ANNUAL REPORT

ON THE ACTIVITIES
OF THE PARLIAMENTARY COMMISSIONER
AND THE DEPUTY COMMISSIONER FOR CIVIL RIGHTS
IN 2006

(Abbreviated Version)

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1.

Introduction

Year 2006 was of a special importance for the Hungarian Parliamentary Commissioners – beyond the importance of the parliamentary and local governmental elections –, because the Annual Report of 2006 has closed the last complete year of the second ombudsman term which begun in 2001. This fact gave the Parliamentary Commissioners a handle to run back over the last 6, occasionally 12 years in their Annual Report besides reporting on their activities in year 2006. The practices developed during previous years – considering the feedbacks of those interested in the activities of ombudsmen – were applied during the preparation of the Report.

In year 2006, again, we produced the Report for Parliament in two versions. Its printed version which is to be published in the form of a book, contains a summary discussion of the main categories of cases dealt with, including descriptions of the most significant cases, initiatives concerning legislation and the report of the joint Office of the general and special ombudsmen. The complete Collection of Cases that includes brief analyses of individual cases as well is presented – owing to its size – only on the enclosed CD. (As a matter of course, the complete versions of the earlier and the current reports of the Hungarian Parliamentary Commissioners are available on the website of the institution.)

The Report of the Parliamentary Commissioner for Civil Rights and his General Deputy on year 2006 was discussed and appreciated by the Parliament, therafter it was unanimously accepted. It should be noted again, however, that despite the fact that after the Resolution of Parliament on the acceptance of the reports of the Parliamentary Commissioner for Civil Rights and his General Deputy on their activities in year 2003 and 2004 the Parliament called on the Government in 2005 as well to take the necessary actions to settle outstanding issues concerning the legal status of the headquarters building used by the Office of the Parliamentary Commissioner, no such actions have been taken to date. We are still using part of the building without a proper legal title, therefore we have asked again for the Parliament’s help.

2.

Statistics of year 2006

In year 2006 a total of 4000 cases were referred to the Parliamentary Commissioner for Civil Rights and his General Deputy. During the eleven years and a half that have passed since 1995, the election of the first Parliamentary Commissioners, nearly 65 000 petitions were submitted to the general ombudsmen, which contained almost 80 000 complaints. From year 2001, the election of the present commissioners, a total of 27 463 submissions were received by the Parliamentary Commissioner for Civil Rights and his General Deputy. (The number of received cases differs from the number of complaints, because a submission registered as one case may contain more than one violation or complaint against several organs or of several natures.)

In year 2006 more than 700 submissions, respectively complaints fewer were received by the general ombudsmen. This decline, however, was not unexpected. We have already experienced in previous years that 'complaining-humour' is significantly declining in the year of general elections. This was the situation in 1998 and 2002 either. (In 2002 the number of submissions reduced with 1404, while the number of complaints fell off with 1480 in comparison to the number of cases dealt with in 2001.)

The Client Service Department of the joint Office of the Parliamentary Commissioners is operating the so called Complaints Office and Information Service. In year 2006 the colleague providing the information service received a total of 5226 phone calls and the information service was called at by 893 clients in person. In the last 6 years in about 19% of the total cases complainants appeared personally in our institution at the Complaints Office and their petitions were recorded by the staff. The employees of the Client Service Department heard 954 complainants in year 2006. In 723 cases new cases were recorded, the other clients asked for the supplement of their submissions in pending cases.

The number of ex officio cases carried out in year 2006 corresponded to the average of several years, it desceared, however, in some degree compared to the previous year. At the same time complex investigations were carried out which engaged the capacities of several colleagues for a longer period.

In year 2006, again, the proportion of petitions submitted by civil organisations, ad hoc or constant communities continued to rise; this number was the highest in year 2006 from the last 6 years. The average of the last 6

years was 4,7%, that of 2006 was 5,3%. The number of submissions received from private individuals and families proportionally decreased. This trend is welcomed by the ombudsmen because such complaints sumbmitted by certain communities – feeling some common responsibility – show problems of smaller or larger groups of citizens instead of individual violations. While in year 2001 79,1% of cases concerned individual violations and 20,9% those of some groups of citizens, in year 2006 the number of individual violations decreased with more than 15%: to 63,9%, and 36,1% (more than one third of the total number of submissions) concerned groups of citizens. The number of cases remitted from other authorities decreased with 50% last year. The number of foreign citizens – European Union citizens as well – turning to the ombudsmen continued to rise from 26 to 33 in year 2006. We can not define – however – the precise reason of this trend because of the relatively small case number. The settlement of more and more foreign citizens in Hungary may contribute to this increase: these citizens may also have disputes with local governments similarly to Hungarian citizens.

In our previous reports, year by year, we appointed that urban residents submitted significantly more complaints than did people living in rural Hungary. This remark is valid for the year 2006 as well, at the same time the proportion of urban residents increased with 1% last year (from 66 to 67%), while the proportion of their submissions decreased with 1% (from 74 to 73%). Far-reaching conclusions, however, can not be drawn from these numbers. This change might be the result of the fact that many smaller settlements have been raised to town-level in recent years, which did not mean the change in the mentality of habitants at the same time. In year 2006 the number of submissions coming from the capital city decreased, but the proportion of those continued to rise (with 0,5 per cent). Last year practice also proved the former item, according to which if the parliamentary commissioner visits a county complaints coming from that county jump in the respective year. In year 2006 the Parliamentary Commissioner for Civil Rights visited Vas County with his colleagues. While in previous years this county was always considered as one of the less-complaining counties, this year it was ranked to the third place in the so called complaints ranking regarding the number of cases referring to 100 000 habitants. The proportion of submissions coming from Vas County was doubled compared to the previous year.

In year 2006, again, most complaints issued to the Parliamentary Commissioners concerned health insurance, pension insurance and labour issues (11,2 %), this is 0,5 per cent more than was it in last year. Even if with declining proportion, issues relating to criminal and penal proceedings can be still found on the second place in the rank of most frequent complaints (9,6 %). At the same time changes took place in the order of the following: In year 2006 cases relating to civil law, tender and corporate issues came before cases relating to construction, premises, housing and national monument protection. Although the number of complaints relating to tax, duty, customs, financial

institutions and insurance matters declined, these complaints constitute the fifth largest category, unlike last year, when this position was filled by complaints against public utility service providers. As in previous years, about 45% of all complaints received by the agency derived from these categories of cases. Complaints in transport, water and newscast cases and cases relating to public administration, referendum, general elections and corporate activities of local governments significantly increased in proportion and in number too (to 2,7, respectively 1,6 %). The change is especially noticeable in the preceding category: while only 80 such complaints were received in 2005, this number was 205, nearly three times more in year 2006, mainly against parking companies. The proportion of complaints against various public utility service providers declined with 1,7% compared to year 2005.

In 2006, again, most complaints were submitted against local governmental offices, courts and police headquarters, even if the proportion of these complaints is relatively declining. The most significant decline, more than 1,5%, can be observed in case of local governmental offices. Citizens are turning to these authorities most frequently so the 'illustrious' ranking of these three organs is not surprising. Considerable rise could be observed only in case of economic organizations; their proportion increased from 3,9% to 4,7% while the number of complaints filed against them was nearly the same as last year. Most complaints, nearly 48,9% of all cases concerned the procedures of authorities, and only one fifth (21 % in year 2005 and 19 % in year 2006) of the complainants disputed the decision itself. The number of complaints against long procedures of authorities increased with 1% and nearly 0,5% more persons felt to be injured in the course of or due to procedures of authorities than last year. In year 2006, again, in almost 7% of cases the complaint was about the piece of legislation applied to the complainant's case. The number of complainants asking for information or for some help in their pending cases or on other possibilities is increasing year by year. They are usually asking for some financial help as well. Our colleagues provide them with information willingly, even in case of the rejection of the complaint they try to give some guidelines – besides the detailed reasoning – for those turning to the Parliamentary Commissioners. The Office has no funds, however, for providing financial assistance for those in need.

In 2006 decisions were made concerning 5728 cases. In year 2006, again, similarly to our several-year experiences in about four fifth of all complaints we had to reject the application or terminate the procedure by some reason (e.g.: for the request of the complainant, or by the simple fact that the proceeding authority meanwhile redressed the violation). In 1078 cases – 1% more than last year – detailed investigations were carried out by the colleagues of the Commissioners. From among the investigated cases we had to reject – with report or information – nearly 65% of all cases. In 137 cases we sent the complainants reports produced on other – same or similar – cases at the end of

our proceedings; in several cases new reports declared that the injury can not be redressed or it had been solved meanwhile. 199 cases, 18,5 % of all investigated cases were terminated with one or more recommendation to the authorities concerned.

Most cases (1102) had to be rejected without investigation, because it had been filed against the actions (omissions) of authorities or organs performing public service not within the scope of competence of the Parliamentary Commissioner. Almost the same number of complaints was received (1015) concerning cases under court proceedings or adjudged by the court. The Parliamentary Commissiners do not have the competence to investigate court proceedings according to the provisions of the Act defining their scope of competence. In significant number of cases the Commisioners did not have the competence to proceed by other reasons: in 450 cases the available administrative legal remedies had not been exhausted, in 62 cases more than 1 year had passed since the final judgement, on 145 ocassion the complainant submitted a petition in a case, which had been formerly considered by the Commissioners and the submission did not contain any new data or facts. In 15 cases the constitutional impropriety complained by the client was qualified marginal by the Commissioner and this was the cause of the rejection. (Table 1 shows the actions by which complaints were closed in 2006.)

In year 2006 12,9% of the investigated cases was related to construction, premises, housing and national monument protection, these were tightly followed by complaints concerning public utility services (12,4%). In year 2005 the latter category came before construction cases with more than 2%. Investigated complaints relating to environmental protection, conservation and agriculture increased with half as much (from 5,4% to 9,1%) and transport, water and newscast cases also doubled. The investigated complaints submitted in land, recompense, expropriation and compensation cases significantly decreased (from 7,3 % to 2,2 %). The proportion of the decline is even larger in police and public prosecutor's cases (from 3,2 % to 0,8 %). In year 2006, again, most cases investigated by the Parliamentary Commissioners concerned complaints against local governmental offices and town clerks (23,5 %), respectively local governmental councils (bodies of representatives) (10,3 %). These organs are followed by the various public utility service providers with 7,2 %, mostly those dealing with public sanitation and garbage delivery (2,1 %). (The participation of the latter declined with more than 2% compared to year 2005.) Investigations carried out against penal institutions significantly declined (almost to its half) in number and in proportion as well.

In case of complaints terminated with detailed investigation we also pay attention what kind of injury the client is complaining about in the procedure of the authority concerned. It can be declared that there is not any significant difference compared to the total number of complaints, proportions may change at the very most. The majority of complaints (58%) investigated complained about procedures of authorities, 15,7 % disputed the decision itself.

In respect of the investigated cases a total of 30 constitutional rights were injured, mostly, in 190 cases the principle of legal certainty and the right to fair procedures. In much less cases (46 investigated cases) had to be established the violation of the constitutional right to property. This was followed by – in nearly the same number – the right to health and legal remedy, then the right to social security, healthy environment and the right to life and human dignity. (There were not any significant differences in this ranking in year 2005 either, only the prohibition of discrimination came before the right to social security.)

The Parliamentary Commissioners with general scope of competence terminated the inquiry of 199 complaints with recommendation. In most cases (137) the redress of the constitutional impropriety was initiated for the concerned organ, in 41 cases, however, recommendations were made for the supervisory organs. The general ombudsmen made recommendations concerning the adoption, amendment or repealing of legal regulations or other instrument of state administration in 84 cases. (For details, see Table 2.) The Commissioners are entitled to initiate disciplinary proceedings or public protest of the prosecution only exceptionally; initiatives of criminal procedures were not made at all this year. Almost 60% of our actions taken in 2006 were accepted by the addressees, and in one third of the cases the deadline for response has not expired yet, or reconciliation was pending between the commissioner and the addressee in order to approximate their standpoints. The competent authority rejected our initiative only in 8% of cases.

Since the establishment of our institution (till 31st December 2006) a total of 78 163 complaints were received by the Parliamentary Commissioner for Civil Rights and his General Deputy. 97% of the cases were terminated till the end of 2006. Each submissions received by the office before year 2005 was closed; unfortunately we have not managed to arrange, however, nearly 500 cases older than one year. Though our employees closed almost 500 more cases than the number of complaints received in 2006, the agency still has 3% backlog. Such a backlog can not be processed only with better organisation or more efficient work, the expansion of the permitted headcount of the office would be necessary. Instead of expansion, however, the permitted headcount of the agency have been reduced in year 2007. At the same time several experienced colleagues of ours retired or are planning to do so, and many colleagues are away because of the birth of their children. The new employees temporarily hired for their supplement are not able to work on the equivalent level, since even (on a different area) highly experienced professional is obliged to know the special tasks, proceedings method and style of the institution.

3.

A selection of the most important cases

3.1.
Deterioration of living conditions of people living next to roads carrying heavy traffic

As the built-up areas of settlements and the degree of motorization are increasing, the loading of the environment is also raising along with the number of complaints. The increase of motorization necessarily and inevitably entails some disturbance of a certain degree. More and more submissions are received by the Parliamentary Commissioners in which people complain about the increased vehicle traffic of their dwelling place, the resultant extended noise and air burden, risk of accident and the continuous deterioration of the condition of their dwelling-houses. On the ground of these complaints the Parliamentary Commissioner for Civil Rights launched a complex investigation.

In his report the Commissioner established that although this inquiry had been related to the traffic of certain sections of only a few main roads, the press quite frequently reports on similar complaints or protestations of people living near to other main roads. So it can be declared that this is a nationwide problem which is also confirmed by former inquiries of the ombudsman. The Commissioner reviewed the redress possibilities of citizens' complaints relating to road transport and underlined that many lorries are running on free roads seeing across built-up areas because of road utilization fees. The fact that these roads do not stand increased loading and their quality is continuously deteriorating means further problem besides the caused burden of environment and risk of accident.

In the time of the inquiry of the ombudsman the Parliament amended the Act on Transport according to which operators are entitled to take tolls for the use of motorways, highways and nationwide major roads by lorries the weight of which is exceeding the permitted 3500 kg total gross. The amount of this toll shall be allocated to the operation, maintenance and renewal of motorways, highways and major roads.

