

I.

The Role of the Parliamentary Commissioner of the National Assembly for Civil Rights in Ensuring the Legality of the Treatment of Persons Limited in their Freedom and the Efficiency of Law Enforcement

The Parliamentary Commissioner for Civil Rights pays particular attention to the human dignity of persons limited in their freedom (in custody, convicted), to the assertion of their rights to life and humane treatment, for it cannot be disputed that the detainees are in an exposed situation or such one deemed by them. The rule of law and the democratic legal principles equally require that the implementation of the loss of freedom should be humane, educational and leading back to society, in other words an opportunity should be ensured for the rehabilitation of convicts.

Therefore the Ombudsman considers it indispensably necessary that problems related to the assertion of basic rights in the given field should surface and be solved. He wishes to achieve it not only on the basis of individual complaints but also within the framework of ex officio launched investigations.

In the spirit of Art. 16 para (2) of Act LIX (Obtv.) of 1993 there is an opportunity for the Parliamentary Commissioner to proceed ex officio, without any complaint. Based on Art. 16 para (1) of the Act (Obtv.), the direct danger of the violation of constitutional rights also lays the ground for the identification of abuses related to constitutional rights. Therefore there is no need for the Parliamentary Commissioner's procedure for the commission of any specific violation of the law. In view of all this the Ombudsman, during his visits to counties in 2009 also visits penitentiaries and conducts on the spot investigations. On those occasions he does not only ask information about the conditions of detainment from the commander of the institution but also surveys the basic documents, more over, he also visits cells and makes convicts speak.

Treatment of convicts can be considered legal if it meets the valid legal regulations as well as expectations worded in international agreements.

Resolution 13/2001 (V. 14.) of the Constitutional Court contains the following: "Historically the constitutional values protecting the individual against the tyranny of the state punitive authority and its excessive weight were primarily worded in relation to penal law and penal procedure and have become parts of constitutions with varying detail. This, however, does not mean the limitlessness of the state punitive authority manifest in law enforcement and the total exposure of the individual found guilty and condemned to punishment. *The convict is not an object of law enforcement but its subject who has rights and duties. ...The margin values of the constitutional framework of law enforcement are partly set by the right to human dignity and personal safety on the one hand, and by the prohibition of torture, cruel, inhuman and humiliating treatment and punishment.* It can be deducted from this framework as well as from the constitutional prohibition pertaining to the limitation of the essential content of fundamental rights to what extent the state can interfere into the life of the individual and can restrict basic rights and freedoms by punishments and the implementation of measures."

Legal treatment is an indispensable element of efficient law enforcement, because the future respect and observance of legal regulations can only be achieved by the exemplary behaviour of the authorities among members of the society who have committed a mistake. Consequently enhanced attention should be paid to ensuring the legality of the treatment of individuals of limited personal freedom, with special regard to the expectations related to the realisation of human rights.

The legality of treatment manifests itself in a complex manner during detention. Partly the prohibition of all kinds of discrimination among the convicts constitutes part of legal treatment in the narrow sense of the word, together with the use of proper tone and respect of the

convict's human dignity and self-consciousness. Complaint against torture and other cruel treatments should be ensured for the convict, the possibility of reporting and the exercise of the related legal remedy should be accorded together with asserting punitive and disciplinary procedure against those prison service workers who commit the violation of law. On the other hand, a broader interpretation of treatment includes the conditions of the convict's placement as well as the density of convicts in the prisons. The over-crowdedness of the prison service institutes may negatively influence the legal position of convicts, the security of detainment, but it also influences the legality of treatment. The conditions of placement may exercise influence over the human dignity and self-conscience of the convicts.

At the same time it should be demanded of the convict to respect the order of implementation in the interest of legal treatment, as the institutions cannot grant the person any favour which is against the legal norms, there cannot be prohibited relations or intertwining with members of the staff and the detainees.

The Parliamentary Commissioner can contribute to the protection of the convict's legal position by controls, investigations and in the case of the exploration of abuse related to constitutional rights by measures taken by him, thus promoting the assertion of state punitive authority as well as its keeping within a constitutional and legal framework.

II

The Ombudsman on Guaranteeing the Right to Legal Remedy

A woman complainant incarcerated for a petty offence described in her submission that the Gödöllő City Law Court condemned her for 30 days of incarceration for the petty offence of prohibited debauchery on 4 October 2007. In view of her ten-week pregnancy she submitted an application on 9 October to the Pálhalma Prison for a break in incarceration. She complained that the law court rejected her request not granting her the right to decide upon the embryo and treated her as if she were a criminal. She would not have been able to keep the baby because she had no housing and has already been supporting a minor child. She requested the investigation of her complaint so that "other pregnant Hungarian women should not have the same fate".

According to the justification of the judicial ruling of 12 October 2007 "...the court does not give assistance to the execution of such deviant behaviour which is otherwise defined and allowed by law in a certain sphere, which would lead to the termination of embryonic life and condemnable by general moral attitude. After the birth of the child, in case the person under procedure is unable to arrange for its upbringing it is possible to give it for adoption. On this basis the court has rejected the application according to para (2) of Art. 115 of the Act on petty offences (Sztv.). No appeal against the ruling is allowed."

