Annual Report

ON THE ACTIVITIES OF THE PARLIAMENTARY COMMISSIONER FOR CIVIL RIGHTS IN 2007

Abbreviated Version

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Responsible Editor: Dr Máté Szabó
Translated by Dr Laura Góg
Designed by Zsófia Kempfner
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Introduction

Year 2007 was a determining year relating to the activity of the institutional system of the Hungarian Parliamentary Commissioners. This year the tasks of the ombudsman with general scope of competence were fulfilled by five ombudsmen as Parliamentary Commissioner for Civil Rights or substituting special Commissioner.

The Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights has been also modified twice this year. The National Assembly decided to discontinue the position of the General Deputy of the Parliamentary Commissioner for Civil Rights effective from July 1, 2007, then in the preamble of Act XXXVII of 2007 effective from December 1, 2007 the Hungarian National Assembly wished to create – guided by its responsibility felt towards future generations – a new institution, namely the institution of the Parliamentary Commissioner dealing with the issues of environmental protection.

It can be easily admitted, however, that such reduction of the number of ombudsman positions with general scope of competence does not mean the diminution of the number of complainants asking for the legal protection ensured by the ombudsman institution. Now the Parliamentary Commissioner for Civil Rights has to fulfil as a sole ombudsman with general scope of competence the tasks – with the exception of environmental protection cases –, which had been divided between two Commissioners in the past.

Besides the transformation of the domestic institutional system of general and special ombudsmen year 2007 was the year of the change of the terms of mandate of Parliamentary Commissioners as well. The mandate of the commissioners with general scope of competence expired on the 1st of July 2007, but effective from April 21 the Parliament elected Dr Barnabás Lenkovics the Judge of the Constitutional Court who resigned therefore with effect of April 20. From this time the tasks of the resigned Parliamentary Commissioner for Civil Rights were fulfilled by Dr Albert Takács General Deputy. He was, however, proposed by the Prime Minister

to be appointed as Minister of Justice and Law Enforcement; therefore Dr Albert Takács demitted office on May 31, also before the expiration of his mandate as ombudsman. The parliamentary voting on the new Parliamentary Commissioner for Civil Rights took place firstly on June 11, 2007, but this time the Parliament did not elect the nominee of the President of the Republic.

Then the authority of the Parliamentary Commissioner for Civil Rights was practiced – in a substituting authority – by the two special ombudsmen in office: firstly – according to the order stipulated by the Ombudsman Act – by the older commissioner, Dr Jenő Kaltenbach minority ombudsman, then Dr Attila Péterfalvi data protection commissioner.

The President of the Republic named his new nominee, Dr Máté Szabó for the post of general commissioner on June 19, who was elected as Parliamentary Commissioner on September 24, 2007 by the Hungarian Parliament.

The full text of this report is also available on the website http://www.obh.hu/allam/eng/index.htm.

The Parliamentary Commissioner for Civil Rights

Dr. Máté Szabó was born on 13 June 1956 in Budapest, Hungary. He is married, and the father of two children.

He received his degree from the Faculty of Law of Eötvös Loránd University (Budapest) in 1980, and then he was working as the editor of the periodical 'Világosság' for four years. Joining the Law Faculty of Eötvös Loránd University from 1984 he worked in the Political Science Group and the Department of Political Science as scientific associate, from 1987 as chief associate and as associate professor from 1990. He defended his Candidate Dissertation on political science in 1987 in the subject of social movements and received the title 'Doctor of Political Science of the Hungarian Academy of Science' in 1996.

From 1 November 1999 he has served as the head of the Department of Political Science, then from 1 November 2001 – after its transformation into Institute of Political Science – as the director of the Institute. He has taught in the Doctorate School of Political Science of the Law Faculty of Eötvös Loránd University since its establishment and he has also been the member of the Committee of Doctorate School. After 1989 he taught and participated in the organization of the education of political science in the Budapest University of Economy, the University of Miskolc and the Széchenyi István University of Győr. Since 2002 he has taught in a part-time job in the Institute of European Studies of Berzsenyi Dániel Teachers' Training College.

He is a founding member of the Hungarian Political Science Society and the Hungarian Humboldt Association. From 1992 to 1997 he was the chief secretary of the Hungarian Political Science Society and the member of its executive board between 2000 and 2004. He is also a member of the Political Science Committee of the Hungarian Academy of Science and several international associations of sociology and political science. He

regularly participates in international conferences, takes part in the edition of various issues and publicise in periodicals and professional books in several languages. Since 1980 he has continuously made researches of political science and sociology. From 1991 to 2000 he was one of the founding editors of the Political Science Revue, from year 2000 he is the member of the editing committee. Since 1999 he has edited the series of 'Rejtjel' political science books. Between 1998 and 2001 he was the holder of Széchenyi scholarship for professors. In 1988 he received the Erdei Ferenc Prize and in 2006 he was the recipient of the memorial medal 'For Hungarian Higher Education'.

Publications

1. Books

– (eds.) The Challenge of Europeanization in the Region: East Central Europe. HPSA: Budapest.1996.

2. Studies in volumes

– Was There a Strategy? Hungary's Path to Democracy in: Tatu: VANHANEN (eds.) Strategies of Democratization. Crane Russack. Washington. 1992. p. 37–55.
– External Help and the Transformation of Civic Activism in Hungary, in: Gerhard Mangott/Harald Waldrauch/Stephen Day(eds.): Democratic Consolidation – The International Dimension: Hungary, Poland and Spain. Nomos: Baden-Baden: 2000. 293–317.
– Hungary, in: Detlef Pollack-Jan Wielghos (eds.): Dissent and Opposition in Communist Eastern Europe. Origins of Civil Society and Democratic Transition Ashgate Publ. Aldershot. 2004. 51–73.
– 1968 in Hungary, in: Martin Klimke-Joachim Scharloth (ed.): 1968 in Europe. A History of Protest and Activism, 1956–1977. Palgrave: New York. 2008. 219–229.

3. Studies in Journals

– The Politics of protest in Post-Communist East Central Europe. in: The Journal of Behavioral and Social Sciences (publ. in: Japan, Tokai University)1995/1. 6–56.
– Repertoires of Contention in Post-Communist Protest Cultures, in: Social Research 1996/4. 1155–1183.

– Some Lesson of Collective Protests in Central European Post-Communist Countries, in: East Central Europe, Vol. 27. No. 1. 2000 59–77.
– Intelligence Against Dissidents: The Kádár-Regime, Control of Dissenting Intellectuals, and the Emerging Civil Society in Hungary after 1956, in: The Journal of Intelligence History Vol. 4. No.1. Summer 2004, 75–107.
– Transnational Influences on Patterns of Mobilisation Within Environmental Movements in Hungary (co-author: Kerényi Szabina), In: Environmental Politics Vol. 15. No.5. 803–820. November 2006

Statistics of year 2007 on the Commissioners' activities

In year 2007 a total of 3981 cases were referred to the Parliamentary Commissioner for Civil Rights and his General Deputy. Since the establishment of the institution more than 68 000 petitions were submitted to the general ombudsmen. The 3981 petitions received in year 2007 contained 5081 complaints. 82 358 complaints has been registered since 1995.

Documents connected with the operation of the institution, statutory instruments received for opinionating and other submissions not containing any complaints are registered on so called 'gatherer number'. The number of these files exceeded 500 in year 2007.

The submission of complaints is characterized by the fact that even today the majority of complaints are submitted in written to the Parliamentary Commissioner (2249 complaints), 975 complaints, however, were submitted in e-mail. One tenth of the clients still appears personally at the Complaints Office where 931 complainants appeared last year asking for the recording of their petitions. One part of the clients asked for some information in their pending cases, the majority of them, however, presented a new injury. Some of them accepted the oral information received from our staff. The Office is also operating an Information Service which receives clients mainly by phone, but in person as well. In year 2007 the Information Service was reqested 5600 times. 598 clients called the service for some information in their pending cases, while in 4176 cases they requested some general information or an appointment for personal hearing.

While in year 2006 only 6 European Union citizens and 27 other foreign citizens addressed to the office, this number was 21 in case of European and 6 in case of other foreign citizens in year 2007. The reason of this change may be the fact that a new neighbour country accessed to the European Union and the settlement and employment of more and more European citizens in Hungary may contribute to this increase.

The subject of complaints and the divison of different types of procedures clients complained about indicate that in year 2007, again, most complaints issued to the Parliamentary Commissioners concerned health insurance, pension insurance and labour issues. These complaints covered 10,8% of the total number of complaints. These are followed by civil law cases with 8,9%, criminal and penal cases with 8,7%, then cases concerning public service providers (7,8%) and cases relating to construction, premises, housing and national monument protection (a total of 7,7%). Compared to the preceding year the most significant rise (2,3%) occurred in the number of cases concerning public services.

Most complaints were submitted against local governmental offices (more than 20% against local municipality councils and mayor's offices).They are followed by courts (8,7%), police (6,6%) and public service providers (6,4%).

In year 2007, again, most cases (69,5% of the complaints) had to be rejected without investigation, the proceedings had to be terminated (8,6%), or the petition had to be transferred to other competent organs (6%). Investigation in the merits took place in only 15,9% of complaints which means 951 cases. One fifth of the complaints had to be rejected because it had been filed against the procedure or decision of courts, and these cases are not within the scope of authority of the Commissioners. The other two main reasons for rejection is that the citizen's complaint is obviously unfounded, the injury cannot be connected to constitutional rights and the presumed or real complaint is not directed against any authority or public service provider. Further reason to reject petitions is that the available administrative legal remedies had not been exhausted in the case.

In not all investigated petition did the Commissioner established any constitutional improprieties. As a result of the inquiry it could be established that the judgement of the case is not within his scope of competence or there are other legal obstacles of his proceedings. It also occurred, that the Commissioner had already investigated the complaint in other complainant's case and had also taken the necessary measures, thus he has already made actions to prevent the further occurrence of the injury or on the contrary, he had established that the proceedings in question did not cause any constitutional improprieties. In these cases the report of the ombudsman on the similar case is to be send to the complainant. In year 2007 only 122 out of the 951 investigated cases were terminated – besides establishing a constitutional impropriety – with recommendation to the organ causing legal violation or the supervisory organ thereof. In case of

rejections without investigation complainants are informed on the reason of rejection and the possibilities they may have to redress their grievances. If the judgement of the complaint falls under the scope of authority of other organs, the petition is sent there.

In year 2007 the Commissioner terminated the inquiry of 122 out of 951 complaints with a total of 260 recommendations. More than half of the recommendations were accepted by the addressee, and only one and a half percent of recommendations were not accepted. In case of the remaining 48%, the deadline for response has not expired yet or reconciliation was pendig. Last year he Commissioners addressed to the Constitutional Court in three cases asking for the ex post investigation of a statutory instrument, the termination of unconstitutionality manifested in omission or the interpretation of the Constitution. The 'processing time' of recommendations concerning the adoption, amendment or repeal or statutory instruments is relatively long, therefore we are following with attention the life of legislative proposals from the establishment of the institution. In the course of the past nearly 13 years the Commissioner has proposed in 458 cases the adoption of statutory instruments on several levels, and in further 874 cases has he proposed the amendment thereof, almost 70% of which were accepted. Fulfilling the ombudsman's proposal has been refused by the addressee in only 24,4%. The Commissioners are also following with attention if the accepted recommendations are realized, and they are reviewing time to time if it is reasoned to maintain former and not yet realized initiatives considering the meanwhile occurred changes.

A selection of the most important cases

Tax debt execution proceedings

In case OBH 1494/2006 the complainant addressed to the Parliamentary Commissioner, because according to the protocol prepared by a county directorate of the Hungarian Tax and Financial Control Administration (APEH) in the cadre of tax debt execution proceeding the complainant bought apart form auction a LIAZ lorry previously owned by his son for 200 thousand forints with the effect of auction purchase. According the the aforementioned protocol the measure of the duty of the acquisition of ownership is 10% of the purchase price. On the ground of this information included in the protocol the complainant expected that he would be obliged to pay a duty of 20 thousand forint after buying the lorry. The county duty office, however, obliged him to pay 179 thousand forint ownership acquisition duty.

The Parliamentary Commissioner established that the sum of the duty payment had been calculated by the duty office on the grounds of the relevant legal provisions (thus section 24 of Act XCIII of 1990 on Duties – Itv.). Therefore the ombudsman did not disclosed any improprieties concerning the proceedings and resolution of the Duty Office. The difference between the duty amounts of 20 thousand forint declared in the protocol and 179 thosand forint reported in the Resolution of the Duty Office is the result of the regulation according to which not the general duty range (Itv. 19. §) shall be paid after the acquisition of motor vehicles, but a special duty range (Itv. 24. §) concerning motor vehicles. Therefore the protocol issued by the Hungarian Tax and Financial Control Administration contained inaccurate information on the measure of the duty to be paid. The law does not prescribe directly the tax authority to refer separately in the auction protocols to the possible obligation for duty payment and its measure. If, however, the tax authority refers to this, it is reasonable and it can be expected from the authority to provide detailed information on tax and duty payment obligations relating or burdening the contract in question

and their measures, considering the right of the taxpayer to the accurate and professional orientation which is directly linked to the requirements of legal certainty and fair proceedings and the fulfilment of the obligation for general and proportionate sharing of taxation laid down in Article 70/I of the Constitution respecting the provisions of tax laws (including duty law as well.)

The inaccurate information on the measure of duty payment obligation laid down in the protocol did not meet these requirements and as a result, the complainant could not take into account the burden of paying more duty. And when he learned it, he had already missed the possibility to restore the original status. It can not be imputed to the complainant that he did not checked the factual measure of the duty, considering the fact that all taxpayer shall or may assume that tax authorities are aware of the regulations on tax-type payment obligations and that they are continuously and appropriately informing taxpayers on these rules.

Considering the fact that the disclosed impropriety can be attributed to the deficiency of innacurate information of the Hungarian Tax and Financial Control Administration, the Parliamentary Commissioner asked the president of the Hungarian Tax and Financial Control Administration to take the necessary measures within his competence so that the state tax authority always provide appropriate information on the contents of tax law, paying increased attention to especially important provisions in case of well-known statement of facts. The ombudsman also asked the tax authority to consider to cancel by tax abatement the difference between the duties of 20 thousand forint declared in the protocol and those of 179 thousand forint factually imposed, and other duties and allowances emerged in the case as well. The tax authority agreed the initiative of the ombudsman and entirely fulfilled it.

Police raids in discos

In case OBH 1916/2006 the Parliamentary Commissioner launched an investigation based on a citizen's complaint concerning a narcotic drugs raid executed by the police on a place of entertainment. The police obliged the complainant and others to urinalysis in the framework of narcotic drugs control. The performed test showed a THC (tetrahydrocannabinol) limit, against which the complainant objected to. Therefore the police brought him before the building, pushed him to the wall,

checked his chlothes and arrested him to the Police Station of Salgótarján. He was then interrogated there as a suspect, but no control examination was carried out despite his request to do so.

In its report of 22 November, 2007 the Commissioner established that the Nógrád County Police Headquarters had ordered an increased control in order to prevent and disclose the criminal misuse of narcotic drugs and crimes against public order which has been multiplied in places of entertainment and their vicinity. In the cadre of this action the identities of 118 persons were checked and 39 persons were obliged to provide urin sample. The selection was made by a police doctor on the basis of pupil reflex. 12 persons were arrested to the police station whose tests referred to the consumption of narcotic drugs containing THC over the limit (marijuana).

The Police Act authorizes policemen – for the sake of targets declared by the law – to check someone's clothes, this right, however, does not make it possible that the public of entertainment places of a part of them be obliged to provide urin sample on the basis of selection by glance. Policemen are also entitled to arrest the suspect of a crime, which crime may be the criminal misuse of narcotic drugs as well. However, following the arrest, urinalysis shall take place only for the sake of getting evidences necessary to prove the given crime, then only after having the expert's opinion and herewith founding the suspicion shall the suspicion be reported and the suspect interrogated. Giving urin sample without any well-founded suspicion can not be enforced.

The evaluation of the applied fast-tests was uncertain in the concrete case, as the results could only be confirmed by control examination performed in an professional institution. Other uncertainty factor was that without any physical evidences, data relating to the consumption of narcotic drugs, types of consumed drugs, sources of acquisition and other relevant data can be acquired only on the basis of the confession of the person under proceedings. Despite the prohibition of self-accusation, presumably such methods were also applied against large number of arrested and identified individuals, who were at the same time uninformed on their procedural rights. This practice was suitable for intimidation, and the right to defence and right to petition were not ensured either.

As a result, the Commissioner pointed out that the 'disco raid' drafted in the complaint caused disproportionately grieve injuries for many young people, whose number is indefiniable, even if they were arrested or only obliged to be examined. The performed examinations without any legal titles also violated the constitutional prohibition of degrading treatment.

State is entitled to restrict fundamental rights only if the protection of legitim targets can not be reached otherwise. Other condition of restricting fundamental rights is the fulfilment of the requirement of proportionality. The investigated measure meet neither constitutional requirements, nor the law in effect.

In order to avoid the future occurrence of the impropriety the Commissioner asked the Head of the National Police Headquarters to take measures to supervise the practice of 'disco raids' and to call emphatically the attention of its subordinated organs to keep the law.

The Head of the National Police Headquarters agreed with the report and sent it to the heads of county police headquarters. He commanded that the heads of county police headquarters and the Budapest Police Headquarter observe the contents of the relevant National Police Headquarter instruction 17/2006. (XI. 24.) on the uniform execution of tasks fixed in the Drugs Strategy of the Hungarian Police, abstain from drugs raids executed by ignoring the targets and tasks declared in it, and provide for that the concerned staff by informed on this instruction.

Guardian funds

In case OBH 2797/2006 the Parliamentary Commissioner launched a complex investigation on the basis of a newspaper article published in the number of 13 May, 2006 of Heti Világgazdaság, by reason of the presumed devaluation of assets placed on deposit accounts of individuals under guardianship and trusteeship. According to the article the Hungarian Child and Youth Protection Laegue proposed the Government and the Prime Minister to establish a so called guardian fund. The spokesman of the organization stated that the management of assets and deposit accounts of minors is not still resolved, although it is more flexible than before. He mentions as an example that the interest paid after deposits placed on the so called 'guardian court reserved accounts' did not even reach the measure of the annual inflation rate in year 2005. Thus the assets of the concerned minors may be devaluated troughout the years.

By reason of the similar subjects the Commissioner enlarged his inquiry to questions relating to the assets of individuals under trusteeship as well. The ombudsman asked the opinion of the Minister responsible for child protection and the affairs of individuals under guardianship and trusteeship concerning the legal background and the concrete problem rised by

the newspaper aricle. In order to have a sight into the law application practice the ombudsman addressed to the heads of social and guardian offices of the regional public administration offices.

According to the standpoint of the Minister of Social and Labour Affairs formulated in the course of the inquiry, since the modification of the law on child welfare administration effective from 1 January, 1999 the cash assets of individuals under guardianship may be placed in any credit institution competent after the seat of the guardian office. The law also authorizes that the cash assets be managed not only on the so called guardian court reserved account but on foreign current account or on foreign exchange account. The Minister finds that the legal representative has still the opportunity to choose the most favourable financial construction or the credit institution providing the highest possible interest. The only restriction is that the supervision of the guardian court shall be realized over the deposit. According to the Minister's information it is a fact that no competition has evolved between credit institutions in ensuring deposit-constructions. One reason of it might be that guardian deposits are usually of a small amount, on the other hand their management is an extra-burden for banks by reason of the obligation for ensuring the supervision of the guardian court. The Minister also mentioned in his response that the Government concluded a three-year contract with OTP Bank Zrt in 2005 for the sake of preserving the stable-value of the assets placed on the guardian court reserved accounts. On the basis of this agreement the bank ensures after the guardian court deposits at last an interest equivalent to the amount of basic interest provided at the 6-months hypothecation of the public forint current account, founding herewith the stable value of the placed amount. According to the Minister's standpoint the lagal regulation ensures the appropriate management of the cash assets of individuals under guardianship and trusteeship.

Concerning the legal practice, the heads of social and guardian offices of the regional public administration offices informed the ombudsman during his inquiry that about 40-45 thousand persons out of the individuals under guardianship and trusteeship have some cash assets, and the value of their total assets is up to 51.750 million forints. Proceeding authorities designate mostly OTP Bank or a branch of some mutual savings bank for the management of cash assets. Its primary reason is that the guardian office is obliged to designate a bank for assets management according to its seat and in the majority of cases only the aforementioned banks dispose of branch offices on the spot, whereas it is not sure at all that

the interests of their investment opportunities are the most favourable ones. As the only requirement prescribed by the law concerning the openly managed account is the realization of the supervision of the guardian court, guardian offices do not examine – and cannot examine in the lack of the appropriate expertise –, how profitable the chosen deposit construction is. It is primarily the legal representative or the guardian who has to choose among the opportunities offered by various banks, even if himself, either, do not dispose of the financial and economic knowledge necessary to invest the assets of those under his guardianship or trusteeship in the possibly most profitable, secure and stable value way.

Therefore, although the law provides wide opportunities to choose among investment options, it does not ensure the exploration of opportunities which might be the most suitable to the interests of those under guardianship or trusteeship. This may be the reason of the fact that the interest provided by the bank playing the leading role in assets management (3,75 %) did not even exceed the degree of the consumer price index growth (inflation) of year 2006 (3,9 %). On a long term this results in the devaluation of cash assets of individuals under guardianship and trusteeship.

In order to terminate the impropriety disclosed in the course of the inquiry the Parliamentary Commissioner asked the Minister of Social and Labour Affairs to take the necessary measures to avoid the devaluation of cash assets of individuals under guardianship and trusteeship managed by state supervision. He also asked the Minister to consider to initiate the modification of the relevant provisions of the Governmental decree on guardian courts and child protection and child welfare proceedings.

Modification of handling charges of banks

According to several petitions in case OBH 2958/2006 the complainants borrowed a home-purchasing loan (Source Credit) form OTP Bank Rt in 2003. The annual handlig charges of the loan was 2%, but not more than 9000 forint per month at the time of signing the contract. Meanwhile, the bank changed the conditions of the credit and cancelled the maximum limit of 9000 forint of the handling charges which resulted that the monthly payment obligation of the complainants rasied with a sum of 10.000-20.000 forint. According to the provision of the relavant credit contracts: 'The extent of the credit fee (interest and handling charges) is not fixed, and creditors shall be entitled to modify it unilaterally during the existence of the loan contract. The modification shall be published in an Announcement titled 'Interest, fee, commission and cost items of Source Credit' posted in the creditors' premisies open to the public 15 (fifteen) days preceding its entry into force.

In August 2007 the Parliamentary Commissioner pointed out that according to the resolutions of the Constitutional Court the existing contract obligations can be modified only in case of the essential change in the circumstances, and the modification must result in a new and equitable division of the contract burdens. If general contract terms and conditions are applied in case of long-lasting legal relationships and several year duration contracts, it is required on the basis of the principle of legal certainty that contract conditions be foresseable and predictable during the whole duration, particularly where state support is linked with the sevice. Since the aim of state support, interest support in the cases in question, is to make some services, which is the home-purchasing loan in this question, more favourable for their users than it is on the market, or make it possibility available at all for those who could not have access to it. In case if the general contract terms and conditions and financial conditions are not predictable and foresseable, and if they can be unilaterally and unlimitedly modified without any obligation for reasoning in the merits by the service provider, the requirement of legal certainty is violated. This kind of contract makes it possible that the service provider transform support benefits into his own financial profit, neglecting at the same time the original target of state support, the improvement of the financial conditions of relevant home-purchasing loans. It does not cause any impropriety in itself if conditions – particularly interests, and exceptionally costs – can be modified in the course of the long-term duration. It causes, however, impropriety, if modifications take place unilaterally, without the consent of the other party (borrower), and without any substantial and well-founded reasoning or reasons which were not fixed by the contracting parties.

The Parliamentary Commissioner established that the creditor bank formally fulfilled the provisions prescribed by paragraphs (3)-(4) of Section 210 of the Act on Credit Market concerning the cancellation of the maximum limit of handling charges, since the concluded contracts contain such provisions which make the unilateral modification of the contract possible, and the bank published in time this modification of the conditions. Formally the bank also resprected the provisions of Governmental decree 12/2001. (I. 31.) on the home-purpose state support relating to the

maximum credit fee. The ombudsman established, however, that contractual conditions do not include in details in which conditions and circumstances can the credit fee be modified, and do not inform clients that it is impossible to determine these circumstances.

The Commissioner emphasised that the determination of handling charges is unambiguously a general contract condition, as it is determined by the bank previously and unilaterally to all contract concerned without involving the borrower. Neither the initial, nor the modified degree of it has been discussed by the parties. The relavant provision of the standard service agreement of the bank provides an authorization to the creditor bank to modify the contract which can not be controlled and followed by the client in the merits, as no one apart from the bank can control how the risk factors of community credits change and the bank charges concerning source-and credit account management are modified. Credit contracts made out as official documents relating to contract modification also regulate only that banks are entitled to modify the degree of interest and handling charges and they are obliged to publish this modification in an announcement 15 days before its entry into force. In its letter sent to cients on the modification of handling charges the bank did not even refer to the reason of the otherwise significant raising in costs.

The inquiry of the ombudsman did not managed to disclose substantial and real reasons on the grounds of which the bank would be entitled to modify contract conditions relating to the maximum level of handling charges. By cancelling the maximum level of handling charges the bank caused improprieties relating to the requirement of legal certainty and the principle of the freedom of contract. In order to remedy the disclosed improprieties the ombudsman initiated the director-general of OTP Bank Nyrt. to review the contract conditions and practice of credits with state interest support. He also initiated him to specify and complete the relavant standard service agreement of the bank so that unilateral contract modification could take place only on the basis of real and reasonable motives. It is also desirable that in all relavant cases the bank charge up the real handling charges raised in the lack of well-founded reasons considering again the maximum cost level of 9000 forint, and that it include the meanwhile charged extra costs in payments.

The Commissioner proposed the Minister of Finacial Affairs such legal modification which would ensure substantial guarantee to bank clients, so that creditor bank shall not be entitled to unilaterally and almost unlimitedly modify contract conditions of credit contracts with changing credit

fee, and so that this kind of modification can take place in case of substantial and well-founded reasoning.

In his response, the Minister of Finacial Affairs indicated that the banks themselves should regulate as a first step their own practices. If, however, no leap forward happens in the merits, he is going to survey the necessity to modify the relevant law. The OTP Bank Nyrt. reached an agreement in the cadre of competition supervisory proceedings with the Office of Economic Competition for paying back to clients those parts of handling charges which exceeded 9000 forint.

Police proceedings against juveniles

In case OBH 4005/2006 the complainant found it injurious that his juvenile child had been arrested and put in misdemeanour detention by the 14th District Police. The Parliamentary Commissioner launched an investigation in the case by reason of the suspicion of impropriety affecting the right to personal freedom, and addressed to the Chief of the Budapest Police Headquarters.

On 14 August, 2006 the patrols of the 14th District Police fulfilled traffic control against the juvenile child of the complainant. The register showed that the driving privileges of the concerned juvenile were suspended for 12 months from 4 April, 2006. The juvenile was arrested and brought to the police station where he was interrogated in the presence of the complainant. The head of the police station ordered to take the juvenile in misdemeanour detention on the grounds of the offense of driving during the period of suspension of driving privileges which may also be punished with imprisonment. On the hearing held on 16 August 2006 in the cadre of an accelerated procedure, The Pest Central District Court established that the juvenile under procedure had committed the offense and the Court applied warning againt the accused. Then the juvenile was released.

According to the standpoint of the Chief of the Budapest Police Headquarters item a) Section 15 of Act LXIX of 1999 on Offenses, according to which detention shall not be applied agains juveniles, qualifies only as a principle to be applied during the imposement of punishments and therefore only obliges courts. Accoring to parapraph 1 Section 77 of the Act on Offenses the police may arrest the person under procedure for the sake of conducting an accelerated court procedure against him in case of

in flagrante delicto, if the committed offense may also be punished with imprisonment. The misdemeanour detention is a coercive measure applied for the sake of conducting an accelerated court procedure. The Act on Offenses, however, prohibits only the application of detention as a sanction against juveniles. Considering that the conditions laid down in the law existed, the authority arrested the juvenile perpetrator of the offense lawfully. On the basis of paragraph 2 Section 126 of the Act on Offences the court examined the existence of the conditions of the arrest and did not file an objection against the arrest of the juvenile in the concrete case.

