



Report  
on the Activities of the  
Parliamentary Commissioner  
for Civil Rights  
in the Year 2010

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## Commissioner's Welcoming Address

The effects of the global economic and financial crisis have placed a significant part of Hungarian citizens into increasingly difficult economic as well as social difficulties, and as a result into a graver health and mental situation in the context of the internal economic and social problems. The trends, beginning in 1989, characterised by the slower or faster improvement of the indices of the quality of life at least for the upper and middle strata as a result of the unfolding of rights and freedoms as well as of the pluralisation of opportunities in life seem to halt by now. Decline and deterioration, however, did not start in 2010. Its signs already appeared earlier, followed by its visible tendencies, which have formed a framework, obviously interpreted and processed differently but present more or less in every stratum and group of the society by the years 2009 and 2010, and arranged in different, though interrelated series of problems that can be labelled by the category of 'crisis'.

The appearance of a mentality considering the economy, society, culture and policy as well as its institutional system as the symptom, and even the consequence of 'crisis' in Hungary is of fundamental significance for the Ombudsman's work. The crisis of individual situations in life is further enhanced by the media as well as of public discourse with its theme focused on the crisis. The situation is similar to a strong string of beads with each bead constituting a uniformly coloured and shaped single piece: we are in crisis!

Instead of the euphoria of the system change and our accession to the EU, the expectation of getting richer and having a more meaningful life today it is the dark perspectives of seeing through a tube that are gaining ground in our society. This perspective does not spare even the state based on law and the constitutional system. What is the worth of institutions if they let sink not only the 'lazy' and the 'helpless' but even the rather diligent and enterprising families imagining their future in an ever nicer property?

The burst of the bubble of credit for property confronts precisely the groups of the society oriented towards middle class life to the tangible and daily horror of insolvency, the loss of accommodation, and the loss of existence without shelter. And the ever widening and spreading maelstrom of unemployment to the extent never seen since the change of the system does not only hit the less qualified labour market but also diploma-holding new entrants as well as employees of small and medium enterprises and their owners, further on the highly qualified labour of the post-modern service sectors. Diplomas, language exams, family houses and in some places even the family and children appear as a devalued investment.

Shocking natural calamities, the unpredictable but devastating floods, or the flow of red sludge sweeping away man, cattle, houses and bridges make the framework of this sad world changing its colour into grey. How far these calamities are to be attributed to 'nature'? Was there any circumspect planning, a proper quality test, a scenario of resettlement and of catastrophe, or a cadastre of the location of endangered property? Is it not men, rules and institutions that are supposed to evolve the protective system for the post-modern 'risk society' against the changing water output and the mass of hazardous materials? Is there no human or institutional omission that is related to the short-sighted administrative and political culture living only for today? Was the society capable of adequate defence? What else humans and the society could do but to protect themselves? Protect, but how? We are in quest of new recipes or others put aside earlier for healing our wounds. An unprecedented decrease of political confidence has set in under the impact of the crisis. At the same time masses having lost their orientation have been giving new mandates along new loyalties for shaping their future. In our human strategy, we, as contrasted to the Poles, Romanians and Bulgarians, where millions have become European migrants, still prefer solutions staying in our locality. The Hungarian mode is fidelity and protest, defending ourselves against the impact of crisis and its assumed causes and not moving out.

What the Ombudsman gets from it is a flood of complaints. We have succeeded in approximating the European average in this respect; while around 2006 and 2007 it was stagnant if compared to the all-European trends. It means work for the Ombudsman, and poverty as well as sadness to the citizen. Understandably it is primarily the economic and social problems that appear in the complaints but much more than that: dissatisfaction with the existing institutions, defence against procedures assessed as unjust.

In a defensive society it is the groups of the needy that are the weakest. A basic guiding principle of the Ombudsman's work is to hurry to help groups that are most in need. This entirely correct and justifiable requirement, however, runs counter to the phenomenon of the 'pyramid turned upside down'. It is in fact those groups of the society that are in greatest need which have the most modest intellectual and contacts capital for wording their problems if only in the form of complaint, whereas the bigger the settlement, the higher school education is along the line of status the ruler would rise towards the middle class the more complaints can be found under the heading. Thus there is a reverse proportion between the gravity of social problems and the ability of wording complaints and forwarding them to the proper addressees.

Consequently the Ombudsman as well as the professional aid and social branches have to attempt to achieve some change in the position of the 'pyramid turned upside down' and help bring to the light and put in the foreground that wide range of troubles by the employment of the most diverse techniques of therapy that would be left outside the tip of the pyramid because of the lack of communications ability. In order to promote the process we focus on a group in a particularly problematic position unable to express problems in complaints by our projects annually. In 2010 we focused on mapping the legal condition of the victims of the credit crisis and of the financial sphere causing abuses, whereas surveying the institutional and legal situation of the aged and problems of the homeless and of people living with disabilities were put in focus. The preparation of publications summarising our experience were supported by the Ministry of National Resources, the Hungarian National Bank, the Hungarian Banking Association and the Hungarian Bank of Development this year.

Naturally, we have dealt with complaints received besides the investigations launched ex officio within the framework of the projects, moreover we even repeated earlier investigations and initiated follow-up ones. Thus, in 2010 we repeated our investigations conducted in residential homes for the elderly done more than ten years earlier. We have organised workshop discussions involving experts of the government and of the professions as well as representatives of science and of civil society organisations in our focus topics. They were supplemented by a great variety of forms of social and cultural events, exhibitions, book launches, or participation in events, and presence and manifestations in the field beginning with an exhibition of children's drawings to a charity fair.

Dealing with children's rights has been incorporated into the activities

of general ombudsmen as there is no autonomous Ombudsman for children's rights in Hungary. Therefore we dedicate a thematic project each year to the living and legal conditions of children. In 2010 our activities focused on the education of children in families and outside (such as supplementing and replacing) in institutions. The topics of investigation covered the classical tasks of child protection to the differentiated network of childcare as well as to special provisions. Earlier making people conscious of children's rights as well as violence against and among them stood in the frontline of our investigations.

The children of today do not live in the communications space of the Gutenberg-galaxy, but in that of the Google-galaxy. It may involve opportunities as well as dangers. According to our interpretation one should not struggle against this trend for it is impossible, but one should attempt to forward meaningful and constructive contents to children in the global space of virtual communications. Surely it cannot replace the role of school and extra-curricular education in a selective and critical choice of media contents. Our modest contribution consists of the creation and operation of our autonomous homepage for children's rights which we succeeded in again developing further this year with the help of the Ministry of National Resources. Naturally, our homepage cannot compete with the commercial-based websites, but it represents communication between our operational culture organised within the framework of the Gutenberg-galaxy and the children's culture in the Google-galaxy. Still waters run deep! Our continuous work cannot change the world but may help in smoothening rough edges, making them rounded and less harmful.

What is missing today in a fuller realisation of human rights in Hungary? There is much to be proud of that has been achieved after twenty years of the development of the state based on law, despite the fact that the assertion of human rights is hindered by a series of old and new institutional problems. The decision makers should and could right now respond to them, parallel to constitution-making, or at least to raise various alternatives, perhaps not requiring material but rather intellectual investment and creativity from the law maker and of institution building.

The cooperation of law-protecting institutions set up at different points of time and by different intentions of law makers is not satisfactory. In Hungary no one can draw any picture about how many citizens and in what issues have turned to the various ombudsmen and authorities. The uniform treatment and classification of submissions does not exist even among the four ombudsmen, not speaking about such organisations

like the Equal Treatment Authority, the Independent Police Complaints Board of the complaint forums of the public media. The human rights situation in Hungary cannot be learned from the annual or longer-term reports of any authority or NGO, because its precondition would be linking the databases and processing them systematically. Since it is not available the general image, the nature of the developmental trends cannot be learned even by decision makers committed to change. Hence the process of constitution making could not rely on such a survey.

The UN surveys the condition of Hungarian human rights in every three years about which the Department of Human Rights and Minorities of the Ministry of Foreign Affairs has prepared a good survey assembling several points of consideration with the involvement of the authorities and civil society organisations, working on it for more than a year. It is, however, not always accessible by the citizens of Hungary, and not even by the relevant authorities, and its propagation is not a foreign affairs task either.

One sided and biased status reports are produced since information and sources accessible by all are missing. A balanced and regular flow of information among the various actors in authority would enhance the problem orientation and precision of legislation and decision making. It is obligatory by law, for instance, in Slovakia for all the state organs to supply data and analyses from their respective fields to the Equal Treatment Authority, of which a comprehensive legal analysis is prepared annually. Not a single state organ has a similar competency in our country.

It is also a problem that the major, global and European systems of international accords (such as the ones on the rights of children, of people living with disabilities, or of women) do not have as yet the independent control organs undertaken to be set up by the accords which would study the assertion of international standards in our country. It would require money and would also mean the support of social organisations having authorisations for access and control. The specialist authorities are averse to develop such independent control agencies. This trend has characterised all governments so far in office and no basic change is visible at present either. Our accession to the optional international system, undertaking the operation of a national control authority against torment and inhuman treatment has also been delayed for long, which was, among others even criticised by the parliamentary sub-committee investigating legal violations in 2006.


It would be a governmental task to set up mixed committees composed of independent experts and professional organisations as well as rep-

representatives of the government. While the Ministry of Foreign Affairs encourages our participation in the international mechanism for human rights, the various ministries are hesitant in launching operations requiring human and material resources.

It is also a governmental omission that though the various control organisations for human rights function as forums of complaint for the citizens none of them has a local network for accepting complaints. Today it would be necessary to develop a citizen-friendly multifunctional network for the submission of complaints promoting the common use of the various human rights institutions in Hungary. The occasional or regular visits of the various organisations and their collection of complaints are unable to ensure this, and their parallel activities result in the fragmentation of resources. The self-development of NGOs appearing spontaneously is unable to reduce the great distance gaping between organisations protecting rights and the local communities, and the number of civil society organisations undertaking roles in the protection of rights is small, and even the few that are there mostly operate in Budapest with the help of their supporters from abroad. The level of the legal protection of the Hungarian countryside lags behind the standards of the capital and of the international and European ones.

I am of the view that a more active role to be taken up by the government and coordinated governmental programs would be needed to make the existing level of citizens' legal protection more efficient, as well as to support the civil organisations in data collection as well as in strategic legislation and to a fuller observance of international obligations, further on to rendering assistance to the work of local networks of legal protection and of complaint forums.

Further on, laying down the foundations of human rights education already in basic education is indispensable from the aspect of future generations. Thus, we have abundant tasks in a more effective assertion of citizens' rights which equally requires constitutional and legal changes as well as an active governmental work and the cooperation of independent human rights organisations, which must orient the Ombudsman's work also towards new directions.



Prof. Dr Máté Szabó

# 1. 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 investigate any abuses of 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 has to be independent and may take measures exclusively on the basis of the Constitution and law.

The Ombudsman is elected for a six-year term by a majority of two-thirds of the votes of the Members of Parliament. The election is based on a proposal by 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 he/she has suffered injury as a result of action of any authority or body 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 his/her fundamental rights, or if a risk thereof exists.

The Act on the Ombudsman gives an exhaustive list of authorisations for investigation. These are:

- Bodies or organisations fulfilling 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 security services;
- Local government, minority self-government, the office of the mayor;
- Notaries public;
- Court bailiffs;

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

The fundamental rights may be infringed by:

- Unreasonably long procedures
- 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 procedure has begun before 23 October 1989
- If the non-appealable decision was made more than 1 year ago
- If the legal proceeding is pending or is already *res judicata*
- With regard to acts 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 more appropriate. Key measures are:

1. To make a request for remedy to the supervisory institution of the body that has infringed constitutional rights.
2. To initiate a remedy request at top management level.
3. To make a motion to the Constitutional Court for the examination of the unconstitutionality of a legal act.
4. To initiate (at the Public Prosecutor's 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 is enacted.
6. To submit the case to Parliament and request to be investigated by Parliament.

## 2. Some Important Events of the Year

### 2.1

#### Our International Relations

It was a milestone in our international relations and hence the most important event of international nature when, on 11 October 2010 the Parliamentary Commissioner for Civil Rights forwarded his application to Geneva for obtaining the status of the *National Human Rights Institution* – NHRI). The main mission as a corollary of the status, and perhaps it is not an exaggeration to use this term, is the independent and expert inspection of human rights in the given country on the basis of the Paris Principles of 1991.