Political life mainly measures the success of transport sector according to the handed over or planned motorway-sections. The Commissioner is not entitled to take a stand on professional questions of transport organisation or traffic

technology and shall not influence the framing of transport policy and the scheduling of investments. Through his investigation the Commissioner wished to simply call the attention to the fact that the protection of the constitutional rights of the residents suffering from the negative effects of road transport, the amelioration of life conditions of people living next to the roads and the protection of built environment are all preferential state tasks. The traffic can not be by-passed or allowed to roads where it may cause the danger of life or serious environmental harm, not even if the road concerned is shorter or tall-free and carriers would insist on it. The public roads of the country are overcrowded and their quality is not totally adequate either, while further rising in the number of vehicles is expected, since truck traffic might grow further with the accession of Bulgaria and Romania to the European Union.

The Commissioner contacted the Minister of Economy and Transport asking him to pay attention that the designation of nationwide public roads concerned with fees and the definition of the extent of these fees force the burdening heavy traffic to the use of motorways and prohibit the diversion of this traffic to minor roads. In the transitional period and on the roads where the toll is not introduced the Minister should use further opportunities to restrict the traffic. In the past few years as well, the ombudsman made numerous recommendations on the ground of submissions complaining about environmental loading originating from the traffic, therefore he requested the Minister to send him the relating draft legislation so that the involvement of his recommendations into legislation could be controlled.

Furthermore, the Commissioner requested the Minister of Environmental and Water Affairs to initiate the adoption of a statutory instrument which would strengthen the competence of the environmental protection authority and asked the Head of National Police Headquarters to control and sanction the observance of restrictions concerning the passing heavy traffic and the speed of certain vehicles in a greater extent and a more intentional manner.

The Minister of Economy and Transport described the antecedents of the present unfavourable transport situations and forwarded the draft governmental motion on „the principles of the completion of road network involved in toll system” indicating that he is going to forward the draft legislations in this subject as well. The Head of the National Police Headquarters agreed with the initiative informing the Commissioner on his standpoint relating to the incidental modifications of transport regulations through which the passing heavy traffic could be restricted. The Minister of Environmental and Water Affairs has not responded to the recommendation till the preparation of the Annual Report.

3.2.
Transformation of blocks of flats established by panel technology

The president of a flat-maintainer association of Budapest complained that several proprietaries of the block made transformations in their flats with the cutting of the wall between the kitchen and the living room, which cutting could disrupt the static balance of the whole building. The community of the flat association did not agree to such transformations of flats and asked for the position statement of the building authority. The response of the authority made it clear that if the constructor is disposing with a static expert opinion according to which the wall is to be cut is a partition wall, there is no need to conduct the procedure of the building authority. This response, however, can not be accepted since the static expert examines always a concrete flat and not the impact of flats to each other.

The Commissioner has launched an investigation by reason of the suspicion of the violation of the right to property. Considering that the raised problem concerns the expected transformations of all blocks of flats, the ombudsman demanded the National Housing and Building Office (OLÉH) to send him its standpoint elaborated in this case. The issue whether the OLÉH finds it necessary to modify the relative statutory instruments was also raised by the Commissioner.

The vice-president of the OLÉH communicated that they were planning to initiate the elaboration of an architectural study-aid relating to internal transformations of flats. This architectural study-aid would give appropriate professional guidance for the elaboration of a nationwide uniform practice requirement system for the internal transformation of these buildings. The introduction of specific regulations relating to this stock of building will be considered on the occasion of the next modification of the effective building legislation on the essential requirements of architectural technological plans. However, the specification of the planned study-aid and the relative ministerial decree was not prepared due to the preparation works of the modification of the Building Act.

The Commissioner established that the problem raised in the complaint can be exclusively redressed by realizing the legal amendment proposed by the OLÉH and by issuing the above architectural study-aid. Till then the constitutional right to property might be violated. The ombudsman recommended the vice-president of the OLÉH to urgently initiate the elaboration of the architectural study-aid relating to the internal transformation of blocks of flats – which had already been welcomed by him –, and the introduction of specific regulations relating to this stock of building – considering special characters of construction technology as well – on the occasion of the next modification of the effective building legislation on the essential requirements of architectural technological plans.

The vice-president informed the Commissioner that on the ground of the reconciliation between the static departments of the Hungarian polytechnic high schools, the concerned professional organisations and the professionals of the Hungarian Chamber of Engineers they came to the conclusion that the issue of the architectural study-aid is not necessary.

The Commissioner accepted the response and withdrew his proposal relating to the issue of architectural study-aid. At the same time he pointed out that the inclusion of specific regulations relating to internal 'wall construction' of panel buildings into the ministerial decree on the essential requirements of architectural technological plans shall continue to be necessary, since – according to his opinion – it is not the proprietary of the real estate who is obliged to decide whether his internal transformation work needs to be authorized (which means that the concerned wall is a load-porter construction) or whether the plan-documentation has to contain special solutions or not.

In line with the termination of this case the Commissioner asked the Ministry to inform him about the relating two new draft decrees by sending him these documents. This request has not been fulfilled yet.

3.3.
Freedom of scientific research and the cognition of its results

The Alfa Association, a civil organisation aiming at the protection of foetal life submitted a petition complaining that the consumer medicine information of drugs offering emergency or 72-hour contraception does not correspond with the requirement of fair orientation, since according to the impact mechanism of the products these drugs result in the chemical abortion of early-stage pregnancy instead of contraception. According to the association the time of the fertilization, the conception is the moment when an ovum is fertilized by a sperm on a certain point of the oviduct, but since the notion of conception is defined by the medical science in a different manner, 'the child living before the impregnation' is deprived of his or her human nature. The association objected to the promotion of these drugs in public places and complained that the phrasing of the manufacturer and the transmitter relating to the essence of the intervention caused by the product is specious. In reality procured abortion is happening in its opinion and the promotion of these drugs violates certain provisions of the Act on Foetal Protection. The provisions of the Health Act concerning the informed consent are also injured since consumers are not adequately informed about the character and the impact mechanism of these drugs and the possible compilations.

The Commissioner contacted consumer protection inspectorates, the director-general of the National Institute of Pharmacy (OGYI) and the president of the Health Care Scientific Council asking for some information.

Investigating the promotion supervisory procedure of the consumer protection inspectorate the ombudsman established that it had been carried out in a professional manner, the inclusion of the OGYI had not been failed either, and the resolution had been taken based on the expert opinion of the competent authority. The National Consumer Protection Inspectorate signalled that numerous procedures had been carried out by them in professional co-operation with the OGYI because of advertisements popularizing contraceptive products with the application of their denomination. There were not any proceedings, however, which would lead to the condemnation of advertisements applying the labels of 'emergency contraception' or '72-hour contraception'. The Commissioner established that the consumer protection inspectorates proceeded in term and complying with the governing legal provisions.

After examining the annexes of the authorization the Commissioner came to the conclusion that the phrasing of the consumer medical information of the medicine is misleading, since the information that the precise impact mechanism of the product is not known is kept back from the user. However, this is only related to the bio-chemical mechanism of the product's impact, the therapy efficiency of the drugs are well-known, since the OGYI would refuse the petition for offering permit without this information. The meanwhile modified decree prescribes that before the finalization of the consumer medical information of drugs applied for human use consultation must be carried out with the target audience of patients concerned by the product on hand in order to achieve that the consumer medical information be well-legible, unequivocal and easily usable.

Considering the fact that the offering permit of the two products is expiring in the immediate future, this new prescription has to be also observed when prolonging it. Pursuant to the Commissioner this provision has enough guarantees for providing – through the consumer medical information – precise, authentic and easily intelligible information consumers need besides the personal medical orientation so that they could decide on the use or forbearance of the product on the ground of appropriate orientation. The resolutions of the OGYI are avoidable before the court also in case the content of the consumer medical information is disputed.

The Commissioner did not find any constitutional impropriety in the procedure of authorization of the OGYI and the effective legal regulation relating to the consumer medical information.

Since the detailed investigation of the complaint carried out by the Commissioner could have been only possible after the clarification of the medical professional question whether the already fertilized but still not-impregnated ovum can be qualified as foetus, the Commissioner demanded the position statement of the Health Care Scientific Council (ETT). According to the ETT the fertilized but not-impregnated ovum can not be regarded as foetus, so the emergency contraception can not be qualified as medical abortion.

Concerning the freedom of science and on the ground of the provisions of the Constitution the Commissioner recognised obligatory – even for himself – the thesis, according to which only the actors of science are entitled to decide in the question of scientific verities and assess the scientific values of researches. He established therefore, that the standpoint of the actors of medical science can not be questioned in medical issues.

He also declared that improprieties relating to the right to life and legal certainty had not been observed in this case.

3.4. Disturbing impact of open-air programs

In year 2004 the Parliamentary Commissioner for Civil Rights carried out a complex investigation relating to disturbing impacts of open-air programs for dwelling-environment. Further complaints with similar subjects have been received since the issuance of the report, therefore the Commissioner considered a new complex investigation necessary.

He established that the promotion of educational, scientific and artistic activities is also the obligation of the local governmental council which derives from the Act on Local Governments. Areas built in a massive, city-like manner, however, are inappropriate for the execution of open-air programs with sound-amplifiers, particularly between or near by dwelling-houses. The appearance of new noise sources could generate the lawful opposition of the residents in the already noise-overloaded world. Long-lasting programs with the use of sound-amplifiers shall be organised on less-built areas which are therefore much more appropriate. The Commissioner stated that in the lack of measuring instruments the public domain inspectorate shall not establish the degree of noise expressed in decibel, it state, however, with a single observation if the program is terminated at the authorized hour by the organisers.

The Hungarian Constitution declares that local governing is the practice of local public power for the sake of the population. An appropriate balance has to be aimed to achieve between the performance of tasks stipulated by the Act on Local Governments, the interests relating to the utilization of local governmental property and the development of tourism together with the interests of the population concerned. This balance situation can be realized provided that the programs are held on several locations instead of burdening one spot with all events (the most appropriate location has to be chosen for the program in hand), the maximum number and duration of events which can be authorized on the concerned public domains are determined, and the observance of conditions has to be also controlled. The prudent regulation and organisation could make programs more acceptable even for the residents.

The Commissioner asked the Minister of Justice and Law Enforcement to initiate the modification of the offence factum of civil disturbance. He contacted

the mayor of Budapest asking for information on the execution of the resolutions of the City Planning and Image Protection Committee of the Assembly of Budapest mentioned in the report as well. The Commissioner asked information from the president of the Budapest Public Domain Inspectorate on the experiences of inspectors obtained during the control of open-air programs and the measures taken in the cadre of the co-operation agreement signed with the police. The ombudsman recommended the local governments to consider the possibility to establish 'noise commandos', the local regulation of noise and oscillation protection and that incidental noise-overrun authorized by the relating statutory instrument should be authorized by town clerks only in particularly reasoned case in the future.

The mayor of Budapest and the president of the Budapest Public Domain Inspectorate informed the ombudsman on their standpoint in detailed responses which were accepted by the Commissioner. Meanwhile the Constitutional Court established that the part 'and larger than the authorized' of the Governmental Decree on Individual Offences is unconstitutional and annulled it with March 1, 2007. Since the annulment of this part of the decree the police is authorized to proceed on the ground of public notification even in the lack of any measuring instrument and is entitled to declare civil disturbance provided that the causeless noise disturbs other people's rest. For the pressing of the ombudsman the Minister sent his answer informing him about the essence of the already known Constitutional Court Resolution.

3.5.
Lack of realization of noise protection investment

The complainant coming from a district of Budapest objected to the deficiency of noise protection of the road next to the access section of motorway M5. The Parliamentary Commissioner for Civil Rights has launched an investigation by reason of the affection of several constitutional rights. During his inquiry he lodged a request for assistance to the mayor of Budapest and the director of the competent Inspectorate for Environmental Protection, Conservation and Water Affairs asking information on examinations made on the above road section and the actions taken for the sake of posterior noise protection.

The Commissioner established that the measuring results of the Inspectorate support the lawfulness of the complaint, since the traffic noise significantly exceeds the authorized limit in the day and also at night according to the available measure results. The significant overstepping of limits qualifies as environmental pollution and endangering at the same time, and the long-lasting overstepping of noise limits may cause environmental defrauding. The Office of the Mayor of Budapest made arrangements for the reduction of noise

deriving from the complained road in recent years, these measures, however, have not obtained the required result.

The Commissioner signalled that neither himself, nor the organs which could be requested by him to take actions have no competence to determine when and which road is being reconstructed. He emphasised that the solution with essential changes requires significant material resources over the amounts of which he is not entitled to dispose and can not enforce the soonest construction of the wall. There is no other solution left and the problem can not be otherwise redressed, the financial funds for the construction shall be planned to the budget of the Budapest Municipal Council. Relating to the procedure of the Inspectorate the Commissioner stated that proceeding in its regulatory powers it obliged the operator of the road for partial environmental protection supervision in accordance with the provisions of the Act on Environmental Protection. This procedure was still pending during the investigation.

The case – which had been dragging on for years – raised the necessity of solving numerous questions the solution of several from which (settlement, city, public road improvement and budgetary questions) goes beyond the frames of the report even in spite of lawful complaints of the residents. Noise protection walls were overstep by the transport improvement of the city; the cause can not be abolished and only a part of the problem can be essentially handled since it is caused by deficiencies in the settlement structure.

Considering the fact that the action plan of the Office of the Mayor of Budapest prepared relating to the supervisory procedure contains the plan of building a noise shading wall to the concerned area till 2009, the Commissioner did not issue any initiatives in this concrete case. However, he asked the Mayor to look over the possibilities from which funds and frames could it be possible to guarantee the construction of the wall, and to avoid the new incidental postponement of the headline because of material deficit.

Henceforward, the ombudsman asked the director of the Inspectorate for Environmental Protection, Conservation and Water Affairs to prescribe the execution of the action plan submitted by the operator of the road in an operating permit issued as a result of the supervision. The director sent the Commissioner his resolution relating to the lack of noise protection of the access section of motorway M5, in which it had been prescribed that till 2009 ‘noise shading walls have to be constructed along the full length of the road section in hand in order to reduce traffic noise’.

3.6.
Application of cemetery observer camera system

The Budapest Funeral joint stock company turned to the Parliamentary Commissioners asking for their position statement in the question whether the

operation of space observer camera system in cemeteries would violate constitutional rights.

