner to continue to cooperate with all parties of fundamental rights protection: with the Constitutional Court, with the courts and with civil society organisations for the protection of rights.

Concerning *information rights*, it brings new possibilities that the tasks and competences of the Commissioner for Data Protection (including authority-type public powers) have been taken over by an *independent authority*. In the single Ombudsman model specialised *Deputy Commissioners* are responsible for the special protection of the interests of future generations and the rights of nationalities living in Hungary, respectively. Deputy Commissioners have various tasks; their activities are based on internal professional cooperation and coordination. They monitor the enforcement of the fundamental rights concerned, regularly inform the Commissioner on their relevant experience, call his or her attention to the danger of violation of rights of larger groups of natural persons, may propose the starting of *ex officio* proceedings, contribute to the inquiry of the Commissioner for Fundamental Rights, and finally they may propose that the Commissioner turn to the Constitutional Court.

In the future too, the Ombudsman's activities will, among others, focus on the *protection of the rights of individuals who are not, or not entirely capable of enforcing their rights*. In the course of their work, Parliamentary Commissioners paid special attention to *the situation of persons living with disabilities*. The Ombudsman Act gives a legal expression to this already existing role and attitude, stipulating that the Commissioner for Fundamental Rights, in the course of his or her activities, has to pay special attention to assisting, protecting and supervising the implementation of the UN Convention on the Rights of Persons with Disabilities, especially by conducting *ex officio* proceedings. The situation is much the same regarding the protection and enforcement of the rights of children, where the Ombudsman has been trying to achieve results with all legal and other tools at his disposal since 2007 by launching special projects and promoting legal awareness.

Up until now, there have been no uniform *statistical data* on violations of fundamental rights. For the first time, the Ombudsman Act stipulates that the Commissioner for Fundamental Rights shall keep statistics on the violation of fundamental rights; other organs of fundamental rights protection (like the Equal Treatment Authority, the National Authority for Data Protection and Freedom of Information, the Independent Police Complaints Board and the Commissioner for Educational Rights of the State Secretary for Education) are obliged to supply data as well. This will allow us to have a comprehensive and true view of the situation of human rights and the tendencies of committed infringements in any given year.

Compared to the former regulation, the competences of the Commissioner for Fundamental Rights have expanded, in exceptional cases he now has the right to inquire into the activity or omission of organs other than authorities as well, if their activity or omission gravely infringes the fundamental rights of a larger group of natural persons. In such *exceptional cases* the Commissioner may initiate proceedings with the competent authority as a result of the inquiry. Consequently, the Ombudsman Act enables the Commissioner to act in order to protect the right to a healthy environment when this right is violated by others than authorities or by public utility providers.

The scope and nature of the classic tools and methods of inquiry and the applicable measures have not changed significantly. However, the Act has become more distinct in this aspect than the previous one. The detailed regulations and definitions (for instance those of authority, impropriety, and *ex officio* inquiries) are in accordance with the former practice of the Ombudsman and they help a *flexible and effective interpretation of the Ombudsman's tasks and competences*. The regulation in the Act concerning the competence of initiating the adoption or amendment of rules of law is also progressive. It ensures that the Commissioner for Fundamental Rights may propose to the law-maker the revision of a legal regulation if improprieties are established in individual cases, unless the impropriety only occurred due to the proceedings of the authority or public utility provider. The possibility of taking parallel measures greatly helps to provide a complex solution for uncovered legal problems.

In order to redress improprieties, the Ombudsman Act increases the effectiveness of the protection of rights by ensuring the *possibility of new, even immediate measures*. For instance, the Prosecution Service is to be informed when the Commissioner's inquiry draws the conclusion that a coercive measure has been ordered unlawfully. The possibility that the Commissioner may now refer a petition to the prosecutor if he or she

established no impropriety but becomes aware of circumstances pointing to the infringement of a rule of law also contributes to the redress of injuries.

The Commissioners have always considered the rulings of the Constitutional Court authoritative on the content of fundamental rights. After the entry into force of the Fundamental Law the Commissioner for Fundamental Rights intends to continue this practice. As a consequence of the constitutional changes, the institution of *actio popularis, which* made it possible for everybody to turn to the Constitutional Court, was terminated on 1 January 2012. The Commissioner for Fundamental Rights is still entitled, besides the Government or one-fourth of the Members of Parliament, to initiate an examination of rules of law with the Constitutional Court for their compliance with the Fundamental Law or for determining whether they are in conflict with international treaties. Furthermore, according to the new Ombudsman Act and the Act on the Constitutional Court, the Ombudsman's inquiry or report are not preconditions of an application to the Constitutional Court. *Filing an application for the ex post review of norms* may not only be made as a measure: the Ombudsman may exercise this competence of his or hers upon anyone's complaint or *ex officio*, stating his reasons and requesting that the Constitutional Court examine the issue. Doing so, he or she takes on the role of a mediator, and may become a fast, flexible and active initiator of detecting and removing from the legal system those Acts and rules of law which violate the Fundamental Law or international treaties on human rights.

According to the new regulation the Commissioner for Fundamental Rights can also act as a bridge or *mediator between the national and international rights protection mechanisms* in numerous important fields of fundamental rights. Only the formal framework seems to be a novelty, as Commissioners have always applied and invoked international and European human rights standards, requirements and commitments undertaken by Hungary. The new Act stipulates further tasks; it clarifies that, upon appointment, the Commissioner for Fundamental Rights performs the tasks of national mechanisms in accordance with Hungary's commitments undertaken in international treaties. Serious preparations need to be made, since the national preventive mechanism laid down in the Optional Protocol of the UN Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (*OPCAT*) will be performed by the Commissioner for Fundamental Rights as of 2015. There is no doubt a solid basis to build on; the protection of the rights

of detainees and the conducting of inquiries into the functioning of and conditions in penitentiary institutions has always been attributed special importance in the Ombudsman' practice so far.

The new regulation, laid down in an Act of Parliament, allows the Commissioner for Fundamental Rights to become not only an esteemed member of the mechanism for the protection of fundamental rights in Hungary but also a responsible, central and active player who can shape the practice of fundamental rights, and whose activity is based on cooperation and the persuasive power of publicity and of constitutional arguments.

3.2. Statistical Data of the Commissioner's Office in 2011

In 2011, citizens submitted 5191 complaints to the Parliamentary Commissioner for Civil Rights (the Commissioner with general competence).

Number of submitted cases and complaints by year

Years	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	Total
Complaints	3420	8526	8358	7846	6496	7437	6416	4917	6299	6769	6405	5249	5084	5723	6784	8051	5191	**108971**

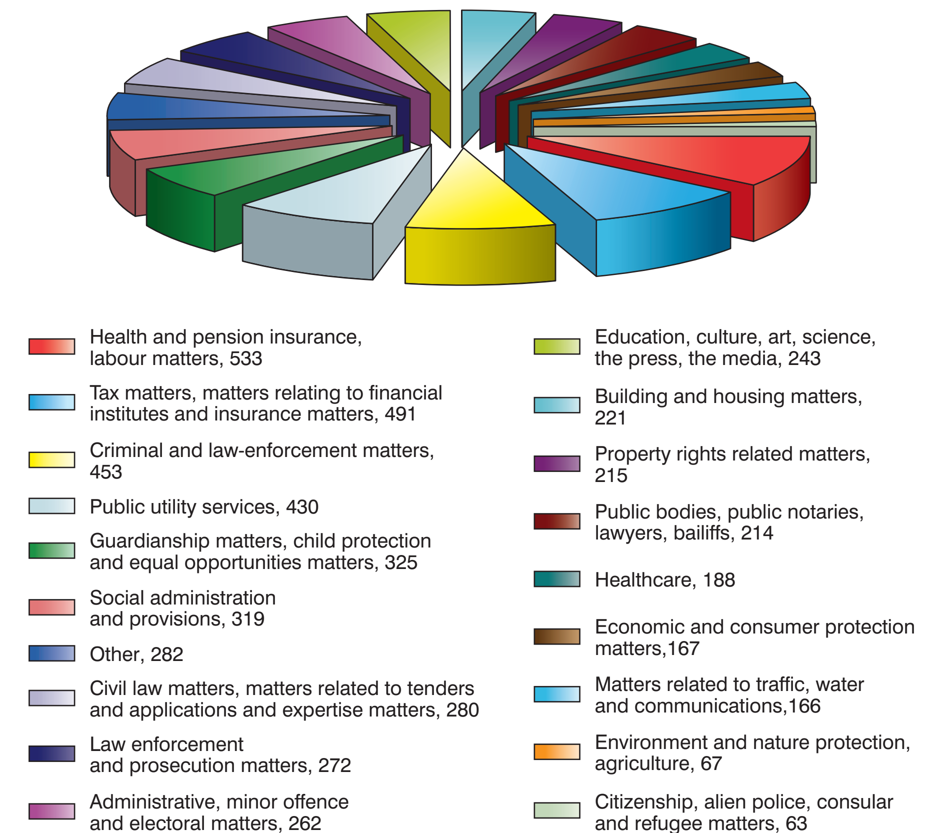
Nearly half of the complainants still forwarded their submissions by mail, and the proportion of those who sent them by email also remained constant. There was a slight increase in the proportion of those who personally came to the Office of the Parliamentary Commissioner to make their complaints.