The most important of the tasks are:

- Human rights counselling or consultation either *ex officio*, or by one's own initiative, or commissioned by the government, parliament and a state organ;
  - Preparation of position papers, recommendations and reports and their presentation to the public on any human rights issue;
  - Recommendation and promotion of the ratification of accords of international law;
  - Promoting the adjustment and efficient implementation of the domestic legal order to international human rights accords;
  - Active participation in the compilation of the human rights reports for the UN;
  - Cooperation with the UN and other international or domestic human rights organisations;
  - Teaching and research into human rights;
  - Calling the attention of the society to issues of human rights (particularly the discriminatory ones) and to the violations of rights.

In case the accreditation procedure will be successful in 2011 then the Parliamentary Commissioner of general competency can function as the national human rights institution in Hungary. All this may produce a significant broadening of profile in the international field, for the Parliamentary Commissioner for Civil Rights, representing Hungary, would



join the community of the international human rights network operating within the framework of the UN as a full member. This step partly represents a serious professional challenge and partly it would bring along a significant growth of prestige in the human rights assessment of the Hungarian Ombudsman (and of the entire Hungary through him).

Our institution continues to be a rather active agent of the various international networks of Ombudsmen as the exchange of information and experience (at times even on a daily level) has a highly positive effect on the Ombudsman's work. In September 2010 the institution of the European Ombudsman, similarly to the Hungarian one, celebrated its 15th anniversary. As recommended by the European Ombudsman, in 2010 the Hungarian Ombudsman has also contacted the Hungarian experts of the SOLVIT legal assistance set up by the European Commission whose task is to handle citizens' complaints deriving from the implementation or interpretation of the Acquis.

In 1978 the International Ombudsman's Institute (IOI) was established with headquarters in Canada. In 2009 its headquarters were transferred to Vienna partly due to the shifting importance of the ombudsman's institutions to the European continent and partly because there was a favourable Austrian offer of location. In the autumn of 2010 a several days human rights training was organised for experts under the guidance of the Ombudsman of the Canadian state of Ontario in the interest of using the practical tools and methodology of the ombudsman's work (more) efficiently.



In 2007 the EU established the Fundamental Rights Agency (FRA) in Vienna, acting as expert and offering counselling to the States of the EU and to the organs of the Union. It keeps a partnership relation with the Ombudsmen, organises extension trainings, seminars and conferences, and the papers compiled by its experts represent an important starting point for Ombudsmen as well. Between 2007 and 2012 the FRA dedicates special attention to the following topics: racism, discrimination, children's rights, the rights of migrants, border defence and visa issues, the information society and data protection, compensation of victims, Union participation rights, and the right to an efficient and independent administration of justice.

In 2010 the FRA, within the framework of the latter topic had been dealing particularly with National Institutions of Human Rights and with the fundamental rights structure of the EU. The Hungarian mem-

ber of the board of FRA was Dr Gábor Halmai up to 16 September 2010, and after the expiry of his mandate he was followed by Dr Attila Péterfalvi, Head of the Office of the Parliamentary Commissioner for Civil Rights. Thus the Hungarian Ombudsmen may get 'first hand' information about the most recent research results and initiatives related to human rights.

On 19 November 2010, during his visit Ian Harden, Secretary-General of the European Ombudsman had talks with the Parliamentary Commissioner for Civil Rights.



*Presentation on 19 November 2010: Máté Szabó, Ian Harden and Mária Herczog.*



The topics of the consultations of the Ombudsman and his associates abroad were primarily organised around projects in 2010. Consequently as member of the jury in Brussels of the European Consensus Conference on Homelessness, set up upon the initiative of FEANTSA, a European 'umbrella organisation' linking national organisations struggling against the problems of homelessness, the Hungarian Ombudsman actively participated during the whole year in the discussion of the following expert materials and specific issues: What does homelessness mean? Is its elimination a realistic objective in Europe? What are the most effective preventive methods of the housing policy approaches? To what extent can the services of carers for the homeless be accessed irrespective of the legal status and citizenship of people? What can be the elements of the European homelessness strategy? (In 2011 the FEANTSA passed its report compiled about homelessness and forwarded it to the respective European Union organs.)



The protection of children's rights in the European Union in 2010, and also during the Hungarian Presidency as well had been a priority task. The Spanish–Belgian–Hungarian Presidencies have dedicated and still continue to dedicate great attention to the elaboration of struggle against child poverty on Union level, and there had been several European-level talks on the draft recommendation against child poverty to be submitted during the Hungarian Presidency (the main points are: access

to adequate resources, access to services and opportunities, children's participation, such as their right to being listened to).

Between 6 and 9 October 2010 the Human Rights Commissioner of the Council of Europe reported on the focuses (children living in institutions in Bulgaria, detained children in France, migrant children in Italy and Greece, the education of Roma children in Croatia) of his on-the-spot investigations at the annual general assembly of ENOC in Strasbourg 2010.

In 2010 the Council of Europe dedicated special attention to child abuse, as according to data every fifth child becomes a victim (by a culprit actually known by the child). Therefore a new campaign is being planned for preparing the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and special attention is being paid to children living in institutions.

An aspect of the protection of children's rights is to assist the legal consciousness of children and the young, and particularly teaching them about human rights. Between 4 and 6 November 2010, the Western Sydney University organised in Sydney an international conference entitled "Human rights education – in the spirit of the peace of human rights and of the intercultural exchange of ideas". In his presentation Mr Máté Szabó spoke about the gap that had developed in teaching human rights in the post-communist countries after the change of the system. It should be mentioned in relation to the 2008 project on the right to assembly that a successful cooperation of experts started last year with the Swedish Police Academy on the proper practice of police dialogue at political demonstrations and on the principles of communications.

The Directorate-General of Home Affairs of the European Commission supported the three-year Union application of the Swedish party (*Good practice for dialogue and communication as strategic principles for policing political manifestations in Europe – GODIAC project*) the aim of which has been a joint wording and evolution of the principles and practice of "the knowledge-based protection of public order" as well as presenting each other's experiences. At the seminars participants could exchange their ideas among others about the psychological background of managing crowds, on the communications strategy of the police to be followed in mass events (the most important element of which is active contact with the organiser).



On 19 November 2010 the Parliamentary Commissioner presented the English version of the report on the year 2009 and of the bulletin on children's rights to representatives of embassies and international organisations accredited to Hungary, about the success of which even the representatives of English-language press in Hungary reported in large numbers.

In 2010 a close-knit working relationship developed between the Hungarian Ombudsman and the three-member Austrian Ombudsmen's body (*Volksanwaltschaft*) which peaked in the visit of the Austrian colleagues in Budapest in the autumn. We could obtain a picture about their activities from a series of presentations and consultations as well as practical examples offered to colleagues.



23 September 2010: Austrian Ombudsmen Dr Gertrude Brinek, Dr Peter Kostelka and Mag.a Terezija Stoisits in the company of Prof. Dr Máté Szabó

## 2.2. Civilian Consultative Body

The domestic and international experiences of the past three years have led me to initiate the setting up of a Civilian Consultative Body of the Parliamentary Commissioner for Civil Rights, which would assist the Parliamentary Commissioner in the exercise of his constitutional competency with members playing an outstanding role as well as undertaking public roles in the interest of asserting the constitutional principles and basic values and fundamental rights and who are known and acknowledged experts, offering their concerted efforts. I have invited the following people to participate in the work of this Body on the basis of their professional career and public activities:

Dr Gáspár Bíró, University Professor (ELTE Faculty of Law),  
 Dr Nóra Chronowski, Reader (PTE Faculty of Law),  
 Dr Géza Finszter, University Professor (Nat. Instt. of Criminology),  
 Dr Zoltán Fleck, Reader (ELTE Faculty of Law),  
 Dr Péter Hack, Associate Professor (ELTE Faculty of Law),  
 Dr György Könzsei, Professor (ELTE College of Special Educ.),  
 Mrs Lehoczky Dr Csilla Kollonay, Reader (ELTE Faculty of Law),  
 Dr Miklós Radoszav, (Municipal Child Protection Service),  
 Miklós Vecsei, Dy-Chairman (Hung. Maltese Charity Service),  
 Dr András Varga Zs., Reader (PPKE Faculty of Law),  
 Dr Mónika Weller, Professional Chief Adviser (Min. of Public Admin. and Justice).

The first statutory meeting of CCB was held on 29 November 2010, in the Office of the Parliamentary Commissioners. As the first topic of the section, beyond declaring the formation of the CCB proposals (concerning its structure, content and extent) the Parliamentary report of the Parliamentary Commissioner for Civil Rights about activities in 2010 was discussed as well as our ideas related to the priority investigations (projects) planned for 2011 were presented.

## 2.3. The Office of the Parliamentary Commissioners is 15 Years Old

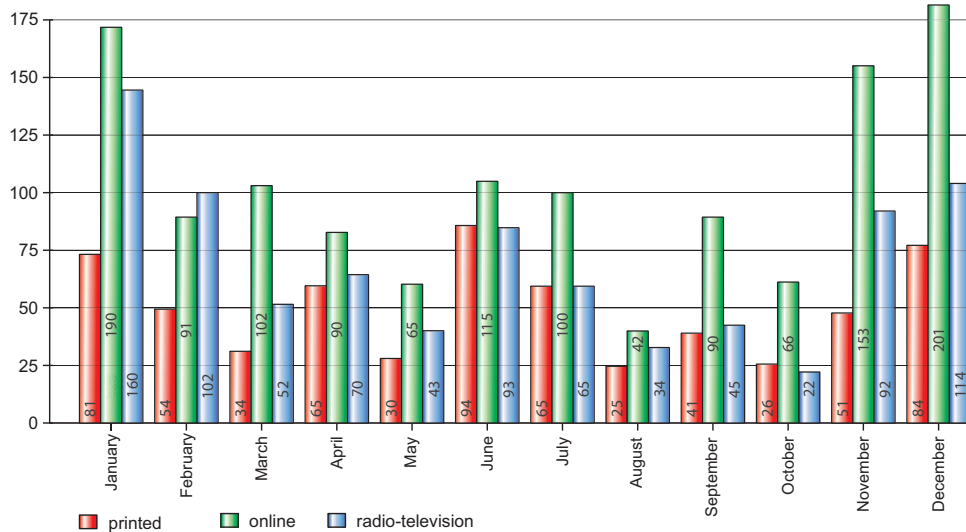
On the celebration organised on the occasion of the 15th anniversary of the Office of the Parliamentary Commissioners the predecessors of the Parliamentary Commissioners currently in office as well as Heads of the Office were also present. From left to right on the picture: Office Head András Varga Zs. (1999–2000); General Deputy of the Parliamentary Commissioner for Civil Rights Péter Polt (1995–2000); Parliamentary Commissioner for Civil Rights Barnabás Lenkovics (2001–2007); Parliamentary Commissioner for Civil Rights Máté Szabó (2007–), Parliamentary Commissioner for National and Minority Rights Ernő Kállay (2007–); Commissioner for Data Protection Attila Péterfalvi (2001–2007) and Head of Office (2008–), Commissioner for Data Protection László Majtényi (1995–2001), General Deputy of the Parliamentary Commissioner for Civil Rights Albert Takács (2001–2007), Parliamentary Commissioner for National and Ethnic Minority Rights Jenő Kaltenbach (1995–2007); Seated: Office Head Ilona Pálffy (1995–1999), Parliamentary Commissioner for Civil Rights Katalin Gönczöl (1995–2001); Head of Office Erzsébet Wolf (2000–2008).



## 2.4. Reaction of the Press

*The media mirror of the activities of the Parliamentary Commissioner for Civil Rights in 2010*

The year 2010 was abundant in domestic political events, thus a significant part of media attention was absorbed by the events related to the elections and political transformations. Perhaps this is the reason why a relatively lesser attention of the media accompanied the Ombudsman's activities, the issues related to investigations and similar ones compared to the previous year. In the following figure mentioning the activities of the Commissioner was conspicuously few in the spring and autumn periods both in the printed as well as in the online and electronic media, while the number of submissions presented to the Commissioner exceeded practically every earlier dimension.