The Hungarian Constitutional Court explained in its Resolution 66/1991. (XII. 21.) that the fundamental human right to personal freedom shall be restricted only by the law. The restriction, however, must be necessary and proportionate compaired to the constitutionally recognized target to be archieved. Constitutonal Court Resolution 3/2007. (II. 13.) also declares that the Parliament caused unconstitutionality realized through ommission by the fact that no right to remedy had been ensured for the person under procedure against the order of misdemeanour detention. The Constitutional Court therefore called on the Parliament to fulfil its legislative tasks by 31 December, 2007.

The Act on Offenses does not prescribe explicitly any excluding cause for juveniles concerning misdemeanour detention. It follows, however, from the systemathic interpretation of the law that this freedom restrictive measure shall not be applied against juveniles. It qualifies as an obviously disproportionate restriction that the personal freedom of juveniles is restricted beyond the arrest in the course of the misdemeanor proceedings, although tipically measures can be imposed to juveniles according to the relevant law.

In May 2007 the ombudsman established that the deficieny of the legal regulation causes impropriety relating to the right to personal freedom, since it does not exclude the possibility to arrest juveniles. The ombudsman asked the Minister of Justice and Law Enforcement to terminate the disclosed impropriety in the course of creating the new Act on Offences figuring in the legislation programme of year 2007. The professional state secretary of public law promised to redress the improprieties relating to the institution of arrest through the modification of the Act on Offences in effect, which has not been fulfilled yet.

Judgement of visa application

In case OBH 4139/2006 a Hungarian citizen addressed to the Parliamentary Commissioner complaining about that the Immigration and Citizenship Office of the Ministry of Justice and Law Enforcement had rejected the application of his fiancée with Thai citizenship for tourist visa. The complainant found it injourious that the Office had not taken into consideration when rejecting the visa application the invitation letter issued formerly by itself and endorsed by authority.

The Commissioner launched an investigation by reason of the suspicion of the violation of the constitutional right to legal certainty and legal remedy and disclosed the followings:

On 6 April, 2006 the complainant applied to the Budapest and Pest County Regional Directorate of the Immigration Office (hereinafter 'Directorate') to supply the invitation letter issued for his fiancée with authority endorsement. The Directorate fulfilled his application. On 22 May, 2006 the Thai citizen submitted her petition at the Bangkok foreign representation of the Republic of Hungary for acquiring a visit visa entitling for repeated entry and 180 days of residence, to which her invitation letter was also attached. She explained the officer of the consulate that she had passed academic year 2003/2004 in Hungary as a student when having made the acquaintance with the complainant. She also described that the reason of her voyage to Hungary is to visit her fiancé, and signalled that the judgement of her study scholarship in Hungary is in progress.

The Office rejected her visa application. One reason of the rejection was that the complainant had attached neither a cerification of income for the Hungarian Tax and Financial Control Administration (APEH), nor an employer's salary certification to the application for endorsing the invitation letter, thus the immigration authority did not accepted it as a certified justification of material funds ensuring the living of the Thai citizen in Hungary. The other reason for rejection was that 'the visa application for visit purpose of the Thai citizen is not topical, since this visa is not suitable for studying.'

In the sense of paragraph 1 Section 4 of Act XXXIX of 2001 on the Entry and Residence of Foreigners the entry and residence of foreign citizens in Hungary may be authorized if they dispose of a certain amount of material funds defined by the law which is necessary for the entry to the country and ensures his residence, living for the whole period of his staying and the costs of the outward journey as well. Furthermore, he is

obliged to justify to be qualified as ensured for the whole range of medical supplies defined by the law or the fact that he is able to ensure himself the costs of his medical supply. There is also a possibility for natural persons and certain legal persons to issue an invitation letter on a form prescribed by the law, in which they oblige themselves to provide accomodationfor the foreigner during his residence in Hungary, to provide for his living and cover the costs of his medical supply and outward journey. By endorsing the invitation letter the Directorate certifies that the applicant is capable to fulfil the legal requirements necessary for receiving the foreigner. Considering paragraph 4 Section 73 of Act CXL of 2004 of the General Rules to the Administrative Offical Proceedinds and Services (Ket.) and paragraph 2 Section 6 of the Act on the Entry and Residence of Foreigners the invitation letter supplied with the authority's endorsement qualifies as final administrative resolution in the course of its validity, and the complainant had civil liability for fulfilling his obligations undertaken in the invitation letter according to paragraph 3 Section 6 of the Act on the Entry and Residence of Foreigners. It may occur that the suspicion arises during the judgement of visit visa application that the immigration control authority unlawfully endorsed the invitation letter. In this case the Office could have chosen from two possibilities. It could call the attention of the Directorate in written to the legal violation and initiate it to examine and withdraw the decision, namely the authority's endorsement in its own scope of competence according to paragraph 1 Section 114 of the Ket. The other possibility could have been to investigate ex officio the antecedents and circumstances of the endorsement to the invitation letter according to paragraph 1 Section 115 of the Ket., and to modify or annul the decision, so that the Directorate can reopen the procedure in case of legal violation.

The Office, however, took measures neither for reviewing the decision assumed as violating the law, nor for withdrawing or annulling it. In the lack of the aforementined decision-supervisory procedures the Office did not have a legal base to dispute if the complainant dispose of the material funds ensuring the residence and living of the Thai citizen in Hungary. Paragraph 2 Section 6 of the Act on the Entry and Residence of Foreigners the general rules of official proceedings apply to the legal remedy in case of the refusal of the official endorsement of an invitation letter. By ignoring the valid invitation letter presented by the Thai citizen without its formal withdrawal or cancellation, the Office prevented the complainant from exercising his right to legal remedy ensured by paragraph 2 Section 6 of the Act on the Entry and Residence of Foreigners. The fact that the

scholarship application of the Thai citizen was under judgement at the time of filing the visa application, did not mean that she intended to study in the possession of this visa in Hungary. When handing her visa application theThai citizen stated that she had wished to visit someone in Hungary, and presented the invitation letter issued by the complainant and endorsed by the Directorate. Therefore the proceeding of the Office could have only examine whether the applicant meets with the requirements for issuing the residence visa with visit purpose.

The Constitutional Court laid down in its Resolution 56/1991. (XI. 8.) that 'organs disposing of public authority perform their duties in the framework and functioning order defined by the law, with the legal limits regulated in a way which is predictable and recognizable for citizens.' The Office caused impropriety relating to the requirement of legal certainty and the right to legal remedy by ignoring the invitation letter issued by the complainant and endorsed by the Directorate during the judgement of the visa application of the Thai citizen, and by judging the visa application not according to its contents.

For the request of the Parliamentary Commissioner the Office reviewed the circumstances of the refusal of the Thai citizen's visa application, withdrew the refusal in its own scope of competence on the grounds of paragraph 1 Section 114 of the Ket., and issued the requested visa. As the Office remedied the complainant's injury in its own competence, the ombudsman did nor make any recommendation or initiative in the subject.

Child welfare supply

In case OBH 4226/2006 the Parliamentary Commissioner launched a complex investigation in September 2006 to disclose how municipality local governments fulfil child welfare basic supplies prescribed by the Act on Child Protection. The ombudsman extended his inquiry to child welfare service providers, institutions ensuring the transitional care of children and substitute parents as well. The first investigation of the ombudsman was fulfilled in County Komárom-Esztergom. In the course of his inquiry the ombudsman requested information from the head of the local branch agency of the regional administration office (social and guardian office) about the institutions providing basic child welfare supply in the county, about substitute parents and the forms of operating child welfare services. The ombudsman asked the head of the social and guardian office

to participate in the on-the-spot investigations, including the Institute of Social Politics and Labour Issues.

In the course of the inquiry the staff of the ombudsman performed on-the-spot inquiries in eight institutions (five child welfare services, one substitute parents'network, one transitional home of families and one transitional home of children), reviewed the material and personal conditions of the institutional supply and analysed the basic documents of institutions.

The report of the ombudsman issued in September 2007 established – above others – the followings: the acquisition of qualifications prescribed by the relevant professional decree is in progress in certain institutions. Professionals are not employed in many institutions, or they are employed in less hours than fixed by the professional decree.

In larger settlements the placement and infrastructure of child welfare services is good in general. The working conditions of family caretakers visiting smaller settlement, however, are nor always satisfactory, which results in the direct threat of the violation of the right to the highest possible psychical and spiritual health of those using these services.

The experiences of the inquiries show that services are more and more well-known year by year. The services of larger settlements also organize leisure programmes and summer camps of a high standard and participate in the arrangement of summer feeding. The lack of supervision necessary for avoiding burn-out by reason of the unsufficient material resources was a general experience of the inquiry. This deficiency causes the direct threat of the violation of the right to the highest possible psychical and spiritual health of those in care.

Child welfare service is ensured in all 76 settlements of the county corresponding to the provisions of the Act on Child Protection. The most conspicuous deficiency was disclosed in the supply form of children's transitional home. In cities with a permanent population over 20 thousand (Tata, Esztergom, Oroszlány) no children's transitional home operates. Only one third of the county's population may participate in the service type of families' transitional home. (This service should be provided also in settlements with a permanent population above 30 thousand.) The situation was similar with the accommodation space with the 24 substitute parents. The inquiry disclosed that the local government causes impropriety relating to the right to preferential protection of children if none of the forms of children's transitional care is provided in the settlement.

The Commissioner established improprieties relating to the the right to preferential protection of children and the right to social security in

cases where the institution providing transitional care did not ensure the full-scale supply of children, or the institutional legal relationship were terminated by reason of a backlog in the fee. The inquiry disclosed the injury of the right to petition in institutions where the participants of the interest representation forum differed from those defined by the law.

The ombudsman made sevaral recommendations to the heads of the investigated institutions and asked the mayors of the maintainer local governments to lay his recommendations included in the report before the local governmental council for further consideration. Finally the ombudsman asked the president of the Komárom-Esztergom County Assembly to review the opportunity that one form of children's transitional care be available for all indigent minor living in the county. He recommended the president of the assembly to consider the possibility that by employing a supervisor, an institution give assistance to all caretaker working in the county.

The president announced that the county government could undertake to fulfil the recommended task as a voluntarily undertaken public affair only by endangering the performance of its obligatory tasks and powers prescribed by the Act on Local Governments. The ombudsman acknowledged the response. Since, however, he considered it important that the members of the county assembly be familiarized with the basic child welfare supplies provided by municipality local governmens, and the deficiencies of these supplies as well, he asked the president of the county assembly to inform the assembly on the report. The president accepted the proposal and the heads of institutions accepted the initiatives. The recommendations were learned and acknowledged by the local municipality councils who passed resolutions on the possible realization thereof. The realization of the recommendations is followed with attention by the Parliamentary Commissioner.

Legal remedy system of credit judgement

In case OBH 4250/2006 the complainant addressed to ERSTE Bank Hungary Nyrt. applying for home enlargement allowance ('half social politics allowance'). Having examined the application and the attached documents the bank rejected the complainant's petition referring to the fact that the application can not be fulfilled on the grounds of Governmental decree 12/2001. (I. 31.). The complainant asked the bank in June 2006 to

reason the rejection in written. The bank, however, did not informed the complainant on the reasons of the rejection in written.

Starting out of the relevant resolutions of the Constitutional Court in June 2007 the Parliamentary Commissioner established that the bank caused the violation of the right to legal certainty and the right to fair procedure when it did not responded in a written form to the support demand application of its client claiming to state support and did not even reasoned the rejection. This procedure of the bank was not properly formal and the arrangement of support mediation – the fulfilment or rejection of the demand and the relating clarification of the facts and the reasons of the decision – can not be established afterwards.

The Parliamentary Commissioner asked the director general of the bank to inform the complainant in written on the reasons of the rejection of the demanded allowance. The director general was also asked to give written orientation in all cases to clients demanding state support on the reasons of rejections in order to avoid the future occurrence of similar injuries. The bank accepted the recommendation of the ombudsman.

Police securing of the right to assembly

In case OBH 4435/2006 several complaints were received by the Parliamentary Commissioner concerning the events held on public places in September-October 2006 and the relating measures executed by the police. In some complaints opinions on police actions on events and demonstrations were formulated in general. Several petitioners complained about police mistreatment against them or experienced by them. One part of the complainants found it injurious that the police took measures also against persons who had found themselves by accident and through no fault of their own in the core of the events, other complainants criticized the speed and effectiveness of police actions. Finally, some complainants considered pre-trial detentions unreasonable and unfounded.

Besides the great number of complaints written and electronic press also reported on cruel police actions and attacks againt policemen, respectively dicturbances and street violence. The Parliamentary Commissioner launched an ex officio investigation in the subject, also also placed emphasis to the judgement of individual citizen's complaints and to take the relating measures. Partly the practical, partly the theoretical method of legal thinking was followed by the ombudsman in the course of his inquiry,

considering the right to peaceful assembly and the insurance of its free exercise and the principle of the rule of law and sovereignity of people.

In his report of 3 May, 2007 the starting point of the Parliamentary Commissioner was that the basic task of the police is to secure the holding of lawful events, including the participation in maintaining the order of the event for the request of the organiser. The lawful event cannot endanger public order and public security. The unlawful demonstration, however, violate or endanger public order and public security, therefore the police is obliged to take measures in these cases.

The Act on Assembly specifically mentions dispersal among the possible police measures in details. If a reason for dispersal occurs, the police cannot ponder and the demonstration shall be dispersed. The dispersion of the crowd is a coercive measure, which is realized by the application of team force. According to the Act on the Police the police shall not examine the individual responsibility of persons on the spot in the course of the application of team force directed towards the dispersion of the crowd.

The lightest coercive measure is the physical force which shall be appied if the application of heavier coercive measures is not justified by reason of force superiority of the police or the state or behaviour of the person concerned. The next level of duress is handcuffing. Among others handcuffing a lying person shall not qualify as inhuman and degrading treatment if handcuffing takes place by reason of the attack or the violent behaviour of the person concerned. When applying the baton, hits directing towards head, waist and stomach must be avoided.

Among the principles and rules of the application of coercive measures a provision must be underlined according to which policemen cannot apply torture, coerced confession, cruel, inhuman or degrading treatment, and they are obliged to refuse such commands. Everyone is obliged, however, to submit himself to police measures serving the execution of legal provisions and to obey such command of policemen. In the course of the effectuation of police measures, the lawfulness thereof cannot be doubted, with the exception if its unlawful character can be established without any doubt and deliberation.

The ombudsman also pointed out that the speciality of particular coercive measures to be applied during dispersion in team force (water-cannon, rubber bullets, stimulating gas, vehicle tie) is that the application thereof is not directed against concrete individuals. However, the application of other coercive measures to be applied during the dispersion of the crowd (physical force, handcuffs, baton) is directed against concrete indi-

viduals, just because of the body-near character of their use. The application of special coercive measures and the choise of the appropriate applied measure can be decided on the basis of type and extent of resistance performed by the crowd. It is also important that coercive measures, applicable only on the occasion of crowd dispersion in team force, cannot be directly used against concrete individuals, particularly those physically isolated from the crowd. Consequently, it is prohibited to shoot directly to persons with rubber bullets or tear gas grenades. On the grounds of the requirement of necessity-proportionateness it is also a main rule during crowd dispersion that the extent of compulsion must adjusted to the behaviour of the concerned person in the course of the measures. Although policemen do not examine the individual responsibility of those residing in the dispersed crowd, it is not lawful to use baton against those participants who are retreating before the dispersing police unit. Likewise, it is not lawful to handcuff lying persons leaving themselves to be handcuffed.

As the practical problems of police measures concerning demonstrations, the Commissioner defined the moving 'whirling' demonstration which expands to larger geographical area. If this movement is peaceful, the dispersion is more likely of an ousting, diverting character and the application of heavier coercive measures is not necessary as a general rule. If a whirling demonstration is accompanied by violent actions as well, the police is required to choose a coercive measure or method which impede or makes it difficult for violent demonstrators to stay on the spot and to organize themselves to an attack. The application of water-cannon and tear gas was considered by the Parliamentary Commissioner as necessary and proportionate measures for meeting this target.

Among coercive measures to be used during crowd dispersion, the ombudsman considered worrying the present rules of the use of rubber bullets in itself, since this is the less controllable coercive measure. According to the ombudsman the rules or a special version of the rules on the use of firearms should be applied to the use of rubber bullets.

Concerning the blending of unconcerned third persons disinterested in the demonstration into police measures the ombudsman emphasised that through mass media intruments and louder devices on the spot, the crowd should be informed on the application of team force and the obligation and way to leave the action area.

In connection with the measures of the police and policemen relating to demonstrations the ombudsman considered that the individual responsibility of policemen cannot be disregarded. Therefore the identification of policemen in the team force must be ensured, in other words they have to wear a well-obseravable identification sign – actually a number –, on the basis of which they may be identified later.

The ombudsman considered as an other important requirement of a policeman's responsibility that it shall be primarily clarified within the corporation, but the principle of effective legal remedy must be also prevail which requires that decision in responsibility issues shall be made only in a transparent and fair procedure, with the clarification of facts and circumstances and following an appropriate evidentiary procedure.

On the grounds of the aforementioned, the Parliamentary Commissioner did not find it possible to perform a unified interpretation and judgement of the police action relating to the demonstrations of September-October 2006. In the period in point there occurred lawful demonstrations and demonstrations qualified as unlawful by reason of their unannounced character, and there occurred violent demonstartions and movements as well which shall be considered as street disturbances. During police actions as well, there were lawful and professional measures, and there occurred unprofessionally performed actions as well. It cannot be estimated according to the ombudsman that ten, hundred or thousand human rights' violations occurred in those Septeber-October days.

According to the ombudsman it was a legal application fault to qualify the demonstration of 17 September, 2006 started on Kossuth squareas an electoral assembly, then as a cultural event. As a result, the police could not fulfil efficiently his task to protect public order and public security. It could be probably the reason of the unlawful demonstration before the headquarter of the Hungarian Television on the Szabadság square next day. Because of the uncertainty and undecisiveness of the police command and the personally and materially unprepared commanded police units, the demonstators attacked policemen then broke into the headquarters of the television. Their increased agressivity endangered the life and personal integrity of policemen and those staying in the building. In case of a more professional police action the extent of this danger cound have been smaller. The unprofessional character of the organization and direction of police measures caused impropriety relating to the constitutional right to life and personal integrity also in case of the commanded policemen and those staying in the building.

One part of demonstrations having continued till 23 of October was unlawful in the lack of announcement, other part of them was not a peace-

ful demonstration, and there were lawful demonstrations as well. The police strived for reaching a strong numerical superiority on the places of demonstrations and arrested numerous demonstrators. Forming a numerical superiority is the recognized aim of of the team force police activity, therefore the Commissioner did not find it constitutionally improper that the police secured the places of demonstrations and restored the order by a numerical superiority.

The ombudsman did not observe constitutional impropriety concerning the numerous arrests and police exaggeration either, by reason of the possibility of the judicial review.

On 20 October the police built a cordon on the Kossuth square the aim of which was to protect persons under preferential protection arriving th the commemoration of 1956. The establishemnt of the cordon and the restriction of movement on the spot corresponded with the conditions for personal and institutional security measures laid down in the Act on the Police. The ombudsman did not respect any constitutional improprieties in this respect.

Numerous unannounced demonstrations took place in the morning of 23 October in different venues of the city centre of Budapest. These demonstrations were dispersed by the police lawfully and without any substantial human rights violations. A part of the unannounced demonstrations with changing venues became violent in the afternoon of 23 of October, and water-cannon and tear gas were used against demonstrators then a unit of mounted policemen was put into action. No legal condition of the application of heavy coercive measures were lacking, therefore these police actions were not qualified either as unconstitutional by the ombudsman.

In the moment of the riot when demonstrators started up an exhibited T-34 tank placed on Városház square, the police used rubber bullets as well and several demonstrators were blessed. The use of rubber bullets was not unlawful according to the Commissioner's standpoint, the number of the blessed, however, raises the question of unprofessionality concerning the mean of the measure taken. The use of rubber bullets does not cause in itself eny improprieties, the not properly prudent application thereof, however, caused impropriety relating to the right to life and human dignity.

The police did not manage to prevent demonstrators from getting to the spot of the already finished Fidesz assembly. The police applied all coercive measures against violent demonstrators which may be applied by team force. Also in this respect, the ombudsman considered worrying the

use of rubber bullets, especially after the fact that one part of the demonstrators barricaded itself at square Ferenciek. The ombudsman emphasised that the application of team force coercive measures was unnecessary against persons eventually staying on the spot following the invitation of the police, provided that their presence did not endanger the effectiveness of the measure taken. In several cases persons staying on the action area did not form an assemblig team and the police duress against them was unnecessary. These police measures caused constitutional improprieties.

In general the opinion of the ombudsman: in September-October 2006 the police did not impede intentionally the exercise of the freedom of peaceful assembly. The continuously reorganized unlawful and more and more violent demonstrations extending to a large area justified the application of team force. There occurred human rights violations and constitutional improprieties in the course of police measures adopted during more than thirty days.

The Parliamentary Commissioner called on the Minister of Justice and Law Enforcement to consider the definition of special rules relating to spontaneous demonstrations. He also asked the Minister to specify by the modification of the Act on the Police the way of individual identification of policemen applied in team force, and the rules of the judgement of complaints against police actions, which corresponds with the requirements of fair and transparent procedure. The Minister should also specify by the modification of the decree on the Service Regulations of the police the way of applying team force coercive measures and he should consider to disregard the use of rubber bullet or to stipulate more rigorous conditions of its use.

The ombudsman asked the Chief of the National Police Headquarters to elaborate and operate the professional themes and educational programme of police behaviour necessary for securing public events and for restoring public order in case of unlawful demonstrations; to create and publish the code of police behaviour relating to events. He should also review the system and situation of coercive measures applied by the police and should authorize only the use of instruments which are necessary and suitable for the fulfilment of legal police tasks. Furtermore, the Chief of the National Police Headquarters should esteem the order of the direction and command of police tasks relating to events on a public place and provide for the follow-up reconstruction to the supervison of the issue and execution of commands. He should also provide for the supervision of

guarantee rules to the judgement of complaints against police measures, following with attention these procedures from the aspect of the requirement of impartiality and objectivity, and create the technical and personal conditions of the obligation for information of the police concerning public events.

The omudsman initiated the Chief of the Budapest Police Headquarters to elaborate the continuous training plan of the staff relating to public events and the method for monitoring the there drafted skills and capacities; to create the order for the examination and judgement of complaints against police measures ensuring the principle of effective legal remedy; and to provide for that no legal violation committed by the police be left without any sanctions.

The Minister did not reacted upon the recommendations of the ombudsman, who urged him on 18 December, 2007. Since then no response has been received. The Chief of the National Police Headquarters agreed with the recommendations addressed to him and started to realize them in a timing depending on the available financial resources. The ombudsman therefore accepted his response, acknowledging the drafted difficulties. The ombudsman accepted the response of the Chief of the Budapest Police Headquarters as well, according to which the Chief of the Budapest Police Headquarters ordered to prepare the training plan and the relating procedural order and took measures on the effective and lawful investigation order of complaints against legal violations commietted by the police.

The promotion of equal opportunities of visually impaired students

In case OBH 5312/2006 blind university students addressed to the Hungarian Ombudsman complaining about the fact that they can not access printed textbooks and university notes, included as obligatory study material, in the adequate form which could make them possible the proper preparation. They asked several publishers to make the manuscripts of the necessary course books available in electronic form for a certain fee, as this electronic format could be made audible with the assistance of a computer programme. However, many publishers shied away from this solution, referring to copyright and publishers' rights. With regard to the publishing of university textbooks, publishers cannot be considered as organs performing a public service; their procedures therefore cannot be investi-

gated directly according to Section 16 paragraph 1 of Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights. The situation described in the petition, however, basically concerned the proceedings of the institutions of higher education as organs performing a public service. As a result, the Ombudsman ex officio extended its proceedings to the inquiry of the insurance of equal opportunities of university students with special needs, and more specifically the unobstructed access of visually impaired students to study materials.

The aim of the inquiry was not the appraisal of all measures taken by the institutions of higher education for the sake of the insurance of equal opportunities, but the Ombudsman attempted to acquaint himself with the circumstances, phenomena and tendencies relating to the access to higher education of the blind and the short-sighted.

Certain higher education institutions had taken or attempted to take various measures to ensure access to information and make public buildings accessible for people with visual disabilities.

In their responses several rectors touched upon the idea of ensuring access of visually impaired students to study materials. This could only be reassuringly resolved through the complex settlement of several questions far exceeding the competence of the individual institutions of higher education. Ensuring electronic access to study materials published by external publishers (not by the publisher of the university) and written by external authors (not by authors having a legal relationship with the institution) depends on the goodwill of publishers and authors. The sources available for the improvement of the so-called electronic study materials – which can be easily transformed audible with the assistance of screen-reading programs – are insufficient. The head of several institutions called the attention to the fact that digitalized study materials may facilitate learning not only of the visually impaired but of those suffering with learning difficulties as well.

Institutions do not dispose of the necessary resources to acquire special material devices and to ensure appropriate proceedings and accessible study materials for individual needs. Previously all these devices, proceedings and materials were made available mainly through the use of different competition sources. However, less and less competitions has been called nowadays for the satisfaction of students with special needs – according to certain institutions of higher education –, and the maintenance of the already achieved results significantly overburden the institutional budget. Several institutions of higher education signalled that there

is a lack of stimulating competitions announced for lecturers and assistants to improve the special study materials.

A significant part of the study material taught in higher education is exclusively accessible in printed format, although certain institutions are continuously striving for enlarging the proportion of electronic study materials. Although the electronic version of these printed books, under the protection of copyright, would help the preparation of students with special needs considerably, the transformation of these materials to digital version can only be realized by violating the provisions of the Act on Copyright. As a result of deficiencies in the law, this practice causes impropriety relating to the principle of rule of law and the right to self-development through higher education accessible for anyone, for which institutions of higher education can not be blamed.

The majority of the homepages of the investigated institutions of higher education do not have a so called blind-friendly version adapted for the visually impaired. As a result, unrestricted access to basic study information and news affecting students is not ensured for visually impaired students. On the level of the present improvement and generally available level of computer science this practice of higher education institutions carries the danger of indirect negative discrimination and the impropriety relating to the right to self-development realized through higher education accessible for anyone.

By reason of all these the Parliamentary Commissioner called the attention to the fact that the disclosed problems are not unknown to the Parliament either. As the new National Programme of Disability Affairs also underlined, only 5% of people with disabilities tend to graduate from universities or colleges. This is far below the average for society in general. The targets drafted in this Program are far from the practical realization in the higher education. The students applying to the Office of Hungarian Parliamentary Commissioners submitted their complaint not because they wanted preferential or exclusive treatment, but to ensure that they have the opportunity to acquire the same knowledge as students without any special needs. In their case – and in the case of many others as well – making available study materials would promote the real equal opportunities, the more complete integration, the equal access and the normalization much rather than various advantages and exemptions ensured during exams. Persons living with disabilities claim equal opportunities, and equal access to all social resources, namely receiving education, new technologies, health care and social services, consumer goods, products and services. Knowing the own opportunities of domestic institutions of higher education, it can be presumed that the insurance of real equal opportunities for creating the real access to institutions and informations exclusively from own resources far exceeds their heavy-duty capacity. Moreover, all this would only be sufficient for the period of studies, and the life-long self-training opportunity of persons living with disabilities would be still unsolved. The necessity of a complex regulation deriving from the state obligation for objective fundamental legal protection which is able to ensure the real equal opportunities of the visually impaired precedes the impropriety relating to the right to education and the (indirect) negative discrimination, and does not put unbearable burden to the concerned either.

The aforementioned disclosed improprieties can be attributed to the deficiencies in the relavant laws. The Ombudsman therefore recommended in October 2007 that Parliament complete Act LXXVI of 1999 on Copyrights and Act CXXXIX of 2005 on Higher Education so that those concerned be not forced to break the law during the suitably reasoned utilization to have access to equal opportunities.