Cases		
Manner in which cases originated	**Number of cases**	**%**
Registration of oral complaint	695	14,3
Written submission	2316	47,5
Started *ex officio*	67	1,4
E-mail	1796	36,8
Total	**4874**	100,0

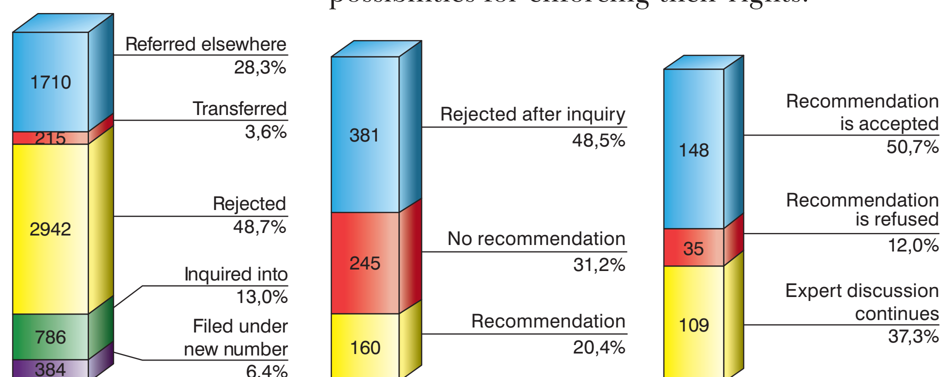
The case-load of our staff was so heavy that even by making special efforts the received submissions could not be processed completely, so we started the year 2011 with a significant backlog of pending cases. We could reduce that backlog by processing 16% more complaints than we received in the reporting year of 2011, when we processed altogether 6037 complaints.

Most of the complaints concerned *healthcare, pension insurance and labour issues*, next in number were *tax and financial issues* and *insurance matters*. Many people turned to the Ombudsman in relation to *criminal law and law-enforcement*, and the next group was complaints related to *public utility provider issues*. A large number of *social complaints* could be observed this year as well.

The breakdown of complaints is presented in the following diagram:



28.3 % of the received complaints we managed to refer to other channels. This percentage also includes those complaints where the clients were orally informed during their personal hearing in the complaints office about the possibilities of the Ombudsman to proceed and other possibilities for enforcing their rights.



We transferred 3.6% of the complaints to the competent organs, and together with these we informed 52.3 % of the complainants about other possibilities of the assertion of their rights, where necessary with an understandable explanation of the legal norms regulating the challenged measures, because we had no possibility of inquiry.

In 786 cases we conducted inquiries involving large-scale data gathering and official requests, out of which we closed 381 cases without a report due to our lack of competence. Among these were cases where we were later informed by the relevant authority that judicial proceedings have been started in the case. In 405 cases we closed the inquiry with a report; we uncovered constitutional improprieties in 160 cases, and we made 292 recommendations for remedying them.

More than the half of our recommendations were immediately accepted by the addressees and only 12% of the organs concerned thought that the recommendations were unjustified. In 37% of our cases we started a professional dialogue with the addressees of our initiatives in order to settle the given problem, but the addressee's final position was not yet known at the closing of this report.

The great majority of our recommendations were made in those 96 cases where we requested the organs concerned to remedy the improprieties within their own competence. The next largest number of recommendations, 70 in all, were made in those cases where we asked the supervisory organs to take the necessary measures. Beyond the recommendations made in individual cases, in 97 cases we initiated measures affecting rules of law with law-makers of different-levels; among these, in 59 cases our proposals were aimed at the amendment of Acts of Parliament. In 2011 we turned to the Constitutional Court twice, and once we proposed the starting of disciplinary proceedings. In those 26 issues where the individual complaints could not be remedied, in addition to establishing the impropriety we drew the attention of the organs concerned to the proper application of the law in the future.

Recommendations	Number
Initiating remedy of the impropriety with the organ concerned	96
Recommendation to the supervisory organ	70
Recommendation for the adoption or amendment of an Act	59
Recommendation for the adoption or amendment of a Government decree	13
Recommendation for the adoption or amendment of a ministerial decree	14
Recommendation for the adoption or amendment of a local government decree	7
Recommendation for the adoption or amendment of public law instruments for the regulation of organisations	4
Call for proper legal interpretation in the future	26
Petition to the Constitutional Court	2
Initiating criminal, minor offence or disciplinary action	1
Total	**292**

The improprieties related to constitutional rights and established in our reports can be broken down according to the different fundamental rights as follows:

Constitutional rights concerned	Number	%
Principle of legal certainty	146	37,0
Other	59	14,9
Right to life and to human dignity	51	12,9
Non-discrimination	33	8,4
Rights of children and parents	30	7,6
Right to health	26	6,6
Right to property	15	3,8
Right to legal remedy	15	3,8
Inalienable human rights	11	2,8
Elimination of unequal opportunities	9	2,3
Total	**395**	**100,0**

Our senior staff members working for the Parliamentary Commissioner for Civil Rights

Dr. Miklós Garamvári
Mr. Garamvári graduated in law at the Faculty of Law of the Eötvös Loránd University, Budapest, in 1993. Between 2003 and 2011 he was the Head of Office of the Office of the Parliamentary Commissioner for Civil Rights.

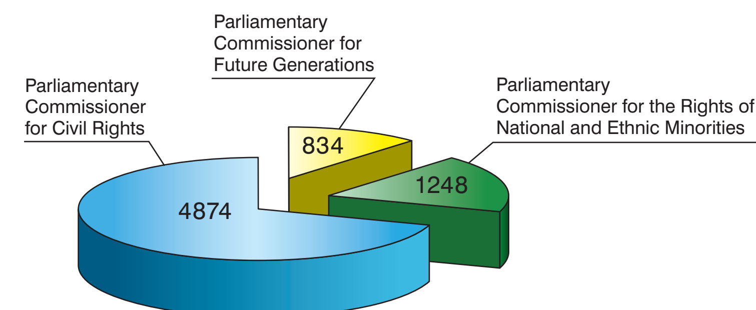
Dr. Zsolt Kovács
In 1985, he received his law degree at the Faculty of Law of the Eötvös Loránd University, Budapest. During the period of 1995–2011 he was the Head of Department of the Office of the Parliamentary Commissioner for Civil Rights.

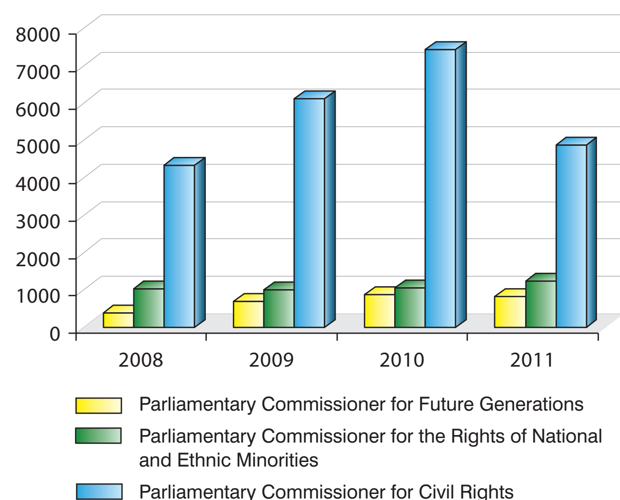
Dr. György Somosi
Mr. Somosi graduated in law at the Faculty of Law of the Eötvös Loránd University, Budapest, in 1996. During the period of 1996–2011 he was the Deputy Head of Department of Preliminary Inquiries of the Office of the Parliamentary Commissioner for Civil Rights

3.3. Statistical Data of the Common Office in 2011

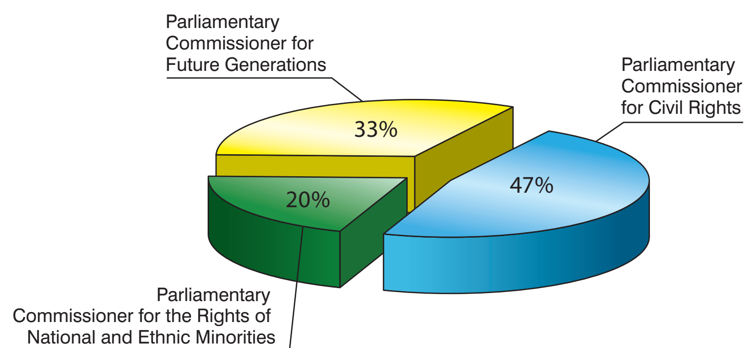
From 1 January 2008 to 31 December 2011 the Commissioner of general competence and the specialised Commissioners (not including the Commissioner for Data Protection) received 29906 cases in total. From these 22765 (76.1%) concerned the Parliamentary Commissioner for Civil Rights, 4357 (14.6%) the Commissioner for the Rights of National and Ethnic Minorities, and 2784 (9.3%) the Ombudsman for Environment Protection.

From among the 6596 cases received in 2011, 4874 cases were handled by the Parliamentary Commissioner for Civil Rights, 1248 were handled by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, and 834 were handled by the Parliamentary Commissioner for Future Generations.





Within the organisation of the Office of Parliamentary Commissioners (excluding the 36 staff members of the Office and the 47 staff members of the Office of the Commissioner for Data Protection) the number of staff working directly for each Commissioner was the following:



You can find statistical tables with further details about the activities of the Parliamentary Commissioner for Civil Rights below.

Table 1

Cases		
Manner in which cases originated	**Number**	**%**
Registration of oral complaint	695	14,3
Written submission	2316	47,5
Started *ex officio*	67	1,4
E-mail	1796	36,8
Total	**4874**	**100**

Table 2

Cases		
Petitioner	**Number**	**%**
Individual, family	4550	93,4
Civil society organisation, community	187	3,8
Other organ	33	0,7
Other (e.g. firm, unknown)	104	2,1
Total	**4874**	**100**

Table 3

Petitioners		
Citizenship	**Number**	**%**
Hungarian	4669	95,8
Foreign	76	1,6
EU-citizen	37	0,8
Non-determined	92	1,9
Total	**4874**	**100,0**

Table 4

Settlement	Received cases	
	Number	**%**
City and town	3528	72,4
Village	1118	22,9
Unknown*	228	4,7
Total	**4874**	**100,0**

*Anonymous or only the e-mail address is known.