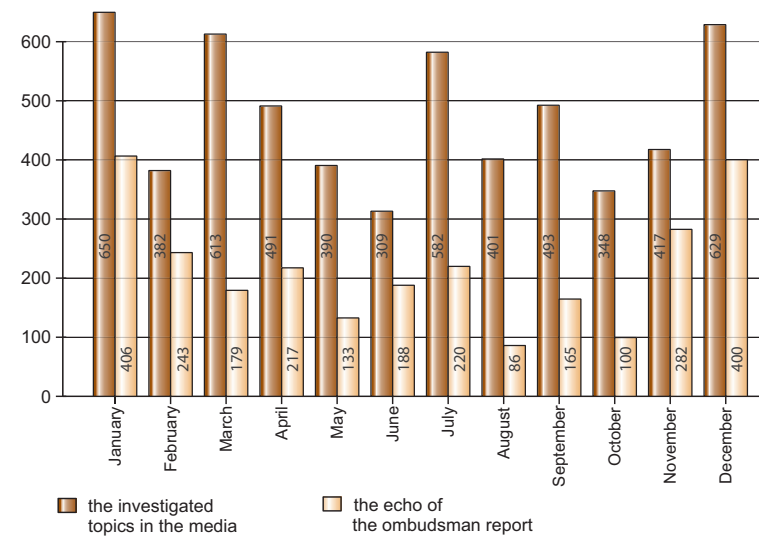


Topics and activity of the commissioner in the media. Source: Observer

Despite the fact that the domestic political events markedly determined the agenda of the media, certain topics of the Ombudsman evoked great interest as earlier. They were mostly cases related to a

large number of citizens or to the violation of certain constitutional rights. This explains why we could count an outstandingly high number of publications at the time of the Budapest Public Transport strike in January. Reports related to the operation of the signalling system of child protection and the situation of minors without accompaniment figured in the media 215 times. The Ombudsman's findings related to problems of flood control provoked media reaction 65 times, and the statements issued in relation to the custody of minors had media reactions 81 times in September and December.

An interrelationship can be identified between the general features of media interest and trends following the Ombudsman's activities. In the following we may compare the appearance of social phenomena touched upon by the Ombudsman's activities in the media to mentioning the reports issued by the Parliamentary Commissioner for Civil Rights in the media.



Emphasizing issues of children's rights was characteristic in 2010 as well, justifying the thesis according to which children who have the least interest asserting ability today are the decision-making adults of the future. If they understand now how basic rights are to be interpreted, what the opportunities and limitations of action ensuing from them are then we may hope that there will be less violation of the law in the adult society of the future. This year the greatest attention was accorded to the report disclosing the faults and at times tragic consequences of the operation of the child protection signalling system. A dozen of publica-

tions appeared on the investigations in the residential institutions, such as homes for the elderly and children, and institutes treating psychic problems. They were divided by content among the major topics of investigation such as that of children's rights, the rights of the elderly and healthcare.

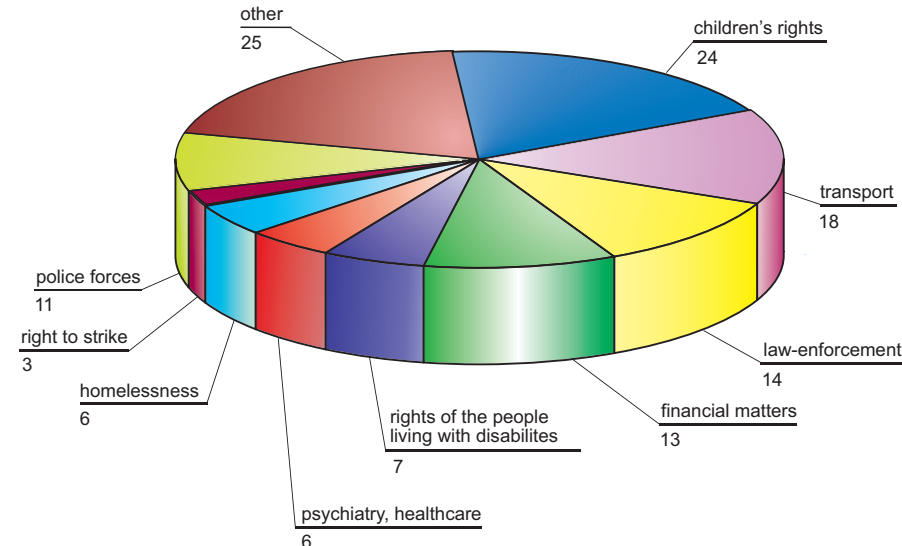
The topic of the right to transport and of the freedom to change one's location summarised not exclusively the views related to the right to strike and the rights of passengers in the publications. Similarly, the media granted broad space to analysing the practice of the parking companies, revealing problems that have been recurrent for years, together with the fining practice of the Budapest Public Transport Company (henceforward: BKV) as well as abuses in the uses of motorways.

We have continued the prioritized on-the-spot investigation of the institutions of law enforcement. The attention of the media was primarily roused by those among our reports and statements which had dealt with the internal conditions of prisons and other law enforcement institutions, with housing and provisions, with the problems of employment and free time, as well as with the excessive workload on the staff. Another related issue was occasionally the assumed interrelationship between a strict policy of maintaining order and the crowded nature of the law enforcement institutions.

In the financial project we studied those effects that were produced by the economic and financial crisis and affected the citizens. Foci in the media of our reports on investigations were among others the disputes related to the strike of the Budapest Public Transport Company and later on the ones on the social card of Monok, and also complaints related to the revenue office without any particular point in time.

The Commissioner issued 127 statements in the year, containing investigations officially launched upon citizens' complaints, or ex officio investigations as well as summaries of priority projects. In addition vivid media attention was provoked by our renewed investigations due to the lack of redressing the abuses discovered by an earlier investigation. Significant attention was evoked from among these cases by our recommendations proposing the redress of the difficulties of the homeless, the problems of people living with impairment, of the assertion of the right to strike and the difficulties suffered by citizens because of the strikes.

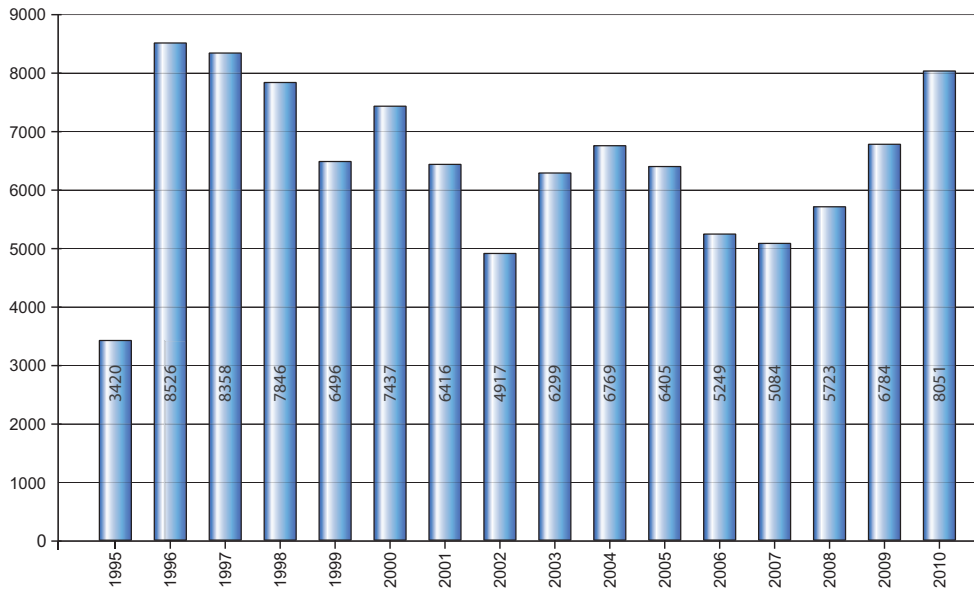
*Topics of the Commissioner's statements*



# 3. Statistical Data

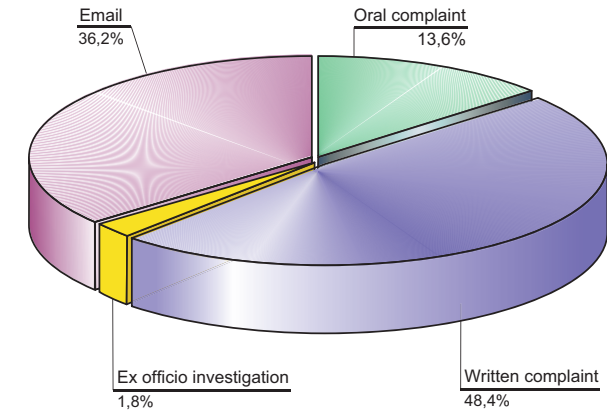
## 3.1. Statistical Data of the Commissioner's Office in 2010

In 2010 citizens worded 8051 complaints in their submissions forwarded to the Commissioner of general competency. The number of people requesting legal protection, advice and support from the Ombudsman has been continuously increasing since 2007, when, compared to the previous year 18% more people turned to the Parliamentary Commissioner for Civil Rights. This year an average of two hundred new cases were consigned to each of our associates.



Half of the complainants have forwarded their submission by mail, but the number of those who sent their letters electronically to the panasz@obh e-mail address of our Office continued to grow. Their proportion of about 36.2% of all the submissions and this growth is becoming increasingly dominant.

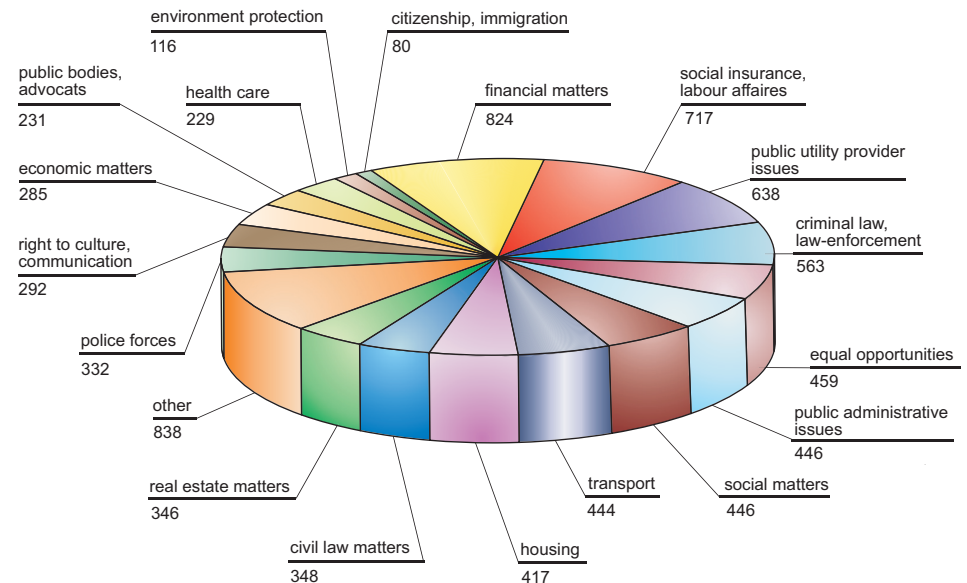
Form of the receipt of complaints



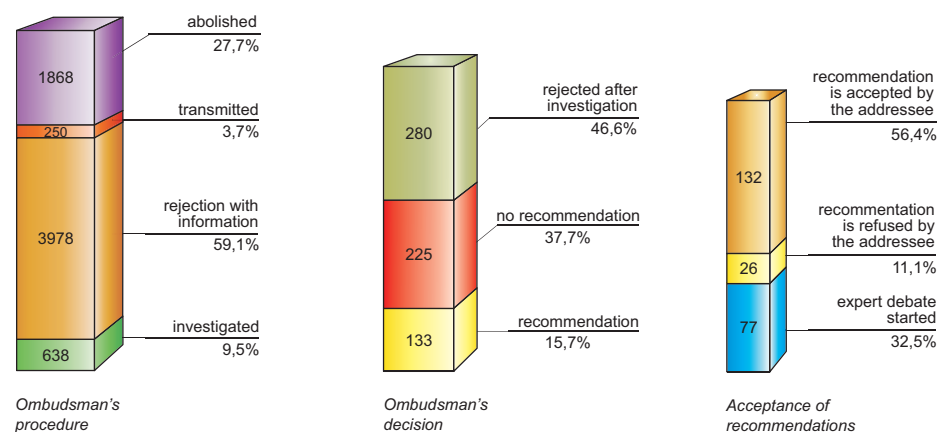
In 2010 the workload on our associates reached the level when the speed of processing cannot be further enhanced without the infringement of quality. In addition to the receipt of 7433 cases in the year we completed 7227 cases, two thousand more than in the previous year, yet in December 2010 we had more than two thousand cases still in progress.

Most of the complaints were seeking solutions for their financial problems, the next group was constituted by complaints about social security and labour issues, and many people turned to the Ombudsman in relation to public utility service providers. The distribution of complaints is represented by the following diagram.