In this case the Parliamentary Commissioner for Civil Rights stated that the observation of public domains, private properties and buildings with cameras – which has become widely-used nowadays – has a double function: inducing people to follow the norms in the spirit of crime protection and the exposure of offenders violating the law, the crime pursuit. According to practical experiences the application of cameras is unequivocally adventageous from the point of view of the protection of the observed area and values and it raises the sense of security of citizens.

The spread of the use of cameras, however, also means the narrowing of citizens' private sphere and prognosticate the vision of a state and social system where citizens might be all the time observed and controlled which can be hardly explained in a democratic country. The expansion of agression, brutality, terrorism and autotelic vandalism (all together: modern-age barbarism), however, is a stronger and stronger reason, since this phenomenon is threatening the existence of the democratic system and free society itself. Also considernig the fact that if the concerned action can be realized only in a certain location (as in case of tomb defilement and damaging of cemeteries) and the electronik observation serves especially the protection of such endangered object or values, the application of cameras logically does not lead to the migration of deliquency and does not directly contribute to the course of the spreading of space observer systems enmeshing cities which is considered injurious by many people.

A cemetery can be considered as a special object of ownership which is a special area serving for the expression and practice of individual and social reverence – similarly to churches and other devotional, cultic places in its character: it is a universal human value, a cultic and sacred place for thousands of years. The damaging of tombstones and the dishonour of the deceased persons' memories is one of the roughest irreverence which is always lawful and induces large-scale indignation of not only the relatives, but people who are remembering the deceased and the whole society as well. The protection of cemeteries – which is the obligation of the society, the state and particularly the owner and operator of the cemetery – does not qualify as traditional 'wealth protection'. Since the obligation for protection covers not only the material character of the cemetery and the objects of ownership in the traditional sense of the word such as immovable estate and tombstone, but also and most of all the reverence value, the individual and communal reverence feeling incorporated by them.

The image and sound record shall not be criticised on the grounds of purely data protectional aspects, provided that the affected persons are preliminarly informed on the fact of recording and give their consent – even through implicit conduct (which means the entering to the area of the cemetery in this case). Observation reporting exclusively the observed area

is not anxious from data protection aspect. In this case individual persons are not recognizable on the record, but the security service has the opportunity to take the necessary actions in case of the preparation of a criminal offense.

The Commissioner agreed the standpoint of the European Court of Human Rights of Strasbourg: the right of the individual to live their lives without any external observation or intervention is the part of the right to the protection of private sphere. The pure observation of public domains by security cameras – without recording – does not concern, however, the right to private sphare of the there staying, since the areas and events observed by cameras are visible for everyone. At the same time the Commissioner emphasised that the cemetery is neither a public domain like a street nor a private property like a private flat, so the standpoint of the Court can be logically and 'appropriately' adapted for this 'special area' where human dignity and reverence feeling are the diect subject of the protection. The increased sensitivity concerning this demand for protection and the protest against the use of cameras as a spreading phenomenon can not be accepted even if it is comprehensible. The camera placed in the cemetery is one of the possible ways of the fulfilment of the guarding obligation burdening the owner or operator of the cemetery the aim of which is the protection of the objects of ownership – tombstones usually representing significant values –, the reverence feeling objectivated in them and the undisturbance of visitors. The technical involvement of reverence obligees is legally irrelevant; the danger of their incidental legal injuries deriving from it is so low that the protection and security of their fundamental rights significantly exceeds it. The protection of larger cemeteries can be more effectively ensured through the application of security cameras and the constant presence of numerous guards – which is more expensive and may disturb more the visitors – becomes needless.

On the grounds of the above observations the Parliamentary Commissioner did not find any constitutional impropriety in this case. He underlined, however, that there is no material funds and social demand for the continuous observance of the whole territory of all Hungarian cemeteries by cameras. The application of cemetery observance camera system could be reasoned for the sake of the respect of historic values, national, cultural and reverence magnitude of certain parts of cemeteries, and the protection of the dignity of visitors and the security of tombstones in order to prevent or disclose serious violations of the law.

At the same time the constitutional requirements of necessity, proportionality and appropriateness must be respected when establishing such systems. It has to be stived that technology concerns the less possible way fundamental rights – especially personal data – of citizens respecting the law warranting their protection and security at the same time.

3.7.
Client rights of the applicants of housing state allowances

Several petitioners complained about the procedures of credit institutions who had taken part in the mediation concerning the utilization of home construction allowance. In general the concerned complainants did not get any appropriate information on the conditions of the recourse of state allowances and the credit institution did not ensure any redress opportunity against the refusal of the application for allowance. One of the complainants states that the concerned bank did not provide any allowance for the enlargement of the real estate referring to business policy decision. Credit institutions participating in the mediation of housing state allowances consider their allowance-mediation activities as a separate product, and different fees are charged for it which may even exceed 20% of the amount of the allowance.

The General Deputy of the Parliamentary Commissioner for Civil Rights disclosed that the judgement of direct allowances, the providing and lending of supported loans, the establishment of the instalment's amount and the accounts of all these with the central budget are performed by credit institutions. State authority or institution does not participate in the execution of housing state allowances. The relating governmental decree does not regulate the amounts of fees – except for the loan advancing home construction allowance – which can be charged by the participating credit institutions to the burden of the applicants of allowances.

Pursuant to the provisions of the Act on the Order of Taxation (Art.) the scope of the law also applies to those resorting housing state allowances as budgetary subsidies, so they can be considered as taxpayer in a procedural sense. Consequently they are equally entitled to the rights taxpayers are entitled to, particularly the right to information and the right to legal remedy. Since the Act on Administrative Procedures (Ket.) shall be also applied as the background law of the Act on the Order of Taxation, the applicants of housing state allowances are entitled to client rights stipulated in this act as well, such as the right to fair administration, the right to legal remedy or the right to information.

The General Deputy established that the governmental decree and the practice of banks do not, or do not appropriately ensure the applicants the rights they are entitled to according to the provisions of the Art. and Ket. Concerning the right to information the ombudsman established that the participating credit institutions try to appropriately inform their clients, the concrete complaints, however, show that problems and deficiencies emerge in the everyday practice. The right to fair procedure is violated by the fact that the relating regulation does not contain any procedural deadlines concerning the application for subsidies. The lack of regulation gives a potencial opportunity for the dragging on of the judgement and no reasoning obligation is prescribed in case of the incidental refusal of the application. Apart from a few exceptions the regulation does not

contain any provision relating to the fees applicable by credit institutions. Credit institutions can not refuse the providing of direct subsidies if the entitled person corresponds to personal and other conditions. The lack of regulation relating to fees, however, practically opens the door for credit institutions to 'exempt themselves' from the providing of certain allowances by the appropriate forming of price structure. Legal remedies are not ensured for the applicants at all.

The above facts cause improprieties relating to the rights to legal certainty, social security and legal remedy. Therefore the General Deputy recommended the Minister of Local Government and Regional Development to initiate the modification of the Governmental Decree so that the full enforcement of the rights to information, fair proceedings and legal remedy could be ensured for the applicants. The decree should also define the maximum limit of of fees and percentages which can be enforced by credit institutions with regard to the mediation of allowances. Apropos of the administration of allowances the ombudsman asked the heads of the concerned banks to call the attention of their colleagues to the importance of precise and comprehensible orientation. The course of their bussiness shall be formed in a way that clients receive a written answer for their request for allowance and in case of the refusal of the application clients must be informed on the concrete reasons of the refusal. Furthermore, banks should review, and – if it is necessary – modify their fees relating to the mediation of housing state allowances so that they will not be disproportionately high compared to the amount of the resorted allowance.

3.8.
Narrower private sphere of politicians

On the ground of an air photo of a politician's house published in several daily newspapers the Parliamentary Commissioner for Civil Rights along with the Commissioner for Data Protection and Freedom of Information launched an ex officio investigation by reason of the concern of the rights to human dignity, the inviolability of privacy of the home and the protection of private secret and personal data.

Although politicians, sportsmen and actors are primarily affected by this method, the Commissioners explicated their legal standpoint also with regard to the rights to private sphere and privacy of the home of any citizen in their report. By reason of the lack of the involvement of authorities the investigation of the ombudsmen did not cover photographing from street.

Accrding to the constant practice of the Constitutional Court the constitutionally protected private sphere of state servants and other public actors are narrower than those of other citizens for the sake of democratic state life and public opinion; they need to expose themselves to the criticism of other people. The constitutional restriction of the right to private sphere of politicians shall be interpreted in close relation with their public function and appearance,

extra-bearing obligation burden them primarily in the respect of criticism and judgement. Over and above that restriction can be founded only on the law or some personal consent; otherwise it is qualified as unnecessary. Data relating to property situation and private home qualify as personal data. The right to the protection of personal data can be restricted by acts, such as the Act on the legal status of MP's which prescribes the obligation of the declaration of property and the publication of it for MP's.

The Commissioners have no objection to the fact that the speech, style, performance or even clothing of a politician are criticized since his private sphere is narrower in this area than those of others, and obliged to increased endurance against criticism. So criticism can not be disapproved, the narrower private sphere, however, does not legalize searching, observation and spying.

An air-photo proves only the fact of reconstruction/enlargement; the precise expense of the works can not be determined, with special regard to the closed character of the solutions of interior construction and furnishing. Beyond the fact that it violates private sphere, the photography of immovable estate can not be explained by the fact that it serves authentic information of public opinion and the disclosure of truth and therefore it is permitted, since it is not suitable for the clarification of incidental contradictions and uncertain questions. The appropriate and lawful investigation method of wealth growth – which is worthy of a constitutional state as well – is the property declaration procedure.

The Commissioners recommended the Minister of Economy and Transport to stipulate the rules of other economic activities performed by aircraft with regard to the ombudsman's report, and determine the guarantee conditions of air photography in line with the provisions of the Civil Code and the Act on Data Protection. Rules relating to the management of photos taken during aviation for private purpose – e.g. promenade flights – were also considered necessary by the ombudsmen. They initiated that on the ground of the report's statement the Civil Aviaton Authority reconsider its practice relating to the authorization of air-photography, and necessarily revising its internal regulations harmonize them with constitutional requirements and the provisions of statutory instruments in force.

For the pressing of the Commissioner the Head of the Cabinet of the Ministry of Economy and Transport stated that the professional legislative preparation had already started.

3.9.
Aggravation of the rules of medicine-order in respect of curable tumour patients

The secretary of the Transfusional and Hematological Professional College addressed to the Parliamentary Commissioner for Civil Rights because of the excessively strict legal regulation which makes difficult or sometimes

impossible, the adequate medicine order of their oncological interventions. The petitioner complained that the modifying Act to the Act on human medicines and other acts regulating drugs market (GyT) had created a situation which particularly endangers the recovery chances of serious cancer patients and disadventegously affects the confidential relation between patient and doctor.

Considering the more and more frequent occurrence of oncological deseases and in full knowledge with the difficulties of medicine-subsidy system – respecting the significance of the changes of medical science – the Parliamentary Commissioner launched an investigation by reason of the suspicion of the violation of the right to the highest possible physical and spiritual health and requested the position statement of the Health Minister in this case. The ombudsman fixed the following facts on the grounds of the information, analysis and conclusions of professionals experienced in the healing of tumour deseases and of the detailed position statement of the Health Minister which included the relating legal background as well.

Professionals find it unfair that the Medicine Act usually prevents the validation of professional rules according to which the application of the best and the most effective healing products would be necessary and reasoned. The fact that the legislator qualified the dosing applied in the indication differing from the authorized as unauthorized human research and threatened with imprisonment of up to 5 years particularly revolted the medical society. According to their standpoints this penalization of the criminal law – which stands without example in the international practice – is a rough intervention to the otherwise delicate confidential relation of doctor and patient. Prohibiting something referring to the scarcity of medical funds is equally an unfair solution, since it may occur that the patient or his family is able to buy the expensive medicine and it has occurred many times that a better, more effective and life-saver treatment could be saved from the HBCs (homogene desease group) belonging to the concrete desease.

The Health Minister emphasised in his answer the scientific base of the professional background of the individual sectoral legal regulation: the opportunities which can be applied for resolving the conflicts between the required social-economic relations, scientifical results, human rights and ethical questions and interests; the prospective impacts and in general the accord of norms relating to international and internal law as well. He underlined, furthermore, the fundamental legal protection of human dignity with regard to the prohibition of medical or scientific research without consent. The concrete regulation makes the doctor possible the free choice from among the different procedures based on his professional consideration and the relating orientation and consent of the patient. The disposal with personal and material conditions defined by law, professional rules, principles and – in the lack of all these – widely accepted professional requirements published in the scientific literature serve as a base for the doctor. Further condition is the highest possible real amelioration in the patient’s situation and the optimal application of patient’s rights and and

available resources. The Health Act declares that the interest and welfare of a human being have always primacy over the mere interest of society or science. The internal norm relating to the production, application and utilization of drugs for human use – which is in line with community law as well – essentially corresponds to the delineated criteria. Therefore drugs used in the healing can be securely applied during the strict authorization procedure with the indication defined on the grounds of clinical examinations. Consequently the trading of these drugs is also authorized. The strict regulation does not exclude that the doctor – partly after authorization procedures stipulated in individual statutory instruments – apply a medicine which does not have any offering permit for the treatment of the concerned desease. Pursuant to the Medicine Act and its executional decree this order – which exceeds the indication – is possible with the acquisition of the permit of the National Pharmatical Institute (OGYI) issued for the request of the applicant from medical interest of special appreciation. The only condition which has to be observed in this case is that the quality and quantitative composition – productional circumstances – be well known and defined. In the respect of clinical examinations launched by research centres, university research institutions, medical institutions of public financing and doctors or doctor groups the minimalizing or remission of the fees of ethical opinionating and authorization procedure would promote the sooting solution of the situation in order to roll back medicine order over indication.