Table 5

Cases	
Distribution of cases by subject-matter	**Number**
Health and pension insurance, labour matters	533
Tax matters, matters relating to financial institutes and insurance matters	491
Criminal and law-enforcement matters	453
Public utility services	430
Guardianship matters, child protection and equal opportunities matters	325
Social administration and provision	319
Other	282
Civil law, matters relating to tendering and applications and expertise matters	280
Law enforcement and prosecution matters	272
Administrative, minor offence and electoral matters	262
Education, culture, art, science, the press, the media	243
Building and housing matters	221
Property rights related matters	215
Public bodies, public notaries, lawyers, bailiffs	214
Healthcare	188
Economic and consumer protection matters	167
Matters related to traffic, water and communications	166
Environment and nature protection, agriculture	67
Citizenship, alien police, consular and refugee matters	63
Total	**5 191**

4. Projects

The Commissioner ***Prof. Máté Szabó*** launched a new working method and a way of thinking after his election in September 2007. **He examines every year topics which are especially important for the society and the enforcement of the rule of law and have a particular significance from the point of view of rights and freedoms**.

Within these defined fields, he initiates special projects which have particular focus and consideration within the Ombudsman office (initiating particular inquiries, etc), in the media and the public presentation of the Commissioner. Since there is no independent parliamentary institution for the protection of the rights of children, the Commissioner operates during his mandate also as an ombudsperson for children's rights.

Projects in 2011 were:

- Child Healthcare
- Right to Health
- Disaster Management

4.1.
Project on Child Healthcare

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

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

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

The special issues to be investigated are:

- drug and alcohol abuse among the younger generations
- sexual exploitation and other forms of violence and child abuse
- child prostitution
- school meals
- access to sport and physical education
- missing children
- health care in youth detention centres
- child psychiatry
- health care of disabled children

Children's Island: Puppets made by children

The Commissioner opens the website on Children's Rights

- access to health services in childcare institutions
- school doctors and dentists, school-psychologists

Inquiry into child prostitution

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

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

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

Inquiry into school healthcare services

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

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

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

Inquiry into sexual abuse of children in care

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

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

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

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

A discrimination case

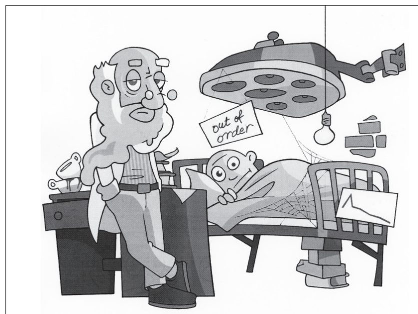
A child who was infested by hepatitis B (HBV) was sent home from the kindergarten for fear of an epidemic. Though the child had a medical certificate proving that he presents no health danger to the community, the head of the kindergarten insisted on a special medical report issued by an epidemiologist.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

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

Our senior staff member responsible for the project

Dr. Ágnes Lux graduated from Eötvös Loránd University of Budapest in political science (2005) and law (2010). Since 2008 she has been working for the Office of the Parliamentary Commissioners, where she has been head of the Ombudsman's children's rights project as of 2010.

4.2.
Patient’s Rights Project



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

The Care of HIV patients in Hungary

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

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

The protection by the authorities of patients’ rights is not resolved either from a formal or a contents point of view – underlines Máté Szabó. According to the Parliamentary Commissioner for Civil Rights his inquiry has not uncovered any such exceptional circumstances that would justify a decrease of the level of protection already achieved in the protection of fundamental rights.

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

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

The report deals with the present status and legal situation of representatives of patients’ rights as well. In this respect the Commissioner underlines that the complete uncertainty and the lack of regulation of the legal status of representatives of patients’ rights – a legal institution having the nature of a guarantee from the point of view of information

Minister, Prof. Miklós Réthelyi and the Ombudsman, Prof. Máté Szabó gave presentation on „the Patients’ Rights Come First” Conference

and representation – results in an improper legal situation. In his report, the ombudsman points out that a high-level protection in the field of patients' rights is in the public interest. Consequently, the Ombudsman has made several proposals of a legislative nature to the Ministry responsible for healthcare and has requested the national medical officer to review the legal practice.

The Ombudsman on health care provision to patients with a disability

In spite of increased financing, the question of dental care provision to autistic patients and patients with other disabilities is not resolved, and there are important regional differences. The Parliamentary Commissioner has requested the help of the Minister responsible for national resources.

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

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

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

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

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

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

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

Máté Szabó informed the Minister for Public Administration and Justice of the above, proposing to him, among others, to *issue binding regulations on the number and the conditions of detainees to be held in one single cell, as well as the security standards of prison-vans where prisoners are transported.* He requested the Minister of the Interior to consider the complete renovation and reconstruction of the hospital (first scheduled for 2002) as an urgent priority task. The Minister should think over the possibility of making the hospital independent of the Juvenile Correctional Institute also in the performance of its financial and management tasks, and as a consequence increase the number of posts for supervisory and educa-

tional staff, and create a post for a psychologist in the prison-hospital. The Ombudsman has sent his report to the National Commander of the Penitentiary System with the request to install medically approved sports equipment in the prison-yard, to have the heating system repaired and to ensure the accuracy of the central register of the penitentiary system. With the general director of the hospital the Commissioner has initiated that he should *take steps to ensure that detainees under medical treatment have more varied possibilities to spend their free time.*

Our senior staff member responsible for the project

Dr. Beáta Borza
In 1991, Ms. Borza got her law degree at the Faculty of Law of Eötvös Loránd University of Budapest. Between 1997 and 2011 she was the head of the 'Dignity' projects of the Parliamentary Commissioner for Civil Rights: Homelessness (2008), Disabilities (2009), The elderly (2010), Patients' Rights (2011).

4.3. Disaster Management Project

Introduction

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

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

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

In the conflict solving mechanism of ordinary situations of socio-political life, human behaviour is regulated by a stable system of legal and ethical norms. The various phenomena of conflict and deviancy, however, bring modern and postmodern societies face to face with continuous crises, threats and disasters. Human omissions, inevitable natural processes or the unwanted consequences of man-made technology may easily lead to mass activities weakening or even disre-

Hungary's most severe industrial ecological disaster occurred in Kolontár and Devecser in 2010

Bird's eye view after the red sludge catastrophe

garding social norms, and threaten with the danger of a state of *'bellum omnium contra omnes'* (the war of all against all), as Hobbes, a classic of British philosophy, says.

Indeed, disaster management is of outstanding significance in every country and metropolis. Regarding only the number of persons employed, if one adds up the staff and structure of the police, special security units, ambulance and fire brigade networks, a 'new army' emerges that can be even bigger than the military, as the case is in many European countries. This 'new army' fights against a non-palpable enemy called 'disaster', which can attack any time and any place. It literally fights, as real armies do, following a strategy, with a general staff and with reconnaissance. Such activities raise a qualitatively new challenge in administration and coordination: to what extent is modern and postmodern society capable (according to its own self-image as a rational society) of adequately predicting and managing the courses of disasters and the resulting series of human rights conflicts?

The often inevitable restriction of personal freedom and interference with private property and huge amounts of personal data may result in numerous infringements of classic and modern fundamental rights, and present dangers to constitutional rights. Therefore, in his series of inquiries in 2011 the Ombudsman attempted to analyse constitutional improprieties and weaknesses of the Hungarian regulation of disaster management, its organisation and practice, with regard to both liberty and safety as opposing values.

In the 21st century, the rules of special legal order and their application must not override the principle of the rule of law. People and their property should be protected; however, people should not only survive but also be able to maintain their human dignity and to exercise the full range of available fundamental rights, and the State should also fulfil its obligation of institutional protection. It is not an easy task. Consequently, the protection of personal and property rights during disasters has become the Ombudsman's special self-assumed task, be it floods, the consequences of the fireworks on 20 August 2006 or of the red sludge disaster on 4 October 2010.

Disasters raise problems of preparation, forecasting and the proper communication of the latter. Rescue operations are required to balance, in the given context, the rights of professionals acting and of those suffering from the disaster. Do disaster management units, on which extra powers have been conferred, overstep their competence when they have to make quick decisions on the protection of life and property? Where can the aggrieved parties turn to and what are the legal remedies after a disaster? Both prevention and reaction (i.e. the prior and the posterior actions) are included in the inquiries we conducted concerning central and local organs started either on the basis of petitions or *ex officio*.

Groups of persons in special need (*vulnerable groups*), whose individual decision-making capacity and ability to lead an autonomous life is limited, require special attention in the inquiries of the Ombudsman. Such groups are the detained, children, the elderly, persons with disabilities and homeless persons without registered domicile. The screening of 'strong' institutions should be made from the perspective of the rights of weak social groups. From our inquiries we cannot exclude the abuse of power or the problems of corruption, as in the wake of such events significant resources, assets and rights may have to be quickly redistributed in the disaster areas. This makes it necessary to ensure that the mechanism for the distribution of donations and central funds should be transparent, fair and just for the persons in need. As a collateral effect of disasters the poor should not become poorer and the rich should not become richer. To this end, one has to find standards based on principles of the rule of law even for this exceptional and concentrated distribution of resources.