The possibility of the termination of pregnancy is allowed by the Act on the protection of embryonic life up to the twelfth week of pregnancy in case of a grave crisis situation of the woman. In its resolution No. 48/1998. (XI.23.) AB the Constitutional Court has stated that it was not against the Constitution if the law allowed for the termination of pregnancy in case of a grave crisis situation of the pregnant woman.

According to Art. 115 of the Sztv. the court can permit the postponement or break in incarceration due to health, family or another reason. If the hospital treatment of the culprit is necessary the incarceration has to be broken.

In the spirit of para (1) of Article 50 of the Constitution the courts protect and ensure the constitutional order, the rights and lawful interests of natural persons ... and punish those who commit criminal acts.

The Ombudsman, considering the decisions of the Constitutional Court, has requested the minister of justice and law enforcement to pay particular attention to the creation of rules ensuring the right to legal remedy against judicial rulings when elaborating a new code on petty offences. The minister found that the law did not meet the requirements deriving from the right to legal remedy as it is contained in para (5) of Article 57 of the Constitution, therefore the creation of the right to legal remedy against decisions related to the postponement or breaking of incarceration is necessary when next time the law on petty offences is modified.

The Parliamentary Commissioner for Civil Rights could not revise the judicial decision due to the lack of such competency. At the same time he informed the complainant that she can launch a lawsuit for damages caused by the action of the court and can also turn to the European Committee of Human Rights. At the same time the Commissioner requested the minister of justice and law enforcement to pay particular attention to the necessity of creating legal remedy against judicial rulings when the new elaboration of the code of petty offences is in progress. The proper modification of the Act on petty offences entered into force on 1 February 2009.

The Ombudsman's Measures against Torture and Inhuman Treatment

In March 2009 the Ombudsman started on the spot investigations without prior notice in penitentiaries, and initiated talks with the National Commander of Prison Service, with organisations of legal protection and the Churches after a well-founded suspicion emerged that a convict died as a consequence of being maltreated by prison service staff as it was reported by the press.

The Parliamentary Commissioner for Civil Rights expressed his consternation on the basis of the case and warned that the implementation of the punishment of incarceration cannot affect the assertion of the convicts' basic rights to freedom such as their human dignity and rights to life and humane treatment. The democratic legal principles as well as the state based on the rule of law require that the loss of freedom should be humane, educational and guiding back to the society. Whereas the suspicious cases of death suggest that violence has spread in the prisons of Hungary among the convicts as well as among some groups of prison service workers, against which he pressed for most resolute measures as part of control by the state based on the rule of law.

According to Máté Szabó violence inside the walls of prisons is the shame of a state based on the rule of law, particularly the abusive physical and psychological violence of the employees of the prison system in a country like ours where hundreds of thousands were tortured, humiliated, or were outlawed and even killed by various dictatorships in the twentieth century.

He stressed that Hungary, as contrasted, for instance to Poland and Slovenia, has not yet accepted the optional supplement to the UN agreement against torture and humiliating treatment. This optional supplement rules for the setting up of an independent national control mechanism and the preparation of reports as well as investigations mostly in law enforcement, but also in every other institution of inmates restricting freedom, such as psychiatric institutions, refugee camps, correctional homes and homes for the elderly. In 2007 the Ombudsman repeatedly called the attention of the government to the necessity of preparing for the introduction of such an independent control mechanism by way of working for the acceptance of the optional protocol in which the Parliamentary Commissioner for Civil Rights would also take part in keeping with the practice of several Union Member States. The Ministry of Foreign

Affairs expressed their agreement, but the Parliamentary Commissioner did not get a clear answer from the Ministry of Justice and Law Enforcement.

The Ombudsman invited those citizens who became victims of torture and humiliating treatment primarily by the employees of the prison service institutions since 23 October 1989, to submit their complaints orally, in writing, in electronic form with name or without to his office. They should make their complaints even if the offence cannot be proved, because their case could be of indicative value for the planned on the spot investigations in prisons which would not be announced in advance.

The convicts and their relatives have also sent accounts to the Ombudsman and only a few of them spoke about assault. There were cases when, mostly in prisons of the capital city convicts were beaten up or insulted in other ways but investigations were launched in most of those cases. There was a prison ward, whose service was suspended, and at other times a criminal procedure ensued, but it also happened that a procedure was launched upon the Ombudsman's notice for "suspicion of assault in official procedure". According to one convict he was beaten up by unknown wards but the investigation into the case was terminated.

Relatives complained against the difficulties of keeping in touch; they had to travel too much for a visit, or they complained against the conditions of health care, and criticised disciplinary procedures.