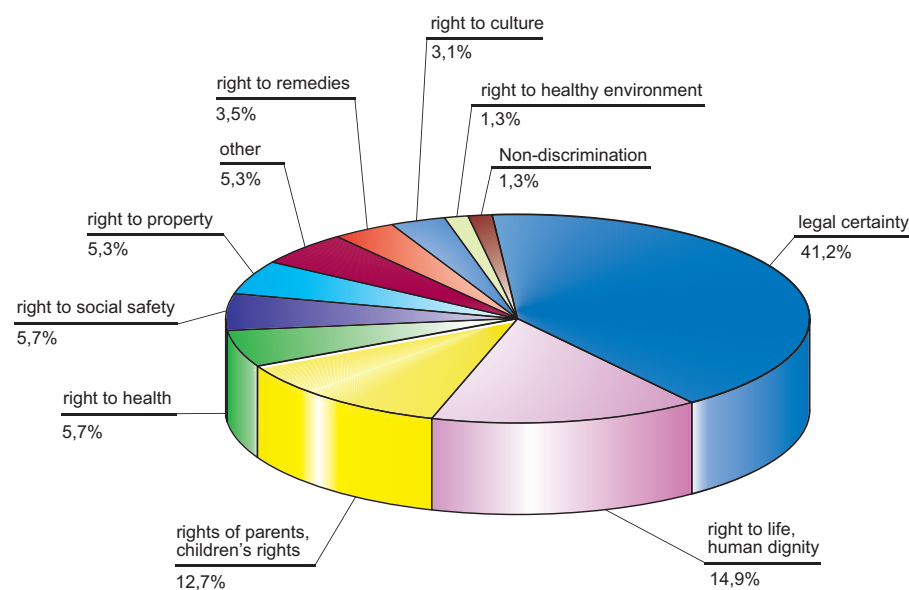
Distribution of cases by subject



We forwarded 3.7% of the complaints to the respective organs; one quarter of them was terminated, and informed more than half of the complainants about other possibilities of the assertion of rights, or gave an understandable explanation of the legal norms regulating the measures challenged because we had no possibility of investigation. Only in one tenth of the complaints we had received we had a legal possibility to conduct meaningful investigations.



The breakdown of abuses of constitutional rights identified in our reports by the various fundamental rights is the following:



## 4. Assessment of the Situation of Constitutional Rights

### 4.1. Projects

The Parliamentary Commissioner investigates and remedies the individual and collective citizens' complaints. The tasks of the institution for the protection of fundamental rights, also aiming at efficiency and at the prevention of abuses and the violations of rights, however, cannot end here. One of the characteristic features of the ombudsman institutions is that the commissioners have considerable freedom to interpret their tasks and competency in the interest of protecting human rights. In view of the outstanding significance of the protection of constitutional rights the Act on the Ombudsman specifies the opportunity for the Parliamentary Commissioner for Civil Rights for ex officio procedure within relatively broad limits. This, at the same time, means responsibility.

In addition to the Ombudsman's reactive role and closely related to it there is need for a proactive role interpretation. (Pro)activity is not at all without example: it is partly manifest in formerly conducted comprehensive ex officio investigations. Since 2008 the implementation of the so-called project method has meant a significant step along the way to a proactive protection of fundamental rights even utilising tools beyond law. In January 2010 the Commissioner again launched three fundamental rights project. When launching the projects two preliminary issues had to be studied: the contents and characteristics of the given fundamental right, and whether there were any such organs that could be investigated by the Ombudsman (such as the police, local governments, etc.), consequently whether the Ombudsman had any opportunity to shape the current legal practice from the angle of the fundamental right besides mapping the legal environment.

The project method can be particularly efficient when it involves the violation of the fundamental rights of a particularly vulnerable and exposed social group, unable to formulate its complaints, or if a conspicuously grave or massive violation of the law can be observed in the given area.

The Ombudsman, considering also his role as a quasi-Commissioner for children's rights deriving from the Act on the Protection of Children investigates the realisation of children's rights within the framework of an autonomous fundamental rights project (children's rights project). In 2009 the Parliamentary Commissioner once again put the problems of an exposed social group into the focus of his attention when he launched the project entitled "With Dignity in Old Age" in the interest of the realisation of the human dignity and constitutional fundamental rights of the aged. Launching the project on financial rights was justified by the large number of complaints pertaining to financial service providers as well as the revenue authorities. Since the spring of 2008 the Commissioner has been regularly conducting ex officio investigations exploring the situation of detainees. A comprehensive investigation continued for several years has also been in progress as a quasi-project pertaining to the Hungarian Armed Forces.

Naturally, different emphases are realised in the various Ombudsman's investigations in the case of a classical right to freedom or of a social right, since they occupy different positions in the system of fundamental rights, and different roles of the state are linked to them. In the sphere of the rights to freedom, and particularly in ensuring human dignity and legal equality it is the attitude of the Parliamentary Commissioner as protector of rights that is decisive, while the primary objective basically is to raise problems and to coordinate and promote dialogue between the parties in the case of social rights and the equality of opportunities.

Work done within the framework of projects was conducted along a set schedule: wording the series of theses serving as theoretical basis was followed by the elaboration of a detailed map of problems, and next a detailed annual plan of investigation was drawn up. The Commissioner specified as a particular aim to cooperate and communicate with the authorities concerned, with experts and civil society organisations, to promote the improvement of practice in the given field, and particularly to encourage the exchange of information and a shaping of attitude going beyond the issue itself. Regular consultations, professional conferences and workshop discussions were common elements of the projects. Activities making people conscious of law and shaping public opinion were oriented to different target groups: in addition to people involved they included the closer environment of those concerned, experts getting in touch with them, and society and public opinion in general.

The present chapter of the Report offers an abridged version about the investigations conducted in the projects, the Ombudsman's measures, the experiences of the professional consultations and conferences as well as the achievements, whereas a more detailed information is offered in the project bulletins organically linked to the Ombudsman's report with the exception of the series of investigations exploring the rights of convicts.

#### 4.1.1.

##### Children's Rights Project

The protection of children's rights is assisted by the Parliamentary Commissioner by his specific means on the basis of the Child Protection Act. It is his task to investigate into abuses affecting the constitutional rights of children whenever he becomes aware of them, and to initiate general or specific measures for their redress. In addition the Commissioner dedicates special attention to the prevention of the violations of rights, to the so-called proactive protection of rights. In 2010 the Commissioner placed the role of the family into the focus of ensuring children's rights such as: children's rights to upbringing in the family and the role of the state in promoting it (by assistance), as well as the operation of the state system of provisions substituting families, and, further on, the issue of adoption in this context.

The development of the Ombudsman's children's rights homepage [www.gyermekjogok.obh.hu](http://www.gyermekjogok.obh.hu) has also continued, which received about 140 questions from children as well as adults (typically from parents and educationists) since 2008. We have taken up several notifications from among them as complaints. Typical topics were the following: behaviour at school, "the teacher shouting", pocket money, private letter, the children's duties, smoking, pornographic content accessible on the internet, school regulations, the operation of the guardianship office, punishment at school, financial assistance to textbooks, keeping in touch, kindergarten outfit, giving marks, exam for marks, publicly financed medicines free of charge, foster parent, family allowance, transfer to an institute, corporal punishment.

It is of special importance that the Chairman of the International Children's Safety Service, Dr Péter Edvi and the Parliamentary Commissioner for Civil Rights signed an agreement on cooperation on 15 December 2010, under festive conditions to ensure cooperation in the interest





of achieving an ever fuller realisation of the so-called “Dignity Projects” launched by the Commissioner as well as children’s rights considered important by the ICSS as well as by the Parliamentary Commissioner for Civil Rights, and if they find it necessary to take joint steps towards the legislators and to coordinate their communications.

In 2010 the Ombudsman, based on the experiences of investigations to be described in brief below, wished to survey and investigate the implementation of the double-sided obligations undertaken by the state, the

regulations and legal practice related to the right to be brought up in the family, to ensuring family support and provisions substituting the family from the angle of children’s rights.

Naturally, investigations related to institutions substituting the family would continue during the project of 2011, focusing on the right of children to the possible highest standard of physical and mental health, and the investigation of the procedure of adoption related to the family would also continue.

#### 4.1.2.

#### “With Dignity in Old Age” – Project for the Elderly

The series of projects launched three years ago, offering comprehensive analyses and a planned work this time studied in a one-year program the domestic situation of the elderly; the suitability of the social and legal environment offered an image to the profession, the public and the political decision makers. Thus the Commissioner launched a priority project in the interest of the realisation of the human dignity and constitutional rights of the elderly in 2010.

Though the clumsiness of healthcare for the elderly is known, no solution guaranteeing satisfaction can be expected in view of the set of conditions to the availability of social services, of the contradictory nature of the economic policy con-



cerning employment after retirement age, of the modern-age problem of training unless there is a change of outlook in the society. It is part of the Parliamentary Commissioner’s priority tasks to clearly word and mediate dilemmas of a human rights nature, and his assistance may promote cooperation among NGOs, the participants of the institutional structure and the government. It has also been revealed during the one-year program that the challenges of social coexistence cannot be settled by the means of law in the field of elderly policy. It also became visible that participation in active social life for the elderly, but even simpler daily activities is occasionally incredibly difficult.

The actual reason for launching the project is that change of European paradigm which began years ago as an economic challenge of ageing welfare societies at first, and next as a moral one, and the strenuous work launched simultaneously in elderly policy, the international consensus which, after the birth of long-term economic forecasts, makes every civil society concerned about its elderly to accept a new philosophy, and also the quest for an answer to the question whether all this is present in Hungary as well.

The Parliamentary Commissioner investigated the situation of the elderly from the social, legal and sociological as well as the fundamental rights aspects of old age. He analysed and explored the given fundamental rights problems, and initiated the redress of the given situation objected to, or worded those dilemmas that burden the daily life of the elderly. It was done in a way that the elderly people or relatives and experts who can provide for (and with) them should possess full legal consciousness and legal knowledge.

As the topic is not only an issue of fundamental rights but primarily one of social sciences, our investigations and research at times tried to comprehend a far broader image than the one expected from the Ombudsman’s role. The common social portrait can be seen much more clearly in the axis of interdisciplinary context, therefore this time attention is rather called to the result of domestic research telling us that in ten years every fourth Hungarian would be above sixty, and Europe is not in any better situation either. An element of reckoning with this situation is thinking about the elderly, policies managing social tensions and the creation of harmony of human rights by the state based on law.

## 4.1.3.

## Financial Rights Project

As shown by the experiences of past years the complainants often objected to the procedure of certain financial service providers, particularly their practice of unilaterally modifying contracts, and as a result the raising of fees and costs of financial services, and they complained against the significant, often unexpected growth of the monthly instalments as a result of the growth of interest rates on loans and of the often unforeseen changes of exchange rates. Several complaints were also received in relation to procedures of execution of debts. In addition the gravity of complaints submitted against the procedure of the revenue authorities, the interrelationship of which with the economic crisis could be inferred from the tone of the submissions and the personal histories described in them which, however, could not be assessed during the Ombudsman's procedure. Therefore the Commissioner decided already in 2009 to launch an autonomous project in the interest of a comprehensive investigation of issues of financial law from the angle of fundamental rights with the financial support of the Hungarian Banking Association, the Hungarian Bank of Development and the Hungarian National Bank.



MFB  
Magyar Fejlesztési Bank Zrt.



MAGYAR NEMZETI BANK

Due to earlier experiences the investigation basically focused on two topics: it aimed partly on the exploration of the relationship to fundamental rights of the activities of financial services providers and insurance companies that can be deemed as public service, and partly of the various procedures of the revenue authorities with those rights.

The Parliamentary Commissioner, however, decided on an ex officio comprehensive investigation into several issues that offered themselves to laying the foundations of work and supporting it in a project. Ex officio procedures have always been directed to the study of phenomena causing abuses related to fundamental rights and affecting major groups of citizens revealed by earlier Ombudsman's investigations.

## 4.1.4.

## Checking Law Enforcement, the Rights of Convicts

The world of prisons is still covered by haze in public opinion, whereas the daily life of those detained in the law enforcement institutions as well as employees is characterised by strict rules but ensuring fundamental human rights. Today the aim of law enforcement is not primarily retaliation but the success of the detainee after release, promoting his/her readjustment to society. Employees of the system of law enforcement, besides ensuring safe keeping, have to work so that the convicts should not be brought back after release and that they should become "better people" under hard and disciplined circumstances than they used to be when they were locked up in the institution.

It should be natural in a state based on law that the implementation of penalties and measures, as well as other sanctions related to the limitation of freedom is a state task that is under differentiated legal, professional, social, etc. control.

There is no Ombudsman specifically for the control of law enforcement in Hungary, but it does not mean that this field would be outside the sphere under the control of the general Ombudsman. Convicts generally turn to the Parliamentary Commissioner because of their individual grievances. The Ombudsman, however, can conduct ex officio investigations also in the field of law enforcement.