Preventing disasters is a continuous task. As a consequence of disasters, disaster management is forced to make quick decisions. Damage assessment, reducing damages and compensation always take place after the primary action. The Ombudsman's inquiry should include all three aspects in order to address the improprieties concerning the constitutional protection of people and property. Organs fighting against natural and industrial disasters prefer centralised and uniform solutions. On the other hand, one also has to foster the connection between the victims and civil volunteers. While the direction of the intervening units require military discipline, the system of disaster management, centralised by its very logic, should be also strengthened by the power of civil society. Here we face the classical problems of finding the right balance and proportion between public and private care, between donation and redistribution and of sharing the liability between civil law and government systems.

Presentation of the disaster management project

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

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

In the light of the above, the Ombudsman examined in 2011, within the framework of an autonomous fundamental rights project, among others, the following range of subjects: follow-up inquiries of previous comprehensive ombudsman inquiries, so for example on the fire brigades; psychological services provision at the law enforcement organs; cooperation of law enforcement and public administration organs and of local governments during emergencies and thereafter; professional management in the event of disaster situations; direction and organisation of the fire brigade and its communications with the organisation for disaster management and with civil protection; timeliness of intervention of certain emergency services and the existence of technical resources for rapid and expert intervention; practice and legal regulation of the mitigation of damages and of repairs and reconstruction, as well as the procedural guarantees related thereto, and certain questions of the reconstruction by the State in the aftermath of the red sludge catastrophe.

The effects of the Red Sludge catastrophe

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

A colleague of the Commissioner wearing the uniform of firemen on fire safety practice

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

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

The report on the deaths occurring in the course of the firework on 20 August 2006 mentions also the issue of informing the public in disaster situations. Informing the public was and is a legal obligation of the disaster management organs, therefore such information must be given in a professional way and using such terminology which is in line with the terminology used in weather reports. Citizens can only adequately cooperate in the prevention and management of situations of danger or of disasters if they are aware of the given threat. For this purpose we need appropriate information material which gives comprehensible information to the public.

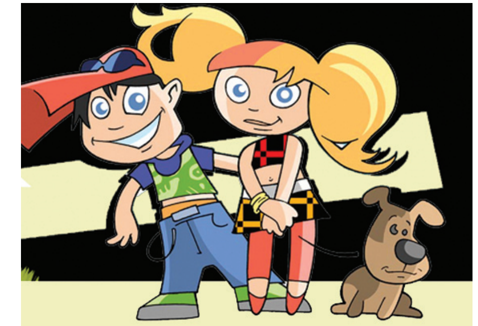
Our senior staff members responsible for the project:

Dr. Erika Pajcsicsné-Csóré
In 1983, she received her law degree at the Faculty of Law of the Eötvös Loránd University of Budapest. During the period of 1995–2011, she was a senior counsellor and the head of department of the Office of the Parliamentary Commissioner for Civil Rights.

Dr. Barnabás hajas
Mr. Hajas graduated in law at Pázmány Péter Catholic University, Budapest, in 2000. Since 2002, he has been working for the Office of the Parliamentary Commissioner for Civil Rights. He is senior lecturer at Constitutional Law Department of the Faculty of Law and Political Science of Pázmány Péter Catholic University. His PhD thesis focuses on the current theoretical and practical issues of freedom of assembly. He is author of nearly 60 publications in the field of constitutional law and public administration law.

5.
Outcome of the inquiries

5.1.
Protection of children's rights



Similarly to the previous regulation, the new Ombudsman Act itself declares that in the course of his activities the Commissioner for Fundamental Rights shall pay special attention, especially by conducting proceedings *ex officio*, to the protection of the rights of children. The Children's Rights Project launched by the Parliamentary Commissioner in 2008 for the period of his full mandate sets one priority children's right topic as a focal point of inquiries each year. Besides his annual proactive project activity, the Ombudsman pays special attention to complaints arriving from children or concerning the infringement of children's rights, and to the monitoring of the system of child protection institutions. Areas typically inquired into include education and the specialised institutions of child protection.

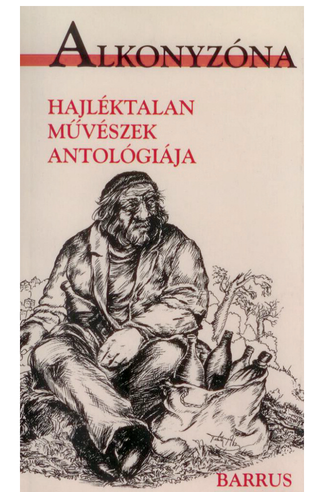
5.2. Protection of the rights of the most vulnerable social groups

The new Ombudsman Act sets, as an important aim, the enhanced protection of the rights of persons belonging to the *most vulnerable social groups*. Similarly to previous years, in 2011, the Parliamentary Commissioner paid special attention to the protection of the fundamental rights of those belonging to this group, even in the absence of a specific legal obligation. On the basis of the established practice of the Ombudsman, people obviously belonging to these groups for different reasons are the following: the homeless, people living with disabilities, the elderly, the ill, especially people with psychiatric illness, detainees, and even children under the age of 18, as well as young adults over 18.

Each of the listed social groups can be regarded as vulnerable for different reasons (e.g. because of their precarious life situation, age, health or mental state); the common feature is that all of them are vulnerable in all interventions by the State or public authorities. On the other hand, in their case it can also have serious and direct consequences if the State does not fulfil some of its constitutional tasks, or it does not or does not adequately fulfil its obligations relating to the development and maintenance of special regulations and practice in order to help those in need. Be it public authority intervention or a failure to fulfil a state task or obligation, the ability of those concerned to enforce their rights or interests is minimal.

Right to life and to human dignity and some of their aspects

According to Article 54(1) of the Constitution, in the Republic of Hungary everyone has an inherent right to life and to human dignity, of which no one shall be arbitrarily deprived. The Constitution, and also the Fundamental Law in force since 1st January 2012, enshrines the right to human dignity and the right to life as first among the inviolable and inalienable fundamental rights. According to the Constitutional Court, the right to dignity, in indivisible unity with the right to life, is an absolute human right. No one can be arbitrarily deprived of this right, because dignity is a quality inherent in human life, which is indivisible and cannot be limited, and therefore it is equal in respect of each person.



Collection of poems of homeless persons

The right to life manifests itself as a subjective right and as an obligation of the State to protect institutions. The right to dignity has two functions. On the one hand it expresses the 'untouchable essence' of man, i.e. personal autonomy, the inner core of individual self-determination which essentially differentiates human beings from legal persons.[4] In this function the right to human dignity is a basic fundamental right, namely the source of further rights (e.g. the right to self-determination, the right to privacy). The comparative side of the right to dignity, together with the right to life, ensures that from a legal point of view no difference can be made between the values of human lives. One's human dignity and life is untouchable irrespective of one's physical and mental development, or state and of the fact how much one has been able to realize from one's human potential and why.

In the practice of the Ombudsman, the protection of the right to human dignity occupies a top priority position, and the activity of the Ombudsman is especially important in cases where the activity of an authority or a public utility service provider infringes individual dignity. These infringements of life qualify as especially grievous, and generally cannot be remedied or only with difficulty. Sometimes they can be remedied symbolically at most, by establishing it as an infringement and making it public:

- An anonymous complaint arrived to the Ombudsman because of unworthy living conditions, hygienic circumstances, deficiencies of catering, and financial abuses affecting the residents living in a retirement home. On the basis of those contained in the petition the Commissioner asked the Social and Guardianship Office of the

[4] Cf. decision 23/1990. (X.31.) of the Constitutional Court.

Government Office of the County to examine the allegations set out in the complaint. The Guardianship Office revealed shortcomings in personal conditions, in the setting of service fees and in connection with the fixing and handling the one-off contribution. The institution was called upon in an order to make up for the shortcomings, and because this had not been done by the given time-limit, a follow up inquiry was also carried out. During the latter, problems relating to financial abuses were revealed, which were reported to the police. On the basis of the report criminal proceedings were instituted for embezzlement against unknown delinquents. The Guardianship Office informed the Commissioner on the proceedings conducted. The information given also included the fact that during the investigation one of the former employees of the retirement home made available to the authority a photo showing a dying resident lying on the floor.

Homeless shanty in Budapest

According to the photos and minutes included in the records of the inquiry, the practice of placing helpless and dying residents on the floor became necessary because the retirement home possessed no suitable beds for persons who were unable to coordinate their movements and were likely to fall off the bed. On the basis of that, the Parliamentary Commissioner stated in his report that the practice of the institution caused an impropriety relating to the right of human dignity of those concerned when persons with serious movement coordination problems and with disabilities were placed on the floor for lack of appropriate beds. The Commissioner found the proceedings and measures of the authority appropriate and did not initiate any further measure. At the same time he suggested to the manager of the institution and the maintainer that in the future they should pay more attention to the increased respect and protection of the right to human dignity of the persons in care.

The prohibition of discrimination and the requirement of equal treatment

Article 70/A(1) of the Hungarian Constitution declares that 'the Republic of Hungary shall guarantee for all persons in its territory human and civil rights without discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origins, property, birth or any other status.' According to the Constitutional Court, the prohibition of discrimination does not mean that all types of distinction are prohibited, including distinction aimed at the attainment of greater social equality. The prohibition of discrimination implies that the law must treat everyone as persons of equal dignity, with the same respect and circumspection, and that the criteria for the distribution of rights and benefits must be determined by equally taking into consideration individual circumstances.