The Ombudsman on the Right of Convicts to Receive Visitors

The right to receive visitors may have an important role in maintaining contacts between the world of prisons and the society in readjustment after the punishment is completed. This right offers an opportunity for maintaining the convict's interest in the outside world, to preserve personality, self-assessment and self-esteem. The sense of being exposed, an inevitable corollary of the curtailment of freedom can be moderated, and occasionally it may contribute to substituting or restoring disintegrating family ties and other social relations. The Commissioner has pointed out in his report that it does not serve any penal law aim and has nothing to do with prevention if the right of the convict in jail to receive a visitor on holidays is withdrawn. Prohibition violates the principle of the state based on the rule of law, the right to human dignity as well as to the protection of marriage and the family, and if it is disregarded the state also does not perform its objective obligation to protect basic rights. In his view laying down in a legal norm the right to receive visitors on holidays could be one of the means for the protection of the convict's rights and for the remedy of his/her complaints.

The Ombudsman has supported his statements by rulings of the Constitutional Courts, by the UN rules related to the handling of detainees, by the recommendations of the Committee of Ministers of the European Council, and by references to international agreements.

The national chief prosecutor supervising the legality of the activities of the Hungarian Prison System agreed with the Ombudsman's proposal according to which efforts should be made that the basic rights of convicts, such as keeping in touch with the outside world should be limited only to the slightest possible degree.

The Commissioner requested the minister of justice and law enforcement to consider his findings in the revision of the regulation of the Hungarian Prison System just in progress and he should see to it that the extension of receiving visitors on holidays should be incorporated into the expected new code of the Prison System either as a main rule or as a bonus opportunity.

In his answer the minister acknowledged the outstanding significance of the right of convicts to keep in touch with the external world in view of their later reintegration into the society as well as that the limited budgetary and financial resources of the prison system cannot push the possibility of receiving visitors on holidays into the background. The minister supported

those measures of the national commander that are intended to be made at the end of his investigation ordered upon the Ombudsman's recommendation. He accepted the increase of the frequency and duration of receiving visitors by convicts as a forward-looking idea, and that the relatives should be informed by the date of visit by phone, further on that the dates of visits on Mothers' Day, Easter and Christmas should be made general.

Harassment from behind the Bars – the Ombudsman on the Dark Side of the External Contacts of Detainees

A citizen complained to the Ombudsman that the culprit committing a crime against him was sending letters of humiliating content, gravely hurting his human dignity from jail, and even called him by phone once despite the fact that he as injured did not agree with keeping in touch.

The Parliamentary Commissioner asked for information from the prison service concerned as well as from the national commander of prison administration and from the chief prosecutor of the city. According to the national commander the institutions do not control whose access is given by the detainee. The municipal chief prosecutors stated that according to the current practice of the prisons there is absolutely no control of whether the given phone number is one of the recorded relative of the registered inmate or not. On the basis of the investigation the Ombudsman has found that the law enforcement institutions create an opportunity by the lack of checks that the detainee may get in touch with the injured side of the criminal case or with the witnesses in order to influence their later testimony, or would even intimidate them thus hindering a successful completion of the criminal procedure. Such a practice of the prisons violates the right to human dignity of those people whose phone number and address were given by the detainee illegally. In his own competency the Commissioner did not take any measure because the Chief Prosecution of Pest County has called the attention of the prison concerned to the case during the procedure, and the commander of the institution took measures so that his subordinates should be more attentive to the circumstances of the detainee's way of keeping contact in the future.

Experiences of the Conditions of Detainment of Juveniles and Detainees

The Parliamentary Commissioner conducted an investigation in the interest of the protection of the right to life and human dignity after a well-founded suspicion arose that a minor detainee was killed by his cell mate, another minor in the Penitentiary of Juvenile Delinquents of Tököl in October 2007.

According to statistics the number of violent crimes committed by convicts to the injury of their mates grew in 2007. The situation was particularly alarming among juveniles in respect of indecent assault. In 2007 investigations were launched in 17 cases because of indecent assault (6 at Tököl, 10 at Szirmabesenyő and in one case at the Prison Service of Tolna County); and there were 13 procedures because of grave physical assault. This is why the Commissioner extended the investigations for exploring the conditions of the detainment of juvenile delinquents and his associates conducted on the spot investigation in the prisons for juvenile delinquents (at Tököl, Kecskemét, Szirmabesenyő and Pécs) and also in three correctional institutes also implementing detainment (Debrecen, in Szőlő Street, Budapest and at Rákospalota) by way of comparison.

By comparing the prisons housing convicts and detainees up to the age of 21 at the most he found that the situation in institutions of a small holding capacity (Kecskemét: 30 people, Pécs: 50 people) was better in every respect than the one in places of larger capacity (Tököl, circle 'B': 192 juveniles, Szirmabesenyő: 115 people). The institution of Szirmabesenyő is regularly filled

up to 110 to 120%, the capacity of the circle 'B' of Tököl was filled to 78% in January 2008, but was already 112% in July. In Kecskemét and Pécs the number of convicts did not exceed the permitted number of convicts. (A space of three and a half cubic metres has to be guaranteed for juvenile convicts.)