In order to prevent the occurrence of improprieties and the danger thereof the Ombudsman also initiated the Hungarian Conference of Rectors to review the measures necessary for the realization of possible access of visually impaired students to study materials; and to formulate its opinion on the basis of the Act on Higher Education, making whatever proposals might be necessary to the competent authorities. The Ombudsman also initiated the rectors to encourage the exchange of experiences between institutions of higher education in this field for the sake of the insurance of access to information.

In order to prevent the occurrence of improprieties and the danger thereof the Commissioner asked the Government to provide – considering the contents of the operative programs approved in the cadre of the New Hungary Development Plan – the soonest insurance of the institutional/financial background to ensure that students with special needs had whatever study materials they might need. The Hungarian Parliamentary Commissioner does not dispose of the proper tools to investigate the proceedings of publishers, he asked the Hungarian publishers to reconsider the review of their aforementioned practice, trusting in their social commitment and the power of publicity. The Ombudsman is persuaded that a solution exists which does not endanger their legal interests but still ensures access to study materials for the relevant students.

Suppression of railway feeder lines

In case OBH 1232/2007 the Parliamentary Commissioner for Civil Rights launched an investigation based on a complaint, since the Ministry of Economy and Transport ordered the suspension of traffic on the Kisterenye-Kál-Kápolna rail line and on further 13 feeder lines. On July 5, 2006 the competent minister announced the suppression of 28 railway feeder lines, which was later modified to 14 feeder lines on December 7, 2006. This measure concerned almost 480 kilometres of rail till the end of February 2007.

According to the Parliamentary Commissioner it can not be clearly established what kind of methods were used for passenger counting serving as the basis of governmental measures, since the data of income-based passenger counting do not reflect the real passenger traffic. One of its reasons is that a big part of tickets are bought somewhere else, which means that the income of the station of focal point is not divided to the feeder line, the other reason is that those passengers travelling legally but without any tickets are not considered at all. Ticket sale is based on distance and not on service which makes impossible the correct establishment of passenger traffic.

The Parliamentary Commissioner underlined that the right to free movement stipulated by Article 58 of the Hungarian Constitution also includes the freedom of a transport. The emergence of constitutional fundamental rights is the basis of the operation of democratic states. The maintenance of democratic order, however, requests sacrifices from the society and the state. The closure of railway feeder lines signals a move in the direction of mechanized individual modes of transport. This is contrary to the provisions of the European Union and raises the impairment rate of the environment.

The measures of railway suppression concern primarily the infrastructurally backward areas. It is the constitutional obligation of the Government in power to realize the targets of regional development within the cadres of the relating law. The Government must concentrate to the whole area of the country from the aspect of sustainable development and the future generations must not be provided less chance on an area than on an other. The spreading of innovations can be less expected in an area which had been made incapable for competitions. Underdeveloped areas should be closed up and not conserve the situation worse than the average. According to the Commissioner the worse solution is if state bodies

further worsen the situation of the area referring to the evolved situation for the reason of the backwardness of the area. By the suppression of feeder lines the state not only disregards its constitutional obligation, but makes the contrary: explicitly raises unequal opportunities. The suppression of railway feeder lines constitutes part of a whole series of cutbacks of regional public utility services. In order to achieve the complex targets of regional development the infrastructure of small settlements can not be wasted. According to the Parliamentary Commissioner a model must be elaborated for the economic operation of regional feeder lines.

The Ombudsman's inquiry revealed that the suspension of traffic of railway side-lines and the cutback in service level the Ministry caused impropriety relating to the right to the freedom of transport, the right to free movement and the prohibition of discrimination laid down in the Hungarian Constitution.

The Ombudsman initiated the competent Minister and the Government that the Ministry of Economy and Transport to suspend the closure of the relevant railway side-lines, respectively the retrenchment of service standard.

The Parliamentary Commissioner insists that, in the interest of future generations, the responsible state must maintain the future's reliable means of transport, the railway, also as an important element of sustainable development.

Delayed issue of public medical supply cards

In case OBH 1976/2007 the Parliamentary Commissioner learned from numerous complainants and a Member of the Parliament that the modification of Act III of 1993 on Social Administration and Social Supplies effective from 1 July, 2006 and the included modified rules of public medical supply resulted in lengthy proceedings.

The complaints described that individuals entitled to public medical supply on a subjective, normative or equity basis can receive only in delay the free of charge medicines, medical aids and medical supplies necessary with a view to medical rehabilitation, by reason of the delayed issue of their public medical supply cards.

The Commissioner launched an investigation on the basis of the available information, since the suspicion of the violation of the right to fair procedure and the right to social security emerged by reason of the sever-

al-months delay of the county health insurance funds. The Commissioner therefore addressed to the director general of the Hungarian Health Insurance Fund (OEP).

The inquiry of the omudsman established that several-year preparatory work preceded the elaboration of the reform of the public health supply, the target analysis and justification of which reform is not the subject of this inquiry. During this period the Hungarian Health Insurance Fund draw the attention several times – four times in year 2006 – to the possible problems deriving from the lack of conditions, called the attention of the Ministry of Health to the fact that the data registering capacity in rather reduced, therefore it is necessary by all means to enlarge the personal staff. Last time the National Health Insurance Fund signalled the Ministry of Social and Labour Affairs the problems relating to the reform of public medical supply on 8 March 2007. On the whole, the technical conditions, which are necessary for the flexible introduction and operation of the planned system transformed from 1 July, 2006, were available. The human side, however, was not simultaneously ensured and the National Health Insurance Fund attempted to rearrange the system from its own resources.

The tasks of the County Health Insurance Funds concerning public medical supply are two-directional. From a substantial aspect, a skilled staff calculates the individual medicine costs of the applicant and determines the monthly amount of medical services on the basis of the certificate of the GP forwarded by the notary, then informs on the calculated costs the notary in a position statement of the competent authority, and the GP in an informing letter. They are also obliged to inform the ensured, for his request, on the details of the establishment of medicine costs.

In the cadre of their technical tasks, County Health Insurance Funds issue public medical supply cards, and forward them to the entitled, manage and maintain the public medical supply register, and inform notaries on the issued public medical supply cards. Considering that the received complaints found injurious the delayed issue of the position statement of the competent funds, the inquiry of the ombudaman did not cover the activity of local governments concerning public medical supply.

The inquiry established that 312 thousand request for professional position statement were received by the County Health Insurance Funds by 10 April 2007. At the same time County Health Insurance Funds had to judge 41 thousand medicine cost accounts and notaries had to judge in 52 thosand application asking for establishing entitlements. 193 thousand cards were issued in case of the established 195 thousand entitlements. At

the same time a significant backlog piled up and it is foreseeable that besides local governments, the prescribed 15 days deadline from the receipt of the notarial decision till the issue of the card will be soon insupportable for County Health Insurance Funds as well.

The modification of the decree of the Minister of Health 25/2006. (VI. 26.) on the selection rules of specifics necessary for the establishment of medicine frame for those entitled to public medical supply, effective from 1 January 2007, the adoption of which has been repeatedly urged by the Hungarian Health Insurance Fund, partly facilitated the work of the County Health Insurance Funds by authorizing GPs to name medicines used to heal chronic illnesses of the applicant. However, for the sake of accelerating the procedure, officials do not consider (in contrast to the provision of the law) the 'professional founding of the need for healing supply'.

The conditions of the newly introduced procedure of the competent authority were lacking in the health insurance funds and those gaps have not been entirely filled by the closure of the ombudsman's inquiry. The preliminarly orientation of clients on the new and more complex and lengthy procedure was not efficient enough, therefore the necessary cooperation among the participants of the procedure (patient, GP, notary and County Health Insurance Fund) was not appropriate either. Moreover, those affected by the delayed issue of cards suffered heavy material detriment.

The investigation carried out by the Parliamentary Commissioner and the director general of the Hungarian Health Insurance Fund showed that the introduction of the rules of the new sysem of public medical supply effective from 1 July 2006 violates the constitutional fundamental right of patients to fair proceedings and to social security, therefore results in constitutional impropriety.

The Parliamentary Commissioner recommended therefore the Minister of Health to take the necessary measures within his competence, so that health insurance funds can fulfil their tasks as competent authorities within the prescribed deadline in this changed legal environment as well. The Minister of Health shifted the responsibility onto the Ministry of Social and Labour Affairs. Paralelly to his request to the Minister of Social and Labour Affairs, the Commissioner asked the Minister of Chancellery to rapidly terminate the constitutional impropriety and to promote the cooperation between the ministerial portfolios concerned. The provisions of Act III of 1993 on Social Administration and Social Supplies prescribing

the administration of public medical supply were modified effective from 1 January, 2008. The ombudsman closed his inquiry.

Transformation of the system of energy price subsidy

In case OBH 2151/2007 the gas price subsidy provided by the state on the basis of subjective right was terminated after the entry into force of the new system of gas price subsidy by 1 January 2007. As a result, the fee of the district heating service has also risen. Citizens and organizations for the representation of consumers' interests addressed to the Parliamentary Commissioner complained about the high level of the fee of the district heating service and the fact that the minimum charge has been raised in the same extent as the heating charge in the capital.

The inhabitants of the buildings disposing of expenditure dividing devices found it also injurious that the ex tunc accounts obligation of the heating service provider, F?TÁV Zrt. ceased by reason of the modification of the decree of the Budapest Municipal Council and that the law does not prescribe the obligatory application of correction factors to compensate the bigger heat demand of flats with unfavourable location.

The complaints may refer to the fact that the rising of the fee of district heating exceeds the heavy duty capacity of the inhabitants of the capital. This generated such an unfavourable process which resulted the separation of consumer communities from the otherwise environmentally friendly heating system. Therefore the Commissioner launched an investigation by reason of the suspicion of the violation of the right to healthy environment and right to property. The investigation was conducted mainly on the basis of F?TÁV Zrt., since the majority of complaints was received from the capital, and aimed to discover how the costs of district heating could be reduced and how district heating could be made competitive against other forms of heating (e.g. gas heating). The Commissioner established that service providers and the proprietary local governments only have narrow possibilities to improve the competitiveness of district heating service. The permanent costs of F?TÁV Zrt. calculated in the minimum charges cannot be moderated even by a more efficient management, and the degree of changing expenditure (the price of the energy), which amounts to 52% of the total expenditure, cannot be influenced by district heating service providers.

In the course of his inquiry, the Parliamentary Commissioner disclosed

that beyond a more efficient operation, such measures are also necessary to maintain services which create more favourable national energy policy and more favourable natural gas tariff system. Power stations producing district heating, which qualify as large consumers, buy natural gas approximately at the same price as small and middle consumers. The introduction of a so called large consumer price category would affect the extent of the service fee in a favourable way. It occurs in certain countries of the European Union that large consumer price is more favourable than small consumer price and a more favourable tax rate is imposed on certain products or services favourable from environmental aspects.

Energy saving also has a reducing effect on the price. However, the heat-keeping capacity of the majority of panel buildings with district heating is low. Heating and hot-water systems owned by the consumers are in an out-of-date, neglected and often unregulated situation, and therefore these systems are waster. The solution might be to elaborate a tender system more efficient than the present system which would give assistance to the energetic modernisation as well, beyond the heat insulation of panel buildings, so that these investments be realized within a reasonable time-frame.

The measure of the Parliamentary Commissioner was not necessary for restoring the subsequent accounts based on the data of expenditure dividing devices, because the director general of F?TÁV Zrt. and the organizations for the representation of consumers' interests meanwhile agreed that consumer communities are entitled to ask free of charge for the subsequent accounts from 1 January 2007 retrospectively. The precondition of this opportunity is to sign a contract with the service provider and to equip the heat emitting equipments of all homes with expenditure dividing devices.

As a result of the aforementioned, the Parliamentary Commissioner established in his report issued in September 2007 that without a gas price system supporting district heating and without measures promoting the economic energy use of panel buildings with district heating, such situation should occurred on the area of district heating which violates the rights of citizens to healthy environment and to property. The ombudsman therefore asked the Minister of Economy and Transport to formulate the natural gas price of large consumers and to take measures for the sake of renewing the heat insulation and heating systems of the buildings. The ombudsman also proposed the modification of statutory instruments on district heating which would make it obligatory to apply correction factors of uniform aspects in case of buildings disposing of heating expenditure

dividing devices. The ombudsman asked the Minister of Financial Affairs to determine the VAT paying obligation relating to district heating service under more favourable conditions. The ombudsman asked the Minister of Environment and Water Management to support his recommendations.

The addressees responded to the recommendations within the prescribed deadline. According to the Minister of Financial Affairs the reduction of VAT rate on the area of district heating services is not possible by reason of the relevant EU rules and the ensurance of budget balance. The Minister of Economy and Transport partially accepted the recommendation and asked the president of the Hungarian Energy Office to examine the question of gas price chategory of large consumers and the relating price proposal. The proposal of the ombudsman for modifying the law on the enlargement of subsidies and the law on the obligatory application of correction factors in case of flats with unfavourable location was not accepted.

The Parliamentary Commissioner maintained his recommendation to the Minister of Financial Affairs. He asked further information from the Minister of Economy and Transport, when the introduction of gas price category of large consumers may take place and whether the ÖKO Programme planned by the F?TÁV Zrt. may count on some special state subsidies besides the presently known tenders. The Parliamentary Commissioner still maintained his proposal to modify the law on the obligatory application of correction factors. The Minister of Environment and Water Management agreed with the conclusions of the ombudsman's inquiry and the recommendations drafted for settling the situation. The ombudsman asked for the Minister's further support to fulfil his recommendations. The deadline for response in respect of the mainained recommendations has not expired yet at the time of drafting this annual report.

Cut down of protected trees

In case OBH 2479/2007 the petitioner, also in the name of his several fellows, complained about the authorization allowing to cut down trees on protected real estates next to the road leading to the landing-pier Nr. 71337 of Szigliget. In his petition the complainant asked the Parliamentary Commissioner to promote the suspension of tree felling.

The Commissioner could not proceed in the application for suspending the execution of cutting down trees, as the trees had been already cut

at the time of registering the complaint. Furthermore, judging the condition of the concerned trees is a professional question in which he was not entitled to take a stand on. Therefore the Commissioner intestigated only the authorization procedure conduceted by the Central Transdanubian Inspectorate of Environmental Protection, Nature Preservation and Water Management and established the followings. The operative part of the resolution sustaining the petition did not contain that the cutting down of which concrete entities had been authorized and out of these entities which were qualified at the drafting of the resolution as entities which can be cut down even in a so called vegetation period in order to avert direct mortal or accident danger. The operative part of the authority resolution, therefore was not properly detailed and the decision could not be known in the merits in the lack of the petition and its annexes.

The argument of the resolution did not disclose the established facts and did not refer to whether the clarification of the facts was thorough, therefore the resolution did have the necessary convincing effect which could support the justified character of cutting down the trees. As a result, the ombudsman established that the proceedings of the Inspectorate caused impropriety relating to the requirement of legal certainty.

Paragraph 1 Section 41 of the Act on General Rules of Administrative Procedure and Services lays down that 'If the law makes it possible, in procedures affecting a large number of clients the authotity may make use of an official mediator with high level qualification adjusting to the subject of the case. A large number of clients were affected in the investigated case, the authority, however, could not make use of an official mediator, as no statutory instruments makes it possible in administrative authority cases that the authority make use of an official mediatior if necessary. The Commissioner established that this legal deficiency casued impropriety relating to the requirement of legal certainty.

The on-the-spot inquiry also disclosed that the Inspectorate had been obliged to dismiss several professional officials by reason of the the centrally ordered workforce reduction, which resulted in the significant burden on public officials proceeding in authority cases. Workforce reduction also raises the question how the Inspectorate will be able to fulfil its task on the expected professional level and entirely perform its obligations prescribed by the law in the future.

Already in case OBH 4031/2005 the Parliamentary Commissioner asked the Minister of Environment and Water Management to emphatically represent the highest possible emergence of the right to healthy envi-

ronment in the course of the institutional transformation affecting public administration, and environmental protection administration as well, so that the institutional protection aspect of it shall not be violated as a result of these transformations.

On the basis of the experiences of the investigated case the Parliamentary Commissioner maintained and confirmed the former ombudsman recommendations calling the attention to the dangers of workforce reduction, since according to his standpoint this reduction directly endangers the principle of the rule of law. With regard to the disclosed improprieties the Parliamentary Commissioner proposed the Prime Minister to ensure the possiblility, by the creation of the necessary law, that official mediator could be used in administrative authority cases if necessary, and also proposed him to establish the rules thereof.

The ombudsman asked the director of the Inspectorate to call the attention of his officials proceeding in authority cases to the guarantee importance of the complete clarification of the facts and the precise and convincing reasoning. The Inspectorate fulfilled the initiative of the ombudsman.

Judicial warrant of the injured-witness

In case OBH 3251/2007 the complainant found it injurious that on 11 April, 2007 she was arrested by the police, she was then held in the police detention facility for several hours and taken in irons to the official in charge. In June 2007 the Parliamentary Commissioner launched an investigation on the grounds of the suspicion of an impropriety relating to the right to personal freedom and addressed to the 4th district notary and the chief of the 4th district police station.

According to the established facts the complainant was attacked by dogs in June 2006. A misdemeanour procedure was launced at the local government in the case by reason of the commitment of the offense ‘engangerement with dog’. The complainant was summoned as a witness three times. She did not appear at the hearing, therefore the court ordered her arrest which was executed by the police. The complaint of the petitioner against the police action was rejected by the chief of the police station who established that the police action had been lawful and professional. Since the measure could not be ensured otherwise, the complainant was arrested and held in the police detention facility. According to the escort rules, her

hands were handcuffed before her, then she was escorted to the office of the authority with an established leash.

The proceeding of the local government – namely the order of the arrest on the grounds of paragraph 1 Section 78 of Act LXIX of 1999 on Misdemeanour Proeedings – was lawful, considering that the complainant did not appear before the misdemeanour authority even after three times repeated summons. The resolution ordering the arrest was also examined and confirmed by the Public Prosecutor’s Office. According to Section 48 of Act XXXIV of 1994 on the Police, policemen shall be entitled to apply handcuffs in order to prevent the self-injury of the person restricted or wished to be restricted it his personal freedom, to prevent his attack or escape and to bear down his resistance. In the investigated case, however, the danger of self-injury, attack or escape did not emerge and the resistance of the complainant did not have to be crushed either. The police resolution rejecting the complaint only referred to an instruction of the National Police Headquarters concerning handcuffs use. According to paragraph 1 Section 45 of decree 3/1995. (III. 1.) of the Minister of Internal Affairs the arrested person may be placed in the detention facility for the period of the keeping at the police, provided that the measure cannot be successfully executed otherwise. Therefore, the placement in the detention facility depends on the deliberation of the authority. Section 15 of the Act on the Police prescribes the requirement of proportionality in the course of the application of police and coercive measures. Paragraph 1 Section 16 of the same law lays down that policemen shall be entitled to apply coercive measures only in case of the existence of the conditions prescribed by the law. Placing the injured party – who was arrested as witness and co-operated with the police during the actions taken – in the police detention room, then handcuffing her seriously violated the requirement of proportionality.

The resolution rejecting the complaint contains that an appeal can be lodged against it together with a duty stamp of a value of 5000 forint. At the same time, item 29 paragraph 2 Section 33 of Act XCIII of 1990 on Duties lays down that petition and appeal filed by persons under coercive measures proceedings of the police authority have special duty exemption. Thus the prescription of duty payment obligation was unlawful.

On the grounds of the aforementioned, in November 2007 the Parliamentary Commissioner established that the police proceedings caused serious impropriety in relation to the right to personal freedom. The ombudsman recommended the Budapest Chief Police Commissioner

to provide for that the police organs under his direction proceed respecting the requirement of proportionality in the cource of carrying into effect arrests. He recommended furthermore, that handcuffing of the detained persons take place only in cases listed by the law, and no duty payment obligation be defined when judging the complaints on the basis of the Police Act. Conciliation is in progress in the case.

Legal status of child brought up by grandparents

In case OBH 3650/2007 the Parliamentary Commissioner launched an investigation on the grounds of a complaint concerning the interpretation of the provisions of the Social Act defining the notion of family members. The complainant has brought up his grandchild in his family for seven years as a guardian. As the child is a regular secondary school student, he is still kept by his grandparents even if he is major now. However, in the course of the judgement of the complainant's wife's application for public medical supply, the child was not considered neither by the notary, nor by the regional guardian office of second instance as a family member when calculating the per capita family income. Authorities referred to the provisions of the Social Act, according to which a grandchild does not qualify as a family member.

On the grounds of the Social Act the following blood, adopted and foster children consider as close relative or family member: those under twenty not disposing of an independent salary; those under twenty-three not disposing of an independent salary and studying as regular students; those under twenty-five not disposing of an independent salary and studying as regular students of a higher educational institution.

The report of the Parliamentary Commissioner principally highlighted that in similar cases children received into the family must be also considered as a family member on the grounds of the proper legal interpretation, irrespective of the blood relation between those living together.

In order to avoid the future occurrence of a different legal interpretation leading to constitutionnal impropriety the Commissioner initiated the Minister of Social and Labour Affairs to call the attention of the heads of the regional social and guardian offices in an appropriate manner to the proper legal interpretation, and recommended the authority of first instance having proceeded in the given case to reconsider the application of the complainant. The addressees accepted the recommendation.

Servitude of public service provider

In case OBH 3912/2007 the petitioner complained about that the district land registry registered a servitude for the benefit of Égáz-Dégáz natural gas divider Zrt. on the real estate owned by him, for which the complainant have not received any compensation.

In 1995 the Mining Authority of Veszprém issued a building permit to the Mayor's Office of Körmend as developer for the construction of the Körmend-Fels?berek gas piping. In the same year the Authority also gave the possession of the establishment to Égáz Rt. In the latter permit the mining authority called the attention of the developer to provide for the establishment of mining servitude and registration into the real estate register relating to the establishment or the real estates affected by security zone.

Referring to Section 36 of Governmental decree 111/2003. (VII. 29.) on the execution of certain provisions of Act XLII of 2003 on Natural Gas Supply the company asked the district land registry in its application of March 23, 2007 to register mining servitude relating to gas distributive pipings constructed on alien real estate in the period preceding April 1997. The company indicated as document serving for the basis of registration the resolution on utilization permit included in the protocol of March 6, 2007, which was received previously (in 1995) and was made effective by the mining authority from the dating of the protocol according to the rules of the Governmental decree.

The proceeding district land registry registered the servitude on the grounds of the aforementioned law, which registration was appealed by the complainant. The gas service provider decribed that the compensation claim of the complainant had lapsed.

The protection of property right is realized through various measures by the different branches of law. The constitutional law primarily provides protection against the legally allowed forms of state intervention to the property. Several factors must be considered relating to the barriers of state intervention. According to Article 13 of the Constitution the Republic of Hungary shall ensure the right to property. Property can be expropriated only exceptionally, from public interest, in the legally regulated cases and way, with an entire, unconditional and immediate compensation. It must also be considered that substantial contents of a fundamental right cannot be restricted even by a statutory instrument.

In the present case it is a question of constitutionality in which cases is

the owner obliged to endure the restriction without any compensation, and when can he lay claim to compensation for the restriction of his proprietary rights. On the basis of the Civil Code, for the benefit of bodies entitled by separate laws, servitude or other beneficial interest may be established on real estates from public interest by the resolution of public administration bodies. The beneficial interest shall be compensated. A separate law lays down the types of beneficial interests and the rules of compensation.

According to paragraph 7 Section 85 of Act XLII of 2003 on Natural Gas Supply, in case of gas distributing pipes construced and put into operation on alien real estate preceding January 1, 2004, the licenced or the owner of the pipes may establish servitude according to the provisions laid down in Section 38 of the Mining Act, provided that no servitude has been established on their placing and security zone, or the established right has not been registered to the real-estate register.

In the sense of paragraph 2 Section 38 of Act XLVIII of 1993 on Mining the mining contractor may claim the establishment of servitude in return for compensation to be paid to the proprietary of the real estate. The procedure conducted to establish servitude and compensation is regulated by paragraph 5 Section 38 of the Mining Act. Accordingly, the mining contractor has to attempt to agree with the proprietary (trustee, user) of the real estate on the establishment of servitude and the type and the measure of compensation by sending an offer. In the lack of an assent the establishment of the servitude and the compensation in return shall be established by the administration office for the request of the mining contractor.

The provision of Section 36 of the Governmental Decree is contrary to the former legal regulation in respect of natural gas distributing pipes construced and put into operation on alien real estate preceding April 1997. If the establishment of servitude on the placement of these pipes was not realized in the way registered in the real-estate register, the licenced may ask the registration of his servitude to the real-estate register by 31 December 2007. The registration shall be realized on the grounds of the final resolution of the mining inspectorate of territorial jurisdiction relating to the utilization permit issued for the gas distributing pipe, which resolution qualifies a document suitable for real-estate registration. The lapse of the compensation claim shall be calculated by issuing the final resolution containing the utilization permit of gas distributing pipe issued by the mining inspectorate.

According to paragraph 2 Article 35 of the Constitution the Government issues decrees and passes resolutions in its ow scope of competence. A Governmental decree shall not conflict with an act. Act XI of 1987 on Legislation determines the hiereachy of legislation. As a result, the provisions of a statutory instument on a lower level shall not conflict with a legal standard on a higher level.

The cited provision of the Governmental decree is not harmonized with the aforementioned legal principle, as it allows a deviation for the obligee from the rules of the Act on Natural Gas Supply and the Mining Act. The decree enlarges the types of documents serving for the basis of registration and creates a legal situation which is suitable for the exemption from compensation payment obligation, therefore realizes the violation of the right to property as well. The Mining Act specifies the agreement of the parties or the administrative resolution as documents suitable for establishing servitude, while the governmental decree also ranks the final utilization permit of the mining authority among these documents. The first two includes the agreement of parties in the amount of compensation or the relevant decision of the authority in the lack of consent against which the judicial route is also ensured. The cited section of the governmental decree does not regulate the manner and opportunity of compensation, but considers the finalizing regulation of the mining authority as the establisment of servitude regardless to compensation, and declares it as suitable for real-estate registration.

The Minister of Economy and Transport explained that in order to solve the problem, the transitional provisions of the Act on Natural Gas Supply will regulate the obligation for the subsequent real-estate registration of servitudes and rights connected to already established pipes. Furthermore, the Minister signalled that the legislative motions for the modification of both the Act on Natural Gas Supply and the Mining Act are under preparation, but servitudes previously established by mining authorities and not registered in the real-estate register are numerous even today. The new regulation therefore shall continue to contain the obligation for registration, the deadline of which is expected to be deferred to 5 years.

The Parliamentary Commissioner agreed the endeavour of the Ministry, according to which mining servitudes shall be registered in the real-estate register. This effort, however, shall not give rise to a regulation method which violates the lawful compensation claims of the proprietaries of the real estates. It guarantees just the security of real estate transactions and the authenticity if the real-estate register do not contain registrations

in large numbers the background legal relations of which (viz. compensations) are controversial.

The response of the Minister also shows that despite the relevant legal regulations (Civil Code, Mining Act), the establishment of servitudes and then of the compensation did not take place in many times, or if the establishment of the servitude was yet realized, it was not often registered to the real-estate register. If the servitude was established by the contracting parties, the obligee shall register it on the grounds of paragraphs 4 and 7 Section 26 of Act CXLI of 1997 on Real-estate registration, within thirty days by the dating of the document. If, however, the servitude was established by the resolution of the administration office, the administration office should have been obliged to address to the land registry, but the registration itself could have also been requested by the obligee in the possession of the final decision.

The argumentation of the gas service provider, according to which the claim of the complainant had lapsed, is unacceptable, since it could not lapsed even according to the provisions of the Governmental decree. In order to liquidate the controversial legal situation the Parliamentary Commissioner asked the Minister of Economy and Transport to initiate the harmonization between the regulations of the relevant sections of the Act on Natural Gas Supply, the Mining Act and the governmental decree on the execution of the Act on Natural Gas Supply, also ensuring the compensation of the proprietaries of real estates. Furthermore, the Commissioner initiated the Égáz-Dégáz Zrt. to fulfil its obligation for compensation.