It has occurred many times in the practice of the Parliamentary Commissioner that social demands are so strongly defined in the submissions that the summarizing report prepared as a result of fundamental legal investigation of the case can not miss the explanation in the level of legal theory and constitutional interpretation and the citation of the fundamental rights to life and human dignity which constitute the foundation of human rights. The unity of life and human dignity makes each human life equivalent and inviolable. The philosophic and dogmatic system of constitutional jurisdiction was formed on this base creating the portrait of the living Constitution. After the explication of this statement the Parliamentary Commissioner made the following remarks in his report:

The institutional life and health protection obligation of the state also means that if it is not able to finance independently a new or ‘too expensive’ healing instrument or procedure, citizens must be ensured – transitionally or even definitively – the opportunity to finance it themselves on the ground of their freedom to personality self-determination and financial autonomy. The primary question concerning such ‘marketing’ is if it is constitutionally inadmissible or not. In this case the application of the new procedure is obviously inadmissible in virtue of the requirement for the unconditional enforcement of the right to life and human dignity. Legal guarantees, however, must be ensured by all means. And if it is inadmissible and the necessary legal background is also available, then equal opportunities for each citizen can be realized concerning the access. The Medicine Act declares that authorized doctors are entitled to

order drugs only in the indication of the application instructions approved by the offering permit. If the drug in hand can be applied to other types of deseases as well, but there is no authorization for that, it can be even considered as non-existing. If the doctor orders such a medicine despite the prohibition, his activity violates the Criminal Code on the one hand and corresponds to his Hippocratic Oath on the other hand raising the recovery chances of the serious cancer patient.

The Medicine Act completed the factum of the Criminal Code relating to the violation of the rules of human researches with the following: 'anyone who performs clinical examination with research material without or contrary to the authorization declared in the Act on medicines for human purpose commits a felony.' So the healing responsibility of the researcher doctor becomes penalized crime in the respect of medication in different indication. The commitment by anyone ('someone') hits particularly the doctor who tries to save the life of his tumour patient with 'reasonable diligence'. May not lead this practice to – an otherwise more and more frequent – defensive healing? The incidental therapy delimitation due to the intimidation of doctors with imprisonment may not sacrifize young, still curable lives?

This – apparently moral – question has actually an exclusively economic aspect, which originates from the decennial mistrust which had driven apart the market actors, the profit-oriented mechanism of medical industry and the ethic basis of traditional healing poisoning the spirit of the oath. Consequently the settling of this conflict must be of a financial character, since its moral base can not be questioned.

The Commissioner declared furthermore, that a certain part (40%) of administrative fees payable during the authoization procedure gets into the financial funds of the Ministry of Health according to the provisions of the decree of the Health Minister on the clinical examination of research products for human purpose and the application of correct clinical practice. Comprehensible reasons of this are naturally time, knowledge and other infrastructure turned to the preparation of professional ethic opinioning. The amount of administration fees fixed by the law must be payed for each product to the OGYI by the applicant for authorization and other procedures which are in its scope of competence. After further comparision of the relating legal norms the question arises whether an existing medicine for an existing serious desease can fall on fee obligation during the authorization procedure, and can it be at all the subject of consideration because of its application in a different indication? The currently considerably high costs (a million items) are huge material burdens regarding very few purely scientific examinations. The case serving for the base of the current complaint also proves that especially the area of oncology is the most defencelessness.

Scientific and practical experiences based on the clinical practice of publicly financed individual oncological institutions may cut down and make cheaper the long authorization procedure initiated by drug producers which is requesting

various – and consequently expensive – control examinations. Consequently it can be stated that during direct medical attendance doctors in clinical practice can react faster and therefore more efficiently relating to the applicability of a product. At the same time the general aggravation – even penalization – of norms regulating medicine order made impossible the real life-saving therapical technologies for serious tumour patients.

Terminating his procedure the Commissioner noted that during the therapic healing of certain types of oncological deseases doctors are completing their tasks on the grounds of the Health Act and the medical oath made for human life when they are forced to apply medicines in an indication different from the authorized for the express purpose of saving the life of the patient. Hence the compulsion of the violation of the Medicine Act and the penalization of imprisonment of the doctor are contrary to general legal principles promulgating the priority of human life and the ethic rules of medical profession. The ombudsman also declared that the aggravation of the rules of medicine order does not reach the desired social and economic purpose in point of the therapy of serious but still curable tumour patients, and thus causes constitutional impropriety by violating the right to the highest possible physical and spiritual health.

The Commissioner pointed out that the specialization of the authorization procedure and the reduction of administrative fees could make possible to avoid that the development of science be untraceable from financial aspect and prevent the decrease of the recovery chances of patients because of the rigidity and insecurity of the legal background. The ombudsman asked the Minister of Health to take the necessary actions in order to harmonize the investigated statutory instruments, particularly those ameliorating recovery chances.

The response of the Minister of Health relating to the modification of fee-rates was positive, he pointed out, however, emphasising the role of medicine productors that he does not have the opportunity to make the enlargement of indication groups obligatory, even in case of deseases with bad predictions. The Commissioner accepted the response of the Minister.

In a further phase of the case the Commissioner was informed, again, that no essential steps were taken several months after the statements of his report and the reaction of the Minister. Therefore he turned to the Minister again emphasising that according to the objection with the same contents as before the adequate and professionally reasoned application of certain medicines with complex active ingredients beyond indication is still obstructed by legal norms and regarded as a crime by the state in case of more and more numerous serious tumour patients, mostly young people and children. In order to achieve the possible solution the ombudsman suggested to ask for the help of the Constitutional Court principally by reason of criminal law threatening and the solicitous applicability of the relative norm pack on the other hand.

The response of the Minister noted in details that the modifying decree on the change of fee rates already includes the reduced fee rate of the authorization

procedure; respectively the Medicine Efficiency Act – which was to be accepted then – opens further opportunities for the creation of a separate statutory instrument which would make medicine orders beyond indication possible, certainly along with the necessary guarantees.

3.10.
Uncertainty relating to the qualification of contracts signed concerning 'life annuity for flat programs'

In recent years several business associations started to operate in Hungary that sign life annuity contracts with a significant number of private individuals in the cadre of their profit-oriented economic activity. The essence of this contract is that the recipient of the annuity gives – besides the reservation of the right of common – his or her real estate into the property of the party granting the annuity in return for which he or she gets monthly life annuity till the end of his or her life. The Parliamentary Commissioner for Civil Rights has launched an ex officio investigation relating to the procedure of the concerned authority, the Hungarian Financial Supervisory Authority (PSZÁF), since according to the standpoint of the PSZÁF its scope of competence did not include these so called 'life annuity for flat programs'.

The Commissioner established that the constructions offering life annuity for a flat are disposing with all the important criterion of life annuity contract regulated by the Civil Code. The characteristics of contract relation are the long duration (contract legal relation lasts till the death of the entitled party), the annuity-character (regularly repeated service on the side of the annuity granting obligor) and close personal engagement on the side of the entitled party. Apart fom this the risk element is also important: it may occur that the entitled person dies within a short time after signing the contract, in this situation the granted life annuity adds up to only a small fraction of the offered assets value; the risk of the obligor stands on the other side, namely the fact that the date of the entitled person's death is incalculable. At the same time life annuity for flat programs strongly remind of annuity security contracts of single payment which start immediately and last till death. These contracts, however, can be considered as life insurances. Insurance activities, however, can be performed only in case of the existence of certain conditions (asset value, business plan, etc.) and with the authorization and supervision of the PSZÁF.

Pursuant to the Commissioner it can not be established equivocally on the grounds of legal background whether the contracts of firms signing life annuity for flat contracts in large numbers in the cadre of their profit oriented economic activity qualify as life annuity or insurance agreements. The ombudsman called the attention to the fact that such a business – principally by reason of the planned great number of clients – requires large material investments; in

addition to this the party granting the annuity has exclusively expenditures till the death of the first obligees. The return of the investment depends on when and on what price can the party granting the annuity sell (or otherwise utilize) flats in his or her property later.

The Commissioner estimated the uncertainty evolved concerning the qualification of the investigated contracts as impropriety relating to legal certainty, mainly because the fact whether the supervisory power of PSZÁF covers this activity or not is not clarified. He also established that the evolved situation caused improprieties relating to the rights to property and social security in an indirect manner. Joining to the opinion of the PSZÁF the Commissioner laid down that for the sake of the unambiguous regulation it would be reasonable to request that – because of the risk of such activities and the concern of numerous potential clients – only firms rich in funds and disposing with adequate personal and material conditions could deal with this profit-oriented activity. The supervisory power of PSZÁF should also cover this activity.

The Commissioner asked the Minister of Justice to examine how the evolved legal uncertainty could be redressed. The Minister signalled that the relating legislation is under preparation in the Ministry of Financial Affairs.

3.11. Speed limit case

The Parliamentary Commissioner has launched an ex officio investigation after a newspaper article on an association urging the end of effectual highway speed restriction. During his proceedings the Parliamentary Commissioner requested information from the director general of the Traffic Chief Inspectorate and the Chief of the National Police Headquarters on their standpoints concerning the possible dissolution of speed-limit.

The heads of the addressed organs noted that they did not support the lifting or dissolution of speed limit and confirmed their standpoints with statistical data and technological, traffic security and environmental protection arguments.

The Ombudsman examined this issue – also considering the professional reasons – in line with the constitutional right to life. The Constitution prescribes the state not only the obligation of abstaining from the violation of this right, but also oblige it for the ensurance of this right and the active promotion of the protection of human life in the given social environment.

Speed-limits (restrictions) serve the protection of human life and physical integrity. Considering the fact that the risk of accidents increases significantly above the speed of 130 kph, the aim of the association was unacceptable for the Parliamentary Commissioner as well.

Instead of the dissolution of speed-limit the Commissioner urged an intensive police control so that the speedster drivers endangering other persons too besides themselves could be strained off. This is the approach which complies with the institutional life protection obligation of the state.

3.12.
Leisure activity leading to the deterioration of environment's state

The Parliamentary Commissioner for Civil Rights has launched an ex officio investigation on the grounds of an article published in a county newspaper titled 'Mudflow to Lake Balaton'. The ombudsman asked the County Plant Sanitary and Soil Protection Station, the South-transdanubian Environmental Protection and Water Authority and the town clerks of the concerned settlements for some information.

According to the press article vehicles participating on an off-road festival set large quantity of mud into the near stream which is one of the most sensible catchment of Lake Balaton.

On the grounds of the available information the Commissioner established that the area is ab ovo liable to erosion. The slosh of alluvial deposit arises from the catchment character and often occurs even irrespectively from the festival. The program, however, influenced the extent of this slash by all means. The reservoir established for retaining the alluvial deposit became full and its development (construction of a new container) and complex erosion protection would be necessary extending to the whole catchment area.

The state can not have the possibility to leave the deterioration of the environment's state or allow the risk of it. Damages caused in the nature are destroying limited goods, and they are many times irreparable since the omission of protective measures induces irreversible procedures.

Tough the phenomenon was not basically caused by the festival; the program on the area ab ovo liable to erosion further worsened the situation contributing to the burden of the stream and the Lake and finally the deterioration of the environment's state. No leisure activities can be supported which causes such an effect or holds the danger of it. Considering the above the Parliamentary Commissioner sent his report to the Minister of Agriculture and Regional Development and the Minister of Water Affairs recommending the supervision of the authorization and urging the construction of the reservoir.

The Minister of Environmental Protection and Water Affairs noted that the territoty of the festival does not concern any protected or planned nature conservation areas, natural values or areas belonging to the Natura 2000 Network of the European Communities, no preserved species of animals or plants can be found on the area affected by the competition and the festival is not under the effect of the governmental decree on the procedures of environmental impact study and uniform environmental utilization authorization.

According to the Commissioner not the location of the festival can be considered as significant, but the question where the impact and consequences of the program appears; and this is Lake Balaton. The Lake and its environs are unique national treasures which desire increased protection, supervision, and actions if it is necessary from the part of state organs. He also pointed out that he had sent his report to the concerned ministers by reason of the concern of Lake Balaton and the necessity of its safeguarding from the harmful impacts of leisure activities. With regard to this the ombudsman addressed to the Minister of Environmental Protection and Water Affairs asking for the revision of his opportunities for joint actions along with the Minister of Agriculture and Regional Development.

3.13. Coherence disorder of statutory instruments relating to permissions necessary for garbage commerce

The petitioner complained about the disturbing operation of the neighbouring Ltd. dealing with garbage commerce among others. The Parliamentary Commissioner for Civil Rights has launched an investigation by reason of the affection of several constitutional rights. As a part of this investigation the Commissioner addressed to the town clerk of the concerned settlement asking for information on his standpoint relating to this case.

The Commissioner established that with regard to the time passed he could not inquire the operational permit issued in 1997 – which forms the basis of the complaint – and the relating procedure. The town clerk, however, took actions considered by him as appropriate by reason of the disturbing operation. During the exploration of the legal background relating to the performance of garbage commerce activity the Commissioner faced the difficulty to decide the question in what extent applies the provisons of the Act on garbage economy to the garbage merchant and whether he is qualified as garbage manager or not. The Commissioner found it problematical if the activity can be performed exclusively in the possession of operational permit or zoning permit and garbage management permit are still necessary, therefore he launched an ex officio investigation in order to dissolve incidental coherence disorders of present statutory instruments relating to the conditions of the performance of garbage commerce activities, and to prevent and handle the evolvement of situations constituting the base of similar complaints.

The Commissioner concluded that according to the logic and notional system of the Act on garbage economy an economic organisation dealing with garbage commerce may be garbage manager at the same time. If a garbage merchant takes over the garbage from its possessors and stores it on its operational area for some time – till its conveyance –, this merchant performs garbage

management, gathering in and storage activities as well consequently he needs to dispose with the appropriate permits.

On the grounds of the present norms relating to the performance of garbage commerce activity the inquiry established that each of the different sectoral norms includes the fundamental notions and institutions of garbage economy. At the same time there exists no coherent use and uniform interpretation of these notions and institutions. The lack of the precise use of notions results that judicative organs can hardly decide if the performance of garbage commerce activity requires zoning permit and garbage management permit or not.

The Commissioner disclosed that by reason of the lack of the governmental decree on the conditions of garbage commerce coherence disorder had evolved between statutory instruments which induces that the joint interpretation of rules and notions formulated in sectoral norms relating to garbage commerce is not able to give unambiguous orientation either. He also signalled that after the appropriate legal settlement of the question similar complaints can be prevented and redressed in the future by the creation of a norm relating to the authorization of garbage commerce and the realization of coherence between the relating statutory instruments. This would also result in the better insurance of the protection of environmental elements. The Commissioner emphasised that several institutions of civil law may also serve as devices before the civil court in the validation of the complainant's rights.

Considering the fact that the accord between legal regulations can be achieved exclusively through their modification, the Commissioner asked the Minister of Environmental Protection and Water Affairs to investigate how the accord between the Act on garbage eonomy, the governmental decrees on the order of zoning permission, respectively the operation of stores and the operational conditions of internal commercial activity could be achieved with regard to garbage commerce.