The Commissioner found the objective conditions best in the prison of Pécs opened in 2006, and built with PHARE support. The institution and the equipment of cells is up to date, food is good. The arrangement and equipment of the prison of Kecskemét, built in 1997, is also adequate though the plumbing units require renewal. The prison of Szirmabesenyő was originally not built for the detainment of young people; it was transformed in 2002 to become the second biggest institution keeping juveniles. The actual number of inmates is regularly over the number permitted, and there is hardly any possibility for isolation. The cells were in an extremely used and damaged condition at the time of the investigation. The danger of causing accidents and fire by the electricity network also meant a serious problem.

The largest number of juvenile inmates can be placed in the oldest institution, the Prison of Tököl serving the keep of youngsters ever since 1963, but they only constitute 24% of all the total possible number of 807 inmates. According to law, however, adult convicts can only be placed in an institution of law enforcement for juveniles in the interest of the operation of the institute. There are in the average only two psychologists for 700 convicts (of which 150 to 200 are juveniles), which is very little. The number of supervisors on duty at night is also insufficient compared to the institutes investigated or to the size of the given one.

The Commissioner has pointed out that the inmates only commit grave and violent acts against each other in law enforcement institutions for juveniles having a large number of inmates (at Tököl and Szirmabesenyő), and there was no such case in Pécs and Kecskemét. Aggression of youngsters against each other is not part of punishment therefore it should be prevented by all means by the state. Asserting the rights of juvenile prisoners corresponding to their special position is thus ensured if they are placed in institutions of small holding capacity and in cells for one or two persons.

The Ombudsman conducted on the spot investigations also in three county prisons (in Kecskemét, Pécs and Debrecen) and found that the crowdedness of law enforcement institutions holding detainees (adults as well as juveniles) was extremely high (more than 200%), which had a detrimental effect not only on inmates but also on the situation of the prison service workers (they are overburdened, have to do lots of overwork, there is high fluctuation, working conditions are poor, wage levels are low). In unit I of the Bács-Kiskun County Prison the toilet was only separated by a curtain in several cells; in such an approximately 8 m² cubicle there were five beds, one of two and one of three tiers. In the of Baranya County Prison six people were locked up in a cell meant for one person and two three-tier beds were crammed into it.

The Commissioner also stressed that detainment cannot be advance punishment, but at present the principle of "separate treatment" of such people is absolutely not realised. The placement of such detainees on three-tier beds and the crowdedness of cells mean an inhuman, humiliating treatment and actual punishment. Therefore he has made a recommendation to the minister of justice and law enforcement suggesting that he should take measures for the reduction of crowdedness in the 'detainment houses', if necessary even by the modification of the legal rule. The minister has not accepted the recommendation but the Commissioner has held it up.

It was indicated everywhere that there were many more problems with juveniles (and with girls in particular) than with adults, their disciplinary situation was much worse, it was difficult to handle them, their school education was low. Changes can only be achieved with the continuous occupation of their leisure and energy, with regular education and employment and with the organisation of various programmes, but all this is a function of financial resources. Being out in fresh air and doing sports are ensured in every institution. Primary education is compulsory and secondary education is also arranged upon demand, in addition different kinds of trade are taught

and courses are held. The inmates complained against the lack of daily bath in hot water and food supply only at Tököl.

In view of all this the Commissioner has stated that the placement of juvenile convicts at the Prison for Juveniles at Tököl as well as at Szirmabesenyő directly endangered their right to life and human dignity, and it also violated the child's right to protection and care by the family, the state and the society, which is necessary to the proper physical, intellectual and moral development. Therefore the Commissioner recommended to the minister of justice and law enforcement to elaborate a specific action plan for ensuring the legal detention of juveniles.

In the Hajdú-Bihar County Prison young ones were also kept to whom no special occupation and education could be ensured, and an extremely large number of inmates were looked after by one instructor. Usually the daily one-hour stay in the open air means regular occupation, and they can use the library. Therefore the Commissioner stated that detaining juveniles in county or national prisons instead of correctional institutes or in prisons for juveniles causes abuses in relation to the right of the child to protection and care by family, the state and the society which is necessary to his/her proper physical, intellectual and moral development. For this reason he requested the minister of justice and law enforcement to ensure the assertion of the constitutional rights of juveniles due to their special situation even in the case of minors in detention by the modification of the respective legal norms.

The correctional institutes surveyed which ensure the education of juveniles in correctional institutes and their detainment ordered by the court and the subsequent care of the convicts in a narrower circle up to the age of 19 were in general more favourable than in the prisons for juveniles. They conducted variegated educational and upbringing activities under consolidated conditions. The young ones did not at all commit grave assaults against each other.

There are altogether 186 places in the correctional institutions for detainees. In June 2008 more minors were kept in prisons than in correctional ones. The court decides on the selection of the place where the detention is to be affected which can be modified by a motion of the prosecutor, the accused or the defence lawyer. According to the Commissioner's stand the enforcement of detaining juveniles in prisons for juveniles should be justified only in the most serious cases. Therefore he has made a recommendation to the minister of social affairs and labour, exercising supervision over those institutions, to consider the establishment of a new correctional institute, and he requested the minister of justice and law enforcement to specify the number of prison service workers in the prisons for juveniles. The Commissioner has forwarded this report by way of information to the deputy chairman functioning as chairman of the Supreme Court as well as to the chief prosecutor.