The Constitutional Court uses two tests for deciding on the constitutionality of a distinction. If unequal treatment occurs in the field of basic constitutional rights, its constitutionality may be judged on the basis of the necessity-proportionality test governing the restriction of fundamental rights. If the distinction does not concern basic constitutional rights, the Court may establish the unconstitutionality of the differing regulation if the law-makers (or those who apply the law) have made an unjustified distinction between subjects of law in similar situations and falling under the scope of the same regulation.[5] The latter, the so-called reasonableness test consists of a comparability test and a justifiability test. In the comparability test the question is whether the distinction has been made between subjects of law in a similar situation. In the reasonableness test, if the distinction has been made between persons belonging to the same group, one should examine whether the distinction is based on reasonable grounds, according to objective criteria, i.e. whether it is arbitrary or not. This test, more lenient than the necessity-proportionality test, is used by the Constitutional Court in cases of distinction on grounds of 'other status', i.e. in cases where alleged discrimination occurs on the basis of characteristics not named in the Constitution.

[5] Cf. decisions 9/1990 (IV.25.), 61/1992 (XI.20.) and 30/1997 (IV.29.) of the Constitutional Court.

The respect for equal treatment is a fundamental requirement, and it is of special importance for persons belonging to vulnerable groups, such as patients and children, because of their precarious situation. In 2011, two cases the infringement of the requirement of equal treatment occurred in relation to children's rights. In another group of cases the discrimination, in addition to the direct infringement of fundamental rights, often caused detrimental financial consequences as well.

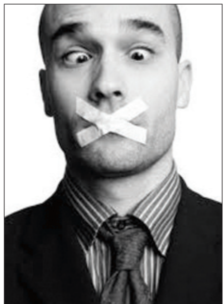
- In one notable case the parents of a kindergarten age child turned to the Ombudsman because their Hepatitis B infected child could not attend kindergarten. In their complaint they related that the director of the institution had sent their child home, although the child had a medical certificate declaring that the child did not present a risk for the other children. The director justified this by saying that the child could possibly still infect others, and the institution could not take the responsibility for that. The director of the institution did not accept the certificate because in his opinion it should have been certified by a hepathologue (a specialist of liver diseases) or by the public health service that the child no longer carried the contagious disease.

  In vain did the parents turn to the Mayor's Office, the maintainer of the institution, nor could they obtain any help from the Education Office. In his response the mayor said he found it unacceptable to protect the interest of one child against the interests of the other 43 children, and emphasised the impossibility of maintaining the institution in such circumstances. The Educational Office, in its letter, informed the parents of its lack of competence.

  In his inquiry the ombudsman examined the regulations on infectious diseases and requested the opinion of the National Medical Officer. According to latter, in the case of several infectious diseases there are no public health or disease control reasons justifying the isolation of the person carrying the disease. In his report the Ombudsman calls attention to the legal provision according to which it is the physician who detects the case who should take measures for isolating the carriers of infectious diseases and these measures should be in effect only for the duration of pathogenicity. The Commissioner underlines that each child has the right to receive the same level of public education as other children in a comparable situation. It clearly qualifies as discrimination if a person, owing to his or her real or presumed state of health, receives less favourable treatment without justification. When examining the case from a basic rights point of view, the Ombudsman, in addition to the relevant legal regulations, also relied on the opinion of the National Medical Officer, especially because whether a child presents a danger for an epidemic is primarily a medical question. In his report the Ombudsman established that the isolation of the child had infringed the prohibition of discrimination in addition to other constitutional rights, such as the right to human dignity and to the highest possible physical and mental health, as well as the child's right to protection and care. He also established that the maintainer of the institution had committed a serious omission by not examining the case, and admonished the Education Office because in his opinion it had failed to fulfil one of its important tasks within its competence, i.e. to ensure compliance with the provisions stipulating the requirement of equal treatment.

  The Commissioner requested that the Minister of National Resources take measures and initiated with the head of the competent Government Office that he inquire into the matter with urgency. The Minister agreed with those contained in the report and informed the Commissioner that in connection with the beginning of the school year the Ministry would call the attention of local governments to respect the rules relating to the requirement of equal treatment. The Government Office, however, replied that it had inquired into the case but found no infringement of any rules of law.

5.3.
Communication liberty rights



The distinguished position in the fundamental rights' catalogue of *freedom of expression*[6] declared in Article 61 paragraph (1) of the Constitution is justified by its twofold role: on the one hand, free expression of opinions enables the subjective self-expression of the individual, thus the free development of his or her personality, and on the other hand it allows – almost – unlimited social communication, which is the most important precondition of a democratically functioning society. This outstanding position is further strengthened by a basic decision of the Constitutional Court[7], according to which in the fundamental rights hierarchy freedom of expression comes immediately after the right to life and human dignity, at the top of the fundamental rights catalogue. Freedom of speech in its classical sense has extended by now to numerous fields and has developed several special sub-fields; therefore it is more appropriate to speak about so-called communication rights and not just freedom of expression. All basic rights ensuring the publication of any information (message of communication) in any form come under the notion of communication rights.

To the system of communication rights belongs a separately designated type of freedom of expression, *freedom of the press*[8], enshrined in Article 61 paragraph (2) of the Constitution, enabling, on the one hand, the expression of the individual's opinion through the media, and playing, on the other hand, a fundamental role in obtaining information, which is the condition of free opinion forming. In addition, public press is a guaran-

[6] The right to freedom of expression is enshrined in Article IX(1) of the Fundamental Law.
[7] Cf. decision 30/1992 (V.26.) of the Constitutional Court.
[8] The right to freedom of the press and freedom of information is enshrined in Article IX(2) of the Fundamental Law.

tee that state and government activities are made public, thus it may have a significant role in securing the control of society over executive power. In modern constitutional democracies assemblies on public domain serve primarily the joint presentation and common representation of already established opinions and standpoints. The relation between freedom of expression and freedom of assembly means particularly the common, public expression of opinion. The significance of freedom of assembly as a communication right is all the more important because it ensures for everyone the participation in the shaping of political will, practically without direct limitation of access.[9]

According to the Constitutional Court, freedom of expression is not only a fundamental subjective right but also the recognition of the objective, institutional side of this right; at the same time it is a guarantee of public opinion as a fundamental political institution. Although this privileged role of freedom of expression does not imply that this freedom cannot be limited at all, it does entail that freedom of expression has to yield to only a few rights; therefore Acts limiting freedom of expression must be construed narrowly. The weight of the limiting Act against freedom of expression is greater if it serves directly the enforcement and protection of another subjective fundamental right. It is smaller if it protects such rights only indirectly, through an intermediary "institution", and it is the smallest if its objective is only some abstract value (e.g. public tranquillity).

Freedom of expression protects opinions regardless of their value or truth content. Freedom of expression has only external limits. As long as it does not transgress a constitutionally set external limit, the possibility and fact of freedom of expression is protected irrespective of its content. So individual expression of opinion, public opinion emerging according to its own rules, and in interaction with these the possibility of forming individual opinions built on the broadest possible base of information, are rights which enjoy constitutional protection. The Constitution ensures free communication – both as the individual's conduct and as a social process –, and the fundamental right of freedom of expression is not related to its content. All kinds of opinions have a place in this process: good and harmful ones, pleasant and insulting ones as well, especially because the assessment of opinions itself is also a product of this process. Everyone, even the State can support opinions which they find proper and may counter opinions which they hold wrong, as far as

[9] See decision 75/2008 (V.29.) of the Constitutional Court.

they do not infringe any other right to an extent where even freedom of expression has to yield.[10]

The Ombudsman's one-year project on the right of assembly ended in 2008. Therefore, similarly to the 2009 report, the report of the year 2011 contains the cases concerning right of assembly in its communication rights chapter and not in the chapter on projects. So this chapter tries to cover the whole spectrum of the Ombudsman's inquiries and findings concerning communication rights. Of course in some of the examined cases fundamental rights (here communication rights) problems do not appear alone; our findings necessarily concern other fundamental rights as well. This chapter deals with those findings of the Ombudsman which closely relate to individual and social participation in communication processes. Each case and inquiry raises unique and specific aspects; however, from our inquiries conducted in similar matters, one can detect several problem areas that are typical of the given period and appear to have caused improprieties related to fundamental rights. Such tendencies, identical or similar problems emerging in more cases and occasionally known for longer periods, could be observed in relation with the right of assembly.

The process of leaving an event is also protected by the right of assembly. In these cases the extension of the definition of assembly is impossible, since it is only departure from the event or behaviour following the end of the event that is to be protected. The significance point is that protection is given regardless of the reason why the person concerned has left the event. Thus it should not be taken into consideration whether the person leaves the event while it is still going on, or whether the organiser has declared that the event is over or it has been disbanded by the organiser or the police. In the latter two scenarios, the quality of the assembly changes: it becomes a simple crowd. That is why those leaving have the right to leave the disbanded event, as it can be deducted from the Service Regulation of the Police concerning crowd disbanding.

The Ombudsman is of the opinion that on the basis of information available concerning counter-demonstrators, restriction (prohibition of departure) was indispensable in order to protect the fundamental rights of the LGBT-march participants. It could be reasonably assumed that otherwise counter-demonstrators would have seriously disturbed the procession. Whether the restriction was proportionate, however, is not so

[10] See decision 32/1990 (V.26.) of the Constitutional Court.

LGBT-march participants in Budapest

clear. The restriction was certainly proportionate until the procession left the surroundings of the Oktogon. Restriction following this can only be regarded as proportionate as long as it was indispensable in order to ensure the exercise of the fundamental rights of others, in this case the participants of the LGBT-march. The Ombudsman did not find it reasonable that the departure of counter-demonstrators had been prevented for 20 minutes after the procession had already passed by.

The time and direction of departure can be determined by the police in the exercising of their obligation to protect fundamental rights. The Commissioner explained that Andrássy Street and its side-streets had been closed, so after the procession had left the direct surroundings of the Oktogon, the physical circumstances could have allowed the police to permit the departure of the participants of the allegedly ended counter-demonstration and to ensure their free departure in direction of Heroes' Square without their disturbing the LGBT-march. On the grounds of the above the Ombudsman established that the police, by not letting the participants of the already ended demonstration leave for a disproportionately long time, had infringed the right of assembly. In his response the Chief Police-Commander, while accepting the system of criteria outlined by the Ombudsman, denied that the duration of the restriction had been disproportionate.