The ombudsman requested the Minister to promote the soonest legislation relating to garbage commerce, and suggested that the environmental protection authority should be qualified again – in the new governmental decree regulating the operational authorization procedure on the grounds of the Commerce Act – as competent authority in the operational authorization procedure necessary for performing garbage commercial activity. Finally the Minister was asked to take the necessary actions towards the competent authorities should he come to the conclusion that the mentioned activity still requires zoning permit, respectively garbage management permit. The deadline for response has not expired yet.

3.14.
The case of a press photographer arrested on the beach

The General Deputy of the Parliamentary Commissioner for Civil Rights has launched an investigation on the grounds of media news and asked the Head of

National Police Headquarters for some information in the case of a press photographer arrested on the beach.

Pursuant to the received data a woman asked the help of the police stating that an unknown man is taking photographs of their naked children on the territory of the free beach.

From the recital of the mother policemen deduced that the photographs in hand must have been taken for pedofile purpose. On the grounds of the description given by the notifier and the orientation of bathers the police arrested the non-resisting man lieing in his swimming trunks near to the waterfront and brought him to the settlement's police station in irons. Policemen brought only the camera and camera bag with the man, whose clothing – with his identity card in it – was left on the beach by the police. The clothes were later brought to the police station by a non-identified woman. The arrested person gave his data on the police station which were controlled in the national registry by the policemen, then the photographer was closed in a detention room.

The man explained during his hearing that he was a press photographer of a nationwide daily newspaper and the member of the Journalist Association, and he had been charged by his newspaper with taking photos on people spending their holiday by Lake Balaton. He did not demand the assent of persons appearing on the photos and did not inform them on the purpose of the photographs either. The detective controlled the photos in the camera and did not find any of them which would refer to the suspicion of a crime.

The proceeding policemen filed charges against the photographer because of the offense of the refusal of proofing his identity, and then released him. A week later the photographer addressed a petition to the head of the competent police headquarters which was later rejected. The complainant appealed this rejection through his attorney.

The fact-finding committee designated by the head of the county police headquarters established that the measures taken by the policemen were lawful, several professional failures were, however, found in their execution. The leaving of the clothes on the spot, the omission of the searching of witnesses, the failure to identify the woman who had brought in the clothes to the police station and the perfunctoriness of reports on the measures taken were all considered as errors. The committee made suggestions to the education of the staff of commanders and subordinates – principally in line with the effective norms relating to the actions and the investigation order of extraordinary events. By reason of the occurred inexpertise they also suggested the launching of disciplinary proceedings against the executive patrol officer and the commander examining the measures restricting personal freedom and the legality of the application of the means of coercion. The Head of National Police Headquarters ordered the training of the whole staff providing service on public domains in order to avoid the future occurrence of the disclosed inexpertise. Pursuant to the statement of the General Deputy the fact that the complainant had not been

even heard on the contradictions recognizable for the investigators as well refers to the failure of the posterior police investigation. The investigation of the complaint should have been performed – with special regard to the proof of facts eligible for the establishment of lawfulness and unlawfulness of the measure – according to the rules of administrative procedure, including the hearing of the client and the recording of important statements of the case in the minutes.

With their inefficient actions and the fact that coercive measures were applied against a non-resisiting person the proceeding policemen caused constitutional impropriety violating the right to human dignity.

The General Deputy considered the measures of the Head of National Police Headquarters sufficient; therefore he did not take any actions. Apropos of the fact-finding committee's procedure, however, he established that the right to fair procedure had been violated when the facts had been tried to clarify unilaterally, ignoring the hearing of the person under police action, circumstances significant from the aspect of the inquiry's result were unregarded and they were documented not according to the rules of administrative procedure.

The ombudsman asked the Head of National Police Headquarters to take the necessary actions in order to enforce that during the investigation of citizen's complaints – particularly in line with the application of coercive measures – the competent commanders strain after the establishment of objective facts even by the hearing of complainants and observe the rules of administrative procedure when executing procedural actions.

The head the police headquarters accepted the recommendation and executed the proposed measures, while informing the ombudsman that the Head of National Police Headquarters proposed the precision of the provisions of the Police Act relating to legal remedy and its harmonisation with the provisions of the Act on Administrative Procedure. We have not had any information on the future of the proposal yet.

3.15. Undifferentiated burdens affecting immovable estates in case of subsidies aiming to lessen damages of floods and inland inundations

A petitioner living in a settlement by the Danube complained that he had been obliged to take out a loan of 2 million forints for the restitution of his damages caused by the flood of spring 2006, since the local government had not provided him any subsidies for several months. The foundation and roofing of the house cracked because of the water standing in the house during almost one and a half week at 90 centimetres high. The plaster totally leached in and out, the walls did not dry up and became mouldy. Furnitures,

clothes, household appliances were damaged, carpets got spoiled. In spite of his limited material facilities the complainant was obliged to take out a loan and reconstruct his house because of his two ill children. The local government promised him to pay the bills later, the complainant was informed, however, on the providing of only 194 thousand forints with 10-year mortgage registration and restraint on alienation and encumbrance.

The Parliamentary Commissioner for Civil Rights learned from the media – besides the complaints addressed to him –, that many citizens expressed their dissatisfaction because of the rules relating to mortgage and restraint on alienation.

The Commissioner has launched an investigation and also addressed his questions to the Minister responsible for legislative preparation, but only the disaster recovery organ responded to his request in view of its proper judicative standpoints. So the Commissioner could not know the legislative resons of the undifferentiated regulation of 10-year mortgage and restraint on alienation and encumbrance. The Commissioner pointed out that the right to property can be restricted from public interest till the target wished to be reached is proportionate with the degree of restriction. Regulations which are uniform and undifferentiated in respect of private property, not reflecting the purpose and reason of significant restriction, nor the fact when property restriction is not proportionate with public interest and value guarantee is missing, can not stand the proof of the constitutional test. Since this fundamental right can be restricted from public interest, special attention must be favoured to the restriction of the right to property and the providing of appropriate value guarantee.

Several Constitutional Court Resolutions dealt with the context of the protection of fundamental rights and their narrowe-range restriction possibilities. The Court declared that pursuant to the Hungarian Constitution the Republic of Hungary acknowledges the inviolable and inalienable fundamental rights of the man, the respect and protection of which is the primary state's obligation. It declared as a requisite that the importance of the target wished to be achieved and the weight of the violation of fundamental rights caused in the interest of this target must be in accord with each other. On the occasion of the restriction the legislator is obliged to choose the blandest instrument which is suitable for reaching the target. If the applied restriction is not suitable for reaching it, the injury of the fundamental right can be established. The Court also declared that the state could use the instrument of resticting fundamental rights if the protection or enforcement of other fundamental rights and freedoms, respectively the protection of other constitutional values can not be attained in another way. The pure fact that the restriction of fundamental rights happens for the sake of other constitutional targets or the protection of other fundamental rights or freedoms, therefore, is not sufficient for the constitutionality of the restriction of fundamental rights. The restriction needs to correspond with the requirements of proportionality: the importance of the

target wished to be achieved and the weight of the violation of fundamental rights caused in the interest of this target must be in accord with each other. On the occasion of the restriction the legislator is obliged to choose the blandest instrument which is suitable for reaching the target. The restriction of the content of the right is unconstitutional if it happens peremptorily, without any forcing reasons or if the weight of restriction is unproportionate compared to the target wished to be achieved.

According to the standpoint of the Constitutional Court 'the provison permitting the restriction of the secure long-run use of the constitutionally defended property…is constitutional if – similarly to other possibilities for property restriction – it happens for the sake of other significant, similarly defended target besides the constitutional redress of the proprietary's injury.'

10-year mortgage is also obligatory in case of small-value subsidies mentioned in the investigated cases – according to press news even in case of subsidies with the amount of 100 thousand forints –, and there is no place for differentiation, proportionality or other significant defended target when registering restraint on alienation and encumbrance. Citizens may well dispute that such charging of a home which represent the work of a whole life means further violation to the aggrieved persons; hence many citizens are obliged to give up subsidies because of the unproportionate legal burden. Significant parts of the aggrieved are old persons who do not wish to charge their till unencumbered homes with this registration so devising it to their families. Sometimes a minor subsidy for the mitigation of damages would help the aggrieved in the conservation; they are obliged to give it up however, in order to avoid the unproportionate burden.

The Commissioner established that local governmental decisions taken on the grounds of the relating governmental decree during the lessening of damages of floods and inland inundations caused – in the respect of private property with the uniform and undifferentiated regulation not reflecting the purpose and reason of significant restriction – improprieties relating to the right to property and the right to fair procedure. The ombudsman asked the Minister of Local Government and Regional Development to initiate the modification of the governmental decree which would correspond to the constitutional requirements of restriction affecting the right to property. He also asked the Minister to take care that the fixation of the amount of subsidies and restrictive decisions be separated in the procedures of local governments granting and disboursing subsidies, and local governments take actions on restrictive land registry registrations only after the modification of the law.

The Minister did not accept the legislative recommendation; therefore the Commissioner is considering setting it before the Government.

3.16.
Tragedy at the annual Budapest fireworks

The storm, in consequence of which several fatalities and injuries of different degrees affecting some 500 further persons occurred, had reached the spectators of the annual fireworks of 20th August 2006 in the open air.
The Parliamentary Commissioner for Civil Rights and his General Deputy launched an ex officio investigation by reason of the violation of the constitutional right to life in order to examine the relating legal regulations, the activities and functional consistency of the concerned authorities and organs performing public service and to disclose the incidental deficiencies.

During the inquiry the ombudsmen addressed for information to the Minister of Chancery, the Minister of Local Government and Regional Development, the president of the National Meteorological Service, the director-general of the Hungarian National Ambulance and Emergency Service, the heads of the National and Budapest Police Headquarters and the mayor of Budapest Capital. Becoming aware of the investigation, several experts affected by this domain also offered their professional help.

The Commissioners pointed out, that they restriced themselves to the inquiry of whether the operative Hungarian legal system and the state's institutional system were able or not to adequately comply with their constitutional life protection obligation. They aimed neither at discovering and defining the individual personal responsibilities, nor adjudging the subjective legal injuries and incidental damage claims of the individual aggrieved persons.

Several articles of the Hungarian Constitution stipulate that each state organ is obliged to protect citizens' rights.

The Office of the Prime Minister organised and executed the central programs of the state feast of August 20, 2006 in collaboration with a business association. In the contract for professional services signed with the profit-oriented company on 18th July 2006 the parties declared that the entrepreneur is obliged to prepare a security and sanitary plan and organise and ensure the health care service and the security of the participants during the program. The annex attached to the contract, however, included only a 'Sanitary and Security Guarding Plan'. So a real security plan was not prepared, since the plan included orders only relating to 7 ambulance cars on alert, the supervision of parking prohibition and the guarding of certain units of the program.

The inquiry of the ombudsman stated that the Office of the Prime Minister proceeding and contracting in the name of the Government during the organisation of the feasts had not fulfilled its objective obligation for fundamental legal protection, causing grievous impropriety relating to the constitutional life protection obligation.

Analysing the activities of state organs participating in the organisation and insurance of the program the inquiry came to the following conclusions:

The Budapest Police Headquarters prepared for the incidentally occurring extraordinary events relating to the execution of the firework on the grounds of its former experiences, but they did not calculated on the occurrence of an extraordinary weather situation. The Act on the Police generally prescribes the obligation of the police for co-operating with different organs and organisations in order to ensure the life and estate-protection of the population. The Act also declares that 'policeman contributes to averting the danger threatening public security. If the averting of the danger is the task of another organ, but its intervention would be possible only in default, policeman immediately arranges for the information of the authority or organ responsible for the averting of the danger.'

The Governmental Decree on the Supervision of Pyrotechnical Activities for Civil Purposes declares that 'Commencement and continuation of pyrotechnical activities violating or endangering life, physical integrity, health or estate security are forbidden by the police'. Pursuant to Pyrotechnical Security Regulations 'The arrangement of using pyrotechnical products shall be postponed in strong wind, or if they are already started to be used the responsible pyrotechnician is obliged to stop the operation.'

It became clear that the police was the only authority which received any information on the approaching tempest even before its outbreak, so it should have taken the necessary measures to postpone or stop the event with regard to public danger even without any concrete legal authorizations.

The findings concerning the National Meteorological Service are the following. According to identical opinions of the investigations pursuant to the present situation of science and technology the National Meteorological Service could not have given substantially more precise forecast data earlier than those factually provided. Apart from the forwarding of information they failed to control its awareness. This task was not specified by the law; consequently the result of its omission could not be predictable for the employee on duty. The red-level alerting of the National Meteorological Service issued for the Central Hungarian Region at 7.39 p.m. was issued since marking Budapest in it. Nevertheless, we can not accept from any organs the explanation that they did not prepare for the tempest because the designation of Budapest city had not been mentioned in the forecast, since Budapest is also the part of the Central Hungarian Region. At the same time the lesson of this case is that it is necessary to expressly designate the city of Budapest in the future considering the territorial extension and number of population of the capital, and along with the technological improvement the alerting may concern even closer area.

The organisers of the annual fireworks have not required any 'meteorological insurance' from the National Meteorological Service for years. This fact proves in itself the deficiency of preparations for prevention and averting. The law regulating the legal status of the National Meteorological Service does not provide appropriate scope of competence for the Service in meteorological catastrophe situations, the recognition and

forecast of which they are exclusively disposing the necessary professional conditions for.

The organisers of mass programs can be expected to continuously follow with attention personally and inquire about the phenomenon – weather circumstances as well – endangering the program and its participants. This obligation is expanding to the case when received information may be too general and therefore needs to be specified. Preventive measures can be taken on the ground of detailed orientation, consequently protective and averting activities could be also more organised.

Numerous acts and decrees regulate the operation of organs and organisations participating in disaster recovery. There is not any anwers, however, from millions of law sections for the simple question, who is entitled and obliged to take preventive measures with immediate effect in an approaching meteorological catastrophe situation which endangers human lives on a mass program. It is a serious deficiency that disaster recovery bodies, apart from the forwarding of the information, had not been entitled to any preventive measures, alerting or calling for the fast leaving of the spot in the lack of concrete authorization after the defaulting perception of the meteorological danger.