The minister of justice and law enforcement informed the Commissioner on his applications that the action plan concerning the legal detainment of juveniles has been prepared and its implementation has been mostly completed. At Tököl the regrouping of detainees and hence the release of space, and the transfer of juveniles from Szirmabesenyő the crowdedness of the Tököl as well as Szirmabesenyő prisons has been reduced. The possibility of taking baths daily has been ensured for the young ones also at Tököl. The prison service workers of the institute at Szirmabesenyő were supplemented by a psychologist and a neurologist doctor in December 2008. The minister also agreed that the number of prison service workers in prisons for juveniles should be stipulated by law which would be presented to Parliament as part of the new code on law enforcement together with rules for the separation of juveniles and young adults.

On 18 May 2009, when the Ombudsman visited the Regional Prison for Juveniles at Szirmabesenyő he could personally experience the positive changes resulting from his recommendations, but could also discuss the dilemmas of the future with the head of the

institution. In summary they have stated that the conditions of the detainment of juveniles have improved within a year.

The crowdedness of the county houses of detainment (Kecskemét, Pécs, Debrecen, Nyíregyháza, and Miskolc) was also reduced by transfers, yet the capacity of the Bács-Kiskun County Prison was used up to 200% even in January 2009. The enlargement of the capacity of the Baranya County Prison cannot be done in the near future because of the lack of budgetary resources. There is continued need for the maintenance of the three-tier beds in three institutions in Szeged, Pécs and Kecskemét. In case the toilets were separated by walls only the space of the cells would be further reduced.

The minister agreed in principle with the implementation of the detainment of juveniles exclusively in correctional institutes and in prisons for juveniles but in practice he could not support it with responsibility, because in his view taking to court the accused would take up much time which would hinder the closure of criminal procedures within a rational period of time. According to the Ombudsman's position, however, the problem could be solved by a proper organisation of the acts of procedure and by the transfer of the juvenile accused for detainment.

The minister of social affairs and labour did not consider the establishment of a new correctional institute because the full capacity of the existing ones was not utilised, but in case there was demand for it during a longer period of time the possibility would be investigated.

Assertion of the Constitutional Rights of Women in Captivity and of the Prison Service Workers

The Parliamentary Commissioner has ordered an ex officio on the spot investigation in the interest of exploring the conditions of female convicts and of the living and working conditions of the prison service workers with special regard to women. The Constitution ensures the protection of mothers and working women, hence it authorises the development of rules containing positive discrimination.

Female convicts can be placed only in three prisons of the country, in Eger, Pálhalma and Kalocsa, whereas those convicted for high security imprisonment only in Kalocsa, typically far from their place of residence, which makes contacts with relatives significantly more difficult. Each of the institutions was over-crowded (115 to 140% of the holding capacity).

The Ombudsman has stated that the possibility of taking baths daily which corresponds to the special hygienic needs of women is ensured only at Pálhalma, where showers were installed in the cells. In the two other institutions the deficiencies in ensuring the possibility of daily bath cause abuse in relation to the right of convicted women to human dignity.

In the Heves County Prison in Eger no psychologist is employed which directly endangers the right to the possible highest level of physical and mental health of the prisoners as well as of the prison service workers.

At Pálhalma conditions of captivity have been significantly improved in comparison to the Ombudsman's investigation of 2000. The lack of medical care and the lack of running water in the disciplinary cells, however, directly endanger the realisation of the right of convicts to the possible highest level of physical and mental health as well as to human dignity. The particularly low number of workers allows for the performance of service tasks at a safe and adequate level only at the cost of extraordinary work and serious over-burdening, which, in its turn directly endangers the right of the staff to human dignity, and indirectly the realisation of the captives' rights, and also affects their handling.

In Kalocsa the number of security inspectors is small and break at work cannot be ensured for them, which creates an abuse of their right to rest.

The Commissioner has stated as a positive feature that a large part of convicted women are employed in all the three prisons (they work and/or study), and also that the staff is characteristically of mixed (male and female) composition which means an important safeguard to the legality of custody.

In the interest of remedying the disclosed abuses the Ombudsman has recommended to the minister of justice and law enforcement to elaborate a medium-term action plan for the solution of the indicated problems and to try to ensure the financial resources to it.

In his answer the minister explained that the obligation to provide hot water is met “in keeping with the possibilities” in Eger as well as in Kalocsa, but he would consider to increase the weekly one shower to two in the new law enforcement code in view of hygienic and human rights considerations. He cannot, however, take any steps to provide for a psychologist under the present budgetary and staffing conditions. At Pálhalma an additional general practitioner doctor is employed from 1 July 2009 on, and supplying the disciplinary cells with running water is in progress subject to financial resources. The minister also agreed that the number of employees at the establishment of Mélykút is dangerously low, but here too the enlargement of the staff depends on the financial possibilities. In the Prison and Jail of Kalocsa the break at working hours as well as the supervision of the three-story hall of cells has been solved partly by the modification of the distribution table of service workers as well as by increasing the number of inspectors.