The Égáz Zrt. did not agree the recommendation of the ombudsman. According to its standpoint the complainant had not proceeded with due care and his claim had lapsed. The Commissioner maintained his recommendation and initiated the proceedings of the Hungarian Energy Office.

Travel allowances for disabled persons

In case OBH 4087/2007 the petitioner turned to the ombudsman on grounds that the Health Insurance Fund of Jász-Nagykun-Szolnok County refused to reimburse his travel costs incurred in connection with the use of health services, referring to the fact that being over 65 he is entitled to travel free of charge. The petitioner attached the documents generated in his case to his petition. He also presented that he was severely disabled,

and had a medical certificate stating that due to his health condition, he was unable to use public transportation means.

In its Decision 38/2000 (31 October), the Constitutional Court pointed out that the right to use health services covered by health insurance and in that context the social insurance financing of the institutions are based upon Article 70/E of the Constitution and on the constitutional protection of property. Paragraph 2 Article 70/E of the Constitution provides that the state shall ensure the right to social security and the right to the necessary care for subsistence in the case of old age, illness, disability, widowhood, orphanage and unemployment due to reasons not imputable to the person through social insurance and the system of social institutions. The institutional guarantees for this constitutional provision are ensured by Act LXXXIII of 1997 on Compulsory Health Insurance, which determines the scope of those health services the use of which is the subjective right of the insured persons. Starting from the principles laid down in the Constitution, the Parliament has adopted Act CLIV of 1997 on Health (Health Act) determining the set of conditions for health care necessary in order to create equal opportunities for the members of society and to preserve and restore their health and improve their health conditions through access to health services as well as Act LXXXIII of 1997 on Compulsory Health Insurance (CHI Act) determining the rules for the use of the services.

The CHI Act determines the services to which the insured persons are entitled, i.e the ‘service package’ guaranteed by law under the insurance relationship covered by the contributions paid. A means for mitigating or eliminating inequalities in access to health services is travel allowance.

Pursuant to Government Decree 217/1997 (1 December) implementing the CHI Act (Implementing Decree) travel allowance is paid in two cases: on the one hand if scheduled public transportation means are used, and, on the other hand, insured persons unable to use public transportation means due to their illness or health condition are also entitled to travel allowance subject to the decision of the doctor competent for hospitalisation. The Implementing Decree sets the extent of allowance in both cases. While in the first case the extent of allowance is equal to the fare set for the use of the scheduled public transportation means (ticket price), in the second case the insured person is entitled to the ticket price for the cheapest scheduled public transportation means on the given route. Obviously, in the latter case there is no need to attach the ticket to the travel documents. According to the Implementing Decree, no travel allowance shall

be paid to a person who is entitled to travel free of charge pursuant to a separate law, i.e. who is granted travel discount for public passenger transport.

The scope of persons specified in Government Decree 139/2006 (29 June) (effective until 30 June 2007) and subsequently in Government Decree 85/2007 (25 April) may only use the discounts determined therein for national public rail services, scheduled distance bus services, suburban rail services (Budapest Közlekedési Zrt. – Suburban Railway), scheduled ferry services and scheduled local public transport services, regardless of the purpose of travel. The Decrees do not provide discount if the insured person travels to the health service provider to use health services but he/she cannot travel by public transportation means due to his/her illness or health condition.

When using health services, the principle of equal opportunities shall be observed. The main requirement for the creation of equal opportunities is that the individuals can use the health services justified by their health condition with the same professional content, regardless of whether or not the state can ensure health service of the same level in their direct neighbourhood. In cases where the state cannot fulfil its obligation, the insured person is entitled to travel allowance in order to mitigate or eliminate inequalities. A further aim of the travel allowance is that no one remains without care due to his/her financial situation.

The Constitutional Court holds that legal certainty is tightly connected with the constitutional principle of the rule of law, it forms a material element thereof. In its Decision 26/1992, the Constitutional Court pointed out the principle that 'clear, intelligible and appropriately interpretable content is a constitutional requirement regarding normative texts'. Legal certainty, an important element of the rule of law declared in paragraph 1 Article 2 of the Constitution, requires that the text of a law has intelligible and clear normative content, which is recognisable when the law is applied.

The ombudsman stated that paragraph 8 of the Implementing Decree had contained a provision which could be misinterpreted in application, having infringed the requirement of legal certainty, however, with regard to the fact that the legislator had complemented the text of the norm and clarified the provision in paragraph 8 of the Implementing Decree by referring to the travel allowance for insured persons unable to use public transportation as defined in paragraph 5 of the Implementing Decree, the ombudsman has not initiated any further measure.

During the investigation of the specific case the ombudsman stated that the National Health Insurance Fund had refused to pay a travel allowance in the first and second instance, which had not been reimbursed to the insured person but to which he would have been entitled pursuant to the law. Thereby the National Health Insurance Fund infringed the petitioner's right to the highest level of physical and mental health and to social security. For the purpose of eliminating the said infringement, he requested the Director of the National Health Insurance Fund to review his resolution passed in the petitioner's case. The ombudsman did not accept the Director's answer to the recommendation.

Registration of used motor vehicles originating in the EU

In case OBH 4091/2007 the Parliamentary Commissioner has launched an ex officio investigation into the practice of registering motor vehicles imported into Hungary from elsewhere in the EU. During this inquiry, terminated in October 2007, he basically disclosed that how the proceedings of the organs concerned – document bureaus, National Transport Authority and customs authority – are built on another, in what extent are certain procedural steps necessary and effective for achieving the planned target, and how procedural guarantees prevail in the single procedures separately and in the whole process as well.

According to the experinces of on-site inspections clients are obliged to spend several days even in an ideal situation for settling their affairs personally. The reason of this complicated and time-consuming procedure is mostly the deficiency of the legal regulation and not the operation of the proceeding authorities. This results in improprieties relazing to the right to fair procedure.

The complicated and lengthy procedure (which may also last for several weeks and months) causes the clients not only inconvenience, but also excludes the possibility for them to use their vehicles lawfully and without restrictions, with Hungarian official signs, for an adequate period. This complicated procedure is caracterized by the fact that more time is spent by vehicles with administration than with the examination of the vehicle. The fact that each authority currently has access exclusively to its own database, and data are practically registered again and again by each authority during the procedure, is a further problem, making the inaccurate registration of data a real possibility. Individual authorities are not

aware of modifications registered by other authorities, therefore they are obliged to check and register these data in their own data bases.

During vehicle administration cases document bureaus are proceeding exclusively on the basis of documents. This means that in the course of administration the transport administration authority does not suit the vehicle with the issued documents and official signs. It can be easily admitted that the fact that the transport directorate authority only issues the registration label and it is not entitled to control whether official signs are really put on the registered vehicles generates an effect contrary to the main target of the introduction of registration label: the elimination of crimes concerning motor vehicles. This situation causes – by a reason based on the legal regulation – the direct danger of impropriety relating to the principle pf rule of law, the deriving requirement of legal certainty and the right to property.

Also in cases of vehicles within the EU the National Transport Authority, when issuing the individual registration certificates of Community vehicles – notwithstanding testing that is carried out prior to registration – control in a review whether the vehicle respect the relevant transport security and environmental requirements relating to the already registered vehicles. The Commissioner underlined in this respect that, in the sense of the ECJ judgment in case C-297/05 this is contrary to Article 28 EC (free movement of goods) if the control of transport security and environment situation is generally and regularly required for vehicles which have previously been registered in other Member States, regardless of the fact that control have already been executed in other Member States. The Ombudsman confirmed during his inquiry that the National Transport Authority caused impropriety relating to the rule of law and the deriving requirement of legal certainty when requiring the review of the correspondence of the vehicle with the transport security and environmental requirements – exclusively on the basis of a superfluous provision of the legal regulation – relating to the already registered vehicles in the course of the issue of the individual registration certificate of a Community vehicle, since this regulation is contrary to the Community law.

In the Main Customs Office for private circulation two custom agencies are operating in the same premise for client service and the place of direct customs administration can only be approximated going by these agencies. The Customs and Finance Guard hired a part of the client waiting-room to customs agencies referring to its obligation for income acquisition. It is unusual that in the official premise of an authority serving for client service undertakings, proceeding regularly as representatives before this authority, establish branch office or premises. This situation evolved on the grounds of the income ‘pressure’, affecting not only the Customs and Finance Guard causes impropriety relating to the requirement of legal certainty.

According to the vice-commander of the Main Customs Office they are conducting the registration tax procedure of 60-80 vehicles originating from the EU per day. It is the client who proceeds personally in almost 20% of these cases, other cases are managed by customs agencies or other specialized undertakings. The vice-commander finds the completion of the forms so difficult that the man in the street cannot fill them at all, or they can complete them only with the permanent assistance of the staff.

The possibility of electronic administration is ensured in several tax and customs procedures within the competence of the Customs and Finance Guard. In case of the registration tax, however, the possibility for electronic administration is not ensured. The assessment of registration tax is managed almost automatically – except for the data registering – on the grounds of data registered by the National Transport Authority and enclosed as documents to the petition, considering the cylinder cubic capacity of the motor vehicle and its environmental classing, and with the assistance of a quite simple algorithm counted after the time passed since the first date the vehicle was put into circulation. The ombudsman does not know the reason why the opportunity for a complex electronic administration is not ensured in the registration tax procedure.

In light of the aforementioned ECJ judgment, the Commissioner established that the identification of the vehicle itself for the purpose of registration does not cause constitutional impropriety.

However, the preliminary origin control in its present form is inappropriate by itself for identifying the vehicle, as presenting the vehicle is not necessary for that. Furthermore, besides significantly increasing the duration of registering procedure, the repeated presentation of the client before the authority is an unjustified extra administrative burden on clients and proceeding administrative bodies as well. Furthermore, in its present form – still recognizing the reason of restriction necessary and proportionate for the sake of the protection of the right to property – it is unsuitable for achieving the wished target: the insurance of property sta-

tus, origin and identification of motor vehicles. On these grounds and by reason of the deficiency in laws the Commissioner established that the preliminary origin control results in the direct danger of impropriety relating to the requirement of legal certainty and the right to property.

Despite improvements in the area of information technology, paper-based administration is dominant in the whole process. The individual authorities are communicating with each other exclusively on paper, except for the justification of the payment of registration tax. All this has environmental and budgetary implications as well as significantly slowing the process down. It can be also noticed that the present procedural order does not minimalize or excludes the possibility of abuses. As a result, it can not be totally ensured that indivisual data bases contain the relevant data of the concerned motor vehicle in the same manner. All this causes the direct danger of impropriety relating to the requirement of legal certainty and the right to property.

The technical arrangement of the obligation for registration tax payment means for the client the movement of, in many times, several million forints in cash, if he or she wishes to settle the registration tax payment procedure in one day. This complicated character of the fulfilment of tax payment obligation can not be considered by no means as a client-friendly procedure.

According to the standpoint of the Parliamentary Commissioner, the fact that clients can only fulfil their obligation to pay tax, which is necessary for continuing the proceedings, through one of the aforementioned procedures and no administration is possible at place, is incompatible with the requirements of fair proceedings. Moreover, neither the requirements of market economy, nor the prohibition of negative discrimination (unreasonable preference) is compatible with the practice that the customs authority allows for a prompt procedure only for clients of a financial institution with a nearby branch in case of tax payments by transfer.

In order to redress the disclosed situation the Parliamentary Commissioner addressed the National Assembly, the Government and separately the Minister of Economy and Transport and the Minister of Financial Affairs as well.

The closure of the National Institute of Psychiatry and Neurology

The Parliamentary Commissioner has issued a position statement in case OBH 2464/2007. The restructuring in the Hungarian health care system, the rearrangement of bed capacity of hospital care providers and the problem of the transitional situation of closing institutions generated such a social reaction which goes beyond the concrete closure of institutions and may justify the constitutional control of the state obligation for institutional health care. This is the very situation now concerning the National Institute of Psychiatry and Neurology (OPNI) as well.

Considering the method and possible consequences of the controversial reform measures and recognizing the danger what unforeseeable consequences the rapid closure of the famous institution ‘caring’ widespread diseases of our time (eg. depression, panic disease) could induce, the Parliamentary Commissioner found it necessary to appraise the evolved situation from human rights and constitutional fundamental rights aspects and to inform the public thereof. On the basis of the legal appraisal of this measure the standpoint of the ombudsman is the following:

I. During the 12 years of its existence, the institution of the Hungarian Parliamentary Commissioner has always paid special attention to the operation of psychiatric institutions and the emergence of the rights of patients treated and living in these institutions. Previously, the ombudsman launched a general investigation covering psychiatric institutions in Budapest and the countryside and disclosed the underdeveloped situation of the psychiatric heath care system which struggles with the lack of personal and material conditions (OBH 2255/1996). As years have passed, more and more submissions and complaints were received by the Office from psychiatric departments of the health care system (e.g. OBH 5425/1996) and social homes attending psychiatric patients as well (e.g. OBH 5006/1997). On the ground of the investigations with on-site inspections executed after the received complaints it could be unambiguously established that the circumstances of psychiatric care were declining from year to year. Consequently this part of health care is about to lag behind not only the average of the members of the European Union but other health care sectors as well.

In this situation it became obvious that capacity restrictions intended to introduce during the health care reform can further worsen the situation

of psychiatric care (providers and patients as well), since – as the present situation also shows – principles applied in the course of hospital restructuring do not pay enough attention to the special needs of psychiatric patients. A further problem is caused by the fact that the basic remuneration of psychiatric and mental hygienic caretakers working in the outpatient supply significantly decreased.

Furthermore, the recent events relating to the National Institute of Psychiatry and Neurology, however, exceed the general scruples of the profession. According to the deed of foundation of the Mental and Neurologic Institute of Lipótmez?, the almost 140 year-old institution has to serve the Hungarian mental affair during 200 years. (One of the cruriosity of the history is that the deed of foundation cannot be found, although psychiatrists hoping the respect of the fair procedural order, are searching it within and outside the institution for weeks.)

It is a well known fact that the closure then the sale of immovable estates of health care institutions situated in preferential dwelling zones of Buda (Paediatric Clinic of Buda, Paediatric Hospital of Mountain Szabadság, OPNI) has been at issue since year 1995-96. Till now, however, there has not been an appropriate occasion and political will for the possible realization.

In connection with the flexibility of the health care supply, the most neuralgic point is not primarily the changing of the place. If it is/would be a simple 'seat transfer', then the professional team work, the researches and the stroke centre could be operated again within one building after the fast and properly prepared move.

This has not been the situation so far. According to the almost daily modified 'conception' psychiatric beds were planned in several hospital care providers, relocating there certain departments or divisions of the OPNI. It would not even been worrying in inself if the profession would announce a fast and duly prepared transfer. But in the currect situation even the directors of the institution had not enough information exactly where the resting active and rehabilitation beds (wards and their fractions) were to be placed.

Consequently the redirection and orientation of newly applying patients under the prohibition of registration can not be undertaken from professional standpoints. This situation, even if it is temporary, leaves patients unprovided and as a result, realizes the direct threat of the violation of the constitutional right to the highest possible physical and spiritual health in respect of patients and the population belonging to the health care area (Article 70/D of the Constitution).

II. It is also a fact that the first transformation draft plan issued by the Ministry of Health Care (in January 2007) prescribed significant reduction in the number of beds. This draft report, however, did not contain the plan of the total liquidation of the institution. It was the recommendation of the Regional Health Care Council which contained the possible closure, and this proposal was unconditionally accepted by the competent Minister.

The relating procedure of the Ministry of Health, however, affected not only patient's rights, but the freedom of expression and speech of the staff by impeding the accurate information on the situation. The Ministry interpreted the question settled by Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest:

1. In the electronic circular of the Ministry of Health of 7 March 2007 it is communicatied that the communication activity of the OPNI changes, for the request of Zoltán Tasnádi ministerial commissioner, namely: 'Media relations are to be centrally managed by the Press Department of the Ministry of Health, thus the staff of the OPNI cannot make statements in any subjects (even on an executive level), without any ministerial permit or preliminarly negotiation.'

2. The second electronic circular of the Ministry of Health of 12 March 2007 contains that the 'press conference planned to be held after the staff meeting is cancelled because it has been prohibited by the Press Department of the Ministry of Health'. If anyone called journalists of TV crews to the event, they should be called off, since the security service of the institute does not allow the press enter to the institution.'

As a result, the danger of impropriety also arises relating to the rights of the staff of the OPNI to the freedom of speech and freedom of expression declared by the Hungarian Constitution (Article 61 of the Constitution).

III. It also follows from the foregoing that the main barrier of the practice of each constitutional fundamental right and subjective right ensured by the law is the inviolability and the unconditional respect of other persons' fundamental rights. So if by reason of the radical methods of structure-reform the stakeholders disapprove the provisions of the relating resolutions and statutory instruments or the behaviour of the health care organisation proceeding on the grounds of these regulations (here 'Regional Health Care Council), the constitutional control practice of the Constitutional Court and the Parliamentary Commissioner for Civil Rights have to be also considered during the negotiations on execution.

As a result, the interest enforcement opportunities of a constitutional state shall oblige each citizen, institution and authority of a democratic constitutional state to respect the law and the fundamental rights of others even in case of the rejection of their demand. The contrary conduct and the individual 'repeal' of laws obliging everyone would result in the total disorganization of the legal order and the democratic constitutional state.

So in the present situation the question is the insecure future of a historical institution, in case of the closure of which the loss is indisputable. On the wall of a beautifully renovated historical building, a memorial tablet will signal that this building had been once established by the public will for the healing of psychiatric patients. After all, the national centre of psychiatry is closed, which had not only cured, but professionally guided, educated and performed researches as well.

IV. Considering the aforementioned facts the ombudsman asked:

1. the Committee on Health Affairs of the Hungarian Parliament to immediately review the situation of psychiatric care (including the extremely neglected child psychiatric care) in the whole country after the attempt of the dissolution of the National Institute of Psychiatry and Neurology without succession.

2. the Parliamentary Committee on Human Rights, Minorities, Civil and Religion Affairs to investigate immediately the consequences and legal, economic and professional circumstances of the closure of the National Institute of Psychiatry and Neurology, as the reception of patients is prohibited in the institution from the 1st of April.

Furthermore, with regard to the restricted interest enforcement capacity of the special group of patients, a professional gremium must be established without delay by the completion of the inquiries to co-ordinate the realization of the restructuralization, which gremium would also be responsible for the restructuralization. At the same time the continuous financing payment of the National Healt Insurance Found and the unbroken heath care supply must be also provided.

Reform of the health insurance system

The Parliamentary Commissioner has issued a position statement in case Gy. 114/2007. The restructuring introduced to the health care system in Hungary made it indispensable to review the operation of the health

insurance system, taking into account the requirements of a modern financing system which is consistent with supplies and respects the principle of solidarity.

The ombudsman found necessary the evaluation of the evolved situation on the basis of fundamental human and constitutional rights and the disclosure thereof, considering the prospective consequences of the reform measures and recognizing the danger that the restructuring of the health insurance system may result in numerous unforeseeable consequences. In genera, these consequences may also be induced by the disruption of the existing order of the social insurance system through the planned introduction of the multiple-insurance system affecting the Hungarian reform progress.

The legal appraisal of this measure is the following according to the ombudsman's standpoint:

I. In the more than one hundred years of the Hungarian social insurance system, the traditional proprietary risk community of solidarity approach is at a cross-roads, whether it keeps to be the apparent and operable framework or a business insurance medium requiring market thinking corresponds better to the high quality financing of national health care services, respectively the equal access of the ensured.

The social insurance as an autonomous, separated and economically independent part of the national economy based on social risk community and operating with state guarantee on the principle of sovereignity, which has went through several transformations even following the regime change. In 1991 the Act 'on the conception of the renewal of the social insurance system and its short-term tasks' divided in half the Social Insurance Found (which had been separated from the budget still in 1989), establishing the Health Insurance Found and the Pension Insurance Found. The Health and Pension Insurance Government was set up in 1993 wounding up at the same time the National Social Insurance Directorate-General. The former unified organization was separated and the National Health Insurance Found and the National Pension Insurance Directorate-General was founded. Simultaneously, the territorial bodies were also separated.

The Health Insurance Fund still operates with State guarantees (budget background), the main revenue sources originating from employers' and employees' contributions. The extent and distribution of contributions between health and pension insurance funds is regulated by an act of

Parliament. The task of the National Health Insurance Found is therefore to promote the targets of health insurance and health policy through financing instruments.

II. A risk community has evolved within the social insurance system, in which the weight of the solidarity element keeps to be significant besides the proprietary position acquired during hundred years (cf. insurance element/purchased right) falling under constitutional property protection. Consequently no reform or structure change can be constitutionally conceivable which violates the acquired/purchased right. 'Social insurance services (…) cannot be substantially and unproportionately modified, leaving untouched the compensation system at the same time, in a way which would violate the constitutionally protected position of the proprietary.' (Resolution 56/1995. (IX.15.) of the Constitutional Court, CCR 1995. 265.) This constitutional protection still covers at least 60-70% of the active population. The 'deprivations and reductions' affecting them shall be realized only by respecting the principle of immediate, total and unconditional compensation, thus an appropriate and equal compensation must be provided for them. Only in respect of the generations of young employees can the system be gradually transformed purely on the basis of insurance principle in a way that 'purchased rights' are not violated.

The right to the highest possible physical and spiritual health is laid down for everyone in the Hungarian Constitution, and concretizing this provision Act CLIV of 1997 on Health ensures everyone the opportunity and right for the necessary and adequate supply (emergency supply is ensured even in cases where contribution payment is lacking). It must be also remembered that the burden-bearing capacity of the national economy and the contribution payer citizens, however, severely limits the quantity of health care supply (personal and material conditions) and its quality level. A new collective risk community (risk-distributive system) would widen this restricted opportunity, which requires citizens to undertake much more own risk and burden-bearing and ensures them in return the minimum which was fixed by the Constitutional Court in 1995 on the border of the burden bearing capacity of national economy. *(Resolutions 54/1996. (IX. 30.) and 1996. 186-187 of the Constitutional Court.)*

As a result, the society indeed arrives at crossroads, and its knowledge is rather defective on the causes and consequences of this situation and the inherences concerning supply quality. It would not be a serious problem in itself, the 'fundamental legal prosperity' after the regime change, however, made people more conscious of their rights. This is the reason why they are not willing to give up their 'rights' and emolument-attitude following the decennial privation.

III. The consistent practice of the Constitutional Court is that according to Article 8 paragraph 2 of the Hungarian Constitution constitutional fundamental rights – except for their essential subject-matter – shall be restrained only by legal acts. Concerning the restricted character of individual fundamental rights the Constitutional Court laid down the triple requirement of necessity, eligibility and proportionality. *'The state shall be entitled to restrict a fundamental right if the protection or emergence of other fundamental rights and freedoms or the protection of other constitutional value cannot be realized otherwise. Therefore the constitutionality of a fundamental legal restriction requires not only the protection of an other fundamental right or freedom or other constitutional targets to be ensured, but it is also necessary that the restriction meet the requirements of proportionality: so the importance of the target and the weight of the caused fundamental legal violation for the realization thereof must be proportionate. In the course of the restriction the legislator is obliged to apply the most lenient measure possible which is suitable for realizing the given target. It is unconstitutional to restrict the content of the law arbitrarily, without any coercive cause and it is also unconstitutional if the weight of the restriction is unproportionate compared to the target.' (Resolution 30/1992. (I. 26.) of the Constitutional Court, CCR 1992. 167., 171.)*

Fundamental rights may be primarily restricted by reason of the protection of other constitutional rights, and secondly if some abstract social or state interest – in particular public interest or public health – makes it necessary. When examining the restriction the Constitutional Court applies its necessity-proportionality test, according to which the restriction of a fundamental right can be considered constitutional only if it occurs by some *coercive reasons* and if the importance of the target to be achieved is *harmonized* with the weight of fundamental legal violation caused for the sake of this target *(Resolution 20/1990. (X. 4.) of the Constitutional Court)*. Therefore, according to the practice of the Constitutional Court the condition of the constitutionality of the restriction of fundamental rights is the common existence of the requirements of necessity, suitability and proportionality. The existence of the same conditions must be examined relating to the possible restrictions of rights acquired in the one-insurance system.

IV. In the light of the aforementioned can it be examined if each modification affecting the health insurance and health care system indicates a fundamental legal restriction and if it can be justified from a constitutional aspect. What is the new constitutional connection between the fundamental right to health (and in general social) care and the constitutional protection of property (purchased rights)? What kind of new insurance system is able to finace the supply of the ill, the elderly, the disabled insured, or those preserving their health? And in the framework of what kind of obligations for taxation (contribution payment) and subjective entitlements? Through which methods can the number of 'freebie passengers' be really filtered without violating the principle of solidarity? Does the connection between the declared incomes, the paid contributions and the factual revenue (and expenditure) of the National Health Insurance Fund deform the market status and the dependence of a new insurance company on the budget?

The aforementioned, almost hundred-year old system of the social insurance has always changed towards the widening and deepening of social solidarity – as it was also basically represented by the state structure before the regime change, and the allocated estate was primarily gathered from the private property, namely the contributions of the insured. The present and recent demand for modification is an exigency deriving from historic distortions. There exist no 100% social property and total employment any more, and there exist no 'unconditionally' finacing socialist state, but there exist a market economy based on private property, competition, and there exist also (many) people without any insurance. All these facts serve as a basis for the strategic transformation of social insurance and, more specifically, health insurance and at the same time for the preservation of equal access to supplies/services.

According to experts in the – even today – mainly publicly financed health care system, the already existing private undertakings and certain voluntary insurance companies are not able to induce real competition between service providers for the present. The often stressed 'under financing', however, is an obstacle to raising standards (mainly material standards such as meal, placing and instruments). Optional insurance funds operate in the Netherlands, in Germany and in Slovakia for years, a real competition, however, has not evolved among service providers. It is doubtful if fundamental services – operatig in any system – can compete within the social insurance system. And if beyond fundamental services, insurance companies with profit approach are the service buyers, it may

deform the traditional confidence relatingship between doctors and patients. After all, is it possible to start an appointment at the doctor with the question 'What is the number of your insurance policy?' instead of the question 'What seems to be the matter?', and is it possible to diagnose something and apply the appropriate therapy on the basis of the market compulsions of cheapness, rapidity and effectiveness? Preserving/restoring the health of the insured cannot be the privilege of the 'winner competitors' or even the 'competitive' (solvent) persons.

The system should be made transparent in three units according to a draft. The first unit would include pulic – and peoples's health care, prevention (and the material supplies: sickness benefit, accident contribution and disabled contribution; and costy supplies, operations (oncology, transplantation) and emergency supply could be classified to the second group. The 'remaining' supplies, such as basic supply and outpatient special supply would be put to the third package. The first two units would be left in the state insurance system, while citizens would conclude agreement with private insurance companies for the latter supplies. However, the enforcement of the general insurance conditions and the determination of preferences is still uncertain. Who will be the good ('economic') patient? Is it reall possible that the logic of health care be followed by the logic of sale? (Bauer). Can the constitutional state target be divided – and in which limits – on the basis of the competition logic and interests of the private sphere?

V. Consequently, even if according to the achieved consensus the reform of health supply system is necessary, the historical antecedents and changes to the insurance structure must be considered. The Ombudsman absolutely agrees with expert opinion according to which the primary aim of the reform is to reduce the gap in life expectancy compared to other European countries. The question must be also responded if a unified nursing system can be operated (paralelly) besides the health insurance system, if the disabled – and accident insurance can be separated, respectively in which framework could it be possible to finance the system of social supplies. The gradual separation of tasks of health care and social character is also necessary for that, as a result of which a special, functionally divided multi-insurance system could be established.

The Constitutional Court has established several times that the abstract constitutional standard of the minimum of the right to social care is the inviolability of the right to life and human dignity. Considering all this, the State fulfils its constitutional obligation only if both health insurance and social subsidy systems are organized and well-operated. The only restric-

tion is that the State cannot modify arbitrarily the relationship of systems including insurance and solidarity elements *(Resolution 26/1993.(IV. 22.)* of the Constitutional Court), so it cannot leave – even temporarily – areas or social groups unprovided for and cannot cause supply circumstances which are undeserving to a human being.