The Ombudsman, soon after he took up office, took note already in October 2007 of suspicious cases of death in prison and he drew the conclusion that violence was on the spread among inmates in the prisons of Hungary between certain groups of convicts as well as the staff of the prison service. Pushing back violence, torture and humiliating treatment cannot be done by the Ombudsman's means otherwise but by an on-the-spot investigation of the individual violations of constitutional or human rights which is nothing else but catching red-handed some manifestation of human exposure.

The basis of the Ombudsman's investigations of prisons is offered by that finding of the Constitutional Court according to which the convict

is not an object of law enforcement but its subject who has rights as well as duties. The extreme margins of the constitutional framework of law enforcement are the right to human dignity and personal security on the one hand, and the prohibition of torture, cruel, inhuman and humiliating treatment and punishment on the other. Within those limitations it can be deducted from the state based on law and the constitutional prohibition of the limitation of the essential content of fundamental rights how far the state can interfere into the life of the inmates under the pretext of punishments and measures and how far it can limit their fundamental rights and freedoms.

Since 2008 the Commissioner has been investigating within the framework of a quasi-project either personally, or by his appointed associates in prisons. These Ombudsman's investigations offer a good opportunity for taking stand against torture and inhuman treatment in penal institutions, and to forward his findings in an abbreviated form to those who can and want to do something in the case.

The Parliamentary Commissioner wishes to continue this project next year as well using the method of on-the-spot inspection of the law enforcement institutions. The results of his investigations have convinced him of its importance.

#### 4.1.5.

#### Comprehensive Survey of the Hungarian Armed Forces



In 1997 the general deputy of the Parliamentary Commissioner investigated the realisation of constitutional rights within the armed forces, and attempted to survey the realisation of recommendations by follow-up investigations in the following years.

A new comprehensive investigation was justified by the longer time passed since the last one as well as by the following circumstances. During the past, almost one decade the Hungarian National Armed Forces were affected by two basic changes: Hungary joined the North-Atlantic Treaty Organisation (NATO) in 1999, which meant and continuously means new obligations as well as challenges and opportunities for the Hungarian Armed Forces. An even more significant change was that after 136 years conscription was abolished in November 2004, and the transition to voluntary armed forces has fundamentally

modified the organisation and operation of the Hungarian National Armed Forces, and the relevant regulation was fundamentally transformed. Armed forces operate according to a strict hierarchical order, with a special complaint mechanism of their own, and presumably this is partly the reason why hardly any complaint of the members was lodged with the Commissioner during the past years.

Summing up his experiences the Parliamentary Commissioner has made the following statements based on investigations. The Hungarian Armed Forces have well trained servicemen doing their vocation on a high standard, who even stand their ground in missions, and their work is appreciated by their foreign comrades-at-arms. During the course of visits in locations the results of the Barracks Reconstruction Program aiming at improving the living and working conditions of the soldiers were visible. A clear progress has been made in this field if compared to the earlier Ombudsman's investigations, yet further investments are needed to achieving extensively the conditions that would correspond to the standard of the age and meeting just expectations. In some places the proper healthcare and working conditions, housing, food supply and rest of servicemen, particularly compared to other units were unworthy of the Hungarian Armed Forces because of missing refurbishments and development, and those conditions involved the risk of abuse related to the right to health of the servicemen. The work load of servicemen remaining in the country is enhanced by participation in missions, in extension trainings and courses. The superiors have to face a difficult task due to the shortage of servicemen and managing the resulting additional service. Making the Armed Forces attractive and enhancing their retaining capacity justify the reconsideration of the payment system.

## 4.2.

### Investigations Exploring the Realisation of Constitutional Rights

The Ombudsman satisfies the stipulations of his mandate granted by the Constitution by collating exclusively arguments of fundamental rights and the given problem when exploring the set of contexts behind it autonomously, in an objective and neutral manner. The structure and theme of the reports of the various Parliamentary Commissioners are built from the interpretation of the role of the given Ombudsman within the constitutional, legal and professional framework. It is this interpretation of role and outlook that offers the theoretical framework for determining the directions of the investigations in a given period.

#### 4.2.1.

##### Right to Life and Human Dignity

Para (1) of Article 54 of the Constitution states that every person has the right to life and human dignity from birth in the Republic of Hungary, and no one can be arbitrarily divested of it. The Constitution lays down in the first place the right to human dignity together with the right to life among the inviolable and unalienable fundamental rights of people. According to the Constitutional Court the Constitution does not simply lay down the right to life and human dignity as a simple fundamental right, but as such a human right of absolute nature which cannot be taken away arbitrarily from anyone since human dignity is a quality associated to life right from the outset, which is indivisible and illimitable, therefore it is equal for every individual. The right to equal dignity ensures, in unity with the right to life that no legal distinction shall be made between the values of human lives. The life and human dignity of everyone is un-touchable, irrespective of his/her physical and mental development or condition, and also how much he/she has realised of his/her human opportunities and why that much.

#### 4.2.1.1.

##### The Obligation of the State to Protect Life

Para (1) of Article 54 of the Constitution partly guarantees for all the subjective right to life, and partly, in harmony with para (1) of Article 8 of the Constitution it makes the protection of human life as a primary task of the state. Deriving from the objective side of the right to life the state is not only obliged to refrain from the violation of the subjective right of individuals to life but it is obliged also to ensure its protection by law as well as by organisational measures. This obligation is not exhausted by the protection of the life of individuals but it also protects human life and the conditions of life in general. As part of objective institutional protection the state also has an obligation to manage the consequences of accidents and natural calamities and to mitigate their detrimental effects and this task is performed by the elaboration of the relevant legal regulation and legal institutions as well as their proper development and operation. This protection, however, is not at all an absolute one, because its objective level is influenced by several objective circumstances, such as the economic capacity of the state in any given point in time.

**1.** Since 2002 the Parliamentary Commissioners have investigated the *operation of emergency call numbers* altogether four times, during the course of which several abuses related to law were discovered. As a result of the Commissioner's investigation in 2008, proposals for legislation were made in the interest of setting up the operation of the Uniform Emergency Call System and its implementation was once again studied in 2010. The investigation has disclosed that despite the findings of the earlier investigations meaningful changes have not taken place for the identification of the caller's position. The Act on Electronic Communications stipulated years ago that in order to answer emergency calls the telephone service provider was obliged to supply data for the identification of the caller and for determining his/her location to the emergency services, more over, an order of the Ministry of Economics and Transport laid down even its technical parameters, yet in practice and directly nothing was done with human interference. There would be an urgent need for the determination of the actual location of the emergency caller, particularly in the case of a traveller without the knowledge of the location in case of emergency as well as also in the interest of screening unfounded calls. The Ombudsman has found that the lack of a precise determination of the caller's location needing help, irrespective of the specific reasons it can

be attributed to, causes abuse related to the duty of the state to protect lives. He has also found that the operation of 112, the uniform European emergency call number in its present form at times expressly makes the organisation of assistance offered in a uniform outlook more difficult. He requested the Prime Minister to consider the reduction of the time of interference of the organs receiving emergency calls as a priority objective, and he proposed the Government to pay extraordinary attention to the performance of the legislative tasks necessary to the creation of the Uniform Emergency Call System, but no response to the recommendations has arrived up to the closing of the current report.

2. The Parliamentary Commissioner conducted an *ex officio* investigation into the *legal framework of the management of extreme flood situation* as a result of an extraordinary quantity of precipitation in the spring of 2010. According to his stand the legal regulation pertaining to damages caused by water (flood and stagnant water) and to the management of the ensuing catastrophe situations needed revision. If possible, the legal material should be made uniform, simplified and the number of the relevant legal norms reduced, particularly as far as the management of disaster situations is concerned. Regulation on several levels affecting the competency of several administrative organs cannot be eliminated due to the complexity of the topic but if possible, parallel and at times even contradictory regulation of the same issues should be avoided. For instance, several systems of management are operational in disaster situations caused by floods. It seems to be expedient to give the comprehensive and uniform management into the hands of an expert of water management and disaster in each catchment area, on a local or county, or regional level in the interest of uniform direction. Such a person could act in a broader competency than the one currently available to the flood control manager thus problems deriving from the communications of public administration heads acting parallel could be eliminated.

The Commissioner has stated that despite the authorisation received the Minister of Home Affairs did not issue his order on the National Rules of Disaster Relief. In addition it would be desirable to create harmony between the regulations for various special disaster situations and the general regulation for disasters. The Ombudsman has found that the over-articulated regulation and the implementation of the law by various administrative, law and order and local governmental organs of overlapping competency based on it may be an obstacle in the way of the state

to meet its duty to protect human life. The Commissioner requested the Minister for Public Administration and Justice to survey the entire positive law related to the management, diversion and prevention of floods and stagnant waters, the catastrophes caused by them, and related to the damages caused by waters together with the Ministers of Rural Development and Home Affairs, and further on to elaborate a comprehensive concept for informing, training and preparing the heads of villages and of the population, particularly those living in regions endangered by floods and stagnant waters.

As a consequence the Ministry of Home Affairs and the National Directorate for Disaster Management have *elaborated a concept* for the improvement and development of the disaster management system in which proposals for solutions were worded in harmony with the theoretical findings of the Ombudsman's report. The Minister of Rural Development said that the possibility of taking over the responsibility and task of flood and stagnant water prevention and control by the state from local governments should be studied. According to his opinion, though regulation can be improved, it was clear what was within the competency of water management and what of disaster management. The Minister for Public Administration and Justice accepted the proposals and stressed that the revision of legal norms would extend over the legal regulation of building on flood-plains as well.

#### 4.2.1.2.

##### Right to Human Dignity

Ever since the beginning of their activities the Parliamentary Commissioners have dedicated particular attention to the protection of the fundamental rights of the needy, of people in exposed situations, and persons having a weak ability to assert their interests. The Ombudsman learned from a signalization received that those persons who rubbish-shift and look for food, returnable bottles and saleable metal scraps in rubbish bins and containers on the territory of the town can be fined on the basis of the petty offences order of the local government of Kaposvár. The notary said that rubbish-shifting has been sanctioned since 1992 because of environmental and public health considerations, because those who shift rubbish in containers throw out garbage, pollute the environment and violate the interests of local residents. Based on information forwarded, the local government received more than 900 complaints against rub-

bish-shifting during the past four and a half years, but the petty offences procedure often had to be dropped because the place of stay of mostly homeless people could not be identified.

The Commissioner has stated that the order of local governments cannot be objected to formally, but no legal norm whatsoever and particularly not an order of a local government can arbitrarily prohibit a form of behaviour without justification on a democratic state based on law. Keeping in view the practice of the Constitutional Court the protection of the image of the town and the general condition of inhabitants cannot be classified among the aims of legitimate legal restrictions because most of the activities in public spaces could be sanctioned with limitations based on such subjective justifications. It cannot be justified that punishing rubbish-shifting was necessary in the interest of protecting public health, because it cannot be mixed up with littering. If anyone threw away litter in a public space he/she can be taken to task because of petty offence, irrespective of the form and content of littering. The Ombudsman also mentioned that an object thrown into the garbage was given up, it is not owned by anyone, therefore ordering the limitation cannot be justified even by the abuse of the right to ownership. Legal violation is further aggravated by the fact that persons already in an exposed situation, living on the periphery of the society, and hit by general social aversion are punished because of rubbish-shifting, which, in many cases is almost their only legal possibility of mere survival and famine is its alternative. The Commissioner stressed that if the system of social provision was unable to offer even minimal help then squeezing rubbish-shifting ‘underground’ and its persecution is definitely not the proper answer to problems. He stated that the right to human dignity of persons concerned was abused by the existing legal situation, and requested the local government to repeal the relevant section of its order on petty offences.

#### 4.2.1.3.

##### Right to Personal Freedom

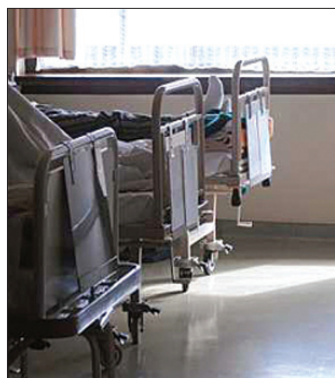
The violation of the right to personal freedom was investigated in the case of psychiatry patients, convicts, and people taken into custody, as well as persons in custody for cases of petty offences and criminal procedure by the Parliamentary Commissioner in 2010.