The Commissioner is now studying international standards and international experience which can help to improve Hungarian practice. The GODIAC project is a good opportunity because it reveals the challenges of the 21st century appearing in this field and gives examples of the latest methods of crowd control by the police.

Right to Assembly

The challenges of the 21st century and modern methods for crowd control by the police – international practice and domestic reality.

The Hungarian police are not yet prepared for the info-communications challenges of the 21st century – this has been revealed in an international project which focuses on elaborating new methods for dealing with demonstrations by the police. The staff of the Ombudsman have been actively participating in the GODIAC project for two years already, and they are making use of newly acquired information for studying demonstrations in Hungary.

Demonstration on the streets of Budapest in 2011

The staff of the Commissioner for Fundamental Rights are currently analysing the circumstances of the handling of four demonstrations by the police. They are conducting inquiries into the application of the law by the police in the following cases: the "occupation of offices" by activists at the mayor's office in Józsefváros, the demonstration on 23 December 2011 in Kossuth Square, the hunger strike in front of the MTVA building and the demonstrations outside the Opera House on 2 January 2012. Máté Szabó is continuing the series of inquiries he was requested to do by László Sólyom, former President of the Republic, when he nominated Máté Szabó, a researcher of demonstrations and protest actions, for the office of Ombudsman in 2007. In 2008 the Ombudsman started a project examining the enforcement of the right of assembly, and ever since he and his staff have been regularly dealing, both on the basis of complaints and of ex officio inquiries, with the fundamental rights problems of the police handling of demonstrations and other mass events.

Demonstrations are more and more often crossing national boundaries, whilst demonstration tactics are also changing and developing. When demonstrations become international, police expertise in the matter must also become international. It is a challenge all over Europe that, on the one hand, the police have to guarantee security, but that on the other hand they also have to ensure that citizens can freely exercise their rights.

Dr. Agnes Lux and Dr. Barnabans Hajas, the colleagues of the Commissioner participating in the GODIAC project

It is for supporting this aim that the GODIAC project was set up with the participation of 20 partner organisations from 11 countries; the partner organisations include law enforcement organs, research and education institutions, as well as National Police Headquarters and the Commissioner for Fundamental Rights. One of the most important aims of the GODIAC project is to find out how the new info-communications technology can be used to establish a constructive dialogue or "law and order protection partnership" between the police and the demonstrators, who are also primarily building networks in the virtual space, in order to prevent the degeneration of demonstrations and offences against law and order.

At the latest conference in Sweden, where the developments and results were summarised, one of the topics concerned a new phenomenon of 21st century mass demonstrations: the fact that many such events are organised by using the social networks on the internet. Consequently, the police must be able to communicate effectively on such sites, like Facebook or Twitter, with the organisers of mass demonstrations organised on the internet. Such methods are not yet used by the Hungarian police, and the experience gathered in the GODIAC project shows that domestic police practice is not aware of the possibilities of using these social networks for transmitting messages. For example the police of London, the Metropolitan Police, actively communicate on the social networks even during the events and they have almost 1600 comments on Twitter. As opposed to this, the user called 'Hungarian Police' has not made more than 14 comments, the last of which in February 2010 – are we again falling behind Europe?

Infringement of the right to peaceful assembly – the findings of the Ombudsman concerning the police handling of two demonstrations in Budapest.

The fact that protesters conducting a sit-down strike in the Mayor's Office in the 8th district of Budapest were taken to the police station was contrary to the right to peaceful assembly and to the right to liberty of the person. Instead of facilitating the resolution of conflicts between the people demonstrating in front of the building of the Public Service Television and the institution, the police have not even made an attempt at the resolution of the conflict and have thereby infringed the right of assembly and freedom of expression.

In his *ex officio* inquiry the Commissioner for Fundamental Rights, Máté Szabó, found that the conduct of the persons both in the sit-down strike in the Mayor's Office of the 8th district and in the hunger strike in front of the Budapest building of the Public Service Television was in conformity with the lawful conditions of assembly, since several persons assembled peacefully at the same place in order to jointly express their opinion.

According to the opinion of the Ombudsman the sit-down strike started on 11th November 2011 in the 8th district Mayor's Office against the criminalisation of homelessness was in conformity with the lawful conditions of peaceful assembly, but it was also lawful to break it up, since the exercise of the right of assembly infringed the rights and liberty of others. So the demonstrators should have been removed from the building; the police, however, in addition to breaking up the event employed other measures as well: they took the protesters to the police station, which infringed their right to peaceful assembly and to liberty of the person.

Máté Szabó noted that the Act on the Police emphasises the requirement of proportionality, meaning that police measures shall not cause harm which is obviously out of proportion to the lawful purpose of the measure. From among several possible and appropriate police measures the police have to choose that one which, while still ensuring an adequate outcome, entails the least restriction, injury or damage for the person(s) concerned. Pursuant to the interpretation of the Constitutional Court, the proceedings for depriving a person of his or her liberty may only be regulated in such a way that they should not unnecessarily or disproportionately restrict the right to liberty of the person.

Those taking part in the hunger strike started on 10 December 2011 in front of the Budapest building of the Public Service Television protested against the fact that in a news report a public figure, the former chief justice, Zoltán Lomnici, was blocked out. The demonstrators demanded the naming and holding to account of those responsible. The site of the hunger strike was an unfenced area where anybody could enter without

Dr. Zoltán Lomniczi (right), the president of the Supreme Court at a book presentation in our Office

any restriction, i.e. according to the Commissioner for Fundamental Rights the police should have considered the area as public domain. The police did not even make an attempt at resolving the conflict and they justified their omission by saying that the event took place outside the public domain. Both the protesters and the management of the television asked the police for help, but the latter did not take any action because they did not recognise that the demonstrators were exercising their right to peaceful assembly and therefore the police had an obligation to act. As a consequence, both the protesters and the management of the television tried to settle the situation as best they could, by putting up mobile fences and by trying to prevent the building of fences, respectively, according to their interests. On the site the police did not consider whether the event restricted the right or liberty of others or whether the right of assembly of the protesters was infringed.

In both cases the Commissioner for Fundamental Rights turned to the Chief Commissioner of the National Police asking for his opinion and inviting him to ensure that similar situations be settled in conformity with the provisions of the Act on the right of assembly.

5.4.
Social Rights and the Right to Property

Right to Social Security

The Parliamentary Commissioner receives a large number of petitions of a social nature. However, in these cases it is quite frequent that – although information is provided – the petition is rejected for lack of competence. In cases where the Ombudsman had the possibility to conduct an inquiry, he often revealed another infringement as well, typically an infringement of legal certainty, which follows from the principle of the rule of law.[11]

The Commissioner established an infringement of the right to social security in a case where the complainant objected to the proceedings of the local government of Szamoskér. He explained that the local government repeatedly rejected his application for transitional aid, although to the best of his knowledge he would be entitled to transitional aid every three months. To support his claim he set forth that in his family they were raising six children in difficult financial circumstances and that his spouse earned no salary. The Commissioner established that for entitlement to transitional aid may be established if the person gets into an extraordinary life situation endangering his subsistence or if the applicant has periodic or permanent problems of subsistence. The decree, however, unduly narrowed the scope of entitled persons; the local government, in the absence of a specific authorisation to issue a decree, did not have the right or possibility to narrow the personal scope. In no way could the local government exclude from this provision any person in need defined in a higher-ranking rule of law. The inquiry found that the contested local government decree did not contain the frequency of the aid given by the local government and that the maximum amount of the aid was linked to the amount of another social provision, which varied depending on the entitled persons and which could be exceeded on the basis of discretionary considerations in the given case. According to the Commissioner the ensuing legal situation infringed the right to social secu-

[11] Thus certain cases described here are also mentioned, from other aspects, in part 3.2.6. of this report.

rity of the complainant. In order to remedy the uncovered improprieties the Ombudsman initiated a review of the local government decree, and the mayor, in his response, informed the Commissioner that the decree would be modified accordingly.

Right to Education

Children on the occasion of launching of the Ombudsman's website dedicated to children's rights

In the course of the inquiries into cases relating to education, the Parliamentary Commissioner has to take into consideration the fact that regarding educational rights *the ministerial Commissioner for Educational Rights also has the competence to inquire*. Consequently, the Ombudsman – despite the fact that the Act regulating his competence does not exclude his proceedings in those cases where the Commissioner for Educational Rights is also conducting an inquiry – in cases touching on educational matters always examines whether the case gives rise to concerns of potential infringements of educational rights exclusively, or whether there exists the danger of an impropriety related to another fundamental right where a measure of the Parliamentary Commissioner may be necessary. It is worth mentioning that in a significant number of cases relating to the proceedings and activities of educational institutions and submitted to the Commissioner, it is not the right to participation in education that is infringed but other fundamental rights or requirements related to the principle of the rule of law.

Right to Property

Because of the contradictory regulation of the establishment of line easement and the practice of the authorities to register such rights at a later date, the right to legal certainty and fair proceedings was infringed in those cases where the owners complained that gas pipelines had been constructed before 2004 but line easements to the plots con-

cerned by the security zone were entered into the land registry only at a later date. The complainants contested in particular the fact that on the plots concerned by the entries into the register there is no facility at all; moreover, they contested the determination of the security zone as well as its extent. They objected to the fact that owing to such entries into the land registry their property was subjected to restrictions and prohibitions which diminished their value. Unaware of the proceedings, they learnt about the entries only from the decision of the Land Registry, hence they had not been able to exercise their clients' rights, said the property owners.