Both the response of the mayor of Budapest Capital and the report of the Ministry of Local Government and Regional Development touch upon the fact that the preparation of the residents for different catastrophe situations is not satisfactory, the population is poorly informed in respect of the danger of the catastrophe, the preventing and protective mechanisms and the possible human behavioural forms. The 4-5 links in the alerting warp together with the uncontinuous operation and posterior convening of the individual levels make it difficult to adopt the substantive measures the soonest possible after the signal of the danger and the occurrence of the catastrophe.

The Hungarian National Ambulance and Emergency Service secured the program with 12 emergency units (3 emergency cars, 7 basic units and 2 Mass Accident Units). According to the decree regulating their activity in case of programs with more than hundred thousand participants further emergency cars are necessary after every fifty thousand persons. Projecting it to the estimated one and a half million spectators this provision would have justified the delegation of at least 30 ambulance cars. So there was a not enogh mobile guard on the event in accordance with the relating instructions, since the number of participants was underestimated and the requirement stipulated by the decree was impossible to be observed. The Governing Group, however, has the possibility to enlist the services of other organisations entitled to medical transport on the groud of the decree’s authorization, according to which immediate actions were taken just after the outbreak of the catastrophe and 40 medical transport units took part in the attendance of the injured.

Appraising the lessons of this case the Ministry elaborated the modifications of the provisions relating to mobile guards which have been already promulgated.

In the case of the arrangement of the annual fireworks the Parliamentary Commissioners declared that they had no competence to carry out investigations on the activities of business associations, the performances of the principal and subcontactors organising and executing the fireworks either. The investigation is the task of state organs contracting with them. The state organ procurer of the mass program, however, shall not decline the responsibility to fulfil his constitutional life protection obligation with entrusting the execution of some activities to business associations in the cadre of private law contracts. As a procurer contracting party its primary obligation is to validate the life protection obligations it is responsible for even during the selection then the control of the work of the contracting partner. The procurer has to ensure the continuous connection and co-operation between associations contributing in the execution and state organs as well. All this ab ovo presumes that the procurer has to be the superior organ of the state organs concerned, as it is the situation in case of the Office of the Prime Minister.

The approaching of the tempest was perceptible to the naked eye even few minutes before the beginning of the fireworks. Pursuant to the governmental inquiry the director of the Ltd. responsible for the coordination and execution of the fireworks declared that ‘they had not received any information or warning apart from their own weather information which had not signalled any weather catastrophes for Budapest. No one demanded the postponement or the suspension of the fireworks from them, nor did they receive such instructions. From technical aspect the stoppage of the firework could have taken place anytime.’

At the same time it is necessary to refer to the legal obligation of the contractor according to which the work shall not be completed ‘if it endangered life- or estate security’. This obligation charges the contractor without any separate clause in the contract.

The former intensive form of the insurance of mass programs significantly declined after the year 1990 because of the modifications of several statutory instruments and the change in the activity of internal-security organisations. At the same time the preparation of the residents for the incidental catastrophes has failed, although the intensification of the danger of terrorism and the frequency of the occurrence of extraordinary weather phenomenon makes it more and more reasoned.

The VAHAVA project, operating under the guidance of the Hungarian Academy of Sciences and dealing with the analysis of the economic and social impacts of global climat change has many times recommended the building-up of a city storm-forecast system, which could inform citizens about the approaching storm and other dangers in time through the operation of storm-signal lights placed on conspicuous spots of the city. A range of

international examples prove that also the most serious catastrophe has fewer victims if both the destinated state organs along with their staff and executives and the resident population are appropriately prepared for the behaviour to be followed in these kinds of situations. Although the most important aspects of this preparation are available in Hungary as well, on the website of the Directorate-General of Disaster Recovery, this information has got neither the reasonable media attention, nor the necessary social publicity.

The Office of the Prime Minister proceeding and contracting in the name of the Government during the organisation of the feasts did not fulfil its objective obligation for fundamental legal protection. Each further organ concerned was insecure in its role and decision-making authority, so the question of liability is not unambiguously clarified either. Consequently it is necessary to take into consideration during the legal amendments, that the right to decision shall not be determined on a much lower, nor on a much higher level, furthermore that the responsibility can not be divided.

Risks relating to the mass of millions of people were not investigated before the catastrophe and analyses were not made either, links in the alerting warp significantly prolong the time of intervention. The spectators of the fireworks did not behave in a way to be followed in these kinds of situations due to the deficiencies of the preparation of residents. The movement of the mass points properly to the fact that without guidance people did not even have an idea of the fact par example that in the high wind with big likelihood right the lower quai was the safest place which they left first.

It is clear that in case of the appropriate preparation of the resident population the state could have fulfilled its objective obligation for fundamental legal protection just with a professional alerting. The Hungarian regulation accentuates properly neither self-defence/self-rescue – which is considered as the third pillar of disaster recovery in the German terminology –, nor the proper personal responsibility of the citizens concerned.

The governmental investigation did not discover who would have had – among the several possible denominated persons – substantial possibility to intervene in the course of the program of 20th August, which ended with a tragedy. Neither found the inquiry the anwer to the question why the warning of the waiting mass and the swich back of the public lighting failed.

The report restricted itself to state that the reason of the omissions was that for an incomprehensive reason a fireman in charge of the Directorate-General of Disaster Recovery did not attach importance to the alerting received through the alerting system established for that purpose. On 21st August the Minister of Chancery so interpreted the omission of the organs badly reacting to the lately understood danger in the press that ‘the meteorological forecast was not punctual enough, even if it had been precise, such a big crowd would have needed two-two and a half an hour to disperse.’

In this respect the Commisssioners established that the catastrophic consequences of the tempest – the tragedy causing nearly half thousand injuries and 5 fatalities as well – could not have been fully prevented by the police, nor by the common effort of the organisers on the ground of the information received at 8.46 p.m. Nevertheless, the extremely serious consequences could have been also reduced, if the residents had been informed through the available instruments or their escape from the site had commenced. The omissions and the uncoordinated operation of the bodies participating in the execution of the firework caused constitutional improprieties relating to the principle of rule of law and the right to life, health and physical integrity. Therefore the Commissioners have formulated the following recommendations in order to prevent the future occurrence of similar cases:

They asked the Minister heading the Office of the Prime Minister, the Minister of Local Government and Regional Development and the Minister of Justice and Law Enforcement to make the necessary arrangements to redress the disclosed improprieties.

They recommended the legal regulation of the operation of the National Meteorological Service, the pragmatical utilization of the results of scientific researches, the termination of overruling and the reconsideration of the necessity, extent and locations of the annual fireworks of 20th August, particularly from the point of view of the life protection obligation. They asked the Assembly of Budapest Capital to reconsider the rules defining the tasks and operation of the Budapest Defence Committee and to provide for the execution of the preparation for the defence. The Commissioners recommended the Minister of Local Government and Regional Development to issue the ministerial decree on the detailed rules of the National Disaster Recovery Regulations.

The responses of state bodies concerned reacted distinctly to the observations formulated in the report and the initiatives of the Commissioners.

The National Meteorological Service coincidently supported the proposal of the ombudsmen for the legal regulation of the Service's operation. The National Directorate-General of Disaster Recovery, however, did not agree with that proposal. Police organs continuously maintained their standpoint stating that they did their best in view of the short period.

The Minister heading the Office of the Prime Minister stated in his letter that according to his standpoint the majority of observations and recommendations of the report correspond with the statements of governmental bodies, their planned and partly realized arrangements. He added that the inquiry of the commissioners also contributes to the fulfilment of fundamental legal protection obligation of the state on a higher level.

In their response the Commissioners thanked the measures taken up till now indicating that they are following with attention the modifications of statutory instruments, and continuously missing that no internal investigations disclosed who could have had the possibility to intervene to the course of the program during the events of the national feast.

3.17.
Exclusion from gas price support in case of the cartridge form of propane-butane gas for domestic purpose

In the program of one of the biggest public radio families with many children living in farms mentioned that their only energy source is cartridge gas, but they are not provided any gas price support for its purchase. The local government, however, can not support them referring to resource gap.

During his ex officio investigation the Parliamentary Commissioner for Civil Rights reviewed the provisions of the Act on natural gas supply (Gas Act), the Ministerial Decree on the recourse of discounted gas supply and the Governmental Decree on gas and district-heating price support of certain socially indigent families in year 2006.

The effect of Gas Act covers the cable transport, the storage and the utilization of natural gas, biogas, gas deriving from biomass and other types of gas. Discounted gas supply and the support of socially indigent families can be resorted during the consumption of natural gas and propane-butane gas provided through gas-mains and the compound of the above. The examined statutory instruments do not mention propane-butane gas sold in cartridge.

Most of the complainants living in farms – who participated in the radio program – have big families and they are able to use exclusively propane-butane gas in cartridge for water warming, heating and cooking as well. Local governments do not provide support for the consumption of propane-butane gas in cartridge, because the relating governmental decree does not authorize them to do so.

The Parliamentary Commissioner also received a complaint from a retired farmer using propane-butane gas who complained that home maintenance allowance is not provided for him by reason of the lack of public utilities.

The Commissioner established that the deficiencies of legal regulations led to the violation of the right to equal opportunities and the right to the highest possible physical and spiritual health. He pointed out that in year 2003 he had already investigated the situation of people living in farms without electric energy supply. As a result of this inquiry the Commissioner established that comfortable life must be ensured the inhabitants of these farms as well providing them the equal opportunities of social emergence at the same time, a significant part of which is the appropriate physical and spiritual development of children and the health preservation of the residents.

In order to dissolve the impropriety the Parliamentary Commissioner recommended the Minister of Economy and Transport, respectively the Minister of Social and Labour Affairs to initiate the modification of the acts on gas compensation, according to which domestic consumers using propane-butane gas in cartridge for maintaining their homes would be also entitled to the preferential gas supply.

In his response to the recommendation the Minister of Social and Labour Affairs did not consider realizable the extension of gas compensation system to cartridge gas, since the control of the proper (domestic) use of support would face unproportionately large difficulties.

The Commissioner did not accept the Minister's response. He explained that the solution proposed by the Minister, according to which indigent persons would be supported by the local government in the frames of home maintainance allowance regulated by the Act on social administration and allowances, causes legal inequality because of the different regulations of the establishment of per capita income – which is necessary for the support – in the Social Act and the Governmental decree on gas and district-heating price compensation effective from January 1, 2007. The control of the proper use of the subsidy would not cause difficulties to local governments since they know very well the structure of the settlement, its supply with public utilities and life circumstances and social situation of families living in farms or in the settlement.

The Commissioner therefore proposed the Minister in his modified recommendation the adoption of a statutory instrument or the completion of the Social Act with provisions which would ensure the equal support of socially indigent consumers using cable and cartridge propane-butane gas for domestic purpose.

The Minister signalled that from January 1, 2007 the Act on natural gas supply was completed with a provision which authorizes the Minister responsible for social and family policy to regulate the rules of other heating supports of socially indigent persons on the level of ministerial decree in connection with the Minister responsible for state budget. During the legislative preparation the Ministry is paying special attention to the most complex possible redress of problems drafted in the ombudsman's report.

The Parliamentary Commissioner asked the Minister to make the draft legislation under preparation to his disposal for studying it.

3.18. Definition of income in case of tax on interest

The petitioner complained about the legal regulations relating to tax on interest effective from September 1, 2006. According to his opinion the legislator did not consider during the modification of the statutory instrument that the total amount of the acquired interest can not be considered as income, expenses turned to the acquisition of interest revenue should be also considered, consequently the difference between interest revenue and expenses emerged for the sake of the acquisition should be considered as income.

The General Deputy of the Parliamentary Commissioner for Civil Rights noted that pursuant to the provision of the Act on personal income tax – which is in force from September 1, 2006 – interests credited and/or capitalized on

the grounds of contracts signed with publicly announced conditions between private individuals and credit institutions (including business regulations and terms of interest as well) in case of the debt balance of any credit institutional deposit (savings deposit), charge account and bank account are qualified – above others – as interest incomes. The Act does not allow cost accounting against interest revenue, which is the same, therefore, as the interest income after which 20% tax must be payed.

Contribution to common charges is basically realized through tax payment, one of its elements is personal income taxation and the taxation of interest incomes within it. The taxation of interest incomes itself is not contrary to the provisions of the Hungarian Constitution. It can not be forgotten, however, during the qualification of interest as income that only interest revenue exceeding the all-time inflation constitutes real income. Nevertheless the acquisition of interest income often involves costs (e.g. account maintenance fee, commission), which can not be accounted as costs against interest revenue pursuant to the Act on personal income tax. Consequently the regulation considers the total amount of interest revenue as income and does not allow considering the degree of current inflation and other expenses as decreasing items during the determination of the tax base (notion of interest). Incomings which actually do not affect at all real income are also classified to the base of income tax. Consequently at the moment interests under the inflation rate are also counted in the base of interest tax – such as the degree of interest payed after not-earmarked amounts of money of bank account in most banks –, which is not a real income, moreover, the real value of the account's money is countinuously decreasing along with the received sight interest (which is under the level of the all-time inflation in general). This amount is further reduced by bank expenses relating to certain account maintenance and deposit lockup.

The General Deputy suggested the Minister of Financial Affairs to consider the modification of the Act on personal income tax which would make possible the account of costs evolved in relation with the acquisition of interest revenue and according to which only interest incomes exceeding the all-time inflation would be considered as interest revenue.

3.19.
Prohibition of performing remedial gymnastic tasks in educational institutions

The complainant found it injurious that in September 2005 the Budapest Municipal Council – referring to the provisons of the Act on Public Education and the Co-operation Agreement signed between the Budapest Municipal Council and the distict governments of the capital – prohibited in a circular the heads of educational-training institutions maintained by the Budapest Municipal Council the

performance of remedial gymnastic tasks. According to the circular district governments of the capital are obliged to provide remedial gymnastic services.

As a result of this circular remedial gymnastic supply was terminated in the majority of public educational institutions maintained by the capital, against which the complainant formulated numerous objections. According to the petitioner this action violates the rights of students and their opportunities for healthy life. As a result of the measure taken a for a long time well-operating system providing local qualified supply ended leaving several hundred entitled students unattended. The action took palce during the educational year in spite of the rule that the maintainer is not entitled to modify the tasks of the school during the educational year.