**1.** The Parliamentary Commissioner’s associates held on-the-spot investi-

gations in the Home of Psychiatry Patients in Szentgotthárd, maintained by the Municipal Government. A special unit for ten people was created in 2004 with the aim of promoting and helping adjustment by a more intensive therapy of patients suffering from addiction or against other causes making their adaptation difficult. The special division is sectioned; its inhabitants can leave the premises exclusively if accompanied by their nurse. They may welcome their co-residents for one hour each twice a week and may go out to town only in exceptional cases with someone accompanying them. The residents can be placed in the section for minimum two and maximum four months, but the maximum duration may be extended by the specialist psychiatrist by two months provided the patient commits a grave violation of norm. In cases deserving special consideration the psychiatrist advising the placement of a person in the unit may relax the rules without limitation. According to the Commissioner the segregation of patients cannot be the outcome for those needing special care who are placed in the unit, the fundamental rights of the patients must be asserted within the unit as it is asserted in any other part of the institution. The Ombudsman has found that the unit did not meet those requirements in several respects that derive from the Constitution, from the UN Convention on the Rights of Persons with Disabilities, and from the governing legal norms. The operation of the special unit causes abuse of the right to personal freedom and to free movement, therefore the Commissioner requested the head of the institution to modify the operational order of the special unit in close cooperation with the maintainer. The head of the institution has implemented certain modifications but did not agree with some other proposals and did not accept modifications suggested about free outing, the handling of pocket money and smoking.

**2.** A mother turning to the Ombudsman objected to her son, an autism patient, being bound to the bed in the Psychiatry Ward of the Saint George Hospital of Fejér County, and that nappies were put on him, and she was informed about the causes and about the condition of the child with delay. The Commissioner has found that the complainant was not given information about the condition of her son for five days though she repeatedly and expressly requested it. The hospital did not meet its obligation to warranting as stipulated by the Act on Healthcare according to which the legal representative of the patient as well as the representative of patients’ rights should be informed without delay when the limitation of personal freedom is ordered. The internal regulations of the hospital

did not meet the requirements of the Act on Healthcare regarding the obligation to giving information. According to the deputy medical director personal freedom was limited on one occasion for three hours and ten minutes. It was revealed by the received healthcare documentation that later on the binding of the upper limbs was applied, but the respective data sheet did not contain the end date of the restrictive measure, the name and position of the person who ordered it, neither the applied physical measure. The limitation of personal freedom was ordered because the son of the complainant lay down in someone else's bed, urinated on the bed of other patients which also justified the application of nappies. Whereas according to the healthcare documentation the restrictive measures were applied on both cases because the patient harassed his co-patients, was ungovernable, restless, was a danger to himself and to others. As contrasted to information given by the deputy medical director, a detailed documentation and support of the limitation was not done. The Ombudsman called attention to the fact that the aim of the legal implementation and documentation of measures concerning the restriction of personal freedom was that such measures restricting this fundamental right may be taken only amidst adequate safeguards. He requested the director-general of the hospital to rework the internal regulations, as well as to proceed in the future in psychiatric care with the observance of the governing legal regulations. The hospital has sent the reworked regulations to the Commissioner.



**3.** The Parliamentary Commissioner experienced partly similar shortcomings at the Psychiatry Ward of the Jávorszky Ödön Hospital of Vác. It was revealed from the documentation requested to be transferred due to a complaint that the representative of patients' rights was informed late about a measure applied on one occasion, limiting the personal freedom of the complainant's relative. It was also found by the Parliamentary Commissioner that the hospital, despite the

respective order, did not have regulations on the restrictive measures pertaining to psychiatry patients. Laying down the procedural rules for the limitation of personal freedom has a significance of safeguards, therefore the Commissioner requested the director-general of the hospital to act without delay so that the rules on restrictive measures be elaborated.

**4.** Based on news reports, the Parliamentary Commissioner ordered an ex officio investigation into the case starting with three grammar school girls trying to steal some trinkets to the value of about ten thousand forints from a Budapest shop. The security guard caught them, and the police arriving on the spot took the culprits to the Police Headquarters of District 5, based on the modification of the Act on Petty Offences in force. The girls were put into the police lockup and were kept there for one and a half days, but one of them had to be transferred to a hospital psychiatry ward already on the first evening. According to information from the *police chief of Budapest* the young ones were taken to the police on the basis of the Act on the Police, within the authorisation of discretion, and the culprits were interrogated by the petty offences authority in the presence of the legal representative in the case of one of them, and in the presence of an authorised defence counsel in the case of the other on the same day. One of the girls got sick during interrogation, an ambulance was called and she was taken to hospital. The two other culprits were taken to a 72-hour petty offences custody for the purpose of an accelerated court procedure because of committing a petty offence against ownership. The court postponed the case because the accelerated procedure could not be conducted without the third culprit; hence the two others were acquitted. The police chief of Budapest considered the measures of the authority legal, professional and proportionate. In his report the Ombudsman emphasized that the authorisation for discretion was not unlimited, and *the police had violated the right to personal freedom when they ordered custody of the young girls for petty offence*. Taking someone to custody can never be a punishment brought forward and cannot be applied even with an "educational objective".

The modification of the Act on Petty Offences in August did make the use of conviction as punishment even in the case of juveniles as well as the possibility of converting unpaid fines into custody. According to the Home Minister's opinion, who was contacted, making possible the locking up of young ones can be adequately justified by the lack of detaining force of sanctions previously available (warning, fines in a narrow circle). The Ombudsman has found that allowing the locking up of juveniles was suited for causing the abuse of the rights of children and it disproportionately and unnecessarily limited the right of young people to personal freedom and safety. The same abuses emerge in relation to juveniles taken to custody and the Commissioner pointed out that if a petty offence is committed it is the system of child protection that should take action. Depriving a young person of freedom can only be

the ultimate measure, further on, it is not possible to apply straight away the gravest sanction (taking into custody, locking up) for an offence of the smallest weight, for a petty offence; when any procedure is taken in relation to a minor it is the educational purpose and not retaliation that should be asserted. Hence the Commissioner recommended to the Minister of Home Affairs to consider initiating such a modification of the Act on Petty Offences which would terminate the possibility that juveniles are taken to petty offences custody and ordering their locking up. The Minister of Home Affairs did not challenge the statements of the report; according to his information the plans of the portfolio for 2011 contained an all-round revision of the Act on Petty Offences.

5. The Ombudsman conducted an investigation based on a complaint submitted by a lawyer, according to which his client, based on warrant, was caught by the police and taken to the Police Headquarters of District 7, where he was taken into custody, and next transferred to the Central Jail of the Budapest Police Headquarters handcuffed and on a leash and further on to the law court that had issued the warrant. According to information received by the police chief of that Headquarters the law court had issued an order of arrest against the person taken to the police, therefore he was arrested legally, and he had also forwarded the warrant ordered by the law court. The national police chief stated that the arrest and custody had no legal basis since the law court only issued a warrant against the person. There was no criminal procedure against him, the law court only wished to interrogate him as a witness; therefore a warrant was only issued for trying to identify his wherewithal. However, the official of Police Headquarters of District 3, which conducted the warrant of apprehension registered the relevant data on the Warrant Apprehension Information System, hence a disciplinary procedure was initiated against him. The police chief also stated that the use of handcuffs was also not legal. When rejecting the complaint submitted by the lawyer the Budapest Police Headquarters he did not refer to legal norms but internal rules (measures taken by the BPH), and the officer in charge responsible for custody did not examine the existence of legal preconditions when handcuffs were applied. According to the national police chief that stipulation of the BPH measure which makes the use of handcuffs and leash compulsory in every case when a person is escorted, does not correspond to the contents of the Act on the Police, therefore he immediately ordered the head of BPH to modify the rule accordingly. The Ombudsman has found that the *pro-*

*cedure* of the Police Headquarters of District 3 as well as of BPH *abused the right of the complainant to personal freedom and human dignity*. Taking anyone to court and into custody can only be done on the basis of an order of arrest issued against a person under criminal procedure, but not on the basis of a warrant. At the same time the Commissioner did not make any recommendations in view of the measures that had been taken by the national police chief earlier.

#### 4.2.1.4.

##### Right to Self-determination, to Private Sphere and to Piety

In 2010 the Ombudsman conducted an investigation in the field of the right to piety studying the treatment of the dead and the maintenance of cemeteries, and another one into the removal of organs and tissues related to the right to self-determination. Another investigation into the regulation of the opening hours of shops also touched upon the realisation of the right of residents to private sphere.

1. The complainants objected to the undignified handling of their deceased relatives. They learned right before the funeral that the cold-store of the Albertirsa cemetery was out of order and consequently the corpse of the deceased started to decompose. And when the antecedents were studied during the course of the *ex officio* investigation it was revealed that the local government of the town of Tolna did not maintain a public cemetery. The Commissioner has found that the notaries concerned omitted their duty of control, and that the local governments of the respective villages did not perform their obligatory task of maintaining public cemeteries; hence they *abused the right to piety*. The Commissioner initiated that the notary of the town of Tolna should fully comply with his duty of inspecting the operation of the cemetery and the activities of the undertakers, further on that the representative body of the local government of Albertirsa should take the necessary measures in the interest of maintaining the cemetery. The Ombudsman requested the Minister for Local Governments to promote the performance of the tasks related to the public service provision of burial by the local governments with the means of professional guidance. Further on, he also initiated the calling of attention of the authorities (public notaries of district centres) issuing licences for the provision of burial services to properly exercise their right to control in relation to the maintenance



and operation of cemeteries. The local governments involved accepted the contents of the report and have taken measures necessary to remedying abuses, and the Minister for Local Governments complied with the recommendation by publishing the report in the Local Governments Bulletin.

2. The complainant turning to the Ombudsman requested investigation into a burial held simultaneously of his mother and of a high-ranking military officer. He narrated in his submission that the organisation of the burial of the military leader was started days after the complainant commissioned the burial of his relative. He was not informed about the special traffic control and the implementation of other security measures; therefore it was made difficult for his relatives to arrive on time for the beginning of the obsequies. The allegations of the complainant about the circumstances of the burial were not refuted by the organs contacted by the Commissioner, the Minister expressed his regrets, and the director-general of the Budapest Undertaker Institute accepted the complaint as justified. *The Parliamentary Commissioner has identified the fact of abuse of the right to piety*, but there was no way of redressing the particular abuse so he did not make any recommendations. The Ombudsman requested the director-general of the Budapest Undertaker Institute to act with particular circumspection in the case of prominent burials in order to avoid similar cases in the future.

3. According to a complaint several minor criminal deeds were committed against visitors to the cemetery of Pesterzsébet operated by the Budapest Undertaker Institute. All this could happen because the back gate of the cemetery was open without control; the cemetery is used as a thoroughfare by pedestrians as well as cyclists disturbing the visitors' right to piety. The Ombudsman has found that the Budapest Municipal Government as owner deficiently guarded the cemetery by leaving the back entrance of the Pesterzsébet cemetery unguarded, and the Institute as operator did not properly arrange for the maintenance of order in the cemetery by leaving the back gate unguarded. He has also stated that the Institute, disregarding the relevant legal regulations and over-extending its tasks as operator ruled that 'drive-in fee' should be collected from the visitors using the roads in several of its cemeteries. The Commissioner initiated with the Municipal Government to take the necessary measures for the all-round guarding of cemeteries maintained by it and to terminate the collection of drive-in fees. Further

on, the Ombudsman requested the notary of District 20 to check the realisation of the contents of the relevant legal norms and contracts for public service provision in the field of obsequies within his competency. The Municipal Government in its answer gave information about measures to be taken in the future deemed necessary but not specified them; hence the Commissioner did not accept the answer of the local government due to the lack of individual measures initiated by him. In his response the notary indicated the lack of competency, consequently the Commissioner initiated measures to be taken by the Office of Public Administration which called the attention of the notary to exercise his competency. A follow-up investigation is planned in this issue.

4. A mother turned to the Ombudsman because it was revealed by the autopsy report of his deceased son that part of his brain was removed for scientific purposes at the Institute of Forensic Medicine of SOTE without even asking her before. The Commissioner has found that the employees of the Institute proceeded in keeping with the regulations of the Act on Healthcare when they removed an organ for scientific purposes of the deceased who had not made a statement prohibiting the removal of his organs, and according to the legal regulation in force the Institute did not have to solicit the agreement of the relative either. The report refers to that statement of the Constitutional Court according to which certain partial authorisations of the right to human dignity, including the right to self-determination may be limited similarly to any other fundamental right. The fact in itself that the law maker attaches protest against the removal of tissues and organs to specified preconditions during the course of autopsy does not mean the violation of the right to self-determination. At the same time the Ombudsman's report also calls attention to the fact that respecting and protecting the right to self-determination requires special measures. The Commissioner has found that the lack of registers recording protests against the removal of tissues and organs during autopsy (similarly to registers of transplantations) creates the imminent danger of abuse of the right to self-determination. The Commissioner has initiated at the Minister of Health to modify the respective order of the Ministry of Health and make possible the recording of protests against the removal of tissues and organs by autopsy. The Minister agreed with the contents of the report and informed the Commissioner to initiate the setting up of the relevant system of records.