In his report on the inquiry the Ombudsman calls attention to the fact that the on the basis of the regulation in Acts and decrees and on the basis of the applied legal practice it is not clear whether line easements do include a security zone or not. At the same time the question remains open in how far the regulation complies with the requirements of the foundation of rights of easement ensuring the operation of a public utility, or whether one should simply register it as a fact that the plot is affected by the security zone of the gas pipeline. The report also mentions that the gas pipeline should be planned and marked out in such a way that it be, as far as possible, on public land and affect agricultural land or other not publicly owned property to the smallest possible extent. The gas pipeline must be planned, built and operated in such a way that it does not endanger the health of the population of the given area and of the natural environment and that it changes the landscape only to the smallest possible extent. The Ombudsman recalled in his report a Constitutional Court statement according to which public utilities should, as a rule, be built on public space, so the foundation of rights of easement is unnecessary since the notion of public land already implies this type of use. The administrative errors made in entering line easement at a later date, bad automatisms, omissions, at times unlawful proceedings and decisions by the authorities raise concern especially because they question the representation of the interests of the property owners and the enforceability of their property rights. In order to remedy these improprieties the Ombudsman has invited the Minister of Public Administration and Justice to initiate the clarification of this unclear legal regulation.

5.5.
Principle of the Rule of Law

It is laid down in the Constitution that the Parliamentary Commissioner for Civil Rights shall inquire into those improprieties related to constitutional rights that come to his or her knowledge, or have those improprieties inquired into, and initiate general or specific measures to remedy them. In order to perform this task, the Act on the Parliamentary Commissioner for Civil Rights ensures *wide-ranging powers for supervision and obtaining information*. The Act contains provisions on the authority concerned by the inquiry and on the possibility and manner of obtaining information and data from its supervisory organ or from other organs. If the Commissioner requests data, information or explanation, *the addressed organ has to comply with his request within the time limit*, not shorter than fifteen days, set by the Parliamentary Commissioner.

The Act on the Parliamentary Commissioner for Civil Rights clearly defines the possible proceedings ensured for the Commissioner to perform his tasks. The enforcement in practice of the procedural rules enables the Commissioner to perform his constitutional task: if the requested organ does not give a response to his request, it obstructs the Commissioner in the performance of his tasks, therefore it infringes the predictable and lawful operation of the Ombudsman institution. In certain cases the Commissioner has established that failure to respond to the requests, delays in responding or responses which do not address the merits of the case constitute an infringement of the powers of inquiry of the Parliamentary Commissioner, restrain him in the performance of his constitutional tasks, and consequently give rise to an impropriety related to the principle of the rule of law and the requirement of legal certainty.

In a case, for example, an *ex officio* inquiry into the restriction of the unilateral modification of contracts of financial service providers was significantly delayed because practical experience related to the regulation

The Parliament of Hungary

could not be evaluated in time: the President of the Hungarian Financial Supervisory Authority, in spite of his promises, sent the findings of his thematic inquiry into unilateral contract modifications only when repeatedly reminded to do so. That is why the Commissioner points out in his report that failing to provide the requested information on the substance of the matter, or providing it with a considerable delay, constitutes in itself an obstruction of the exercise of his constitutional powers.

Activity Related to Law-making

The starting point of all inquiries of the Ombudsman is a fundamental rights dilemma related to the application of the law by the authority or public service provider. The impropriety, however, may often, wholly or in part, be traced to the text of the legal norm. That is why Section 25 of the Act on the Parliamentary Commissioner for Civil Rights enables the Parliamentary Commissioner to examine the rules of law and public law instruments for the regulation of organisations (previously 'other legal instruments of state administration'). The Act on the Parliamentary Commissioner for Civil Rights provides that if, according to the Ombudsman, the impropriety can be attributed to a superfluous, ambiguous or inappropriate provision of a rule of law or public law instrument for the regulation of organisations, or to the lack or deficiency of the legal regulation of the given matter, in order to avoid such impropriety in the future he or she may propose that the organ authorised to make law or to issue a public law instrument for the regulation of organisations modify, repeal or issue the rule of law or the public law instrument for the regulation of organisations.

On the basis of the Ombudsman's practice, which also focuses on preventive rights protection, the Commissioner for Civil Rights remains

within the framework of his mandate when during his *ex officio* inquiries – in a way necessary for his fundamental rights inquiries, in order to prevent specific violations of fundamental rights, and in close connection with the examination of the activities of those applying the law – he reviews elements of the relevant legal regulation, makes a survey of his constitutional concerns relating to the text of the legal norm and directs the attention of the law-maker or of the Constitutional Court to his concerns. This is a responsibility and an opportunity at the same time, and the Commissioner must be equal to the task. All this, however, does not mean that the Ombudsman becomes a participant in the process of law-making; his activity in the course of law-making may only be directed at furthering compliance with the requirements of constitutionality.

More than one-third of the legislative proposals drawn up in 2011 relate to four main projects. Owing to the specificities of the projects, these proposals were drawn up by the Parliamentary Commissioner in order to protect the fundamental rights of groups in a defenceless position and unable to enforce their rights or to remedy infringements of a flagrant gravity or affecting a great number of persons. Moreover, the Ombudsman considers that he has to draw attention also to such specific and atypical life situations which have not yet been regulated in the course law-making, which aims at generalisation.

5.6.
Giving Opinions on Draft Legislation

It is a constant practice of the law-maker to ensure the possibility for the Commissioner of giving a prior opinion on draft legislative proposals that might lead to infringements. This practice may provide an opportunity to eliminate such infringements. In 2011, a legislative period of high intensity, the Commissioner received numerous drafts to give an opinion upon.

The Ombudsman basically agreed with the Act on the reform of local governments and with the aims of the concept laid down in the Act on Local Governments, but in connection with certain provisions he proposed that they be complemented. He called the attention of the legislator to the fact that the division of the tasks assigned to the local governments between the mayor and the notary, that is the separation of state and local government tasks, is not transparent enough for all those concerned. He emphasised that if, according to an Act, the handing over of local government tasks to the State implies the handing over, free of charge, of the assets necessary for their performance, then it is necessary to regulate the transfer of tasks and assets between the local governments, the State and other organisations (for example churches and foundations) maintaining the given institutions. He also proposed that the draft be submitted to social consultation.

The Ombudsman made several observations on the draft containing the comprehensive amendment of the Act on the General Rules of Administrative Proceedings and Services. He pointed out that it is not clear who should inform the parties to the proceedings on the legal situation in proceedings involving legal disputes. He proposed that the rules of the proceedings related to petitions, complaints and reports of public interest be regulated within the framework of the Act on Administrative Procedures and that the notion of 'official matter of an administrative nature' be defined more precisely so as to make it clear which of the above applications fell under the scope of the Act. He stressed that the notifica-

tion of clients or other affected persons of the fact that some data related to them had been entered into an official register was also an issue of data protection, and that such persons should be given the possibility to submit within a short period of time an objection, protest or proof in connection with the registration or its content. Moreover, he drew the attention of the law-maker to the fact that the criteria regulated in certain sectoral rules of law may pose problems for standardisation, especially in a procedural Act for determining fines. Whereas in certain sectors (for example environment protection) the protection of life, health and physical integrity may be a criterion, this criterion is rarely used or is excluded in other cases, for example in fines for behaviour violating the prohibition of agreements restricting economic competition.

The draft of the Government Decree on the tasks of road traffic administration and the issuing and withdrawal of traffic related documents now regulates, with the necessary detail and fundamental rights guarantees, the majority of cases where the Commissioner made proposals in the past years (especially the question of the driving licence of quads and the re-regulation of the on-the-spot withdrawal of the driving licence). Nevertheless, the Ombudsman pointed out that in the case where the vehicle was excluded from road traffic for a period as a sanction, it was not clear when, by meeting which condition and within what period of time therefrom the persons concerned could recover their traffic certificate.

Concerning the Bill on Regulatory Offences, Regulatory Offence Proceedings and the Regulatory Offences Register the Commissioner objected to the taking over of criminal law terminology, since it strongly criminalises the perpetrator of a minor offence. He pointed out the failure to lay down the principles of gradual progression and of proportionality, which would be important also because of the significant increase in the amount of fines, and raised concerns because punishments could be applied in parallel and also because of the lack of differentiation of the notion of repeated infringement. He found confinement a disproportionate sanction in cases where the offender perpetrated a regulatory offence different from the one they had perpetrated the first time. He pointed out that when converting community service to confinement it could happen that a period of less than 30 hours had to be converted (since the person concerned had already served part of the punishment) but the draft did not provide for this possibility with a special provision, so even in such case the person affected had to be confined for at least five days. As for bringing the perpetrator before the court, the Commissioner did not support that it would no longer be necessary to obtain the approval of

the prosecutor, he objected to the absence of the definition of the notion of grounds for the termination of culpability, and stressed that there was no remedy in the case where the person concerned contested the decision and the court applied a graver punishment or measure than that imposed by the regulatory offence authority. He also pointed out that after the changes of the rules of the imposition of on-the-spot fines, situations would occur where the driver, absent when the fine was imposed, would not be able to object to the decision in substance. Owing to his absence, he would have no possibility to reject the fine and no possibility either not to pay the fine or submit his arguments in the started regulatory offences proceedings, since on the basis of the new rules the court could then convert the amount of the fine to confinement.