If the fundamental right to life and human dignity is the only standard for the restructuring of the insurance, health care and social supply system, each step and institution can be undertaken which corresponds this condition, but no fiscal, competitive market and business arguments can be accepted which might jeopardise the right to life and human dignity as the main attribution of the democratic constitutional state. From this aspect the Commissioner considered that rerorms are promising, but not guranteeing results, which would be proportionate with the caused damages and risks. As a result, the Commissioner found worrying the methods of the transformation of the health insurance system also in respect of suitability. The long-term scheduled reforms introduced gradually – by social or professional consent – would even make possible more significant transformations form a constitutional aspect. It is important to remember that we are deciding on not only the already acquired rights of the middle-aged and the elderly, but the fundamental interests of future generations as well. Do not sacrifice the European Union ideas of constitutional rights, justice and solidarity on the altar of reforms. Even if it is true that the time of reforms has arrived, it is indispensable to introduce them in a socially accaptable, transparent and harmonized way. It is also evident that new resources are necessary for the operation of a health care system of a higher level, one possible means of which is the transformation of the insurance system. It is also indispensable to control patient histories and strictly monitor expenditures. It is hardly possible to operate a supply system, which seems to be profitable from a market aspect, without the co-operating contracting partners, namely the insured, and particularly for their grievance.

As it follows from the foregoing and from the previous position statements of the ombudsman, the main obstacle of the practice of every constitutional fundamental right and subjective right ensured by the law is the inviolability of other persons' fundamental rights and the unconditional respect thereof. So if the concerned persons disapprove the relating decisions, the provisions of the statutory instruments or the behaviour of the health care financing organisation/insurance company proceeding on the grounds of these statutory instruments by reason of the methods and/or

disadvantageous consequences of the modification of health insurance system, the practice of the fundamental legal control of the Constitutional Court and the Parliamentary Commissioner for Civil Rights shall be also considered at the latest during the negotiations of execution.

Closure of the Paediatric Clinic of Buda

The ombudsman issued his position under number OBH 2530/2007.

I. The Managing Director of the Paediatric Clinic of Buda (Budai Gyermekkórház és Rendel?intézet Kht.) addressed a petition to the ombudsman requesting him to support the efforts of the paediatric profession and himself aiming to make the health administration reconsider the present situation of the Paediatric Clinic of Buda in order to remedy the inequalities in service provision caused in the child care services of the Buda region and its agglomeration, which are not in line with the aims of the structural changes, and to restore the active operation of the hospital.

With regard to the method and expected consequences of the governmental measure which served as the basis of the petition, and recognising the danger of unforeseeable consequences which might arise due to the elimination of active beds in the renowned institution representing a high standard of in-patient care, the ombudsman considered it necessary to evaluate the situation developed from the aspect of human rights and fundamental constitutional rights. During the proceeding the mayor of Budavár Local Government also filed a petition with our office objecting against the closure of the institution. In order to explore the situation and the events objected against I contacted the Minister of Health requesting a presentation of the government's position concerning the institution, the economic and professional reasons behind restructuring and its expected benefits.

II. Based on the documents provided the following facts can be summarised. Instead of the children's wards of the so-called general hospitals, the conditions for modern and high standard care can be created in specialised paediatric clinic(s) known and recognised by the profession. The related policy arguments have enabled the closure of several children's wards over the past decades (Csepel Hospital, Délpest Hospital, István Hospital, MÁV Hospital, Péterfy Hospital, Rókus Hospital, Tiszti Hospital, Újpest Hospital). Afterwards two paediatric clinics and three specialised

hospitals were operating, which was professionally justifiable, though bed numbers were fairly high. (From these two hospitals - Madarász u., Heim Pál Hospital - have been merged recently). However, this does not justify the professionally hardly acceptable solution that Szent János Hospital should take over a substantial part of children's in-patient care in Buda.

The hospital manager claims that the resolution ordering the elimination of the active hospital beds is contrary to the needs of rational operation and the principle of avoiding wastage. In the recently built modern building (awarded with a prize of architectural excellence) chronically sick patients will be treated, while active care has been moved to the over hundred year old building of János Hospital. Hence the cost of necessary investments will largely exceed the 'saving' to be realised by the closure of the hospital in Buda.

In order to highlight the inconsistencies related to the Ministry's efforts aiming at spatial equalisation of services, the leader of the institution presented comparative data. According to these 85 beds are foreseen in Szent János Hospital for 'infant and children care, PIC' whereas the population of the area covered is 642,221 persons. For the same task Heim Pál Hospital is assigned 235 beds for a population of 864,980 persons. The Developmental Neurology Department closed in Svábhegy also has a claim to the 85 beds of János Hospital. As the maternity ward of the Szt. Margit Hospital, which is also affected by the integration process, has been transferred to János Hospital, it is expected that PIC tasks will increase and the remaining 50 beds will be shared with the surgical ward, while in Heim Pál Hospital – in addition to the 235 beds – further 40 beds are planned for traumatology and 40 beds for Internal Medicine and related professions.

A further inconsistency regarding the concept of 'task concentration and best prepared professionals' is that pursuant to the new hospitalisation order – Szt. János Hospital, SE Clinic, Heim Pál Hospital – the services concentrated as yet in the Hospital of Buda (where treatment was provided by highly qualified doctors and teams in all professions and subfields except for surgical and ophthalmological in-patient care) is now organised in a deconcentrated way.

Being aware of the above, the Minister of Health pointed out that legislators had determined the publicly financed capacities of specialised in-patient care with due consideration to constitutional principles. Furthermore the regulation aimed to rationalise domestic specialised in-patient care with a view to ensure equitable access to the different treatments and services and to improve the quality of treatments through the concentrated utilisation of resources while exercising proper control over publicly financed specialised in-patient care capacities.

According to the Minister about 20% of the patients having received the most expensive hospital care could have been successfully treated in more cost-efficient out-patient care. He considers that this was especially true for general paediatric care. The average bed occupancy rate in specialised paediatric clinics was 60.7% in the financial year 2006 and 50.3% in the first half of the financial year 2007. However, the active capacities of infant and paediatric care were only reduced by 26% on average during restructuring.

The Minister also presented the events related to the operation of the Paediatric Clinic of Buda, namely that general paediatric care was transferred from the Paediatric Clinic of Buda to Szent János Hospital. The decision was taken after negotiations among others with the members of the Local Government of Budapest in charge of the in-patient care of the capital. Paediatric care, just like any other profession, had been professionally analysed, and its concentration was a result of professional considerations. The Minister highlighted the following facts supported by specific figures from the previous year:

1. In the financial year 2006, 4720 cases of financed in-patient treatment were recorded in the Paediatric Clinic of Buda.

2. 1998 financed cases were recorded in the general paediatric ward, 1333 cases in otolaryngology, 971 cases in orthopaedics and 418 cases in the psychiatric ward for children and young people.

3. In the financial year 2006 the cases treated were classified into 111 homogeneous groups of patients (hereinafter: HGP), of which there were only 9 HGPs where the number of cases treated was at least 100 a year. In 50 HGPs there were less than 20 cases a year. First on the HGP list were adenoidectomy and tonsillectomy with altogether 772 cases, accounting for 94.6% of otolaryngologic operations. In the case of nearly 40% of the patients treated in the otolaryngologic ward no surgical intervention occurred.

4. Psychological care for children and young people covered a narrow field of the profession: diagnoses were childhood mental disorders and in 11 cases depression, no severe psychotic cases were treated.

5. In the financial year 2006 there were 99 surgical interventions out of 971 financed cases in orthopaedics (10.2%), of which 14 cases were minor operations. Finally it was stated that the majority of cases treated in general paediatrics were upper and lower respiratory tract infections. Treatment

days per case and the so-called Case-mix indicating the seriousness of cases were both lower than the average recorded in paediatric clinics.

The Minister mentioned that due to its profile, also in the period prior to restructuring, the Paediatric Clinic of Buda had been unable to provide services in several branches of the profession (e.g. paediatric surgery, paediatric ophthalmology, paediatric gastroenterology, infant and paediatric cardiology), but the clinic could not even cover the complete spectrum of services in those professions represented which expressly demand paediatric specialisation.

The Minister also emphasised that it served the safety of paediatric care that, pursuant to the current regulation in the form of a government decree, when calculating the limit of performance volume broken down to institutions (hereinafter: LPV), the performance volumes related to oncology, cardiology, traumathology and infant and paediatric care must be treated separately within the total performance volume. If the separated performance volume is insufficient to cover arising needs, the surplus demand must be covered from the unearmarked volume within the total performance volume, which means that surplus demands can also be satisfied in paediatric care.

The Minister highlighted that the Ministry would maintain continuous supervision over the financing of services. After the performances of the first three months following restructuring are processed, the experts of the Ministry of Health will review the LPV figures of the institutions. Unused LPVs will be transferred to institutions where the review of patient load shows that more LPVs are needed. The Ministry proves by means of a survey that also in the future, high standard institutions will provide in-patient care for the children of Buda, which are ready to provide not only special treatments but also intensive care, guaranteeing the safest possible treatment for children.

However, the Director of the Paediatric Clinic of Buda considers that the above justification for the elimination of active beds and the conclusion drawn from the data are controversial, and they are unsuitable for justifying the measures presented above. For instance the statement that from the 111 HPGs there were only 9 where more than 100 cases were treated annually – contrary to the Ministry's conclusion that the care capacity would be low – also means that in spite of its relatively small size, the hospital can treat a wide range of paediatric diseases and the specialist team able to treat a high number of subspecialities is also efficient in the case of rare and special illnesses.

The director also finds the critic concerning the orthopaedics department unfounded since as a result of the division of tasks among the paediatric orthopaedics departments of the capital it only provided conservative care. This was connected with the endorsement of the Minister's proposal made in January concerning bed numbers (80 active, 40 for rehabilitation purposes), which would have allowed for the establishment of a locomotor rehabilitation department.

Another argument contested by the Director is that the branch of profession is insufficiently qualified and there are deficiencies in the provision of care. Except for paediatric surgery, in the other professions (ophthalmology, surgery, gastroenterology) specialists with several qualifying examinations and in some cases with scientific degrees treated the children suffering from the given illness in out-patient care and in the closely cooperating infant and paediatric ward. This means that a matrix-like internal medicine care was provided here. It follows that the fact that not the full range of care was provided in certain professions can be explained in two ways. On the one side with the political decision made prior to the change of regime which allocated intensive surgical care to Szt. János Hospital. The management of the Buda Hospital has been requesting the revision of this decision for several years, with no result. On the other hand, there is no professional argument for a paediatric clinic with regional responsibilities to provide full-range care in all subspecialities since it is the task of regional centres and university clinics.

III. The current restructuring in health administration, the reorganisation of bed capacities and the transition problem of institutions to be closed completely provoked a reaction in society which goes beyond the closure of certain institutions and calls for the control of the state's institutional care obligation from the aspect of fundamental rights.

Since the beginning of his activity, the ombudsman has paid particular attention to the problems of health affairs, the operation of health institutions and the enforcement of the patients' rights. In this situation it has become apparent that the capacity and financing limits to be introduced by the health reform may, at least in the short run, further deteriorate the situation of institutions providing in-patient care since, as also testified by the current situation, the principles applied to hospital restructuring do not or only partly consider individual specificities, such as the special needs of children or psychiatric patients. It is also known that the closure of the health institutions located in the privileged areas of the Buda side

(Paediatric Clinic of Buda, Szabadsághegy Paediatric Clinic, OPNI) and the plan to sell the real estates have been on the agenda since 1995/1996, but there has not been as yet any occasion or sufficient political will to realise these plans.

In the context of seamless health care, especially for children, the main question is not the change of premises (building), since if only the location changed, professional work, research and decade-long successful provision of care could be further pursued at one place following a fast and well-prepared move. However, this is not the case. The former concept has been modified several times during recent background negotiations. This would not in itself give rise to concern, if the paediatric profession reported of a fast, well-prepared move. Contrary to that, at present the managers of the institutions do not have sufficient information about the future place of remaining rehabilitation beds (departments), the circumstances and, above all, the underlying reasons.

It is also a fact that the first restructuring plan issued by the Ministry of Health (January 2007) calculated with a significant decrease in bed numbers without the intention to eliminate altogether the active role of the institution. The possibility of closure was first mentioned in the recommendation of the Regional Health Council, which was immediately accepted by the competent Minister. The related proceeding of the Ministry of Health did not only affect patients (patients' rights) but also the experts, doctors and staff working in the hospital.

Dividing the successful and high standard care provided in the Paediatric Clinic of Buda between Szt. János Hospital and Heim Pál Paediatric Clinic can hardly be explained given the apparently insufficient personal and material conditions. Consequently it is difficult to see the professional considerations which necessitate the concentration of the paediatric care of the entire Buda region and its agglomeration (even if it is only partial) to a location which is apparently unprepared for that, by referring to fundamental constitutional values and 'the current capacity of the national economy' as mentioned in the Decision of the Constitutional Court 56/1995 (15 September).

The Constitutional Court stated ten years ago that in this respect, the care obligation of the state depends on the current capacity of the national economy, and also added that there is no constitutional standard for the functioning of Article 70/D, the necessary minimum is only determined for the critical extreme, the case of a total lack of care. 'Thus, the right to the highest possible level of physical and mental health cannot be interpreted

in itself as a subjective right, it is formulated as a State duty under Article 70/D (2) of the Constitution, including the obligation of the legislator to define subjective rights in certain fields of physical and mental health.' [56/1995. {Decision 56/1995 (15 September), Decision 54/1996 (30 November), Decision 37/2000 (31 October)}

Although it is generally accepted that the health reform cannot be procrastinated, sectoral financial anomalies burdening the state budget must be eliminated and the principle of the 'most modern therapy with the least money' is unfeasible, the current situation cannot be defended from the aspect of fundamental rights nor considering organisation theory and the medical profession. The new health system aiming to solve financing problems has impaired the institutional system of protection necessitated by the children's special situation.

A basic requirement for public services, including health services, is that they should operate in a legally determined system, in a calculable way. The principle of legal certainty imposes the obligation on legislators to create guarantees for the stability of the individual legal relationships. Therefore the rule of law and legality are formulated as constitutional requirements.

On the basis of the information obtained in the course of the proceeding, the data provided and the facts learned, I find the current situation objectionable for reasons related to fundamental rights, from the aspect of both ill children and health professionals. Therefore, in my opinion, a restructuring which results in questionable and professionally unacceptable circumstances instead of real quality care cannot be constitutionally justified neither in the short nor in the long run, not even if it is considered transitional by the government. On the other hand it is indispensable that the health administration acts with especial regard to the constitutionally guaranteed right to the highest possible level of physical and mental health when planning changes to certain fields of the health care system. It is also the Ministry's duty to plan measures and make proposals in consideration of the fundamental constitutional aspects of necessity and proportionality when harmonising the steps of restructuring.

As a result, I cannot find any constitutional justification for the termination of the active operation of the Paediatric Clinic of Buda given its modern principles, proven successes, long-term professional programme and substantial investments.

The Minister of Health has not presented the real professional and/or economic reasons behind his measures, not even when he was requested to

do so, and failed to explain why it was reasonable and expedient that the sick children of the Buda region (Districts I, II, III, XI, XII, XXII) and its agglomeration would only be treated in five other hospitals of the capital according to the reformed system of hospitalisation and attendance.

IV With regard to the urgent correction need arisen due to the legal, social and sociological consequences of the measure objected against, I request the Minister of Health to initiate new negotiations with the involvement of the institutions concerned and the representatives of the paediatric profession and to consider whether the active role of the renovated and properly operating Paediatric Clinic of Buda, which satisfies all European and domestic quality requirements and human needs, could be restored, with due consideration to my analysis based on the aspect of fundamental rights.

Simultaneously I request the Health Committee of the Hungarian Parliament to review the current capacities of the institutions providing paediatric in-patient care in Budapest after negotiations with the Vice Mayor of Budapest responsible for health affairs, considering the elimination of the active beds of the Paediatric Clinic of Buda.

Planned home-births

The Parliamentary Commissioner has issued a position statement in case OBH 4570/2007.

The Hungarian Ombudsman learned from media reports about the death of a baby in September 2007 – following his transportation to hospital – resulting from complications in the natural running of child-bearing arising during the latter stages of labour. The bearing started without any complications in a birth-house of Budapest. Considering the demand of the institution of home child-birth, which has given rise to disputes between one part of the civil society and the profession for a long time, the analysis of the situation by certain representatives of the obstetrician-gynaecologist profession, and recognizing the necessity to reach a consensus between the health care politics and the medical profession in case of the increasing number of demands and also considering the practice of the more developed countries, the ombudsman deemed it necessary to evaluate the situation from a human rights and constitutional perspective and to inform the public thereof for the sake of the soonest possible creation of an adequately grounded legal background.

Ad 1. Many international human rights documents and international agreements oblige the signatory states to respect the fundamental rights contained therein. Article 54 of the EU Charter of Fundamental Rights expressly states the prohibition of abuse of rights in respect of fundamental rights. According to this Article: 'Nothing in this Charter shall be interpreted as implying any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognised in this Charter or at their limitation to a greeter extent than is provided for herein.' These absolute rights are: the right to life, human dignity, health and personal integrity of each individual.

Ad 2. The state's objective obligation for institutional protection and its most important duty is to guarantee each person the *constitutional right to life and human dignity* in harmony with the unrestrictible character of this right (Article 8 paragraph 1 of the Hungarian Constitution). However, the objective obligation for respecting and protecting fundamental rights, the so called subjective fundamental rights can not be restriceted only to the obligation to abstain from their violation, but the state hereafter is obliged to provide for the insurance of conditions necessary for the emergence of these rights. Individuals exercise their fundamental rights from the aspect of their personal freedom and demands. The state, however, must provide guarantees so that subjective fundamental rights could really emerge and handle the relating life situations and values articulated by fundamental rights in itself, but also in harmony with all other fundamental rights. The protection of the constitutional right to life therefore is such an objective obligation, which protects human life in general and in life conditions as well. *(Resolution 64/1991. (XII. 17.) of the Constitutional Court, CCR 1991. p. 300-301.)*

Ad 3. The unambiguous hierarchy of human rights can be defined on the basis of the sentencing practice of the Hungarian Constitutional Court. This hierarchy are attempted to be flexibly but consistently enforced not from the values of the Constitution but by considering specific human rights factors. As a result, the Hungarian Constitutional Court has recognized the right to life and human dignity as a priority, the very basis of the system of fundamental rights which can be also seen as the source of all other rights 'attaching to the person'. „According to the interpretation of the Constitutional Court the right to human dignity is a «mother right», namely the source of the still not specified liberty rights. Therefore the interpretation of this right may influence the drawing of the lines of individual autonomy in case of other human rights. The right to

human dignity – above all others – 'expresses that there exists an absolute border which can not be exceeded by the state's and other people's coercive powers either'. Consequently there exists a core of autonomy and individual self-determination drawn out of everyone's direction by which – according to the classic wording – the human being can be a subject…' (parallel reasoning of *Resolution 23/1990. [X. 31.] of the Constitutional Court).* In this respect therefore the *right to self-determination* as a constitutional fundamental right must also be protected.

Ad 4. On the grounds of the state's objective obligation for life protection the unreasonable ignorance of the institutional system serving for the emergence of the right to health – which is also declared as state aim – can not be constitutionally allowed, although the especially significant 21st century paradigms of self-determination must be also considered. However, in case of the necessary and proportionate restriction of a fundamental right (including the restricting law), the indispensable condition of the operation of a constitutional state is the respect of law by state bodies and by citizens as well. The stable guarantees of conflict dissolving between the state's obljective obligation and the fundamental legal interest of individuals are clear, unambiguous and legitim norms which are professionally well grounded. At the same time this forms the basis of the requirement of *legal certainty*.

Ad 5. Given that the right to life, health and self-determination are fundamental rights, the essential content of which cannot be restricted even by Acts, the institutional system and legal framework around protection during birth can be also examined in this scope. Neither international nor domestic law currently contains provisions according to which planned home-births would be prohibited or restricted. It is certain, however, according to the aforementioned, that the intention or decision of the mother to bear her baby in a health care institution or at home is a personal (subjective) fundamental legal question which can also be considered as a state task of objective institutional protection. *(Bearing in a so called birth house qualifies equally as bearing at home.)* So it became crucial that the state ensure the life-protection of mothers and their babies through legislative actions and other organisational measures (e.g. by creating the professional protocol).

Ad 6. The Ombudsman therefore considered it necessary to reconsider every professional and legal argument formerly expressed in this domain, considering medical-professional arguments not supporting the possible planned home child-birth and keeping in sight the general life protective aspects of planned home child-birts and the international practice as well.

This practice contained the report Nr. OBH 1773/2003 of the Parliamentary Commissioner for Civil Rights and his General Deputy, the response of the Minister rejecting the recommendation calling on legislation and the position statement of the Obstetrical and Gynaecological Professional College of 18 January 2002. The expedient adoption of a framework law is indispensable to protect the right to the highest possible physical and spiritual health, so that any unlawful practice could be avoided, as well as the out-of-institution conduction of bearings which are attended to be risky.

Ad 7. As a result, considering the instiutional state obligation for life protection and the undeniable situation of the legislative exigency, the Ombudsman has drawn the attention of every person concerned – legislators and particularly representatives of the profession – to estimate coherence between professional rules and fundamental rights with increased discretion and responsibility with regard to the constitutional rights of bearing women and their babies and he has asked them to create the legal and ethic requirements and professional minimum standards to ensure that the circumstances surrounding planned home-births are safe.

The presence of journalists at demonstrations held in a public place

The Parliamentary Commissioner has issued a position statement in case OBH 5219/2007.

In a petition received by my office, the petitioner asked the Ombudsman to issue a position statement on the presence, identity check and journalists who were just doing their job at a demonstration held at a public square in Budapest on 17 November 2007 that had not been reported to the police in advance .

1. In the reply, the Ombudsman summarised the legal position concerning the freedom of expression as derived from the consistent practice of the Constitutional Court.

The Constitutional Court has interpreted Article 61 paragraph 1 of the Constitution in several of its decisions. The Constitutional Court is of the opinion that the freedom of expression is of increased importance when compared to several other fundamental rights and that is why the Court has granted improved protection to this freedom. As the Court sees it, the freedom of expression is the origin of fundamental rights of communication.

In Resolution 30/1992 (V. 26.), the Constitutional Court discussed the issue that is relevant regarding all constitutional fundamental rights, that is, whether or not they may be restricted and limited, and if so, on what terms, furthermore, on the basis of what criteria priority is to be determined in the case of their collision (that is, if they contradict). As far as the freedom of expression (including the freedom of the press) is concerned, this issue is of relevance as such freedoms are among the fundamental values of a pluralistic and democratic society.

Therefore, the freedom of expression has a special place among constitutional fundamental rights as in effect it is the origin of several other freedoms; these are collectively referred to as the fundamental rights of communication. Specific rights that originate from the freedom of expression are the right to free speech and the right to the freedom of the press, with the latter encompassing the freedom of all media, as well as the right to be informed and the right to freely obtain information. … Other rights related to the freedom of expression are the freedom of religion and conscience (Article 60 of the Constitution) and the right of assembly (Article 62).

This combination of rights enables the individual to participate in the social processes and the political life. History shows that on every occasion when the freedom of expression was restricted, social justice and human creativity suffered and humanity's innate ability to develop was stymied. (…) The government may only restrict a fundamental right if it is the only way to secure the protection or the enforcement of another fundamental right or liberty or to protect another constitutional value. Therefore it is not enough for the constitutionality of restricting the fundamental right to refer to the protection of another fundamental right, liberty or constitutional objective, but the requirement of proportionality must be complied with as well: the importance of the objective to be achieved must be proportionate to the restriction of the fundamental right concerned. In enacting a limitation, the legislator is bound to employ the most moderate means suitable for reaching the specified purpose. Restricting the content of a right arbitrarily without a compelling reason is unconstitutional, just like any restriction that is disproportionate to the purported objective. … The objective, institutional aspect of the right to freedom of expression relates not only to the freedom of the press, freedom of education and so on, but also to that aspect of the system of institutions which places the freedom of expression, as a general value, among the other protected values. …'

In conclusion, the restriction of a fundamental right is possible mainly if it is required for the protection of other constitutional rights and not if it is necessary for some abstract interest of society or the government such as public policy.

The Convention on the Protection of Human Rights and Fundamental Freedoms regulates the ways of limiting the freedom of expression.

According the Article 10 of the Convention:

'1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. …

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

Regarding this issue, it is important to mention a judgement dated 17 July 2007 passed by the European Court of Human Rights in connection with the Hungarian act on assembly (Bukta v Hungary [2007] ECHR Application no. 25691/04).

In the case the Court ruled in favour of the applicants because in December 2002 the police dispersed the spontaneous gathering of the demonstrators in front of Hotel Kempinski as they had not notified the police in advance on their intention to hold a demonstration. The applicants' applications were turned down by the court in Hungary. According to their reasoning it was impossible for them to comply with the act on assembly that requires the police to be notified three days in advance as they had learnt the night before that the Prime Minister of Hungary had decided to attend the reception given by the Prime Minister of Romania on the national holiday of Romania (1 December). The Hungarian courts disregarded this fact and the petition for review submitted by the applicants was turned down by the Supreme Court on formal grounds.

Next, the applicants turned to the European Court of Human Rights on 13 April 2004. They requested the court to establish that the police had violated the articles of the European Convention on Human Rights on the protection of the freedom of assembly and expression by dispersing the spontaneous demonstration. The Court accepted the plaintiff's claims and

held that the dispersing of the demonstration violated Article 11 of the Convention. The court passed no decision on the violation of the freedom of expression. The Court established that the Convention had been violated but it did not order Hungary to pay compensation in excess of reimbursing the plaintiffs for the costs of the procedure (EUR 2000).

The right to free expression protects opinion irrespective of the value or veracity of its content. Only this approach meets the requirement of ideological neutrality expressed by the amendment of the Constitution by Act XL of 1990 which deleted the enumeration of major ideologies from Article 2 of the Constitution that were indicated there as examples of pluralism. The freedom of expression has only external boundaries: until and unless it clashes with such a constitutionally drawn external boundary, the opportunity and fact of the expression of opinion is protected, irrespective of its content. In other words, it is the expression of an individual opinion, the manifestation of public opinion formed by its own rules and, in correlation with the aforesaid, the opportunity of forming an individual opinion based on the broadest information possible that is protected by the Constitution. The Constitution guarantees free communication (as the behaviour of the individual and as a social process) and the fundamental freedom of expression does not refer to the content of the opinion.

The communication rights (including the freedom of the press, the freedom of assembly, the right to gain information and to form an opinion and the right to freely obtain information in addition to the freedom of expression) are fundamental values of a democratic society and the most important guarantees of democracy. That is, of course, the reason why these fundamental and constitutional rights are granted enhanced protection.

The freedom of the press is a communication right that has several functions as it is a source of information for making an opinion in addition to the function of expressing one's opinion. Also, the press checks the government and thus restricts its power. The journalists therefore are to be protected during their work due to this role of the press.

The police therefore is not allowed to obstruct the journalists during their work as they are granted protection under fundamental rights. However, journalists are not above the law and the measures taken by the police may affect them. This is a conflict that is not yet resolved in Hungary as the preparation of the relevant guidelines and rules has just begun and the completion of the preparation process will likely take a longer time.