5. In 2009 several submissions arrived in which the procedures by property security guards ('security guards') working in various department stores were objected to. A comprehensive Ombudsman's investigation has revealed that persons working as personal and property security guards abuse their entitlements ensured by the law in many cases, they do not apply them with the least limitation of personal freedom and personality rights, and in many cases they go beyond the framework of action specified by the legal norm. The Commissioner called attention in his report to the fact that property security guards did not have rights of an authority, they can apply methods of force exclusively in cases specified by law, and they are entitled to apply the limitation of personal freedom only in the case if someone is caught red-handed in committing a crime. The report states that the legal situation emerging from the total lack of effective police control results in abuses related to the right to private sphere of the complainants.

#### 4.2.1.5.

#### Prohibition of Discrimination and the Requirement of Equal Treatment

In 2010 the Ombudsman investigated the realisation of the requirement of equal treatment in relation to obsequies of embryos younger than 24 weeks, to the subsidy of a medicine against asthma and to the situation of persons living with disabilities.

1. The editor of a homepage offering spiritual and information support to parents who have lost their child called the attention of the Ombudsman to the treatment of cases of miscarriage and perinatal death. Some hospitals do not make it possible for parents to bury their embryo that died at the age of 24 weeks or earlier, further on it is not possible to a dignified parting by the parents in the case of perinatal death in many places. The Ombudsman's investigation has revealed that the practice of handling the dead is often not uniform in hospitals, and the practice of soliciting statement and its absence in the Szeged institution did not meet the rules of legal norms. The Ombudsman is of the view that the *institutional practice goes against the prohibition of discrimination* which does not make it possible for the institution to transfer the dead embryo to relatives for the purpose of a dignified burial. The Commissioner has emphasized that the possibility of parting, as a practice consolidated

as moral rule is the right of every parent and relative, irrespective of the fact how old the embryo was, and a destruction of the remains of a miscarriage as healthcare waste was unacceptable and an illegal practice. The Ombudsman *initiated with the Minister for National Resources* that the regulation related to the dead should make the burial of the dead embryo even at an early or medium maturity possible to relatives. The Commissioner also initiated at the institutions investigated that the embryo should be allowed to be buried by the family only if the relatives made a positive statement in the case of silent delivery, and that the category of silent delivery should be applied in keeping with its legal definition, that the dead embryos should be stored in isolation up to the burial, and information should be given about parting from the dead embryo without any influence, and if required should be allowed before the autopsy. He also initiated that in the case of a miscarriage the handling of the dead embryo should be done in keeping with the legal regulations and its burial should be arranged for.

2. The Commissioner investigated ex officio the *issue of the removal of visual obstacles in the metro*. He has found that the special needs of *deaf passengers and those of impaired hearing* are less considered, as currently several pieces of information and signals cannot be sensed or adequately sensed by them. According to plans light signals would be put on older carriages intended to be run for a longer period of time, however, the approval of the respective authority and the execution would require quite some time. In the place of 1 January 2010 set by law the supplementary light signal can be installed on the metro trains and carriages only by 1 January 2011 as earliest. The life and safety of deaf passengers and those of hearing impairment is exposed to enhanced danger, because they do not receive proper information in danger situations. The Commissioner has found that the lack of visual information on the closing of the doors of metro carriages violated the requirement of equal treatment. The Ombudsman requested the necessary measures from the director-general of BKV to make the transport of deaf patients and those of impaired hearing safe by the instalment and operation of a temporary visual signalling system prior to 1 January 2011, further on he requested the Mayor to prescribe the introduction of the necessary measures for BKV. The recommendations were accepted, and the BKV would implement them as a function of the replacement of carriages and of the technical possibilities.

3. Based on a complaint the Parliamentary Commissioner investigated into the operation of the Székesfehérvár and Bicske divisions of the *Integrated Social Institution of the Local Government of Fejér County*. The residents of the Székesfehérvár division, living with disabilities, complained that in a short period of time they have to vacate the home due to the decision of the maintainer. Four years ago the Ombudsman already requested the Chairman of the Fejér County Assembly to forbear from the planned closure of the rehabilitation division of the institution in question, and that the County local government, in keeping with its legal obligation should renew the institution. The Parliamentary Commissioner has found that *since there was no renewal during the past four years it violated the right to human dignity of residents*, and the all-round operational conditions were not guaranteed. The complainants objected to the fact that in the new place a shop, the post office, and medical care as well as the opportunity of odd jobs ensuring their livelihood would become almost totally inaccessible. The investigation has confirmed that with *the closing down of the division in Székesfehérvár part of the residents would be transferred to such isolated institutions* where their participation in social relations would become difficult due to segregation, *which runs counter to the requirement of the equality of opportunity* (para 3 of Article 70/A of the Constitution) and also to the stipulations of the Act on the Rights and the Safeguarding of the Equality of Opportunities of Persons with Disabilities. The Commissioner asked for remedying this abuse from the Chairman of the Fejér County Assembly as well as from the head of the institution. According to the opinion of the *Chairman of the Fejér County Assembly* the closing down of the division was the only possible solution for making the institution not to care for the residents in a building of dilapidated technical condition, requiring all-round reconstruction in- and outside. The County local government did indeed omit reconstruction but the improvement of social specialist care cannot be expected due to the lack of financial resources. According to information received from the *Minister of Social Affairs and Labour* the replacement of residential institutions offering nursing and care to persons with disabilities would take place in several steps up to 31 December 2013.

#### 4.2.2.

#### Social Rights and the Right to Ownership

##### 4.2.2.1.

##### Right to Ownership

The consequences of the economic crisis can still be felt in relation to the right to ownership. The plaintiffs assess the putting of their immovable and movable property under distraint as the violation of their right to ownership. The overwhelming majority of complaints submitted against bailiffs and law courts the complainants objected to the existence of debt and the legal procedure serving as a basis of the judicial enforcement order (such as a contract with a bank on loan among others) and the deriving obligations, hence the Ombudsman's investigation was not possible into these cases due to the lack of competency. In these cases the Ombudsman offered the means of legal remedy still to be applied which were mostly of judicial nature.

##### 4.2.2.2.

##### Cases Related to the Right to Education

When investigating cases related to education the Parliamentary Commissioner for Civil Rights has to keep in mind that the *Commissioner for educational rights also has authorisation to conduct investigations*. Therefore the Parliamentary Commissioner, despite the fact that the rules of the Act governing his competency do not exclude in detail his procedure in cases where the Commissioner for the rights to education is also investigating, he would always examine in cases related to education whether they raise the issue of the danger of abuses exclusively of the rights to education, or there is ground to suspect that the abuse is related to other fundamental rights the solution of which may require the measures to be taken by the Parliamentary Commissioner.

## 4.2.3.

## The Principle of the State Based on Law

## 4.2.3.1

## The Requirement of Legal Security and the Right to Fair Procedure

According to the practice of the Parliamentary Commissioner for Civil Rights the various requirements deriving from the principle of the state based on the rule of law, in case they can be interpreted in the given context, should be realised also in the activities of institutions offering public service: the right to fair procedure can be expected also from organs offering services to the clients and contractual partners.

**1.** In one of the cases investigated the complainants requested the Commissioner's help in the plight of an elderly mother suffering from old-age dementia and of limited capacity of action. As guardian of the mother she requested the release of money from the mother's restricted depositor's book, but no meaningful decision was made for more than half a year. The Ombudsman solicited information from the head of the Guardianship Office, also requesting to attach the copies of all the documents produced in the case. Based on the information received there was no trace of a written request sent to the bank, and though the Guardianship Office required the plaintiff to present herself and was interrogated the official did not attach the call-in letter and the minutes to the documents. The receipt of the rulings was not proved by a notice of receipt, and there was no information about the possible requests of legal remedy or of the decisions coming into force as such documents were missing. The Ombudsman's report has stated that the documents lacked the signature of the issuer and also the stamp of the authority, sent in deficiently hence did not make a meaningful investigation possible, the procedure of the Guardianship Office hindered the exercise of the constitutional competency of the Ombudsman thus causing the abuse of the requirement of legal security.

**2.** Obstructing the Ombudsman's investigations, however, was not only done by local governments but occurred even on the level of ministries when they did not meet their obligations to co-operate as stipulated by law. In 2008 the Parliamentary Commissioner launched a comprehensive fundamental rights project in the interest of the realisation as well as the practical elaboration of the right to strike as a constitutional

fundamental right. During his investigations within the framework of this project he discovered constitutional objections in relation to the regulation of the Hungarian right to strike and to the stipulations of the Act on Strike; and has made several initiatives in the interest of their redress aiming at the modification of the law. In his letter of 7 September 2010 the Commissioner requested the Minister of National Economy as well as the Minister for National Resources to inform him about measures taken within their competency in relation to his legislative proposals included in his report, as well as about measures done or planned by the government. Since no answer was received to his submission the Commissioner repeatedly turned to the same Ministers in writing on 19 November 2010. As up to 13 December 2010, the closure of the follow-up investigation no meaningful information received to either of his submissions, the Ombudsman was forced to state in his report that the missing answers caused the abuse of the requirement of legal security. The Commissioner requested the heads of those portfolios to inform him in 15 days about their position evolved in relation to his legislative proposals concerning the legal exercise of the right to strike included in the reports referred to.

**3.** In 2010 the Commissioner investigated cases of financial law and of the operation of financial institutions directly affecting citizens, and the realisation of the right to legal security and to fair procedure within them as part of the autonomous project of fundamental rights about which the chapter on projects of the report offers a survey. In 2010 it is worth specifically mentioning *three major thematic fields* from the angle of the realisation of the requirements of the state based on the rule of law, such as: the Ombudsman's investigations related to the procedures of the customs authority, to the control of the activities of property security guards and to waste management. It is worth discussing separately the findings of comprehensive Ombudsman's investigations launched within the framework of the *transport project* of 2009, as some of them extended over to 2010, further on the Commissioner also dealt with the activities of parking companies on the basis of complaints received.

## 4.2.3.2.

## Cases Related to Individual Transport and Parking

For the first time the Ombudsman carried on a comprehensive investigation in relation to the *procedures of parking companies* in 2007. The trend of earlier years did not change in 2010 either: several complaints were received by the Office. During the course of studying the submissions it was revealed that if the obligor submitted a complaint against the payment order of the parking company, then, if the public service provider did not accept the complaint the complainant was automatically obliged to pay a higher additional fee. During the course of the investigation the Commissioner has also found that the current regulation did not acknowledge the postponement force concerning payment obligations which meant the limitation of the right of drivers to submit complaints. As a result of another investigation the Commissioner has found that the legal situation which did not regulate the possibility of the obligor driver to submit a complaint against the parking companies' call for payment created abuse related to legal security. Another situation of abuse emerged by the fact that the regulation on a proper level of the manner of assessing complaints against payment orders issued by the parking companies was not prepared. The Commissioner requested the Minister to initiate the elaboration of detailed rules in relation to the handling of complaints submitted in parking issues.



According to the Commissioner it also provoked the abuse of the requirement of legal security that it was not clarified in the current legal environment whose duty was the clearing of parking places on occasions like snows. The Ombudsman called attention to the fact that the information of clients about payment obligations or their lifting is particularly important as it derives from an obligation for cooperation characteristic of civil legal relations. This obligation holds for parking companies, and the local governments as well as the Municipal Government transferring the task of operating parking places. The Commissioner called attention to the fact that due to the civil nature of the legal relations between parking companies and those who use their services it can be expected from the parking companies to offer services

that are proportionate with the parking fees paid by the operators of motor vehicles. It cannot expire only by ensuring a place for parking, but should include the proper working of the automats, keeping the parking places in good order and clean, and the compatibility of the parking tickets issued by the various parking companies. According to the Commissioner's stand parking automats were basic elements of the service as without them the drivers are unable to use the parking places in keeping with rules. Therefore it is important that the parking companies pay adequate attention to the control of the proper operation of automats.

The Ombudsman initiated with the Major to ask for regular information from the heads of the municipal parking companies about the control and result of the automats issuing parking tickets. The Commissioner requested those concerned to take the necessary measures so that the parking ticket automats on the territory of the capital should accept all the coins in circulation, further on they should take steps to wind up the practice according to which the parking ticket automats demand extra payment a quarter of an hour before the payment period. The Commissioner has also initiated the modification of the rules by the Mayor in order to evolve a uniform order of waiting on the administrative territory of the capital, including the extended opening hours (at least up to 18 hours) of the client service offices of the municipal parking companies.