Concerning the draft government decree on the National Crime Prevention Council, the Commissioner drew the attention of the law-maker to the fact that a victim-oriented criminal policy of the State should include victim assistance services also to victims of minor offences, i.e. to victims of regulatory offences. Regulatory offences infringed protected values in the same way as criminal offences, the victims of such offences might equally be in need of help and assistance, for example old and needy victims of regulatory offences against property, as victims of graver criminal offences. With a view to all this, the obligation of the State to protect public security should also cover the prosecution of regulatory offences.

5.7.
Initiating Proceedings with the Constitutional Court

In 2011 the Commissioner for Civil Rights initiated proceedings with the Constitutional Court on three occasions for the *ex post* control of a rule of law. In all three cases it was the protection of the rights of a most vulnerable group of persons (homeless people or people otherwise in an existentially precarious situation) that justified filing an application with the Constitutional Court. Before filing the applications, the Ombudsman always issued a comprehensive report of his inquiry and drew up recommendations, and he initiated Constitutional Court proceedings only as a measure of last resort, after the rejection of his recommendations in order to remedy the improprieties.

1. In January 2011 the Commissioner turned to the Constitutional Court on the basis of his report of inquiry issued in case Nr. AJB-756/2010. In his application he requested that the court annul the provisions of a local government decree of Kaposvár which declare scavenging a regulatory offence. According to the Ombudsman the regulation issued by the local government does not comply with the requirements of local government law-making, moreover it infringes the right to human dignity and the principle of equal treatment.

In his petition to the Constitutional Court the Commissioner underlines: the Regulatory Offences Act allows unlawful acts to be declared a regulatory offence by local governments in their decree, but this authorisation does not give them an unlimited margin of discretion. The elements of the regulatory offence may not be contrary to a higher level legal norm, and the elements of a regulatory offence laid down in an Act or government decree may not be repeated. According to the Ombudsman scavenging is not declared a regulatory offence by any rule of law in force; however, its sanctioning by a local government still raises constitutional concerns.

The Commissioner underlines that local governments may only prescribe sanctions within the limits of their authorisation. In his application the Parliamentary Commissioner invokes that by declaring scavenging a regulatory offence the local government of Kaposvár, without any constitutional ground, disproportionately restricts the right of such prosecuted persons to human dignity and general freedom to act. In the opinion of the Ombudsman there is no 'right to scavenging', but it does not follow that local governments should have the discretion to order the sanctioning of this behaviour.

The Ombudsman also points out that the targeted sanctioning of scavenging is expressly directed against a specific defenceless and well-definable social group: homeless people living on the edge of subsistence, who become thereby excluded, stigmatised and criminalised. The differentiation aimed at by the law-maker is arbitrary: over and above the justifiable sanctioning of littering, the special sanctioning of scavenging has no reasonable ground, so it qualifies as discrimination.

The Constitutional Court agreed with the arguments of the Commissioner and in its decision at the end of December 2011 it ruled that making scavenging a regulatory offence was unconstitutional and annulled the relevant provision with immediate effect. In its reasoning the Court establishes that by making a regulatory offence certain acts outside the scope of littering, e.g. scavenging, the local government overstepped the bounds of its law-making competence. The decision stresses the fact that scavenging is an inevitable activity that does not violate the rights of others, it is not contrary to law and order, nor can it be established that it is dangerous for society. The decision also emphasises that by making scavenging a regulatory offence, the local government stigmatised homeless and other existentially marginalised people, which violates the prohibition of discrimination.

2. In October 2011 the Parliamentary Commissioner turned to the Constitutional Court with a similar application and requested an examination of a local government decree of Józsefváros on the order of public space and property and on public hygiene. In that capital district the local government also wanted to sanction the removal of garbage from its containers, i.e. scavenging. The Ombudsman here filed another application with the Constitutional Court for infringement of the guarantees of issuing local government decrees and of the rights of the persons concerned to human dignity and equal treatment, because the local government of Józsefváros had not even responded to the arguments put forth in report No. AJB-1232/2011 issued in July 2011 by the Commissioner and had taken no measures to remedy the improprieties found.

The Parliamentary Commissioner repeats that no single provision of a national norm expressly prohibits or allows scavenging; thus the legal system is (correctly) neutral in connection with the removal of garbage from containers, i.e. it tolerates this activity. The Ombudsman points out that certain fundamental rights provisions of the Fundamental Law, in particular the right to equal dignity, and in connection with this the principles of the rule of law and legal certainty, all constitute limits for criminalising such acts.

In his application the Commissioner underlines that in the case of scavenging the local government is dealing with a situation which is unworthy of a human being and which has to be prevented, but it does not authorise the authority exercising public power to sanction this behaviour without a proper constitutional ground and authorisation. The Commissioner also invokes that it is a basic constitutional tenet and one of the main criteria of the State governed by the rule of law that, when defining the elements of all criminal and regulatory offences, the law-maker has to examine and justify that they have real, substantive and legitimate constitutional objectives. The application of the Ombudsman also mentions that a preventive restriction of rights may only be acceptable if the fundamental rights of others or any constitutional value are directly endangered, and the probability of the occurrence of the infringement is justifiably very high.

On this point the Commissioner calls the attention of the Constitutional Court again to the fact that the local government regulation of scavenging pushes, by its very nature and without a reasonable ground, the poorest groups, i.e. people living at the periphery of society, into a much more disadvantageous situation: they are the only group targeted by the sanctions.

3. Pursuant to inquiry report No. AJB-6724/2010 the Commissioner filed an application with the Constitutional Court in con-

Dr. Péter Paczolay, president of the Constitutional Court of Hungary in our Office

nection with the sanctioning of the so-called "improper use of public space". In his application the Ombudsman requests the Constitutional Court to examine several rules of law, such as the Building Act and the Regulatory Offences Act and certain provisions of the decree of the Metropolitan Local Government on the order of public spaces, amended on the basis of the authorisation given by the Building Act. Indeed, according to the Commissioner the regulation in question is contrary to the principle of the rule of law and the requirement of legal certainty and it infringes the constitutional right to equal dignity of the persons involved in the proceedings.

The petition of the Ombudsman mentions that the amendment of the Building Act, effective as of 1 January 2011, enumerates the proper uses of the public space and ensures the possibility for local governments to qualify 'improper' use of public space a regulatory offence. Based on this authorisation the General Assembly of the Metropolitan Local Government adopted a decree in May 2011 stipulating that those persons who used the public space for permanent living or stored their movable property used for this purpose in the public space committed a regulatory offence and might be fined. Moreover, since the amendment of the Regulatory Offences Act, effective as of 1 December 2011, 'repeated infringement' of the prohibition of "living permanently" in the public space can be punished by deprivation of liberty (confinement) or with a fine of HUF 150,000.

In the opinion of the Ombudsman the law-maker, by defining the proper use of public space, operates with general notions which make it impossible to interpret the limits of the authorisation. The relevant provisions of the Building Act are incidental, and they are incompatible with the principle of the rule of law and with the requirement of legal certainty (in particular predictability and clarity), since on the basis of the examined provisions it is not clear what activities in the public space may be qualified as proper or improper use.

The Commissioner points out in his application that, in principle, in a State governed by the rule of law the use of public space is free and there is general freedom of action; this freedom may exceptionally and on proper legal grounds be restricted in order to protect the fundamental rights of others or to protect a constitutional value, and sanctions may be applied against those infringing these restrictions and regulations relating to the public space. However, from the point of view of the enforcement of the principle of the rule of law and of the requirement of legal certainty, his main constitutional concern is that

this guarantee-based system is reversed by the Act and the legislator gives local government law-makers wide authorisation without any justification. The Ombudsman explains that promoting the proper use of public space is not a constitutional objective that can be interpreted in itself; it is a legal and regulatory expression of the general principle that the fundamental rights of others, and, as appropriate, other constitutional values (e.g. considerations of public health) should be respected by everyone.

The other reason the Commissioner finds that provision of the Building Act objectionable is because it could become a 'hotbed' of an arbitrary application of the law: as a result of heterogeneous local government decrees adopted on the basis of such authorisation, subjects of law will not be able to decide which types of conduct in the public space are 'improper', and so even subject to sanction. Besides, one cannot neglect the fact that this may lead to an atmosphere of continuous legal threat for already defenceless persons, since they are unable to adjust their behaviour to regulations of an uncertain content.

In connection with the examined decree of the Metropolitan Local Government, the Commissioner also points out that it makes punishable permanent 'living in the street' (staying in the public space) and an act closely related thereto (storing of movable property), criminalising homelessness as a state or situation (status); i.e. it creates an infringement related to someone's status. The application emphasises that in a constitutional framework no infringement related to status may be defined – not even in exceptional cases. He also indicates that permanent living in the public space is a very grave crisis situation which should be prevented, and that it is very rarely the conscious, deliberate and free choice of the persons concerned. In numerous cases homeless people have nowhere to go, they have no 'private space', so they have to live permanently in the public space. The Commissioner calls the attention of the Constitutional Court to the fact that homelessness in itself does not violate the rights of anybody else, it does not harm anybody and the irritation, outrage or annoyance of the local population, presumed by the law-maker, may not be a legitimate reason for the restriction of rights.

In accordance with the arguments set out above the Commissioner thinks that the amendment of the Regulatory Offences Act which threatens with serious sanctions the 'repeated infringement' of the use of public space for permanent living and the storage of movable property used therefore in the public space clearly raises constitutional concerns. Home-

lessness (permanent living in the public space and the related conducts) as a 'repeated infringement' simply defies interpretation: homelessness is a state befalling people and not a chosen behaviour or free decision. The Ombudsman underlines that on the basis of the regulation it is not clear whether persons threatened with confinement because of their homelessness would be relieved of the sanction by invoking the fact that they have no real alternative (e.g. a place offered in a homeless shelter) to living permanently in the public space.