The General Deputy of the Parliamentary Commissioner for Civil Rights has launched an investigation for the sake of the protection of children's rights. In his response written for the request of the ombudsman the vice-mayor of Budapest informed him that the uncorrect practice that remedial gymnastic tasks are provided within schools evolved in several institutions maintained by the capital. This uncorrect practiced was tried to settle by the Budapest Municipal Council in line with legal provisions.

During the preparation for the divison of subjects the Budapest Municipal Council called the attention of the institutions' directors to the observance of the provisions declared in the deed of foundation, informed them in written on the legal background of the performance of remedial gymnastic then sent them the Co-operation Agreement. Beyond that the Budapest Municipal Council addressed in written to the functionaries of district governments responsible for the supervison of this sector asking them to help with their co-operation and support the performance of remedial gymnastic tasks in line with the relative legal regulations.

The General Deputy established that the measure taken by the Budapest Municipal Council relating to the performance of remedial gymnastic corresponded with the relative provisions and did not cause the termination of remedial gymnastic supply, even if institutions maintained by the capital shall not perform remedial gymnastic tasks in the future. The recourse of this supply in the educational institution was undeniably more preferential for students (the gymnastic was hold within the school, suited to the class schedule and extra time for par example travelling was not necessary), the 'termination' of this, however, is not related to the violation of constitutional rights. Remedial gymnastic supply of the concerned students continues to be resolved in another form and on different location like in case of students who has not had the opportunity – even before – to resort this supply within the school. The pure fact that the conditions of the resort of a supply are changing – in this case they are becoming more and more unfavourable – does not result in the violation of fundamental rights. The expediency of the task in question organised in line with the law is also confirmed by the fact that normative state subsidy for the supply can be demanded only in this case.

The General Deputy established that the Budapest Municipal Council had not fulfilled its obligation for judicial supervision in the institutions maintained by it, since the performance of remedial gymnastic tasks had been contarary to the law for long years. In the cadre of the ensurance of legality the maintainer is obliged to supervise the legality of operation at least once in every four year if the law does not prescribes otherwise. This obligation is also prescribed by the – already cited – Co-operation Agreement according to which parties shall review the performance of the agreement in every second year.

The General Deputy also noted that on the grounds of the circular issued on the 8th of September 2005 educational institutions had been obliged to annul the already planned remedial gymnastic lessons, namely their purposes had to be changed. The maintainer is certainly obliged to modify the tasks of the school, but only with the consideration of certain conditions. Such a condition is declared by the Act on public education when prescribing that the school's tasks can not be changed by the maintainer in teaching year (termtime) and educational year except for July and August. The maintainer, therefore, has the opportunity to change the tasks of the educational institution only in July and August. The Budapest Municipal Council as maintainer, however, called the heads of public educational institutions to the termination of the performance of remedial gymnastic tasks in September and October (during the educational year) ignoring the relative provisions and taking an action not allowed by the law.

The General Deputy established on the whole that certain elements of the Budapest Municipal Council's action disputed by the complainant – although it had been taken by respecting the law in order to restitute the legal order – had violated the provisions of the act causing constitutional impropriety violating the principle of legal certainty. The ombudsman initiated the Mayor of Budapest to proceed in the course of the modification of schools' task considering and observing the relative legal regulations. He also initaiated him to entirely provide for the obligations – setting out the institutions' legal operation – prescribed by the Act on Public Education.

The deadline for response has not expired yet.

3.20.
Lack of the clarification of facts in administrative actions

Complainants asking for anonymity turned to the Office of the Parliamentary Commissioners complaining about the setting of their petition submitted in 2005 for home maintenance subsidy. According to their submission their petition had been rejected by the local governmental office on the grounds of an unlawful local governmental decree.

The Deputy Parliamentary Commissioner for Civil Rights investigated the individual local governmental administrative case without disclosing the

complainants' identity. During his inquiry the ombudsman asked the mayor of the settlement to forward him the documents of all cases dealt with home maintanence subsidy in year 2005, the local governmental decrees applied in the cases concerned and the judicial comments of the administrative authority and the response given to these observations. After the investigation of the documents placed at his disposal the commissioner ex officio extended his proceedings to each case which had been pending in year 2005 for the establishment of home maintenance subsidy.

The Commissioner established that in each case the petitioners submitted their application for home maintenance subsidy, the mayor, however, handled these submissions as cases of the so called local home maintenance subsidy and did not consider whether the petitiones are entitled to the so called normative home maintenance subsidy stipulated by the Act on Social Administration and Services (hereafter Social Act) or not. With this procedure the mayor caused impropriety relating to the right to fair procedures.

The ombudsman established that there is no significance whether the performance of rules aiming at the realization of some basic right or state aim or that of rules in distant contact fail, even the default of the performance of obligations declared in the executive statutory instrument is able to cause impropriety relating to the requirement of legal certainty. The omission of the application of rules declared in acts and local governmental decrees by the practicioner of regulatory powers is not compatible with the principle of rule of law, the requirement of legal certainty, the right to social security and the relating objective obligation of the state for the protection of fundamental rights. In the course of the consideration of the investigated submissions neither the mayor, nor the local governmental council payed attention to the provisions of the Social Act, the local governmental decree and the aim wished to be reached by these statutory instruments.

The General Deputy also stated that all-inclusive clarification of the facts had not taken place in the pending cases, and the conclusions drawn from the established facts had not been always correct. The Social Act does not stipulate any special rules have to be applied for the clarification of the facts, so the provisions of the Act on the State Administration Procedure had to be applied accordingly, which prescribed that the public administrative organ is obliged to clarify the facts necessary for the decision-making. The ombudsman is not entitled to clarify the facts instead of the public administrative organ and recommend concrete decisions in certain cases, he established, however, that the mayor and the local governmental council had caused impropriety relating to the right to fair procedures when not fulfilling their obligation relating to the clarification of the facts.

The General Deputy contacted the practitioners of the regulatory powers asking the withdrawal of resolutions and the clarification of facts. This request, however, was not accepted by the concerned bodies. He initiated therefore the Chief Public Prosecutor to take the necessary actions, as a result of which the

County Public Prosecutor's Office lodged protests against several resolutions and issued speeches and reminders.

3.21.
Opportunities of doctors and pharmacists of small settlements for continuing professional education

Doctors, dentists, pharmacists and clinical special psychologists found injurious the obligation of continuous training and lifelong learning prescribed for them. The activities of doctors, dentists, pharmacists and clinical special psychologists are in the closest relation with the right to the highest possible physical and spiritual health ensured by the Hungarian Constitution. One of the fundamental guarantees of the right to health is the thorough and up-to-date knowledge of doctors and pharmacists and the high-level practice of their professions.

The requirement for continuously renewing and enlarging professional skills is of a particular weight in the sector of health service where the most fundamental human values: life and health constitute the contents of professional activities. The special importance of professional skills related to them justifies that continuous training last not only till a certain age, but during the whole practice of medical and pharmatical professional activities. Therefore generally obliging doctors, dentists, pharmacists and clinical special psychologists to take part in continuing professional education under the whole period of the performance of their professions does not cause constitutional impropriety in itself. The question of discrimination can be raised only between subgroups (family and clinical doctors; doctors with and without scientific degrees; pharmacists working in health institution and attendance district, etc.) within the group of doctors and pharmacists. Doctors working in large health service organisations – mainly in clinics and preferential hospitals – have the opportunity to practically fulfil significant part of training obligations in the course of their work. They can take part in several training forms (educational programs, conferences and publication in periodicals) at their workplace, and they have also close opportunities to participate in study visits with professional purpose. On the contrary, continuing professional education for family doctors and pharmacists operating in small settlements is accessible with much more difficulties.

According to the standpoint of the General Deputy of the Parliamentary Commissioner for Civil Rights by defining the training forms and obtainable credit points the legislator did not payed enough attention to the groups of doctors and pharmacists for whom the absence from the workplace can not or can be resolved only with great difficulties. The discrimination-free treatment would request the definition of opportunities which are capable to reduce

differences in geographical and workplace situations concerning the access to continuing professional education.

3.22.
The practice of the Hungarian Television relating to broadcasting programmes for children

A civil trustee of the Hungarian Television Public Foundation turned to the General Deputy of the Parliamentary Commissioner for Civil Rights complaining that the age group under 16 years do not or only narrowly partakes from the broadcasting supply of the Hungarian Television joint-stock company (MTV Rt.) The complainant also explained that only political programmes are broadcasted in the morning lane by MTV Rt. According to the standpoint of the petitioner the Hungarian Television does not fulfil its obligations relating to minors prescribed by the Media Act and the Public Service Broadcasting Regulations of the MTV Rt. (hereafter KMSZ).

The General Deputy has launched an investigation by reason of the suspicion of the violation of the rights of children for protection and the highest possible physical and spiritual health, respectively the failure of the state's objective fundamental legal protection obligation, and the direct danger thereof. During his inquiry the ombudsman asked the presidents of the National Radio and Television Commission (ORTT) and the MTV Rt. to carry out investigations, and the services of media experts were also enlisted during the inquiry.

The president of the ORTT – in spite of the demand formulated in the request – did not examined whether the MTV Rt. pays enough attention to broadcasting programmes which would serve the interest and physical, spiritual and moral development of minors and enrich their knowledges. Are the obligations of MTV Rt. relating to minors declared by the Public Service Broadcasting Regulations entirely fulfilled?

The president of the ORTT informed the ombudsman that the Programme Observer and Analyser Directorate of ORTT had prepared two complex analyses especially relating to programmes for children. Some inspections dealt with programmes for children only superficially. The proportion of programmes destined for the youth has been followed with attention since 1998 by the ORTT and by a research series named 'Programme offer of national TV channels in Hungary' performed in co-operation with a research group of communication theory. The study including the results of the inspection is published by the ORTT each year.

In the first half of year 2004 the ORTT carried out a target inquiry 'in the subject of the analysis of programmes broadcasted in morning children lane of week-ends. MTV1 was among the five investigated chanells. According to the experiences of the four days involved in the sample the programme offer of this channel on weekend mornings comprised children and juvenile programmes in

a relatively low proportion. At the same time only one out of the 51 examined programmes would had required parental surveillance, so the channel MTV1 broadcasted programmes without age limit.' The studies and parliamental reports on the quoted inquiries were sent to the ombudsman by the president of the ORTT.

The president of MTV Rt. informed the General Deputy that the MTV Rt. primarily expresses its attention payed to the broadcasting of programmes enriching the right to physical, spiritual and moral development, the interests and knowledges of minors through its organisational structure and the conception and programmes appearing in its programme structure.

In year 2005 MTV Rt. introduced organisational and programme structural modifications. As a result of these changes the Children and Juvenile Editorial established within the Cultural Editorial Board elaborated the new conception of children and juvenile programmes and started to realize it. Its necessity was justified by the fact that 'media market totally changed by the beginning of the 21st century along with the habits of the audience. The age group in question became the 'target audience' of many media ventures: numerous thematic TV channels established exclusively and especially for children appeared besides countrywide commercial channels of ground-broadcasting. Since these channels are entertaining their audience with the cheapest possible purchased (mainly foreign) cartoons in significant part of their running time – with the mind-narrowing character and false reality image of which the relating Hungarian and international literature is dealing in details –, children and juvenile programme policy of MTV Rt. had to be organised on a radically different basis. The task of public television is to prepare own-made programmes for and about Hungarian children, which programmes are originating in the Hungarian culture, environment and experiences. MTV Rt. considers it especially important to strengthen through its programmes the – generally accepted – values appearing in school education and above that support the development of talent and initiative ability as well.'

The orientation also included that MTV Rt. strives for producing and broadcasting modern programmes which are able to capture the attention of the young audience. Besides the numerous plans and ideas of the competent editorial board – relating to programmes serving the interest and physical, spiritual and moral development of minors and enriching their knowledges – 'it is ineviatable to face the fact that children and juvenile programmes are expensive: it can not be economized on programmes determining the visual culture of the raising generations, these programmes must be visually of high standard so that it could facilitate the functioning of fantasy. In the lack of financial sources, however, only one responsible editorial and productional attitude exists: to produce less but somewhat more valuable programmes from the available poor financial sources.'

For the question 'how the obligations of MTV Rt. relating to children included in the KMSZ are fulfilled?' the president of MTV Rt. responded the followings: 'It

must be anticipated that the KMSZ of MTV Rt. well reflects the general practice of the Hungarian society and particularly the politics relating to children and juveniles: the tenth point out of the sixteen main subjects of social integration concerns children and juveniles and the obligations relating to minors are on the ninth place out of the ten points of Programme Broadcasting. It is entirely obvious that the KMSZ of MTV Rt. is dealing with children and juvenile audience layers from 'external' aspects instead of a television professional approach. At the moment the MTV Rt.… – principally by reason of external circumstances, namely: deficient budgetary sources – fulfils its obligation only partially.'

The president of the MTV Rt. informed the ombudsman in details about their programmes destined for the age group between 3 and 18 years, and demonstrated – confirmed by statistical data – how the proportion of children and juvenile programmes changed in the programme structure. It amounts to only 5% of the total running time, an increasing tendency can be, however, observed since the change of programme structure in year 2005.

For the question relating to the time period appropriate for children and juvenile age group the president of MTV Rt. responded the followings: 'Both Hungarian and international practice shows that the following time periods are the most appropriate for children and juvenile programmes: between 3.00 and 6.00 p. m. on weekday afternoons, early evening in weekdays (6.30. p. m.), weekend mornings (between 7.00 and 10.00, respectively 11.00 a. m.) and late afternoons, early evenings of weekends (between 5.00 and 7.00 p. m.). Certainly weekend would be the most important period from professional aspect. Instead of children and juvenile programmes, however, political programs are broadcasted in the program lane of Sathurday and Sunday morning at the moment according to the contract signed by the Board of Trustees of the Public Foundation.

The General Deputy investigated the Hungarian Television joint stock company – as an organ performing public service – on the ground of the same reasons formulated in a former case. The ombudsman then noted that the direct danger of impropriety relating to the requirement of legal certainty was caused by the pure fact that the ORTT had not responded to his request entirely and on the merits of the case. Considering, however, that the inquiry could have been thoroughly terminated on the grounds of the orientation of the president of the MTV Rt., the constitutional impropriety was of such a minor degree that the ombudsman ignored further investigations and actions in this case.

In the following the General Deputy's starting point was the admission of the president of the MTV Rt. that the institution – principally by reason of the deficient budgetary sources – does not fulfil its obligation included in the KMSZ, and unable to broadcast children and juvenile programmes in the 'professionally most important' weekend periods.