Still Life from the Csillag (‘Star’) Prison – the Ombudsman’s View Creativity behind the Bars

The Parliamentary Commissioner also visited the Csillag (Star) Prison of Szeged in person. He mentioned as a positive feature that work of outstanding professional standard has been in progress in Szeged in the interest of the re-socialisation of convicts, but an investment of HUF several thousand million would be needed to the improvement of the placement conditions of convicts and of the working conditions of the employees. He assessed the proportion of the employment of convicts as an expressly good one. He also considered the number of convicts per instructor also acceptable if compared to his experiences gained in other prisons. He also assessed it positively that the commander of the prison had already headed several institutes therefore he had a basis of comparison to help him select the most efficient method of management from among those of smaller and bigger institutions. He experienced a significant progress in the field of reducing the congestion of cells and of the institute. He welcomed it that 70 to 80 convicts were allowed to receive visitors twice on Saturdays as well, moreover, the institute ensures for the convict to meet his minor child in a premise especially arranged for receiving visits of families. Though he regarded it an advantage that the institute was originally built as a penitentiary, he assumed that it was contradictory to be located in a place (market place) in the heart of the city. He was of the view that today it may mean a problem not only for city dwellers but also for visitors.

On the other hand the Ombudsman pointed out that the right of the convict to rest and to a healthy environment may be violated and even his human dignity is endangered if there were no six cubic metres of air space at least per convict and three m² of space for movement. And the fact that the toilet was not separated by a wall in the cell and the fact that the convict can wash and dry his garments in the cell is suited for the identification of damage not only of his human dignity but also of his right to the possible highest level of physical and mental health.

The Commissioner did not find the ground-floor offices of the workers of the institute suited for stay because they were humid. Therefore he called attention to the fact that the condition of those offices directly endangered the right of people working there regularly to the

possible highest level of physical and mental health. He also stressed that it violated the principle of the state based on the rule of law and the requirement of legal safety, but it also raised the direct endangerment of the right of the convict to ownership that the rules of the house of the prison orders that the relatives should send their money allocations in a targeted way, indicating for what the money could be spent.

In the interest of remedying the disclosed abuses touching upon fundamental rights and of preventing them in the future the Commissioner recommended to the national commander of prison administration to review the practice of handling the money sent to convicts in every prison, and if necessary, he should take measures for developing a uniform and proper practice. In addition he should elaborate an action plan for the renewal of the offices on the ground floor of the Szeged Prison and Jail and to ensure that they are suited for humans to stay there, further on to separate toilets in cells by walls, and he should attempt to ensure the necessary finances for this purpose. He requested the commander of the Szeged Prison and Jail to study the possibility of developing a room for washing and drying clothes, so that the convicts should not wash their clothes in their own cells but under cultured conditions, and he should also see to it that every convict would have at least six cubic metres of air space and three m² of space for movement. The national commander in his answer stated that he saw chances of realising the contents of the recommendations on the basis of the budgetary forecasts for the year 2010. The commander of the institute has also accepted the Ombudsman's recommendation.

It proves the will of the Parliamentary Commissioner to act in the interest of promoting the acceptance and reception of persons limited in their personal freedom by the society that he lent some space in his own office for the exhibition of the art works of the convicts kept in the Szeged Prison and Jail. The exhibition entitled "Outside the Framework" could be visited from 8 to 25 September 2009.

The Commissioner gladly offered that venue because it is commonly known from the results of psychological researches that creative activity is joyful. Such sense of joy is necessary during the time spent in conviction because isolation, the loss of important emotional ties and of the beloved ones, or the loosening of contacts result in lots of suffering and psychic disturbances.

The exhibition presented the work of eight convicts. It can be stated on the basis of the contents and world of colours of the pictures that processing the psychological effects of the loss of freedom varied. For instance, one could see trauma suffered in childhood, or the condition of loss, the desire for the female gender, sadness because of struggle and self-surrender, just as much as the open aggression of the frustrated individual, or peace found and confirmed by faith, and the serenity of man finding quiet in nature against spiritual suffering. The creative people had once been hiding because of committing something wrong, and they put their face and creations out to public in their pictures. These creations were warning and encouraging that everyone should pay attention to the waves of their creators' soul and to look for the hidden message of its shades and reflections.

Is the Continuous Closing Down of Prisons Permissible in a State Based on the Rule of law?

Statistical data show that the number of people in custody has been continuously growing. In April 2009 the minister of justice and law enforcement gave a report on his measures taken in the interest of reducing the extreme over-crowdedness of custodial houses, at the same time, and in sharp contrast to those measures, he had the No. II establishment of the Municipal Prison in Gyorskocsi Street closed down on 30 June, where almost 300 people in custody were kept.