Therefore the ombudsman called the attention to the Special Report of the Organization for Security and Co-operation in Europe (OSCE) issued on 21 June 2007, titled 'Handling of the media during political demonstrations'. This report is characterized by the demands relating to the participation of the members of the media on demonstrations. Among others the report points out the followings:

'Both law-enforcers and journalists have special responsibilities at a public demonstration. Law-enforcers are responsible for ensuring that citizens can exercise their right to peaceful assembly, for protecting the rights of journalists to cover the event regardless of its legal status, and for curbing the spread of violence by peaceful means. Journalists carry the responsibility to be clearly identified as such, to report without taking measures to inflame the situation, and should not become involved in the demonstration itself. …Law-enforcers have a constitutional responsibility not to prevent or obstruct the work of journalists during public demonstrations, and journalists have a right to expect fair and restrained treatment by the police. …Senior officials responsible for police conduct have a duty to ensure that officers are adequately trained about the role and function of journalists and particularly their role during a demonstration. In the event of an over-reaction from the police, the issue of police behaviour vis-à-vis journalists should be dealt with separately, regardless of whether the demonstration was sanctioned or not. A swift and adequate response from senior police officials is necessary to ensure that such an over-reaction is not repeated in the future and should send a strong signal that such behaviour will not be tolerated. …There is no need for special accreditation to cover demonstrations except under circumstances where resources, such as time and space at certain events, are limited. Journalists who decide to cover 'unsanctioned demonstrations' should be afforded the same respect and protection by the police as those afforded to them during other public events. …

Wilful attempts to confiscate, damage or break journalists' equipment in an attempt to silence reporting is a criminal offence and those responsible should be held accountable under the law. Confiscation by the authorities of printed material, footage, sound clips or other reportage is an act of direct censorship and as such is a practice prohibited by international standards. The role, function, responsibilities and rights of the media should be integral to the training curriculum for law-enforcers whose duties include crowd management. …Journalists should identify themselves clearly as such, should restrain from becoming involved in the action of the demonstration

and should report objectively on the unfolding events, particularly during a live broadcast or webcast. Journalists' unions should agree on an acceptable method of identification with law enforcement agencies and take the necessary steps to communicate this requirement to media workers. Journalists should take adequate steps to inform and educate themselves about police measures that will be taken in case of a riot. …Both law enforcement agencies and media workers have the responsibility to act according to a code of conduct, which should be reinforced by police chiefs and chief editors in training. Police chiefs can assist by ensuring that staff officers are informed of the role and function of journalists. They should also take direct action when officers overstep the boundaries of these duties. Media workers can assist by remaining outside the action of the demonstration and clearly identifying themselves as journalists…'

2. Pursuant to Article 40/A paragraph 2 of the Constitution, the fundamental duty of the police is to maintain public safety and order. According to Act XXXIV of 1994 on the Police, the police have the right to take various measures to fulfil their fundamental duty. Naturally, the majority of these measures restrict certain constitutional rights of the citizens. Arrests and identity checks are two such measures aimed at preventing any actions that would threaten public safety. Therefore it may be concluded that the police may check the identity and arrest anyone in a public place if the statutory conditions are met. However, identity checks may only be made of the identity of the subject needs to be ascertained in the interest of maintaining public order and safety. Arrests are also allowed only in the interest of public safety, save for the cases when it is mandatory by law. The police may only take these measures in cases and to the extent they are required due to a threat to public safety and order as both arrests and identity checks restrict the rights of citizens (the principle of proportionality). The threats and their level need to be established based on clear and direct evidence.

In case of the demonstration on 17 November 2007 when no prior notice was given to the police, the identity check and the subsequent arrest of the journalists may only be deemed legal if it can be established what kind and level of threat led to these measures, that is, if the measures have met the requirements of proportionality and necessity and if the measures have not been arbitrary.

Therefore the identity checks and arrests are only legal if the reasons they have been applied for are clear, direct and timely. These three conditions are to be met in case of both measures.

The Ombudsman has not examined the details of the measures taken in the particular case and therefore it is not possible to check whether the statutory criteria of checking the identity of the journalists, of ordering them to leave and of arresting them has been met. Under the legal regulations, the public order and safety needs to be threatened otherwise the measures cannot be applied. The police are required to verify whether there has been an actual threat and they need to give evidence that it has been necessary to take the measures of checking the identity, of ordering the subjects to leave the place and of arresting them. Only if the abovementioned information is given may it be concluded that the police measures applied in connection with the journalists have actually been proportional to the goal to be achieved and suitable to achieve it. As long as the police fail to give a concrete answer to this dilemma, there will be concerns regarding the constitutionality of the police measure (the commander's decision) in question.

Motion to the Constitutional Court

The Parliamentary Commissioner submitted a motion under OBH 5091/2007 in connection with an omission of the legislator.

On the basis of a citizen's complaint, the Ombudsman started an inquiry because of an alleged violation of the citizens' right to gain information due to the misleading content in the consolidated version of the 'Act on Legislation' as published in the 9 August 2007 issue of the Hungarian Gazette.

The inquiry (OBH 4263/2007) concluded that the 'effective and consolidated text of Act XI of 1987 on Legislation (AL) incorporating the modifications' causes legal uncertainty and thus it violates the citizens' right of legal certainty.

The Parliamentary Commissioner requested from the Minister for Justice and Law Enforcement to initiate the modification of the AL and to prevent any further publication of misleading texts in the Hungarian Gazette.

The Minister for Justice and Law Enforcement made the following reply, quote: '*I agree that due to the legislator's omission the current situation is unconstitutional as the legislator has failed to harmonise the text of the AL with the currently effective Constitution. However, I do not agree with the statement that the consolidated text published in the 9 August issue of the Gazette is misleadin'*. The

Minister wrote that the challenged text of the AL is only misleading 'because it is unconstitutional'. The reason of the alleged or actual unconstitutionality is the fact that the text of the AL has not been reviewed item by item based on Act XXXI of 1989; instead, it has only been revised generally and comprehensively, that is, word by word in accordance with the modifications.

As a result, the following effective regulations have been published in the official journal of the Republic of Hungary and also on the websites commonly used for studying effective law: *Section 1 paragraph 1 item b) The legislative bodies issue the following legal instruments: (...) the President of the Republic may issue a law-decree...*

The currently effective Act on Legislation includes several errors as it specifies, for instances deputy ministers, orders of secretaries of state in charge of organs with nation-wide competence and council decrees, but as these institutions do not exist today, they cannot legislate. However, the President of the Republic is 'granted' legislative power.

The Minister for Justice and Law Enforcement indicated that the ministry (recognising the unconstitutionality of the statute) initiated the modification of the act on numerous occasions. The minister even submitted a bill on 18 June 2003 (T/4488) but there were not enough votes in favour of passing it as the act requires a two-thirds majority for modification.

Accordingly, the Ombudsman concluded the inquiry under OBH 4263/2007 and, to eliminate the anomaly, the Ombudsman requested the Constitutional Court under OBH 5091/2007 to review the Act on Legislation, to establish an unconstitutional omission of legislative duty if necessary and to instruct Parliament to terminate the unconstitutionality.

Advising on a legal instrument: the bill on mandatory health insurance

The Ombudsman issued an opinion (Gy. 342/2007) on the draft. The Ombudsman pointed out that due to the introduction of the new system in healthcare the entire health insurance scheme needs to be reconsidered and a modern financial background needs to be established that is consistent with the treatments and takes the principle of solidarity into consideration. However, due to the expected consequences of the reforms and with regard to the fact that the new structure of the health insurance system and the introduction of competing insurance providers may disorganise the current establishment of the health insurance system and may have unexpected consequences. That is why it is required to review the current situation from the aspect of fundamental rights.

The principle of the draft act is that it wishes to build a new structure based on the principles of freedom, solidarity, competition and a fairer access. This new system would rely on private investors also, not just the state. This, however, is difficult to achieve without fundamental changes to the current system. This, of course, affects rights acquired earlier. Therefore it must be examined whether each change affecting the health insurance system and the structure of medical treatment restricts fundamental rights and whether these restrictions are justifiable. The new constitutional connection between the fundamental right to medical treatment and welfare in general on the one hand and the protection of the property rights (that is, acquired rights) on the other must also be evaluated. Under what conditions can the new system guarantee the treatment of sick, disabled or elderly patients to preserve their health, what kind of contributions should be paid for this and under what unalienable rights? What techniques are there to minimise the number of free riders and still uphold the principles of solidarity? Will the economic relation between registered income and paid contributions on the one hand and the actual revenues and expenses of the funds on the other distort the market situation for new insurance companies and their dependence on the state budget?

A principle often stressed by the Constitutional Court is that '*restricting the content of a right arbitrarily (without a compelling reason) is unconstitutional, just as doing so by using a disproportionate restriction compared to the purported objective*'. [*Resolution. 30/1992 (I. 26.)]* A fundamental right may be restricted primarily because another constitutional right is protected through the restriction but it can also be restricted for some abstract interest of the society or the state (for instance, public interest or health) necessitates such a restriction. When examining a restriction, the Constitutional Court applies the test of necessity and proportionality, that is, it only considers the restriction of a fundamental right constitutional when it is based on a compelling reason and when the importance of the desired objective is in line with the weight of the injury caused to the fundamental right in order to achieve that objective. *[Resolution 20/1990 (X. 4.)]* According to the practice of the Constitutional Court, the restriction is only constitutional if all three criteria (necessity, suitability and proportionality) are met. It must be examined whether these conditions

apply in case of the restrictions concerning rights acquired in the system when there has been only one health insurance fund.

The Constitutional Court has pointed out several times that the minimum constitutional criterion of the right to welfare benefits means that the right to life and human dignity should not be violated. With regard to this, the state will fulfil its constitutional obligations if it organises and operates both the health insurance system and the social welfare system. *The sole limitation is that the state may not change the relationship between the insurance and the solidarity elements of the system arbitrarily* [Resolution 26/1993 (IV. 22.)], *that is, the reforms may not result in a lack of treatment or inhumane circumstances for certain areas or groups of society, not even temporarily.*

Based on all these notions and the one-year transitional period, the Parliamentary Commissioner has summarised his position on the bill as follows:

As the Ombudsman sees it, the establishment of the new Western European model based on a consensus in the profession as cited in the reasoning of the bill cannot operate without the actual involvement of the medical profession. In connection with the introduction of the new system as part of the National Health Programme, the *National Health Council* as a professional organisation may also play this role. Based on Section 148 paragraph (1) to (3) of Act LIV of 1997 on Healthcare (AH) and Government Decree 229/1998 (XII. 30.) Korm. (which defines the competence, the organisation and the operation of the Council) it may be concluded that the NHC is a guarantee that a consensus will be reached in health policy. Therefore it is not reasonable that the legislator does not allow the NHC to exercise professional (that is non-governmental) supervision within the individual funds and when deciding on the tenders. (Section 13: Directorate; Section 25: Supervisory Board, Section 59: Fee Committee, Section 60: Quota Committee, Section 168: Tender Evaluation Committee). In addition to the financial and insurance experts, the member appointed by the NHC to the committees may be able to contribute to the work of the committee by presenting his/her opinion as a medical professional. For minority owners it may be advantage to use the services of an existing and legitimate organisation.

Although through the bill (Section 150) the modification of the relevant provision in the AH is intended [Section 49 paragraph 2], only the representative of the Alliance of Health Insurance Funds and the head of

the organ managing the Fund will become members of the committee; in this way, the professional supervision discussed above is not guaranteed.

The Commissioner has also made certain additional recommendations by specifying the section number and a brief reasoning in each case. Finally, the Ombudsman declared that he hoped to see well-founded and appropriate professional arguments for the current grand-scale reform of the healthcare system, he hoped to see methods that comply with the principle of the rule of law but (most importantly) a national consensus.

Following several additional modifications, the Act on Health Insurance Funds (Act I of 2008) was published in the 2008/24 (18 February) issue of the Hungarian Gazette.

Advising on a legal instrument: the draft Government Decree on the border area

The Ombudsman issued an opinion (Gy. 317/2007) on the draft of the decree. The draft government decree on the border area and on the regulations concerning the entry to and stay in the area of the checkpoint for a reason other than crossing the border has been sent to the Commissioner by the Ministry for Justice and Law Enforcement and the Commissioner was requested to give his opinion on the draft. Under Section 2 paragraph 1 of the draft, 'a parliamentary commissioner, judge, prosecutor (acting within the framework of his/her duties defined by an Act of Parliament) or a person authorised by a international treaty may enter a checkpoint for a purpose other than crossing the border and stay there as long as it is necessary for the completion oh his/her duties'. Under Section 28 para. (1) of Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights, the tasks of administration and preparation relating to the tasks of the ombudsman and the special ombudsman shall be performed by the Office of the Parliamentary Commissioner.

In line with this provision, the Ombudsmen typically do not act in person in the course of inquiries but rather through a civil servant employed by the Office of the Parliamentary Commissioner who has the specialist knowledge required for the given inquiry. The Commissioners pay particular attention to protecting the constitutional rights of captives, including the ones in the border area. It is a natural element of Ombudsman practice to check the placement of the captives and their circum-

stances in the course of unannounced visits at the site. This, as the Ombudsman sees it, is indispensable for the satisfactory completion of our tasks enumerated in the Constitution. It is for this reason that the Ombudsmen objected to the draft in a letter they all signed as Section 3 paragraph 2 of the draft includes the provision that in the future '*at a time agreed in* advance, a civil servant of the Office of Parliamentary Commissioners may enter the border area by presenting his/her identity card verifying his/her position and also his/her letter of commission.'

As the announcement of the inquiry and the specification of its time do not serve the purpose of the inquiry, the restriction violates the essence of the Parliamentary Commissioner's institution. In the interest of protecting the constitutional rights of the persons in the border area, the Ombudsman insists on maintaining the current practice, that is, the employees of the Office selected for this purpose should be able to enter the border area in the future without announcing such visit in advance and by presenting their letter of commission and their identity card from the Office as specified above and they should be allowed to stay their for the period necessary for the completion of their assignments. Based on the above, the Commissioners requested the Minister for Justice and Law Enforcement to have the proposer of the bill delete the provision in Section 3 paragraph 2 preventing them from completing their tasks.

The Minister informed the Ombudsmen in his reply dated 31 October 2007 that the text of the draft had been modified in accordance with the recommendations. Government Decree 330/2007 (XII. 13.) took effect on 1 January 2008 with a wording in line with the request of the Commissioners.

Advising on a legal instrument: the bill on budgetary liability

The Ombudsman issued an opinion (Gy. 413/2007) on the draft of the bill. Although in the course of the preliminary legislative process it has not been made available to the Ombudsman by the Minister of Finance, the Ombudsman nevertheless reviewed the draft of the act on budgetary liability and the Budget Office (bill number: T/4319) ex officio and he noticed several contradictions between the bill and Act XXXVIII of 1992 on Public Finances.

In connection with guaranteeing that the budget act is strictly complied

with, the Ombudsman declared that it is not a guarantee of compliance with the budget act that Parliament passes an act on enforcing compliance with existing acts; the real guarantee is if Parliament is able to check the implementation of the budget. Regarding the same matter, the Ombudsman pointed out that the fundamental issues of public finances are regulated by the Constitution are existing guarantees, and the Ombudsman also stressed the importance of continuous financial supervision. In order to avoid passing an act that would include several unrelated matters, the Commissioner proposed a new regulatory concept that would consider the budget (and its final accounts) a special source of law (at the same level in the hierarchy as the Acts of Parliament); in this way, the possibility of modifying unrelated acts through the budget act (or the final accounts) would be eliminated. In addition to procedural rules, the Commissioner specified it as an important issue to have a balanced budget and proposed the application of the German 'Finanzplan' method of mid-term financial planning.

Regarding the establishment of the Budget Office and its public law status, the Commissioner put forward the idea of excluding the possibility of a second term for the head of the Office for the purpose of guaranteeing the independence of the office. Also, the Ombudsman declared that the head of the Office should not be a member of a party or a political group. The Commissioner found the regulations concerning the employees of the Office involved in the basic tasks of the Office unsubstantiated as the draft includes special regulations on the salaries and the paid holidays of the civil servants employed by the Office that differ from the rules applicable to other civil servants to an unreasonable degree. Also, the Commissioner voiced his concern regarding the establishment of a state organ for the sole purpose of 'forcing' other organs of the state to comply with the budget, that is, to make other organs respect the regulations passed by the state itself.

The Commissioner informed on his position the Speaker of Parliament, the competent committees of Parliament, the chairman of the State Audit Office and the Minister of Finance who had proposed the bill. The chair of the State Audit Office agreed with the Ombudsman in his reply. The Minister of Finance informed the Commissioner that he would take the recommendations into consideration. Parliament has not yet passed the bill.

Joint announcement of the Commissioners on the attacks on public figures

Any actions that threaten public peace or disturb the citizens are crimes. For committing these crimes, it is enough if the offender is aware that his/her actions may trigger hatred.

Naturally, this awareness includes the recognition of the fact that if hatred is instigated, it may result in extreme activities, intolerant actions, rejection, the loss of rights and may even cause violence. Over the last few days, several public figures and politicians and their property have suffered violent and direct attacks and such behaviour cannot be justified by the freedom of expression or political or other beliefs.

The Ombudsmen condemn this type of behaviour. Their position is that in Hungary, a member state of the European Union that stresses the significance of human dignity, violent actions that disregard human rights, personality rights, basic moral rules and the values in the personality of individuals are unacceptable.

As the Christmas holiday is fast approaching and like we have done so several times over the past few months, let us again draw the attention of the public to the necessity of compliance with the Constitution and the relevant regulations and the necessity of following the norms of a civilised political discourse.

Budapest, 20 December, 2007

The Commissioner's call for a settlement without litigation

The Commissioner offered his help as a mediator between the affected organs of the National Police (the Budapest Police and the Law Enforcement and Security Service) and the persons represented by the National Foundation for the Protection of Rights; the Commissioner wished to assist in settling the claims accepted by the affected parties for any damage suffered because of the actions of the police in September and October 2006 as soon as possible. The Chief of the National Police Headquarters accepted the offer.

The Chief of the National Police Headquarters agreed that the most effective way of solving the problem is to settle the matter through agreements and without litigation. The Chief of the National Police Headquarters

thus proposed negotiations. However, since the Chief of the National Police Headquarters only supervises the Budapest Police and the Law Enforcement and Security Service from a professional aspect and the latter two organisations are independent legal entities managing their finances alone, the Chief of the National Police Headquarters may not undertake any obligation on their behalf and may not instruct them to do so. Consequently, the role of the Chief of the National Police Headquarters in the issue is also limited to mediation and helping the parties in reaching settlements.

The Chief of the National Police Headquarters asked the National Foundation for the Protection of Rights to make the damage claims in writing and specify the evidence for the claims. The meeting in person for reaching a settlement should only take place when both parties have had a chance to study the demands of the other. The Chief of the National Police Headquarters has appointed several coordinators for negotiation at each affected organ.

The Commissioner advised the director of the Foundation to contact the coordinators of the police organs in order to begin negotiations and reaching settlements as soon as possible.

Budapest, 20 December, 2007

Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights

For the execution of Article 32/B of the Constitution Parliament passes the following Act:

Tasks of the Parliamentary Commissioner for Civil Rights

1. § It shall be the duty of the Parliamentary Commissioner for Civil Rights (hereinafter 'Ombudsman') to investigate or to have investigated any improprieties of constitutional rights, he has become aware of, and to initiate general or particular measures for the redress thereof (paragraph (1) of Article 32/B of the Constitution.).

Election of the Ombudsman and of the Special Ombudsman

2. § (1) In order to ensure the protection of fundamental rights Parliament shall elect the ombudsman as commissioner responsible exclusively to Parliament.

(2) For the protection of certain fundamental rights Parliament may also elect by two thirds majority voting a special ombudsman defined by the law. The special ombudsman shall be entitled to take independent measures in his own professional field. The ombudsman shall not proceed in cases under the scope of authority of the special ombudsman.

(3) If the ombudsman is prevented, or his office is vacant, the ombudsman shall be deputized for by the special ombudsman appointed by the ombudsman, or in the lack of this or if the appointed ombudsman is prevented, by the oldest other special ombudsman.

(4) If the special ombudsman is prevented, or his office is vacant, his scope of authority shall be exercised by the ombudsman.

(5) Where this Act mentions ombudsman, by this – unless otherwise prescribed by a separate Act – the special ombudsman shall be understood as well.

3. § (1) Any Hungarian citizen graduated from the faculty of law of a university and disposing of voting rights may be elected as ombudsman, who meets the requirements prescribed in paragraphs (2) and (3).

(2) Parliament shall elect the ombudsman from those lawyers with outstanding theoretical knowledge or from lawyers having at least ten years professional practice who have considerable experience in the conduction, supervision or scientific theory of proceedings concerning fundamental rights.

(3) Anyone who during the four years preceding the proposal for election has been a Member of Parliament, President of the Republic, member of the Constitutional Court, member of the Government, secretary of state, professional secretary of state, member of the local government council, notary, public prosecutor, professional member of the Hungarian Army and the law enforcement bodies, or the employee of a party shall not be elected ombudsman.

4. § (1) The President of the Republic shall make a proposal for the person of the ombudsman within 3 months before the expiration of his predecessor's mandate, but not later than on the 45th day preceding the expiration of his mandate.

(2) If the mandate of the ombudsman terminated by reasons stipulated in items b)-f) of paragraph 1 Section 15, the President of the Republic shall make a proposal for the person of the ombudsman within thirty days.

(3) The person proposed shall be heard by the Parliamentary Committee competent relating to the sphere of tasks of the ombudsman.

(4) If Parliament does not elect the person proposed, the President of the Republic shall make a new proposal within not later than thirty days.

(5) Parliament elects the ombudsman for six years. The ombudsman may once be re-elected.

Conflict of Interests

5. § (1) The mandate of the ombudsman shall be incompatible with any other state, local government, social or political office or mandate.

(2) The ombudsman shall not engage in any other gainful employment, and he shall not accept any remuneration for his other activities – except for scientific, educational, artistic activities, activities falling under the protection of copyright, or proof-reader's and editor's activities.

(3) The ombudsman may not be senior official of a business association, member of the supervisory board thereof, furthermore, the member obliged to personal cooperation of a business association.

(4) Beyond the tasks resulting from his scope of authority, the ombudsman shall not pursue any political activity and shall not make any political declarations.

Declaration of Assets

5/A. § (1) The ombudsman shall make a declaration of assets within thirty days following his election then in every 3 years according to the relevant provisions of the Act on the legal status of MPs.

(2)

6. §

Legal Status of the Ombudsman

7. § (1) The ombudsman enters into office at the expiration of the mandate of his predecessor, respectively by election if he has been elected following the termination of his predecessor's mandate.

(2) When entering his office, the ombudsman shall take an oath before Parliament.

8. § In the course of his proceedings, the ombudsman shall be independent; he shall take his measures exclusively on the basis of the Constitution and of the law.

9. § (1) The basic remuneration and grants of the ombudsman shall be the same as those of the ministers, while the measure of the senior official's supplementary remuneration shall be one and the half as much as the ministerial senior official's supplementary remuneration.

(2) The ombudsman shall be entitled to forty working days leave per calendar year.

10. § (1) As to the social insurance status of the ombudsman, the rules relevant for public servants shall be applied with the proviso that the Parliamentary Commissioners' Office is responsible for the obligations of the employer.

(2) The duration of the mandate of the ombudsman shall be regarded as time spent in employment and as service time counting towards pension.

Immunity

11. § (1) The ombudsman is entitled to the same immunity as the MPs.

(2) For proceedings relating to immunity procedural rules relating to the immunity of MPs shall be applied.

(3) In the case of the suspension of immunity the Parliament shall decide by a two thirds majority voting. The Speaker of the Parliament shall take the necessary measures in case of the violation of the immunity.

12-14. §

Termination of the Mandate of Ombudsman

15. § (1) The mandate of the ombudsman shall terminate by:

a) the expiry of the term of mandate;

b) death;

c) resignation;

d) the declaration of conflict of interest;

e) exemption;

f) removal from office.

(2) In the cases of items a) to c) of paragraph (1) the termination of the mandate of the ombudsman shall be established by the Speaker of Parliament. In the cases of items d) to f) of paragraph (1) Parliament shall decide in the issue of the termination of the mandate. The votes of two thirds of the Members of Parliament shall be necessary for pronouncing the termination of the mandate.

(3) Resignation shall be communicated in writing to the Speaker of Parliament. The mandate of the ombudsman terminates on the day signalled in his resignation. A statement of approval is not necessary for the validity of resignation.

(4) If the ombudsman does not terminate his conflict of interests within thirty days from his election or in the course of his activity a conflict of interests arises, the Parliament shall pronounce – upon the written motion of any Member of Parliament and after requesting the opinion of its committee responsible for conflict of interest affairs – the existence of conflict of interests by the votes of two thirds of its Members within thirty days of receipt of the motion. If in the course of the conflict of interests' procedure the ombudsman terminates the conflict of interests against him, the establishment of conflict of interests shall be ignored.

(5) The mandate may terminate by discharge if the ombudsman is not able to meet his duties resulting from his mandate for more than ninety days through no fault of his own. Discharge may be moved for by any Member of Parliament. In case of discharge the ombudsman shall be entitled to three months special remuneration.

(6) The mandate may terminate by removal from office if the ombudsman does not meet his duties resulting from his mandate for more than ninety days through his own fault, intentionally neglects his obligation for declaring his assets or intentionally presents false report concerning significant data or facts in his declaration of assets, or commits a criminal offence established in a final judgement. The removal from office may be

moved for by the committee dealing with conflicts of interests' matters of Parliament after examination of the reasons giving rise to it.

(7)

Proceedings and Measures of the Ombudsman

16. § (1) Anybody may apply to the ombudsman if in his judgement the proceedings of any authority (paragraph (1) of Section 29) or organ performing a public service (hereinafter together 'authority') caused impropriety relating to the fundamental rights of the petitioner, provided that he has exhausted the available possibilities of administrative legal remedies – except for the judicial review of administrative decisions – or that no legal remedy is ensured for him.

(2) In order to terminate an impropriety relating to fundamental rights the ombudsman may act also ex officio in case of the existence of the conditions indicated in paragraph (1).

(3) Any petition submitted to the ombudsman shall be free of duty.

(4) If the person submitting the petition so requests, his identity shall not be revealed by the ombudsman. No one shall be placed in a detrimental situation by reason of his turning to the ombudsman.

17. § (1) With the exception contained in paragraph (2) the ombudsman shall examine the petition submitted to him. He shall select himself the measure deemed to be purposeful within the framework of this Act.

(2) If in the judgment of the ombudsman the impropriety included in the petition is of small importance, the ombudsman shall not be obliged to investigate the petition. He shall notify thereof the person having submitted the petition.

(3) The right of investigation of the ombudsman shall extend to proceedings instituted after the coming into force of Act XXXI of 1989.

(4) If a final administrative resolution has been passed in the matter, the ombudsman can be applied to with a petition within one year of the communication thereof.

(5) The ombudsman shall not proceed in cases where a court procedure has been launched for the review of the resolution, or a final court decision was taken.

18. § (1) In connection with the non-appealably terminated matters, the ombudsman shall be entitled to control any authority, and in the course thereof – unless otherwise prescribed by a separate Act – he may have access to the localities of the authority. In the interest of exercising his rights, the ombudsman may have access to the areas serving the operation of the Hungarian Army, of the services of national security, of the police and law enforcement organs in the way regulated by the minister having competence thereto. This regulation may not impede the control in effect.

(2) The ombudsman may request data and information of any authority in connection with the proceedings conducted by him or in connection with the omission of proceedings, furthermore, he may inspect the documents, he may request the sending thereof, or if this is not possible, the preparation of copies thereof.

(3) The ombudsman may hear the official in charge of the matter investigated by him or any employee of the organ conducting the proceedings, and may request the conducting of an inquiry by the head of the organ concerned or the head of its supervisory organ or the head of the organ otherwise entitled to the conduction thereof by the law.

(4) In a matter investigated by him the ombudsman may request written explanation, declaration, information or opinion of any organ – also of organs not qualified as authorities according to this Act – or an employee thereof.

(5) State secrets and service secrets may not impede the ombudsman in the exercise of his rights regulated in this Section, but the provisions relating to secrecy shall be binding for him as well. The ombudsman shall be under the obligation of secrecy even after the termination of his mandate.

(6) In the course of exercising his rights regulated by this Section, the ombudsman shall manage the personal data connected with the inquiry and the application of which is necessary for the sake of the effective conduction of the inquiry. The ombudsman shall manage personal data only in the extent and for the period necessary for conducting his inquiry. The ombudsman is entitled to publish the conclusions of his inquiry.

(7) The ombudsman may exercise his right to access to documents of the Hungarian Army, the services of national security, the police, the investigative authority of the Hungarian Tax and Financial Control Administration Office, the Customs and Finance Guard and the investigative body of the Public Prosecutor's Office in accordance with the limitations laid down in this Act.