According to the Hungarian Constitution 'the Republic of Hungary shall make special efforts to ensure a secure standard of living, instruction and education

for the young, and shall protect the interests of the young'. The Constitution, however, does not define the legal institutions and degree of the necessary protection and care. 'The realization of constitutional provisions – depending on numerous conditions – is a changing and continuous legislative, governmental, local governmental and social task... the scale of legal actions is wide and the legislator is entitled to discretionarily choose – respecting the Constitutional's provisions – from the different methods of regulations' – declared the Constitutional Court. So the Constitutional Court does not acknowledge the above cited constitutionally declared item as a fundamental right, but considers it as state aim, therefore there is not any impropriety directly related to the Constitution. It is not marginal, however, that the legislator and the individual state organs very precisely determine in the Media Act and the KMSZ in which way must (should) the MTV Rt. fulfil this obligation. The ombudsman's inquiry did not aim to decide if any compulsory forces can be attributed to the cited item of the Constitution, the key question was to establish if there is any conctitutional relevance if by any reason an organ does not fulfil state aims 'exploited for petty ends' by the legislator, namely rules regulating the manner of realization are not fulfilled by any reason.

It is marginal in the clarification of this question whether the fulfilment of rules aiming at the realization of a fundamental right or some state target, or some rule in a distant relating with all these, fails: the failure of the fulfilment of executive obligation defined by the law is objectively able to cause improprieties relating to the principle of the rule of law and the requirement of legal certainty deriving from it.

Beyond that in the sense of the Constitution every child in the Republic of Hungary has the right to protection and care from the part of his or her family, the state and the society, which is necessary for his or her proper physical, spiritual and moral development. The right to care of the child, however, does not mean exclusively social care, but goes beyond it. It is indispensable for the proper development of our children that high-quality children and juvenile programmes appear in the media which are answering to the challenges of audiovisual technologies of the 21st century and the globalisation paying attention at the same time to the values of our national culture. For lack of such programmes our children (and the future generations) will be in an (economic and social) leeway – which can not be made up – contrary to those of the same age who have the possibility to be the receiver (audience) of such programmes.

We can state without exaggeration that in this respect electronic media and especially public service television and radio have significant role and responsibility with which they can not or can hardly comply in the lack of necessary sources. The ombudsman summerized that the indication of the task had not been followed by the assignment of appropriate sources.

Considering the above facts the General Deputy established that MTV Rt. – by producing less programs for children as professionally reasonable mainly by

budgetary reasons – causes the direct danger of improprieties relating to the principle of rule of law, the requirement of legal certainty deriving from it, respectively the right to care of children and the objective fundamental legal protection obligation of the state.

The investigation did not aim, even superficially, to analyse the situation of MTV Rt. and the Public Foundation in the legal system. The ombudsman could not disregard, however, to call the attention to the fact that – as it has been also emphasised in the response of the president of MTV Rt. – morning running time at weekends is extremely important from the aspect of children. The MTV Rt., however, does not broadcast any programmes for children in this period, although its obligation deriving from the KMSZ of MTV Rt. is to provide programmes for children and juvenile age groups regularly and at a favourable hour during its broadcasting. By infringing this obligation the MTV Rt. also causes the direct danger of improprieties relating to the principle of rule of law, the requirement of legal certainty deriving from it, respectively the right to care of children and the objective fundamental legal protection obligation of the state.

The ombudsman also stated that the Programme Broadcasting Found handled by the ORTT – according to the information provided on their website – invited tenders twice in year 2003 and once in year 2005. A total of 16 tender applications were supported as a result of these tenders. The General Deputy found the number of supported programmes very few compared to the number of children and juvenile programmes presented in the Hungarian television broadcasting. He would consider it extremely important to product high-quality and modern children and juvenile programmes for the emissions of every broadcasting company, the MTV Rt. as well. Unfortunately not only the sources of broadcasting companies are missing for that purpose, and the Found – by reason of its budgetary limits – is enable to provide sufficient supplies either. This situation – originating mainly in financial reasons – is also able to cause improprieties relating to the right to care of children and the state's objective fundamental legal protection obligation.

The General Deputy has made recommendations to the modification of the Media Act in several former reports. Considering that those recommendations are confirmed by the present report as well, the Commissioner invariably maintained his former recommendations aiming at the modification of the Act.

Referring to the observations of the present report the General Deputy recommended the Minister of Financial Affairs to supervise the system of the financing of public service broadcasting companies so that they can totally perform their obligations deriving from the law. He further initiated the ORTT and the trustee of the Broadcasting Found to investigate how it could be ensured that the MTV Rt. be able to fulfil its obligation deriving from the Media Act and the KMSZ relating to the production and broadcasting of children and juvenile programmes, and to take the neceassary actions.

The ombudsman also initiated the Board of Trustees of the Hungarian Television Public Foundation to examine how it could be ensured that the MTV Rt. can present programmes for children in the morning lane of weekends as well.

4.

The ombudsman's activities relating to legislation

The Parliamentary Commissioners may make proposals concerning the drafting and adoption of legislation, to amend or repeal existing legal regulations, to organisations that have been authorized to draft and adopt legislation or to issue other instrument of state administration. One pre-requisite for this is that they should find, as a result of their investigations that the impropriety they have identified in relation to constitutional rights, results from superfluous or unclear provisions of statutory instruments or other instrument of state administration or from the lack or deficiency of the regulation of the issue concerned.

Between 1 July 1995 and 31 December 2006 The Parliamentary Commissioner for Civil Rights and his General Deputy made a total of 1,291 proposals (in 84 cases in year 2006) concerning the adoption, modification or repealing legal regulations of various levels. During the two terms of ombudsmen the Commissioners made a total of 429 proposals concerning the adoption, modification and repealing of acts, 282 (66%) of which has been realized till now. This proportion is more than 1% better in case of governmental decrees: 169 proposals have been ralized out of 251. In 70% of all cases the adressees accepted the recommendations of the Commissioners relating to statutory instruments, rejecting only about a quarter of them. (For detailed statistics see Table 2.)

The Parliamentary Commissioner for Civil Rights and his General Deputy – in contrast to the Data Protection Commissioner – do not have statutory duties for commenting on drafts of legislation. However, those preparing drafts of certain statutory instruments sent drafts to them even without a statutory obligation. The drafts of statutory instruments (adoption, modification or completion of statutory instruments) that were proposed by the Parliamentary Commissioner for Civil Rights or his General Deputy in their recommendations, as a result of their investigations, were submitted by the organisations concerned to the Office of the Parliamentary Commissioner in proof of their fulfilment of the Parliamentary Commissioner's recommendation. These drafts were usually checked by the Parliamentary Commissioner and his General Deputy from the aspect of whether the text of the regulation drafted on the basis of the recommendation can be suitable for remedying and preventing in the future, the

constitutional improprieties, identified by the Commissioners. In some cases the drafts or legal reulations that governed the practical operation of certain constitutional rights – and therefore they affected large groups of citizens or entities – were also sent to the Commissioners by the organisations in charge of drafting, in the course of the phase of circulation in the public administration system. In commenting on the drafts the Parliamentary Commissioner and his General Deputy – relying on their experience in the application of the law built up in the course of their investigations – drew the attention of those drafting legislation to risks of constitutional improprieties hidden in the draft texts. In the case of draft legislation about which they had no experience, the Commissioners made no comments. Agreement of the Parliamentary Commissioner or his General Deputy is not a pre-requisite for the adoption or entry into force of draft legislation. Therefore, they reserved the right to make proposals for amendments to regulations in their recommendations in case they find any constitutional impropriety after the entry into force of legal regulations they have commented on.

In respect of what happens to the draft legal regulations they have commented on, the Parliamentary Commissioner and his General Deputy found that their comments had been taken into consideration and in most cases utilized in the course of the re-drafting of the texts of the regulations.

5.

Summary

Year 2006 was the last entire calendar year of the six-year mandate of the four Hungarian Parliamentary Commissioners elected in 2001. At the same time parliamentary and local governmental elections also took place in Hungary in 2006. In this context, due to the long campaign periods, the turnover of the budgetary balance, the convergence program and the relating financial restrictions, the planned then commenced reform of great distributive systems and last but not least the street commotions of September and October the year of 2006 became politically heavy and overcrowded.
In this social-economic medium and political and social situation burdened with tensions it was not easy to ensure the balanced operation of the ombudsman institution preserving its political neutrality and serene expertise.
We managed to do it, however, following the example of the identical institutions of the developed western countries and utilizing the international experiences on one hand and mainly insisting on the more than one-decade-practice of the Hungarian ombudsman institution on the other hand.
The laudative words which could be heard during the parliamentary debate of our annual report also emphasise this success, according to which it is good to know that the Republic of Hungary has 'constant' institutions which are 'securely' guarding the idea and values of rule of law and constitutionality. At the same time this estimation determines the course and measures for the ombudsmen to be elected for the third six-year period.

The Constitutional Court, the justice, the State Audit Office and the ombudsmen not only defend the constitutional order, the public interest and the fundamental freedoms and human rights of the individual but do they also improve the legal senses of citizens, the self-protection capacity of the civil society and the democratic constitutional state itself.
The role of these 'constitutional' institutions in the sophisticated system of 'checks and balances' – which is typical of the well-developed democracies and constitutional states – is anytime and anywhere important, but it is even more important in difficult periods and crisis situations.
While abstract constitutional reasoning and recommendation can be sufficient for the elimination of typically smaller-scale improprieties under consolidated

circumstances, greater activity, the ‘keeping of the standard’ and initiatives expanding to preservation are needed as far as it is possible in the periods of legal restrictions (cutbacks, restrictions, etc.) arising from crisis situations. Legislators, governmental decision-makers and ombudsmen have to face (supposingly for a long time in the future too) difficulties when trying to find the borderlines and correct measures of freedoms and social attendances. It is indispensable de create a balance between the practice of individual freedoms and the respect of the freedom and security-demand of others; between the demand for provision of those in need and the sacrifice-capacity and solidarity-inclination of others; between the compulsion of self-provision and the opportunity for community-provision; between the performance of certain public functions by the state or the civil sector; between the straining of development-compulsion utilitarianism and competitiveness and the requirements of sustainability; and finally between today’s industrial-consumer hedonism and the interest of future generations.
These and these kinds if important questions lie behind the legal regulation of life relations, governmental measures, and concrete complaints of citizens addressed to the ombudsman and the report and recommendation of the ombudsman closing these cases.

Each legislative decision, measure of the executive power or initiative of the ombudsman is at the same time a response. It is the part of our common answers given to the questions raised by our everyday life, our ‘present reality’. Since the really important and significant questions can be correctly answered (in a socially approved way) only commonly. These answers, results and way outs determine if we can live (again? at last?) in peace and security, welfare and health in harmony with our fellow-beings and the nature.

It depends on us, our humanity and our human and citizen quality if we are able to join with each other and take decisions with consensus which could guarantee our common future: our future and the future of our children and grandchildren.

The Republic, the democratic constitutional state and fundamental freedoms and human rights, which are our constitutional basic values desired for thousand years, are offering us historical chance and opportunity.
Our (individual and common) responsibility is alike historical: to make use of this chance, to realize the opportunity and not to misuse it, impair it and let it vanish. The constitutional state is only an organisational form and constitutionality is only a wide framework which has to be filled with concrete content. The quality of this content reflects our human quality and era.

The annual report of the ombudsman was referred to many times by Members of Parliament as a mirror: it shows us the actual situation of the society through the citizens’ complaints.

You do not need to be angry with the mirror when you do not like you are seeing in it. We have to do all we can possibly do, or even more against the displeasing so that we could be proud of the picture the mirror will show us tomorrow.

Dr. Albert Takács

Deputy Parliamentary Commissioner
for Civil Rights

(Also on behalf of Dr. Barnabás Lenkovics, who has been elected Constitutional Court Justice in the meantime.)

Table 1

Complaints Completed by the Parliamentary Commissioner of Civil Rights in 2006, Broken Down according to the Steps Taken

Method of Completion	Year Complaints were Lodged				Total	%
	2003	2004	2005	2006		
Rejected						
with report	0	0	1	0	**1**	0,02
with information	18	166	987	2663	**3834**	66,93
with remittal	0	1	27	244	**272**	4,75
Total rejected	*18*	*167*	*1015*	*2907*	***4107***	*71,7*
Total terminated	3	45	156	303	**507**	8,9
Staying (proceeding, investigation)	0	16	14	6	**36**	0,6
Completed with investigation						
- with position statement of ombudsman	0	0	2	9	**11**	0,2
- report establishing no constitutional impropriety	1	4	21	5	**31**	0,5
- rejected after investigation without report	4	51	295	298	**648**	11,3
- rejected after investigation with report	0	0	3	2	**5**	0,1
- report with recommendation	1	23	91	84	**199**	3,5
- report stating unfeasibility of remedy, no recommendation	0	2	1	2	**5**	0,1
- complaint solved, no recommendation	0	0	14	2	**16**	0,3
- dealt with by using reports made in other cases	1	15	38	83	**137**	2,4
- report without recommendation, calling attention to the problem	0	3	9	14	**26**	0,4
Total of investigation	*7*	*98*	*474*	*499*	***1078***	*18,8*
Grand total	**28**	**326**	**1659**	**3715**	**5728**	100,0

Table 2

Initiatives Related to Statutes Broken Down according to Responses

Initiatives 2006 to Remedy Constitutional Improprieties Broken Down by Responses	Replying			Total	%
	Recommendation accepted	Recommendation rejected	The time limit for answering has not yet expired		
Initiative with state organ concerned to remedy constitutional impropriety	146	20	45	**211**	52,9
Recommendation to supervisory authority	56	9	19	**84**	21,0
Initiative for adopting, amending or repealing statutes:					
Act of Parliament	24	5	13	**42**	10,5
Government Decree	12	0	6	**18**	4,5
Ministerial Decree	7	2	9	**18**	4,5
Local Government Decree	5	0	2	**7**	1,8
Other instrument of state administration	3	0	2	**5**	1,3
Initiative of prosecutor's protest	1	0	0	**1**	0,3
Initiative of criminal proceedings	0	0	2	**2**	0,5
Initiative of disciplinary proceedings	1	0	2	**3**	0,7
Initiative for the right interpretation and implementation of law	5	1	2	**8**	2,0
Total	**260**	**37**	**102**	**399**	100,0
%	65,1	9,3	25,6	**100,0**	