Further on, the closing down of the Székesfehérvár prison of a holding capacity of 120 persons, also ensuring the keep of people in custody, as well as of the Szabolcs-Szatmár-Bereg County Prison of a holding capacity of 140 people also emerged, but no decision has been made to this effect. At the same time the sub-section of the Állampuszta Prison at Solt was partially vacated, and it was decided to merge the Szeged Prison and Jail and the Prison of Nagyfa, and those inmates who did not work were removed from Nagyfa.

The experiences of the Ombudsman's investigations and a growing number of complaints received from people in custody show that the conditions of pre-trial inmates have been already intolerable in several institutes, and the recent measures enhance over-crowdedness to a level which is intolerable. The conditions of placement gravely violate the Covenant on Civil and Political Rights as well as the European Prison Rules. The constitutional rights, however, of persons kept in custody within the understanding of the presumption of innocence cannot be disregarded by a democratic state based on the rule of law.

Humane Law Enforcement in Cooperation of the State and Private Capital

During the on the spot inspection in the National Prison of Szombathely, built in cooperation between the state and private capital, the Parliamentary Commissioner found shocking differences compared to other prisons. In the new institute he found conditions of captivity more considered, humane and hygienic.

The institute is operated by a consortium for which the state pays rent for fifteen years. Maintenance, operation, catering, washing and the employment of inmates at work are all in private hands. Guarding, transportation, arrest, correction, health care and record keeping are under state control. Cooperation between the management of the institute and the consortium is good, but since it is not the management but the national command and four operators are in contractual relationship the clearing and solution of possible problems is sometimes slow. This external legal relationship and the responsibility for compensation if any is not settled by a legal norm, which violates the principle of the state based on the rule of law and the requirement of legal safety.

The air space of cells, the toilets and showers per cell in a premise that can be closed, the number of people permitted per cell all guarantee by far the right of convicts to a healthy environment as well as their human dignity. It was reassuring that part of the convicts could receive visitors even on Saturdays, which is suitable to ensure the right of the convict to the protection of marriage and the family. The convict can meet his child also, and can chat seated at a table, the right to disposal of the convict of how to use his deposited money is treated flexibly, and they can be employed to an acceptable measure. The Commissioner, however, criticised the drying of clothes in the cells here too.

The safety of keeping is ensured by several pieces of internal signal equipment and video cameras. The number of convicts per one keeper is acceptable in the institute. The working conditions of the prison service workers are also good. The Commissioner regarded it an advantage that the institute was not built in the city centre. At the same time the fact that it cannot be approached by mass communications and one can walk to it for a distance of about one km from the bus stop along the highway endangered by car traffic was regarded as a violation of the principle of the state based on the rule of law.

The Ombudsman has recommended to the minister of justice and law enforcement to consider his references to legal lacunae in respect of an institute built in partnership with private capital when creating the new legal norms pertaining to the operation of the system of prisons. He requested the commander of the institute to arrange for a drying room which was not supported by the commander. Finally, he suggested to the Mayor of Szombathely to study the

possibility of extending the route of the regular bus service up to the institute. The Mayor took the necessary steps to prepare a resolution to be approved of the general assembly which would extend the bus service up to the prison.

On an Over-crowded Prison yet on European Standard

After his visit to and investigation in the Veszprém County Prison the Parliamentary Commissioner has reached the conclusion that the institution was over-crowded (130% at the time of the investigation) which violates the right of the convicts to rest and to a healthy environment, and directly endangers their human dignity. Opportunities of employment and study are almost totally missing in the institution, which does not meet the requirements of the parliamentary resolution on the national strategy for the social prevention of crime. Similarly to other jails here also the convicts dry their clothes in the cells which could be arranged differently and would improve the situation of inmates.

The Parliamentary Commissioner welcomed the fact that the convicts and the prison service workers got the same food which excluded lots of problems. He initiated the modification of the rules of the house in respect of the handling of the convicts' money orders since the institute accepts money as deposit only sent for specific purposes such as purchases, telephone calls. The relevant legal norm does not contain such a rule, therefore the rules of the house run counter to a higher-level legal norm.

He also assessed it positively that the families of convicts can visit their relatives also at the time of holidays, and it is permitted to the convicts to receive simultaneously more than two children below the age of 18. The Ombudsman met for the first time with the opportunity in this institution that the convict could borrow board games during his leisure and use them in his cell. Health care is offered in properly equipped offices. The only six instructors for the almost 300 convicts, however, were regarded very few compared to the tasks, and he also did not find sufficient the employment of a psychologist for four hours per day only.

The Parliamentary Commissioner for Civil rights recommended to the national commander of prison administration to raise the number of instructors in the institute, he should also initiate the extension of the building. The head of the institution should have drying rooms developed; he should look for applications for the employment of convicts, for the organisation of courses and trainings. The head of the institution showed positive attitude to the Ombudsman's initiatives. The national commander also accepts the Ombudsman's remark about the need for increasing the number of instructors and has indicated that he would investigate the possibilities of solution, and in case budgetary resources are available, he would also study the realisation of the possible extension of the building.