In another case investigated and based on an earlier experience the Commissioner recommended the modification of the parking order of the Szombathely local government so that during its procedure the parking company may ensure for users of the service the waiver of additional fee, its moderation, or payment in instalment by exercising fairness and weighing individual cases and solid reasons. Further on, he requested the assembly of the city to supplement its rules regulating parking issues by regulations pertaining to the possibilities of subsequently presenting the parking tickets. Repeating his former findings the Commissioner expounded that the parking company cannot refrain from the waiver or moderation of additional fee within the framework of fairness, or from the subsequent presentation of the parking ticket, more over it has to consider its possibility when it investigates the additional fees that are subject to the individual complaints. The Mayor of Szombathely informed the Commissioner after the investigation that they would jointly study with the parking company his proposal concerning the subsequent presentation of parking tickets and would consider it when the order is modified next time.

The Parliamentary Commissioner also dealt with the issue of fairness that could be applied when additional parking fees are determined in another investigation. In his report he stated that the parking company violated the right of the complainant to fair procedure when it did not drop its demand for additional fee on the basis of weighing the individual circumstances and offered misleading information on its homepage to its clients. In the case examined presumably the ticket placed behind the windscreen may have turned down when the door was closed and it was not noticed by the owner, but when returning to the car there was an appeal for paying additional fee. The paid parking ticket was presented at the clients' office of the Budapest Municipal Government's Parking Co., but the complaint was rejected. The Commissioner requested the acting manager, since the order regulating procedures did not exclude the possibility of exercising fairness to see to it that the sum was returned to the complainant and modify without delay the information provided on the internet, in keeping with the valid regulation. After the case of levying additional fee the Municipal Assembly order introduced also the possibility of subsequently presenting the parking ticket not properly placed, thus the legislator recognised in this case too the necessity of the relevant regulation which could be considered as a realistic situation.

#### 4.2.3.3.

##### The Right to Legal Remedy

According to the Commissioner's stand the essential part of the fundamental right to legal remedy also extends over *information on the possibilities or absence of legal remedy*. The obligation of giving information is also stressed by the different codes of procedure emphasizing that information about legal remedy cannot depend on the discretion and consideration of the various authorities. During the course of his activities the Parliamentary Commissioner for Civil Rights has pointed out that information on legal remedy should be given even in *the case of procedures outside those of public administration*. Thus ensuring the possibility of legal remedy is *not merely a formal* (whether it is ensured or excluded by a legal norm) *issue but a matter of content* (was it effectively ensured?) as well. In the majority of complaints received by the Ombudsman in relation to the right to legal remedy the identification of abuse was not about the direct and illegal exclusion of the possibility of legal remedy or about hindering its use, but as a result of *such procedural* mistakes which, directly or indi-

rectly, actually and potentially happened to hinder the true realisation of the constitutional right to legal remedy. There were also such cases when the Commissioner was confronted during his investigations with the direct or indirect *total and unjustified withdrawal* of the right to legal remedy. It can be observed on the basis of practice that in part of the cases in addition to abuses and mistakes of public administration related to the requirement of legal security and the right to fair procedure even the right to legal remedy was violated.

**1.** The Ombudsman's investigation launched on the basis of a complaint revealed that the revenue authority may just as well threaten the citizen with fine of omission according to the legal regulation when the client requested a procedure as in the case of the ex-officio launched cases by the authority. In addition the delayed appeal of the client, instead of being rejected and asked and also informed about the consequences the case is automatically transferred to a procedure of revision with an obligatory fee. In the case investigated the complainant was supposed to pay inheritance duty, an appeal was submitted but after the set deadline. Based on the legal norm in force the appeal should have been rejected and simple information could have been given in answer as no meaningful steps for the legal argument were needed. The revenue authority could not have demanded a fee of appeal. Instead based on an internal guiding principle of the revenue authority, the case was transferred for supervisory procedure which was considered by the Ombudsman as against the legal norm and an appeal fee was ordered to be paid by the client.

**2.** The comprehensive Ombudsman's report dealing with the control of the activities of property security guards stated that the citizens have the possibility to turn to a law court against the illegal measures of property guards, to submit a report or launch a civil lawsuit, further on, in the case of the violation of personality rights and with reference to an ethical malpractice they can launch an ethical procedure at the chamber. According to the Commissioner's position legal remedies against the illegal measures of personal and property security guards mentioned here cannot be regarded as effective and real safeguards. The implementation of legal remedy against the activities of property security guards is made difficult also by the fact that the identification of property security guards is not settled. If the property security guard in question does not comply with his obligation to authentically prove his authorisation for his activity then the identification of his person becomes clumsy which makes

the implementation of the possible legal remedies more difficult. In his report the Commissioner has also pointed out that the police doing the official control of the personal and property security guards check only the existence of formal preconditions to the activity, but not whether the property security guard has violated the personality rights of a third person. Based on these findings the Commissioner has stated that the shortcomings (or absence) of the system of legal remedy against measures taken by personal and property security guards and the absence of the possibility of identifying the personal and property security guards causes abuse of the right to legal remedy.

3. Several complainants have objected to the practice of the public utility company dealing with waste management handing over the collection of unpaid service fees to a private company after the call for payment was sent out, which referred to the prospect of transferring the collection of the missing fee to the law court. According to the Act on Waste Management the arrears of fees for the use of the public service of waste management qualify as public debt together with the interest on default set for the arrear burdening the owner of property as well as other costs can be collected as taxes and the notary as the revenue authority of the local government is authorised to realise, against the decisions of whom the citizens have the right to legal remedy which is not ensured in the procedure of the debt management private company. The Commissioner has found that the practice when a public service provider proceeded with collecting arrears disregarding the legal conditions it violated not only the complainants' right to fair procedure but also caused abuse of the right to legal remedy.

#### 4.2.3.4.

##### The Right to Petition

On the basis of Article 64 of the Constitution everybody in the Republic of Hungary has the right to present a written request or complaint alone or together with others to the respective state organ.

The Ombudsman's investigation has revealed a malpractice related to the exercise of the right to petition on the basis of a submission in which the public interest report of the complainant was not properly handled and the lack of proper information was objected to. To his complaint dictated for the record at the Local Government Office of the Jász-Nagykun-

Szolnok County in January 2008 no answer was received then or any time later. To the question what measures were taken upon the report the head of the Office of Culture and Public Welfare answered that since the person did not qualify as a client no information was sent about the result of the procedure. The Commissioner has found that the Office of Culture and Public Welfare did not answer to the report recorded in minutes, no information in keeping with the legal norms was given, and thus caused the abuse of the right to petition. The Commissioner requested the chief notary of the County to see to it that the head of the Office and his associates should observe the respective legal regulations in their procedures in the interest of remedying the malpractice.

#### 4.3.

##### Ombudsman's Activities Related to Legislation

In each case dilemmas of fundamental law related to the implementation of law represent the starting point for the Ombudsman in every case during his investigations, but often the malpractice can be traced back wholly or partly to the text of the norm itself. As a consequence Item 25 of the Act on the Ombudsman 'opens the gate' also towards the investigation of the existing legal situation based on legal norms and the means regulating public law organisations (formerly known as "other legal means of state governance"). According to the Act on the Ombudsman, if a given abuse related to fundamental rights can be traced back to the unnecessary or not unambiguous stipulation of a legal norm or means of public law organisational regulation or to the absence (or deficiency) of the legal regulation of the given issue, he may propose the modification, repeal or publication of a legal norm (means regulating public law organisation) to the organ authorised to do so in order to avoid any abuse in the future.

# 5. Supplements

## 5.1.

### Scholarly activities

#### 5.1.1.

##### Publications

#### **Berkes, Lilla**

Die Unabhängige Polizeibeschwerdekommision in Ungarn. *Studere Rechtszeitschrift der Universität Potsdam*. Herbst und Winterausgabe, 2010. 47–51.

#### **Szabó, Máté**

Demonstration Democracy in Hungary. In: Armen Harutyunyan (eds.): Freedom of Expression – Right to Fair Trial. Almanac. Yerevan, Armenia: 2010. 38–55. in Russian: 214–233; in Armenian: 123–146.

Gab es eine politische Ethik der Wende- und wäre diese heute noch gültig In: András Masát (Hrsg.): Ethik und Alltag. Zwischen Wahrheit und Wirklichkeit. Budapest: Andrassy University, 2010. 29–57.

Revisionismus, Liberalismus und Populismus: die Opposition in Ungarn. In: Detlef Pollack-Jan Wielghos (Hrsg.): Akteure oder Profiteure? Die demokratische Opposition in den ostmitteleuropäischen Regimeumgbrüchen 1989. Wiesbaden: WS-Vergag, 2010. 63–83.

Zwischen Reform und Revolution. Ungars Weg aus der Staatssozialismuswohin? In: Th. Grossbölting-Rajz Kollmorgen u.a. (Hrsg.): Das Ende des Kommunismus. Die Überwindung der Diktaturen in Europa und ihre Folgen. Essen: Klartext, 2010. 177–195.

The Hungarian Ombudsman Institution. In: S. Rashidova (ed.): World Ombudsmen. Tashkent: Y-M.M. Publ., 2010. 58–74.

Defizite der Demokratie oder Machtausübung mit Defiziten? Probleme der Kundgebungen und des Versammlungsrechts in Ungarn. In: Joachim Jesko von Puttkamer-Gabriele Schubert (Hrsg.): Kulturelle

Orientierungen und gesellschaftliche Ordnungsstrukturen in Südosteuropa. Wiesbaden: Harrassowitz Verlag, 2010. 221–239.

The Ethos of Ombudsman's Institution. *Journal für Rechtspolitik*, 2010/1. 12–21.

Ungarn hat gewählt – aber wie? *Berliner Debatte/Initial* 2010/2. 67–73.

(–Sziklay Júlia): Die Institution des Ombudsmanns in den deutschsprachigen Länder *Humboldt-Nachrichten*, 2010. No. 32. 11–20.

#### **Sziklay, Júlia**

Stelle und Rolle der Institution „Ombudsmann“ in der europäischen – Verfassungsrechtsordnung; *Humboldt Nachrichten* Nr. 32.

(–Szabó Máté): Stelle und Rolle der Institution „Ombudsmann“ in den deutschsprachigen Ländern. In *Humboldt Nachrichten* Nr. 32 11–20.

#### 5.1.2.

##### Presentations

#### **Szabó, Máté**

– Ungarn hat gewählt. German-Hungarian Association Podium Debate – Berlin, Germany. 17–18 May 2010.

– Special Attention to Disabled Children. International Step by Step Association Conference – Latvia, Riga, 7–14 June 2010.

– Autonomy and Etatism in the Twenty Years of the Post-Communist Hungarian Civil Society – Conference on “Democracy in the first half of the 21th Century”. –South-Africa, Stellenbosch, 1–4 September 2010.

– Fundamental rights and financial crisis. Social Platform Conference “Impact of the crisis on people, civil society organisations and social policies” – Budapest, 15 September 2010.

– The Hungarian Ombudsman Institution (1995–2008) – ISES International Studies College, Kőszeg. 26 October 2010.

– From Political Education to HRE – a Missing Link of the Change of the Regime ( „Human Rights Education – Educating for Human Rights Peace and Interculture Dialogue” Conference) Australia/Sydney, 4–6 November 2010.

#### **Bassola, Eszter**

– The institution and projects of the Hungarian Ombudsman – Leo European Forum 2010 – workshop. Sopron, 25 August 2010.



**Farkas, Zsuzsanna**

- The first pillar of the Hungarian pension system EU – China international workshop – Ministry of Social and Labour Affairs. 1–4 February 2010, Budapest.
- “Pension Provisions” – “Meeting of the Hungarian – Slovak Intergovernmental Committee on health, social insurance, social affairs” című nemzetközi workshop – Ministry of Health, 10 February 2010.

**Hajas, Barnabás**

- Übersicht über die Kontroll der Nachrichtendienste in Ungarn. VII. Meeting of Federal Rightdefenders. Reichenau an der Rax, Austria, 26 May 2010.
- Fundamental Rights based Investigations on Public Demonstrations GODIAC – Research Seminar, Uppsala University, 13 December 2010.

**Lux, Ágnes**

- The special projects of the Hungarian Ombudsman – work visit of the Azerian Ombudsman – Budapest, 20 September 2010
- About the comprehensive investigation of the ombudsman on violence in school. Annual Conference and General Assembly of the European Network of Ombudsperson for Children. Strasbourg, France, 7–9 October 2010.

**Sziklay, Júlia**

- The role of the ombudsman in a democratic legal state. Work visit of the kazakh Ombudsman - Budapest, 10 September 2010.
- The Hungarian ombudsman Work visit of the uzbek ombudsman delegation - Budapest, 8 November 2010.
- Presentation of the 2009 Annual Ombudsman Report – Budapest, 19 November 2010.