(8) For a question or notification also relating to the secret information gathering activities of the services of national security, the police, the investigative authority of the Hungarian Tax and Financial Control Administration Office, the Customs and Finance Guard and the investigative body of the Public Prosecutor's Office the ombudsman shall draft his

response in a way that conclusions to the secret information gathering activities of the listed organs in individual cases could not be drawn from this.

(9) The Annex to the Act shall contain those documents of the Hungarian Army, the services of national security, the police, the investigative authority of the Hungarian Tax and Financial Control Administration Office, the Customs and Finance Guard and the investigative body of the Public Prosecutor's Office which the ombudsman may not inspect. If, however, the ombudsman deems necessary the examination of the documents enlisted in the Annex in order to completely disclose the matter, he may apply to the competent Minister, in the case of the services of national security to the director general heading the service or in the case of the investigative body of the Public Prosecutor's Office to the Chief Public Prosecutor for the examination thereof. The persons requested shall be obliged to conduct the inquiry desired by the ombudsman (or to have it conducted), and to notify the ombudsman of the result thereof within fifteen days.

(10) In the course of the hearing in accordance with paragraph (3) the person requested may refuse to answer or to make a declaration in accordance with paragraph (4) if

a) the person affected by the petition forming basis of the proceedings of the ombudsman is his relative or common-law spouse according to the Code of Civil Procedure;

b) in the course of answering or making the declaration he accuses himself or his relative or common-law spouse according to the Code of Civil Procedure of the perpetration of a criminal offence, in the question relating thereto.

(11) If on the basis of his powers declared in paragraphs (2)-(4) the ombudsman requests data (information, explanation, etc.), the requested organ shall be obliged to fulfil the request – unless otherwise prescribed by this Act – within the deadline established by the ombudsman, which deadline shall not be shorter than 15 days.

19. § (1) The ombudsman shall notify the petitioner of the results of the investigation conducted and of his eventual measures.

(2) The ombudsman shall reject evidently unfounded petitions, as well as petitions submitted repeatedly and containing no new fact or data on the merits, and he may reject petitions not submitted by the party entitled to do so, or anonymously submitted ones. The rejection shall be justified in all cases.

(3) The ombudsman shall transfer the petition relating to a matter not within his competence to the competent organ, with the simultaneous notification of the petitioner.

20. § (1) If the ombudsman comes, on the basis of the investigation completed, to the conclusion that an impropriety concerning fundamental rights exists, he may make a recommendation for remedy to the supervisory organ of the organ having brought about the impropriety – with the simultaneous information of the organ concerned. The supervisory organ shall notify the ombudsman within thirty days of receipt of the recommendation of his standpoint on the merits formed in connection with the recommendation and/or of the measures taken.

(2) If the supervisory organ did not agree with the contents of the recommendation, the ombudsman shall inform the supervisory organ within fifteen days of receipt of the communication relating thereto of the maintenance, amendment or withdrawal of the recommendation.

(3) If the ombudsman amends the recommendation, it shall be regarded as a new recommendation from the point of view of the measures to be taken.

(4) In the case of a member of the Government, autonomous public administration body and Governmental office the ombudsman shall make a recommendation to the organ bringing about the impropriety.

21. § (1) If in accordance with the available data the organ bringing about the impropriety in connection with fundamental rights is able to terminate this impropriety within its own competence, the ombudsman may initiate the remedy of the impropriety with the head of the organ concerned. Such initiative may also be made directly (by telephone, verbally etc.); in such case the date, way and essence of the initiative shall be laid down on the document on file.

(2) The organ concerned shall inform the ombudsman within thirty days of receipt of the initiative of his standpoint on the merits of the initiative and of the measure taken.

(3) If the organ requested – with the exception of the organs indicated in paragraph (4) Section 20 – does not agree with the initiative, he shall present it together with its opinion to its supervisory organ within the deadline indicated in paragraph (2). The supervisory organ shall notify the ombudsman within thirty days of receipt of the presentation of its standpoint, and of the measure taken.

(4) Otherwise, the provisions of paragraphs (1) to (3) of Section 20 shall be governing mutatis mutandis for the further proceedings of the supervi-

sory organ and of the ombudsman, with the proviso that the ombudsman shall notify the supervisory organ whether he maintains the initiative in an unchanged or amended form as a recommendation.

22. § The ombudsman may make a motion to the Constitutional Court for:

a) the ex post facts examination of the unconstitutionality of a statutory instrument or any other legal means of government control;

b) the examination of whether a statutory instrument or any other legal means of government control conflicts with an international agreement;

c)

d) the termination of unconstitutionality manifesting itself in an omission;

e) the interpretation of the provisions of the Constitution.

23. § (1) In accordance with provisions laid down in a separate Act, the ombudsman may initiate with the competent public prosecutor the lodging of a public prosecutor's protest.

(2) The competent public prosecutor shall notify the ombudsman within sixty days of his standpoint concerning the lodging of the public prosecutor's protest, and of his eventual measures.

24. § If in the course of his proceedings the ombudsman perceives the well-founded suspicion of the perpetration of a contravention or of a disciplinary delict, he may initiate proceedings directed to the calling to account with the competent organ, and in the case of the perception of a criminal offence he shall initiate the same. Unless otherwise prescribed by a separate Act, the organ requested shall notify the ombudsman within sixty days of his standpoint concerning the launching of the proceedings, and of the result of the proceedings within thirty days of the termination thereof.

25. § If according to the standpoint of the ombudsman an impropriety relating to fundamental rights is the result of the superfluous, not unambiguous provision of a statutory instrument or of some other legal means of government control, or that of the absence (insufficiency) of the legal regulation of the given issue, in order to avoid the impropriety in the future he may propose to the organ entitled to legislation or to the issue of some other legal means of government control the amendment, repeal or issue of a statutory instrument (some other legal means of government control). The organ requested shall notify the ombudsman of its standpoint, and/or of his eventual measures within sixty days.

26. § (1) If the organ requested by the ombudsman fails to form a standpoint on the merits and to take the measures corresponding to it, or if the ombudsman does not agree with the standpoint, with the measures taken, the ombudsman shall submit the case in the framework of his annual report to Parliament, and – with the exceptions laid down in paragraph (2) – he may request that the case be investigated by Parliament. If according to his assessment the impropriety is extraordinary grave or if it affects a larger group of natural persons, he may initiate that Parliament put the debate of the given issue on its agenda already before the annual report. Parliament shall decide in the matter of putting the issue on the agenda.

(2) In the case according to paragraph (1), if the ombudsman has taken the measure indicated in Section 22, or if in the case regulated in Section 25 he applied to Parliament, the ombudsman shall indicate his measures and the measures of the requested organ or the omission thereof in his annual report.

(3) In the case according to paragraph (1), if the impropriety emerged in connection with the operation of the Hungarian Army, of the services of national security or of the police, and its disclosure would affect state secrets or service secrets, the ombudsman shall submit the case together with his annual report, or – if the impropriety is extraordinary grave or it affects a larger group of natural persons, – prior to the annual report in a report classified as secret to the competent committee of Parliament. The committee shall decide in a closed session in the matter of putting the issue in the agenda.

Annual Report of the Ombudsman

27. § (1) The ombudsman shall make an annual report to Parliament on the experiences of his activities – and within the framework thereof, on the situation of the legal protection of fundamental rights in connection with official proceedings, as well as on the reception of his initiatives, recommendations and on the result thereof. The report shall be submitted to Parliament by the end of the first quarter of the calendar year following the subject year.

(2) The report of the ombudsman shall be published in the Hungarian Official Gazette after the passing of the resolution on it by Parliament.

(3) The special ombudsman shall submit an independent report, which shall be governed by the rules of paragraphs (1) and (2).

Parliamentary Commissioner for Future Generations

27/A. § (1) In order to ensure the protection of the fundamental right to healthy environment Parliament shall elect the Parliamentary Commissioner for Future Generations as special ombudsman.

(2) Parliament shall elect the Parliamentary Commissioner for Future Generations from those persons meeting the conditions prescribed by Section 3, furthermore, disposing of outstanding theoretical knowledge or having at least ten years professional practice in the area of environmental protection and/or nature conservation law who has considerable experience in the conduction and supervision of proceedings affecting environmental protection and nature conservation or in the enforcement of the right to healthy environment.

27/B. § (1) The Parliamentary Commissioner for Future Generations shall follow with attention, estimate and control the emergence of the provisions of the law ensuring the sustainability and improvement of the situation of environment and nature (hereinafter together 'environment'). It shall be his duty to investigate or to have investigated any improprieties he has become aware of relating to these, and to initiate general or particular measures for the redress thereof.

(2) The Parliamentary Commissioner for Future Generations shall exercise, with the differences defined by this Act and proceeding in his sphere of tasks, the powers ensured for the ombudsman by this Act.

(3) The Parliamentary Commissioner for Future Generations

a) may call on the person or organization illegally endangering, polluting or damaging the environment (hereinafter together 'environment damaging') to terminate this activity,

b) may call on the competent authority to take measures relating to the protection of environment,

c) may issue general recommendations in his sphere of tasks or recommendations for certain organs, institutions, authorities or persons in individual cases,

d) may initiate the conduct of supervisory proceedings against administrative resolutions relating to the conditions of the environment, and the suspension of execution thereof, and may participate in the suit as intervening party during its judicial review,

e) shall express an opinion on the drafts of statutory instruments and other governmental motions connected with his tasks, and may make a proposal for legislation in his sphere of tasks,

f) may familiarize himself with and express an opinion on the long-term plans and concepts of local governments for development, area settlement or those otherwise directly affecting the life quality of future generations,

g) shall express an opinion on motions relating to the recognition of obligatory effect of international agreements with environmental protection or nature conservation subjects or affecting the common heritage and concerns of the mankind, shall contribute to the preparation of national reports drafted on the basis of these international agreements, furthermore, he shall follow with attention and estimate the emergence of these agreements under Hungarian jurisdiction,

h) shall participate in cases relating to his tasks in the elaboration of Hungarian standpoint represented in the institutions of the European Union operating with governmental participation,

i) may participate on obligatory public hearings held on the basis of the provisions of the law which are connected to his sphere of tasks.

(4) The addressee of the recommendation described in item c) paragraph (3) shall be obliged to respond in the merits within thirty days the recommendation issued for him.

(5) If the owner or manager of a property connected to the sub-sections of state finances do not validate the indemnification demand against the person or organization damaging the environment despite the invitation of the Parliamentary Commissioner for Future Generations within sixty days of the invitation, the Parliamentary Commissioner for Future Generations may validate the demand for indemnification for the benefit of the budget estimate defined in a separate Act.

(6) The Parliamentary Commissioner for Future Generations may inform the public – by indicating the character and measure of the activity damaging the environment and the place of activity damaging the environment and its effect area, also including business secret – on the launching of his proceedings and the issue and contents of his recommendation also including personal data.

27/C. § (1) The Parliamentary Commissioner for Future Generations may call on the person or organization damaging the environment to terminate the damaging activity – irrespective of the fact that it is the result of an action or an omission – and to restore the environmental status preceding the environmental damaging conduct.

(2) The person or organization damaging the environment shall notify the Parliamentary Commissioner for Future Generations within thirty days of receipt of the warning of the measures taken, or immediately but not

later than within five days in case of such request of the Parliamentary Commissioner for Future Generations.

(3) The Parliamentary Commissioner for Future Generations – if he considers the measures taken or information given as not satisfactory – may ask the court to forbid the person or organization damaging the environment the damaging conduct, oblige them to take the measures necessary for preventing the damages and to restore the environmental status preceding the environmental damaging conduct.

27/D. § (1) The Parliamentary Commissioner for Future Generations may initiate the competent authority to take measures to impede and forbid the activity damaging the environment, to prevent damages and to restore the environmental status preceding the environmental damaging conduct.

(2) The authority shall immediately notify the Parliamentary Commissioner for Future Generations on the measures taken.

(3) If it is necessary the Parliamentary Commissioner for Future Generations may address the supervisory organ of the requested authority.

27/E. § Before issuing the final resolution the Parliamentary Commissioner for Future Generations may initiate the suspension of execution with the organ taking the resolution if it ordered the execution of the not-final resolution without respect to appeal, but according to the Parliamentary Commissioner for Future Generations the resolution is illegal and its execution would cause an irreparable damage in the environmental situation.

27/F. § (1) If the administrative resolution was not reviewed by the court the Parliamentary Commissioner for Future Generations may initiate supervisory proceedings with the supervisory body of the organ passing the resolution against final and enforceable authority resolutions which are violating the law and the execution of which violates or endangers the sustainability of the condition of the environment and threatens with environmental damages of significant extent. In this case the supervisory proceedings against the resolution shall be carried out.

(2) In the course of the supervisory proceedings the supervisory body shall decide within thirty days of the submission, while the corporative supervisory body shall decide on its next sitting and notify the Parliamentary Commissioner for Future Generations on its resolution within eight days of the date the resolution has been passed.

(3) If the supervisory organ does not agree with the initiative defined in paragraph (1) or does not conduct it within the given deadline, according

to the rules of judicial review of administrative resolutions the Parliamentary Commissioner for Future Generations may initiate the judicial review of the resolution within thirty days of the delivery of the resolution on it, or the expiration of the deadline defined in paragraph (2).

(4) In the initiative defined in paragraph (1) the Parliamentary Commissioner for Future Generations may also initiate the suspension of the execution of the resolution within thirty days he has become aware of, but not later than within 180 days of issuing the final resolution.

(5) If the organ concerned does not have any supervisory body in the concerned sphere of activity, the Parliamentary Commissioner for Future Generations may initiate the judicial review of the resolution within thirty days he has become aware of, according to the rules relating to the judicial review of administrative resolutions. The Parliamentary Commissioner for Future Generations may also initiate the suspension of the execution of the resolution in its initiative within 180 days of issuing the final resolution.

27/G. § (1) The Parliamentary Commissioner for Future Generations shall be notified on obligatory public hearings held on the basis of the provisions of the law which are connected to his sphere of tasks and the minutes prepared on the public hearing shall be sent to him on his request.

(2) The Parliamentary Commissioner for Future Generations may initiate that the municipality local government, the environmental protection authority, the nature conservation authority or other administrative organ hold public hearings in cases within the sphere of tasks of the Parliamentary Commissioner for Future Generations. If the public hearing is held, paragraph (1) shall be applied to it.

27/H. § (1) In the course of fulfilling his tasks the Parliamentary Commissioner for Future Generations may request information from anyone in cases which may affect the condition and use of the environment.

(2) In the course of his proceedings and in the interest of its conduction the Parliamentary Commissioner for Future Generations may inspect the documents in connection with the proceedings conducted, request the preparation of copies thereof and he may know personal data, other data, circumstances, facts and proceedings. If the document also contains data not connected with the subject of the proceedings and the separation of data is not possible without violating their proof nature, the Parliamentary Commissioner for Future Generations may know all data appearing in the document, he shall investigate, however, data not connected to the subject of the proceedings only to the extent necessary to make certain that the data is not related to the subject of the proceedings.

(3) In the course of his proceedings and in the interest of its conduction the Parliamentary Commissioner for Future Generations shall have access to any localities and real estates where activities threatening with irreversible environmental damaging are going on if getting acquainted with the data, circumstances or facts necessary for conducting the proceedings could not be ensured otherwise.

(4) Private secrets, business secrets, state secrets, service secrets or other secrets defined by a separate Act may not impede the Parliamentary Commissioner for Future Generations in exercising his powers regulated in paragraphs (1)-(3), but the provisions relating to secrecy shall be binding for him as well unless otherwise prescribed by a separate Act.

(5) In the course of data management affecting state secrets or service secrets the Parliamentary Commissioner for Future Generations shall exercise his powers only personally or through his colleagues underwent national security control initiated by him.

(6) If the co-operation necessary for exercising the powers of the Parliamentary Commissioner for Future Generations laid down in paragraphs (1)-(3) is refused by those applied for information, persons disposing of documents and the owner or user of the real estate, they shall be obliged to this co-operation by the Municipal Court of Budapest for the initiative of the Parliamentary Commissioner for Future Generations. The Municipal Court of Budapest shall decide in out-of-court proceedings – together with holding personal hearings if necessary – within eight days of the receipt of the petition. This resolution of the court shall not be appealed.

The Office of the Parliamentary Commissioner

28. § (1) The tasks of administration and preparation relating to the tasks of the ombudsman and the special ombudsman shall be performed by the Office of the Parliamentary Commissioner.

(2) The organizational and operational rules of the Office of the Parliamentary Commissioner shall be established by the ombudsman in agreement with the special ombudsmen.

(3) The operational costs of the ombudsman and of his office organization, as well as the number of employees thereof shall be determined in a separate chapter of the state budget.

(4) The head of the office – in agreement with the special ombudsmen – and the own employees shall be appointed and dismissed by the ombudsman. The employees of the special ombudsman shall be appointed and dismissed by the special ombudsman.

(5) The basic remuneration and grants of the head of the office shall be the same as those of the professional state secretary and the ombudsman exercises the employer's rights over the head of the office.

(6) The ombudsman may transfer in writing the right to issue an official copy in case of documents not containing any measures to a public servant of the office disposing of executive assignments.

Closing provisions

29. § (1) For the purposes of this Act – with the exception of those listed in paragraph (2) – an authority shall be:

a) an organ fulfilling a task of public administration;

b) any other organ acting in its scope of authority of public administration;

c) the Hungarian Army;

d) a law enforcement organ;

e)

f) an investigating authority also including the investigative body of the Public Prosecutor's Office;

g) a local government and a minority local government;

h) a public corporation;

i) a notary public;

j) a county court bailiff or an autonomous bailiff.

(2) For the purposes of this Act an authority shall not be:

a) the Parliament;

b) the President of the Republic;

c) the Constitutional Court;

d) the State Audit Office;

e) the court;

f) the Public Prosecutor's Office, except for the investigative body of the Public Prosecutor's Office

(3) This Act shall come into force on the day of its promulgation.

(4) For the purposes of this Act an impropriety relating to fundamental rights is: the violation of a fundamental right or the direct danger thereof, irrespective of the fact that it is the result of an action or an omission.

(5)

(6) A separate Act may lay down rules departing from this Act for the special ombudsman.

Annex to Act LIX of 1993

I. In the course of his investigation affecting the Hungarian Army, the ombudsman may not inspect:

1. Any document relating to an invention of outstanding importance from the viewpoint of national defence, serving the defence of the Republic of Hungary, to such product, defence project as well as to the development of the defence capacity, from which one can become aware of their essence.

2. The documents containing the battle order excerpt of the Hungarian Army (hereinafter 'HA') including the level of corps, as well as the summarized data concerning the establishment, maintenance and dislocation of military material supplies.

3. Documents containing plans relating to the application of HA in the period of extraordinary state or emergency.

4. Documents relating to the protected command system of the state and military high leadership.

5. Documents concerning fighting value, alarming and sale system of HA, as well as the summarized documents on readiness to mobilize and on the total capability for mobilisation for war, furthermore, the summarized plans of readiness for war of the military territories, and military organizations at the same or of higher level, and the connected documents relating to the whole organization.

6. The summarized plan of the organization of communication of the Ministry governed by the Minister responsible for national defence and of HA, the cipher and other documentation of the special information protection means introduced or employed.

7. The detailed budget, calculation, and development material of HA.

8. Such plans and cooperation agreements concluded with the ministries of defence and with the armies of other countries, as well as those data of military engineering, which were mutually declared state secrets by the parties.

9. Documents containing summarized data relating to the means and operation of strategic intelligence, as well as to HA counter intelligence.

II. In the course of his proceedings concerning the services of national security, the ombudsman may not inspect:

1. The documents containing the organizational and operational rules of the services of national security.

2. The security documents connected to the objects and staff of the services of national security.

3. The personnel registers and other personnel materials of the services of national security, except when this is requested in writing by the person concerned.

4. Registers serving the identification of private persons cooperating with the services of national security.

5. Documents containing the technical data of the operation of means and methods applied by the services of national security for secret information gathering, or documents making possible the identification of the persons applying them.

6. Documents connected with the number, location, operation of means of computer technique, and the applied softwares.

7. Documents concerning the ciphering activities, the specialized direction and official supervision thereof.

8. Documents concerning the security document protection and technological control.

9. Documents that have come about in the course of the security protection and clearing of persons filling extremely important and confidential position or office, or nominated for such office, except when this is requested in writing by the person concerned.

10. All documents the becoming aware of which would make possible the identification of a provider of information.

11. The international agreements of the services of national security.

12. All documents the becoming aware of which would infringe an obligation undertaken in respect of the foreign partner services by the services of national security.

III. In the course of his investigation affecting the police, the ombudsman may not inspect:

1. Documents of co-operation concluded with international organizations and police organs of other states, and joint measures and data and information originating from co-operation and provided by a police organ if the contracting party request the protection of these data as state secrets or service secrets.

2. Qualified documents and agreements relating to the international relations of the police containing concrete commitments relating to the detection of international organized crime (including drugs-commerce, money laundering and acts of terrorism) and the prevention of these actions.

3. Data relating to the co-operation of services of national security with the police, and data relating to and deriving from these data listed by items of section II of the Annex to this Act.

4. Guarding security plans of police objects and objects and persons protected by the police, relating documentations of defence equipments, guards and watches.

5. The personnel materials of the person concerned in the case, except when this is requested in writing by the person concerned.

6. Documents serving the identification of private persons cooperating in secret with the police, except when the legal violation affected the co-operating person and investigation is requested by this person.

7. Documents containing the technical data of the operation of means and methods applied by the police for secret information gathering, or documents making possible the identification of the persons applying them.

8. Data, devices, documentations and documents concerning the ciphering activities of the police, and aggregated data concerning frequency register for governmental purposes.

9. Personal data of witnesses if the closed management thereof was ordered on the grounds of the Act on Criminal Procedure.

IV.

V.

VI. In the course of his investigation affecting the Customs and Finance Guard (hereinafter 'CFG'), the ombudsman may not inspect:

1. Documents of co-operation concluded with international organizations and customs organs of other states, and joint measures and data and information originating from co-operation and provided by an organ of the CFG if the contracting party request the protection of these data as state secrets or service secrets.

2. Qualified documents and agreements relating to the international relations of the CFG containing concrete commitments relating to the detection of international organized crime (including drugs-commerce, money laundering and acts of terrorism) and the prevention of these actions.

3. Data relating to the co-operation of services of national security with

the CFG, and data relating to and deriving from these data listed by items of section II of the Annex to this Act.

4. Guarding security plans of objects and persons protected by the CFG, relating documentations of defence equipments, guards and watches.

5. Data, devices, documentations and documents concerning the ciphering activities of the CFG, and aggregated data concerning frequency register for governmental purposes.

6. The personnel materials of the person concerned in the case, except when this is requested in writing by the person concerned.

7. Documents serving the identification of private persons cooperating in secret with the CFG, except when the legal violation affected the co-operating person and investigation is requested by this person.

8. Documents containing the technical data of the operation of means and methods applied by the CFG for secret information gathering, or documents making possible the identification of the persons applying them.

9. Documents containing aggregated data concerning the devices and operation of the detection proceedings of the customs authority.

10. Data of methods applied by the CFG concerning the protection of excise seals and tax seals, and data relating to the traffic of internationally controlled products and technologies, control plans, surveillances, the orders of warrants and military cases.

VII. In the course of his investigation affecting the Public Prosecutor's Office, the ombudsman may not inspect:

1. Personal data of witnesses if the closed management thereof was ordered on the grounds of the Act on Criminal Procedure.

2. Data originating from the secret information gathering activities of the investigative body of the Public Prosecutor's Office.

3. Data relating to the co-operation of the investigative body of the Public Prosecutor's Office with the organs performing secret information gathering activities, and data relating to and deriving from these data listed as such by items of section II-VI of the Annex to this Act in connection with organs performing secret information gathering activities.

4. The personnel materials of the person concerned in the case, except when this is requested in writing by the person concerned.

5. Documents serving the identification of private persons cooperating in secret with the police, except when the legal violation affected the co-operating person and investigation is requested by this person.

Szonda Ipsos analysis on the knowledge of people on ombudsmen (1998–2008)

RESEARCH REPORT

knowledge on and judgement of ombudsmen among hungarian population

March 2008

Circumstances of the research	On behalf of the Parliamentary Commissioner for Civil Rights the Szonda Ipsos carried out a public opinion poll with questionnaires based on personal inquiry among 1000 grown-up permanent Hungarian residents between 15 and 21 February 2008.
Active knowledge on the ombudsman institution	In 1998 15%, in 2007 32% mentioned the ombudsman institution as an institution the citizen is entitled to turn to in case of suffering any legal violation by a public body.
Total knowledge on the ombudsman institution	In 1998 65%, in 2007 79% knew at last by hearing the institution of the ombudsman. The position of the General Ombudsman is the best known: 72% has already heard of it. The total knowledge index of the data protection and the minority commissioner is 59, respectively 57%, those of the green ombudsman is 17%.
Willingness for making use of the ombudsman system	11% of the grown-up population considers completely certain, and further 28% probable to address the ombudsman with his/her problem if he/she suffered legal violation.
Community confidence index of the Parliamentary Commissioners' Office	The value of the index is 52 points, the third highest among 18 institutions.
Opinions on the ombudsman institution	Community opinions relating to the ombudsmen's work are less differentiated. The biggest part of replying people agreed the positive assertions and rejected the negative ones. There are less positive expectations and assumptions at the moment concerning the operation of ombudsmen than it were in 1998.

Circumstances of the research

On behalf of the Parliamentary Commissioner for Civil Rights the Szonda Ipsos carried out a public opinion poll with questionnaires based on personal inquiry among 1000 grown-up permanent Hungarian residents between 15 and 21 February 2008.

The main targets of the research were the following:
- Surveying the knowledge on and judgement of the institution of Parliamentary Commissioner among Hungarian population.
- Comparison with the data of a former research fulfilled with the same target and method in 1998 and the detection of changes.

Basic crowd

The basic crowd of the survey is the population older than18 years with permanent Hungarian residence. The number of the basic crowd is 8 140 697 persons.

Sampling

The sources of sampling were the data bases of the Central Statistics Office and the Central Data Processing, Election and Register Office.
The method of sampling is: two-step, proportionally layered random sampling.

Error in sampling

Every statistical data recording has a so called error in sampling which derives from the fact that not the total basic crowd but only a certain part of it is examined. Within the measure acceptable in return for significant expenditure savings the error in sampling reduces the accuracy of data. The error in sampling can be a maximum ±3,1% relating to the whole sample.
If data are relating not to the whole of the sample but a group of it the error in sampling is – depending on the number of the group – higher. In the following tables we are presenting the extent of the error in sampling beside various sample and data sizes.
When comparing the data of two (sub)samples, depending on the number of (sub)samples – on a 95% confidence level – bigger differences can be considered as statistically significant than the percentage of the following table. These limits of error must be considered in each case when the data of the 1998 data recording are compared with the data of our present research.

Data recording

The data recording was fulfilled by a standard questionnaire and personal inquiry on the dwelling place of the persons chosen in the sample.

Weighting

In order to restore the proportions of the basic crowd a multi-aspect iterative weighting has been applied according to gender, age, qualification and type of the place of residence based on data provided by the Central Statistical Office.

Composition of the weighted sample

In the following table the composition of the sample according to basic social characteristics is presented.

Table 1
Composition of the weighted sample according to social characteristics

		%
Gender	man	47
	woman	53
	total	100
Age group	18-30 years old	24
	31-45 years old	26
	46-60 years old	26
	61-X years old	24
	total	100
Qualification	maximum 8 primary school years	29
	industrial school	28
	finished secondary school	29
	finished college, university	14
	total	100
Occupational status	active entrepreneur, firm owner	5
	active manager	2
	active intellectual worker	5
	active subordinate intellectual worker	15
	active skilled worker	12
	active unskilled worker	6
	student, young mother (on GYES, GYED)	10
	pensioner	33
	unemployed , homemaker, other dependant	12
	total	100
Financial situation	poor	27
	in medium financial situation	53
	wealthy	20
	total	100
Settlement type of the place of residence	Budapest	18
	county town	18
	other town	32
	community	32
	total	100

Technical remarks

As a rule data rounded off to whole numbers are presented in the research report. The total of percentages may differ from 100 in a small degree by reason of the rounding.