Curtailed Dignity, Humiliating Conditions, Over-burdened Staff

In August 2009 the Commissioner held an undeclared on the spot investigation in the establishment of the Municipal Prison in Venyige Street to survey personally the situation that had emerged in the place after the establishment in Gyorskocsi Street was closed down. He found that twice as many people were kept in Venyige Street than stipulated by law. The staff was over-burdened due to the shortage of employees and members away for longer periods of time.

The requirements set out in the European Prison Rules were not realised in the case of people in custody. He found the conditions of those in custody worse than those of the convicts due to the over-crowdedness of the houses of custody and to the almost total lack of employment opportunities. The Ombudsman has pointed out that the more than 200% over-

crowdedness of the Municipal Prison gravely violated the right of the detained to human dignity and causes the immediate danger of inhuman and humiliating treatment, the extremely low number of prison service workers itself directly endangers the right of employees to human dignity. He repeatedly requested the minister of justice and law enforcement to arrange for the reduction of crowdedness of the houses of custody and particularly that of the establishment of the Municipal Prison in Venyige Street as well as arranging for the employment and training facilities of those in custody in the medium run. He suggested that the Ministry conduct a comparative study of the cost of keeping people in custody and that of the acquisition and operation of 'ankle monitors' ensuring house detention. He suggested that he should take measures together with the national commander of prison administration for the elimination of the shortage of staff. The minister did not agree with the Ombudsman's initiatives, but the Commissioner held them out without alteration. He also recommended to the minister to visit with his associates any of the houses of custody crammed up to 150–200% and see for himself under what conditions the detained lived.

The First Privately Operated Prison

In the first quarter of 2010 the Parliamentary Commissioner appointed his associates to collect information on the conditions in the prison built in cooperation between the state and the private sector, the National Prison of Tiszalök. According to experiences the convicts can spend their term under European conditions in the prison of a holding capacity of 700 people, they have an opportunity to study, work and do sports activities. The cells are for one or two and their equipment is decent, allowing for cultured housing, TV and radio sets switched from outside are also part of the cell equipment. The health care for the inmates is provided in a separate building by specialist doctors and nurses. The equipment of the kitchen is up-to-date; cooking is daily offering more than twenty different kinds of diet.

The Commissioner was satisfied to hear that family meeting is allowed upon request each month thus promoting the protection of marriage and the family at Tiszalök, when even three minor relatives of the convict can be simultaneously present. The convicts could receive visitors at Christmas too, the conversation takes place sitting at a table, and even a playing corner was arranged for smaller children.

The Ombudsman has found the number of convicts per instructor satisfactory. The unit inspectors and psychologists are insufficient in number compared to the number of convicts. The Commissioner assessed it positively that the several decades of the commander's practice greatly promoted the solution of problems deriving from the shortage of staff, particularly the organisation of the guarding, inspection and control of inmates. The order and security of detention is served by the most modern security equipment in the institution. While acknowledging all this the Parliamentary Commissioner would deem an urgent modification of the relevant legal norm necessary for making the relations between the state and privately operated prisons more specific.

On the Realisation of the Rights of Prisoners with Impairment

In order to survey the realisation of the rights of prisoners with impairments the Ombudsman conducted an ex officio investigation in the Institute of Observation and Mental Health (IMEI), at the Central Hospital of Prison Service at Tököl and in the Chronic Post-treatment Section of the Prison Service Institute of Nagyfa.

The condition of the IMEI building has greatly decayed. No additional nurses can be employed due to the freeze of employment. It is a grave problem that the age of psychiatrists working there is between 70 and 75 years and their replacement is inadequate. The placement of persons with mental or physical impairment does not meet the stipulations of the UN Convention on the Rights of Persons with Disabilities; the building is not at all free of obstacles, and additional activities of therapy and others promoting rehabilitation should also be arranged for besides the one or two special circles. The Ombudsman has found that the placement of patients undergoing psychiatric treatment and those sent there for treatment gravely violates their right to human dignity. Therefore he pressed for the creation of the conditions of IMEI for a modern operation within a foreseeable time and that the transfer of the institution under the supervision of the minister of health should be considered.

He found the order on the forceful means allowed to be used against patients under compulsory treatment rather inaccurate which violated the requirement of legal security. As a consequence of a modification of the law a further 20 to 25 patients needing and under compulsory psychiatric treatment will have to be released from IMEI on 1 May 2010. Their further care, however, has not yet been created though its necessity was known earlier too.

Women and men are placed separately in all the institutes investigated, but the juveniles are not separated. This runs counter to the right of children to particular protection and care.

At Tököl the bathrooms are not free of obstacles, and there is no separate toilet developed for persons of impaired movement either. The small, cage-like courtyard of the main building only ensures the possibility of being out in the open to a limited extent.

The representative of patients' rights contacted the Prison of Nagyfa only in the summer of 2009, but still does not ensure the one day per week reception hours for bedridden convicts with impairment as stipulated by law. An extremely poor quality metalled road leads to the institute of Nagyfa. The Commissioner recommended that it should be repaired urgently.

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

☒ 1387 Budapest, Pf.: 40
☎ (06-1) 475 7100
☎ (06-1) 269 1615
@ panasz@obh.hu