The “0” appearing in the cells of tables is higher than 0 by reason of the rounding, but it is a number smaller than 0,5. If no replying persons belong to a cell, it is designated by a “-” sign.

Phrasings appearing in the questionnaire in certain tables and figures are abbreviated where appropriate by reason of the lack of place.

The research report calls ‘persons replying in the merits’ those responding to one of the questions by choosing between the given reply cathegories, respectively by some information in the merits. Only those do not belong to persons replying in the merits who responded that ‘I don’t know’ or ‘I don’ wish to reply’.

The total of ‘I don’t know’ and ‘I don’ wish to reply’ answers are marked with an ND (no data) abbreviation in the tables and the figures.

Knowledge on the Parliamentary Commissioners

The knowledge of people on the ombudsmen was examined in our report in two ways. Primarily we called the participants of our research in a so called open question making possible to provide free and spontaneous responses to list according to their knowledge organizations and institutions people can turn to if their rights are violated by an authority or a firm. Through this method we could gain some information on how active is the knowledge of the population on the existence of the ombudsman institution, namely in which extent can people link this type of legal protection to the legal violation in a spontaneous way free of influences.

The fact, however, that someone does not mention by itself the ombudsman institution while replying this question does not mean that the person concerned does not know or at least has not heard of the existence of the institution. Two causes may explain that someone – although already heard of ombudsmen – does not mention spontaneously the institution. Primarily it may occur that the ombudsmen are simply left out by mistake from the list of the known legal protection institutions. The reason of the lack of mentioning may be also the fact that the available information on ombudsmen are superficial, inaccurate or are not thorough enough to list the ombudsman institution among institutions devoted to help people in case of legal violations.

Active knowledge

For the questions ‘Are there organizations or institutions where people can turn to for help if an authority or firm violates their rights (proceeds in a violating manner against them)?’ and ‘Could you list those institutions and organizations which may – according to your knowledge – help people in these cases?’ 45% of the questioned responded in the merits. A part of these answers is concrete: it mentions by name some institutions – among them such institutions as well where citizens are not entitled to address directly –, the other part, however, is general: it indicates institution types with general summarizing names (e.g. trade unions, civil organizations). Relating to this question 1% of the questioned people gave voice to an opinion that there exist no such institutions the citizen could turn to.

Those responding in the merits mentioned roughly with the same frequency the ombudsman institution (32% of the questioned), than other organizations (30%).

28% of responses referring to the ombudsman institution contains the expressions ‘parliamentary, citizens’, data protection, minority commissioner/ombudsman’, 11% of them refers only to the sphere of tasks (e.g. data protection), and 61% mentions the ombudsman generally speaking, without any specifications.

In responses affecting other organizations, consumer protection authority and court occur most frequently (5, respectively 3% of the questioned mentioned these).

In year 1998 some less people (38%) responded in the merits to this question and even less: 15% named in some form the ombudsman institution, than in 2007 (32%). In year 1998 more people mentioned other organizations (47%).

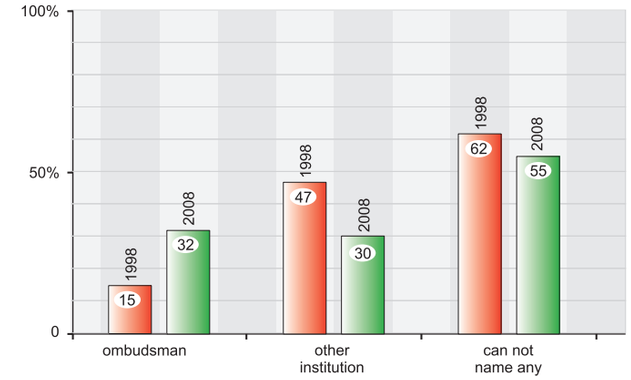
Table 2
Organizations and institutions people can address if their rights are violated by an authority or a firm spontaneous responses

	%
Parliamentary Commissioner for Civil Rights and its variations	2,6
Parliamentary Commissioner for Future Generations and its variations	0,5
Parliamentary Commissioner for the Rights of National and Ethnic Minorities and its variations	3,9
Commissioner for Data Protection and Freedom of Information and its variations	4,7
ombudsman(men) and its variations	18,9
not existing ombudsman (e.g. educational)	0,2
ombudsman total	*31,9*
local governments, Mayor's Office	1,3
labour court	2,6
court	3,4
court of registration	0,5
Constitutional Court	1,1
ministries, Ministry of Equal Opportunities	0,5
Consumer Protection Authority, consumer protection	4,7
relief organizations, charity organizations, Red Cross	1,4
patients' rights representative, medical representative	0,8
trade unions	0,8
Office of Economic Competition	0,2
(Hungarian) Helsinki Committee	0,8
Civil Lawyer's Forum	0,2
Hungarian Civil Liberties Union (TASZ)	0,1
civil, human rights, civil law organizations	2,2
lawyer legal aid service	0,8
police	1,8
ambulance, fire-service	0,2
National Public Health and Medical Officer Service (ÁNTSZ)	0,5
publicity, press, TV	0,2
nowhere, nobody, not existing (such), nowhere to address	1,2
other response	4,4
can not name any	54,7

Table 3
Organizations and institutions people can address if their rights are violated by an authority or a firm spontaneous responses

	1998 %	2007 %
Parliamentary Commissioner for Civil Rights	11,0	2,6
Parliamentary Commissioner for Future Generations	–	0,5
Parliamentary Commissioner for the Rights of National and Ethnic Minorities	2,0	3,9
Commissioner for Data Protection and Freedom of Information	1,0	4,7
ombudsman(men)	4,0	18,9
ombudsman by name	1,0	0,0
not existing ombudsman (e.g. educational)	–	0,2
ombudsman total	*15,0*	*31,9*
local government	9,0	1,3
consumer protection authority	3,0	4,7
trade union	3,0	0,8
court total	10,0	7,6
police	4,0	1,8
civil organizations total	3,0	2,5
other organizations	8,0	5,4
other response	7,0	5,6
can not name any	62,0	54,7

Institutions the citizen can address in case of legal violation
Spontaneous responses, active knowledge



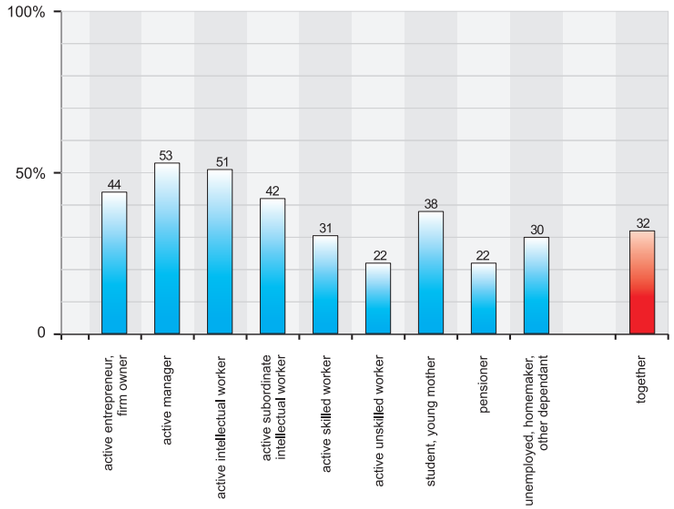
Between 1998 and 2007 the change of the proportion of those spontaneously mentioning the ombudsmen differs characteristically in the individual social groups. This proportion has not changed (in a statistically significant manner) on the one hand among the graduated (who has already outstandingly been aware of the knowledge that citizens suffering legal violations have the possibility to turn to the ombudsman), on the other hand the proportion has not changed either among the poor (for whom the lack of expertise in public life and the mistrust in political institu-

tions makes this possibility more disinterested). The active knowledge on the ombudsman institution, however, has significantly increased among the young, those graduated from secondary school and people in medium finacial situation. While in 1998 this was a knowledge mainly possessed by the elite, now this knowledge has spread in the middle class almost as much as in the upper layer of the society.

Table 4
Proportion of those mentioning the ombudsmen (active knowledge)

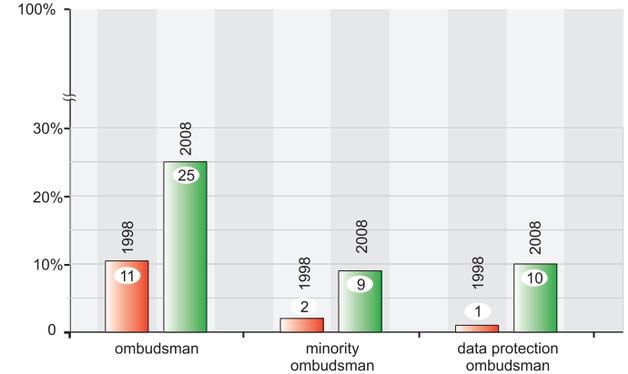
	1998 %	2007 %
man	16	35
woman	15	29
18-30 years old	11	34
31-45 years old	22	37
46-60 years old	19	34
above 60 years	9	21
maximum 8 primary school years	7	18
industrial school	12	26
secondary school	20	44
college, university	44	49
poor	9	14
In medium financial situation	11	35
wealthy	27	47
Budapest	22	35
county town	23	33
other town	11	34
community	11	27
total	**15**	**32**

Institutions the citizen can address in case of legal violation
proportion of those mentioning spontanously the ombudsmen according to occupation



In 1998 the Parliamentary Commissioner for Civil Rights was mentioned by much less people (11%) responding to this question than in 2007 (25%). The mentioning frequency of the minority ombudsman and data protection ombudsman has increased from 1-2% to 9-10%.

Institutions the citizen can address in case of legal violation
spontaneous responses, active knowledge



Consequently we can summarize that during ten years the ombudsman institution has become more transparent, known and comprehensible in its function for the Hungarian society.

Total knowledge

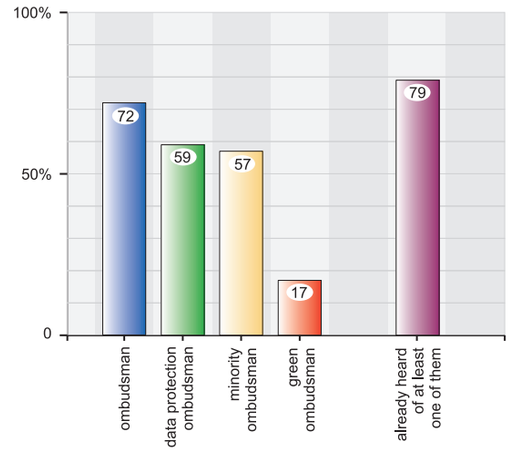
While the present examination has shown a 32% active knowledge on the ombudsman institution, the total knowledge on them is 79%: which means that 79% of people mentioned that they had already heard of these positions, including also those who could recall even spontaneously their existence. In 1998 this proportion was 65%.*

The majority has already heard of the three positions performed at the time of our research. However, only 17% of the grown-up population has heard of the 'Parliamentary Commissioner for Future Generations', the so-called 'green ombudsman'.

The position of the general commissioner is the best known: 72% has already heard of it, while the total knowledge index of the data protection commissioner and the minority commissioner is the same (59, respectively 57%).

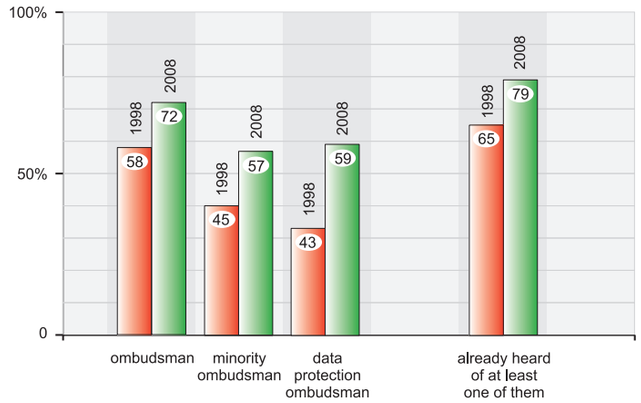
* In year1998, when the institution of the green ombudsman has not existed yet, the General Deputy of the Parliamentary Commissioner for Civil Rights appeared as a fourth element in our research.

Have you heard of...?
responses to inquiries, total knowledge



The total knowledge on the general, the minority and the data protection ombudsmen has been increasing in similar extent (with 12-16 percents) since 1998.

Have you heard of...?
responses to inquiries, total knowledge



All four positions are best known among the middle-aged (31-60 years old).

By the increase of the stages of graduation the total knowkedge index is continuously growing in case of all four positions.

All four positions are best known among wealthy people and less known among the poor.

The positions of the general, minority and data protection commissioners are known at the same extent in Budapest and country cities, a little bit less known in small towns and even less in communities. In case of the position of the green ombudsman the value of the total knowledge index is only outstanding in the capital.

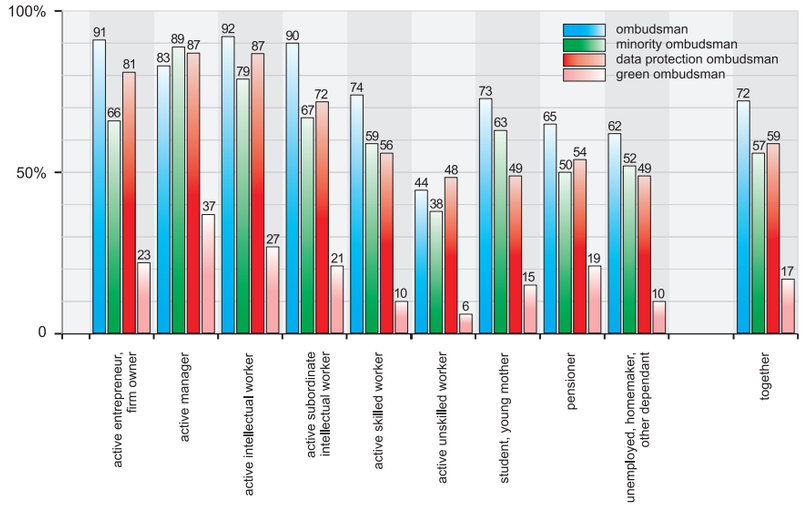
Among active earners entrepreneurs, firm owners, managers and intellectual workers are the most familiar with the institution and the unskilled workers are the less familiar with the ombudsmen. The knowledge of pensioners, respectively the unemployed and other dependants also lags behind the average.

Those who have some kind of political party preferences – and also informed us about it during the research – are more frequently familiar with the ombudsman institution than those not having any political party preferences. The total knowledge index does not differ significantly in the potential electoral camps of various political parties.

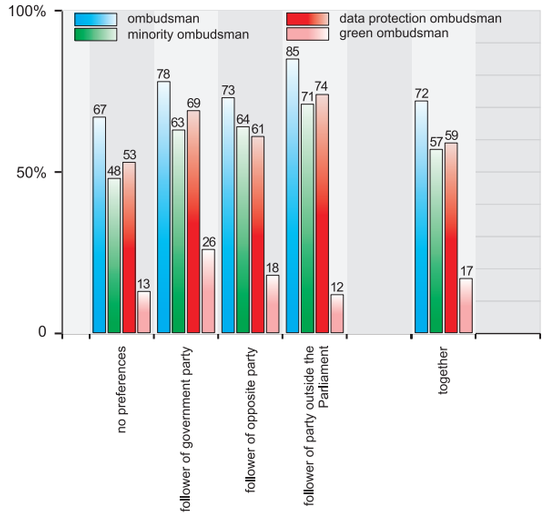
Table 5
Proportion of those having heard about the ombudsmen (total knowledge)

	ombudsman	minority ombudsman	data protection ombudsman	green ombudsman	knows about at least one of them
	%	%	%	%	%
man	74	60	61	18	81
woman	70	55	58	16	78
18-30 years old	68	57	51	13	76
31-45 years old	77	63	63	15	86
46-60 years old	80	67	71	23	86
above 60 years	61	42	50	17	67
maximum 8 primary school years	53	41	41	9	65
industrial school	70	50	53	10	75
secondary school	85	70	72	22	91
college, university	88	82	85	37	91
poor	49	38	41	9	61
in medium financial situation	77	60	62	17	83
wealthy	88	76	76	27	93
Budapest	79	67	67	30	84
county town	80	67	70	15	87
other town	73	54	57	16	79
community	62	51	51	12	72
total	**72**	**57**	**59**	**17**	**79**

Total knowledge index
responses for inquiry according to occupation



Total knowledge index
responses for inquiry according to politicalparty preferences



Since 1998 the total knowledge index of ombudsman positions has increased in a greater extent than the average among women, the 46-60 years old, and people in medium financial situation and people living in county towns.

Table 6
Proportion of those having heard about the ombudsmen (total knowledge)

	ombudsman		minority ombudsman		data protection ombudsman		knows about at least one of them	
	1998 %	2007 %	1998 %	2007 %	1998 %	2007 %	1998 %	2007 %
man	65	74	51	60	50	61	71	81
woman	51	70	40	55	38	58	59	78
18-30 years old	62	68	53	57	49	51	72	76
31-45 years old	65	77	48	63	52	63	71	86
46-60 years old	60	80	49	67	47	71	66	86
above 60 years	44	61	31	42	25	50	49	67
maximum 8 primary school years	41	53	31	41	25	41	48	65
industrial school	52	70	40	50	40	53	62	75
secondary school	78	85	64	70	61	72	84	91
college, university	93	88	72	82	88	85	95	91
poor	44	49	32	38	23	41	51	61
in medium financial situation	56	77	43	60	43	62	64	83
wealthy	78	88	63	76	68	76	82	93
Budapest	74	79	58	67	59	67	78	84
county town	57	80	42	67	47	70	63	87
other town	59	73	46	54	42	57	66	79
community	50	62	39	51	35	51	57	72
total	**58**	**72**	**45**	**57**	**43**	**59**	**65**	**79**

Knowledge about the tasks and activity of parliamentary commissioners

The frequency of mentioning any knowledge is the same concerning the three ombudsmen in office (31-33), while this percentage is 5% in case of the green ombudsman.

Table 7
Indexes characterizing the knowledge on ombudsmen

	ombudsman %	minority ombudsman %	data protection ombudsman %	green ombudsman %
active knowledge	25	9	10	2
passive knowledge	47	49	49	15
mentions any knowledge	33	31	32	5

Parliamentary Commissioner for Civil Rights

Starting out the naming of the position the majority of 330 responses (20%) relating to the general commissioner is about that the general ombudsman protects citizen's rights and constitutional rights. Nearly the same number of people (18%) mentioned that petitions can be submitted to the ombudsman, but the replying persons did not concretized in which case and what kind of complaints can be submitted. 11% of the above replying 330 persons emphasised that by reason of

legal violations it is possible to address the ombudsman. Responses of similar character were given by those 9% of replying people who highlighted that the ombudsman fights against unjustice, unlawfulness, and other 9% who found that the ombudsman protects the rights of people. 8% considered it important to mention that the ombudsman protects citizen's rights against institutions, firms, offices and authorities.

Parliamentary Commissioner for Future Generations

8 out of 51 replying persons mentioned the environmental protection and 25 the youth. 7 persons emphasised that this position has been established nowadays.

Parliamentary Commissioner for the Rights of National and Ethnic Minorities

314 replying persons mentioned the minority ombudsman. A quarter of them mention Roma, 15 % ethnicity, 55% miorities.

12% of the responses touch upon that the minority ombudsman steps up against discrimination and negative discrimination.

Commissioner for Data Protection and Freedom of Information

35% of the 315 replying persons only repeated the name of the position in various forms. In general 27%, more concretely 15% stated that it is about the protection of personal data.

Opinions on the system of parliamentary commissioners

Besides disclosing the knowledge of the Hungarian population on the parliamentary commissioners the research also aimed at identifying the valuation and attitude of the population to the ombudsman institution. So that not only the attitude of the group familiar with the ombudsmen and the Parliamentary Commissioners' Office could be found out, but also those of the less informed layers, the inquirers briefly presented the replying persons the sphere of tasks of the Office as follows:

Everyone can turn to the Parlaimentary Commissioners' Office, namely the ombudsmen if he/she is not satisfied with the proceedings of an authority or organisation feeling that during the administration his/her human rights were violated, par example he/she was treated in an unjust way, was misinformed or measures were taken in his/her case unreasonably slowly.

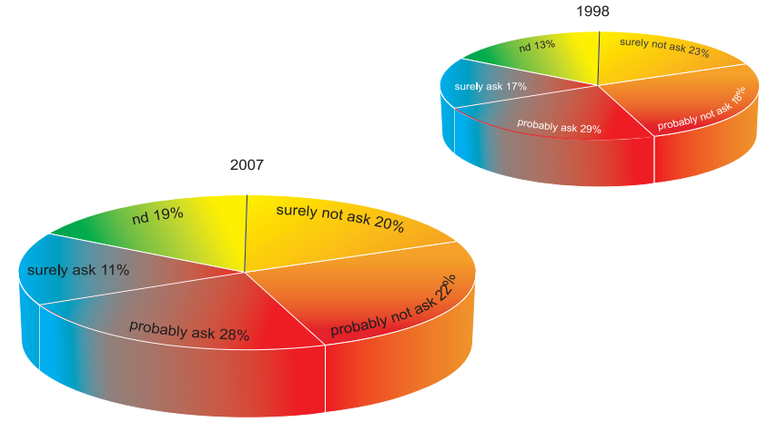
Willingness for making use of the ombudsman system

Following this brief orientation we asked the replying persons whether if such matter occurred with them in the future, they would themselves ask for the help of the ombudsman or not. Responses show that the willingness in people for this form of redressing legal violations is relatively high.

In a given case – according to its own belief – 11% of the grown-up population would surely, while further 28% would probably address the Office with its problems. 22% of them considered it unlikely and 20% totally impossible to turn to one of the ombudsmen with their injuries. 13% of them could not take a stand in this question.

In 1998 more people responded in the merits this question and the frequency of those being certain to address the ombudsman in case of legal violations decreased with 6 percent.

Would you ask for the help of the ombudsman?



Those who are certain in turning to the ombudsman in a concrete case are over-represented among the graduated, and those who are certain in not turning to him are more numerous than the statistically attended figure among people above 60 years.

Among people without any political party preferences those who would not ask for the ombudsman's help are more numerous and those who would ask for it are less than the average.

Table 8

Would you ask for the help of the obmbudsman?

	surely not ask %	probably not ask %	probably ask %	surely ask %	ND %
man	20	20	30	11	20
woman	21	24	26	12	17
18-30 years old	18	21	28	13	21
31-45 years old	17	22	31	13	17
46-60 years old	18	26	31	12	13
above 60 years	29	19	20	8	24
Maximum 8 primary school years	26	20	21	10	22
industrial school	21	20	28	11	21
secondary school	19	25	31	10	15
college, university	10	22	35	20	13
poor	26	20	21	9	25
in medium financial situation	19	23	29	12	18
wealthy	17	23	34	13	12
Budapest	20	21	25	9	24
county town	12	21	32	20	15
other town	26	19	26	10	19
community	20	25	28	10	17
total	**20**	**22**	**28**	**11**	**19**

Community confidence index of the Parliamentary Commissioners' Office

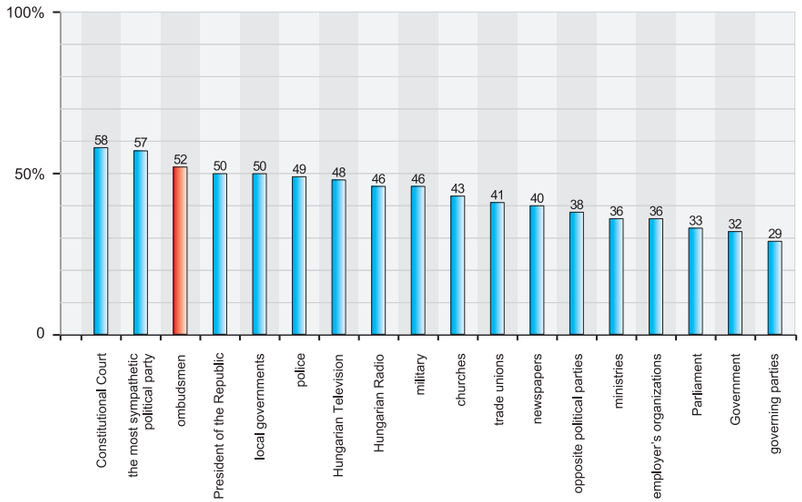
Besides the willingness to ask for help the confidence of the population towards the Parliamentary Commissioners' Office was also examined by an other question not related to personal activity. They were questioned how the Parliamentary Commissioners' Office serves, besides several other political institutions, the good of people today in Hungary. The inquired persons could express their opinions on a scale from 1 to 5 according to the school rating, where rate 5 naturally meant that the institution concerned serves very good, while rate 1 meant that it does not serve at all the good of people. The then received responses were transformed to points from 0 to 100 for the sake of the easier comparison.*

70-94% of the inquired undertook to judge the social utility of various institutions. 76% qualified the ombudsman institution.

From the 18 institutions examined in our research 4 reached 50 or more points on the hundred-grade confidence index in December 2007, while 14 got a qualification worse than the medium. Even the most highly qualified institution, the Constitutional Court received only 58 points. So in this arhmosphere of the disillusion from political institutions the 52 point rate of ombudsmen signifies confidence, at last in a relative sense.

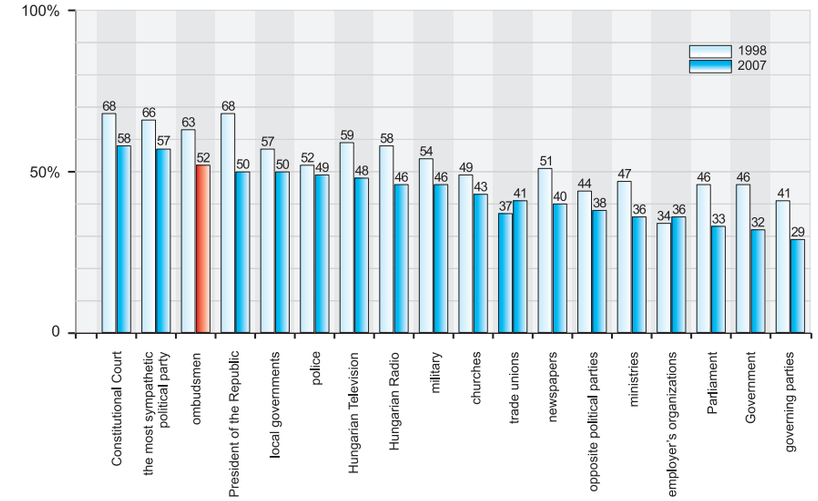
From 1998 the confidence index of all examined institutions significantly decreased except for trade unions and employer's organizations. The decrease is 11 points in case of the ombudsmen.

Confidence index of institutions



* Ratings were made corresponded the following points:
1=0, 2=25, 3=50, 4=75, 5=100.

Confidence index of institutions



The confidence towards the ombudsman institution decreased in a larger extent than the average among the graduated and people living in Budapest (with 14 points in both group).

Table 9
Opinions on the ombudsman institution

	not agrees at all %	mainly not agrees %	mainly agrees %	totally agrees %	ND %
Good that there exist ombudsmen, thus there are at least someone to force the authorities to observe the law.	4	7	38	34	17
The operation of ombudsmen is useful, since in a democratic state it is necessary that more organizations ensure the emergence of people's rights.	3	11	38	30	17
Good that there exist ombudsmen, because an authority must not avoid the judgement of such high-ranked personalities.	4	10	38	29	19
The operation of ombudsmen is useless if they are not entitled to oblige the abusing authorities to modify their decisions.	21	26	22	12	19
The operation of ombudsmen might be rather expensive; the citizens' money should be spent for more important targets instead.	19	28	23	8	22
There is no reason for the operation of ombudsmen, since they are also standing on the side of power and do not help at all the man-in-the-street.	26	34	17	5	19

Comparing the data of our present inquiry with those of ten years ago, it must be established that public opinion on ombudsmen has become more neutral and less extreme: the proportion of those totally agreeing with positive assetrions has decreased, and those as well who totally reject the negative ones. All this means at the same time that there are less positive expectations and assumptions at the moment concerning the operation of ombudsmen than it were in 1998.