

REPORT

ON THE ACTIVITIES OF THE PARLIAMENTARY
COMMISSIONER

FOR CIVIL RIGHTS IN THE YEAR 2008

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COMMISSIONER'S WELCOMING ADDRESS

The last year was the first calendar year when I fully performed the duties of the Parliamentary Commissioner for Civil Rights and also substituted the Parliamentary Commissioner for Data Protection for altogether nine months. The range of powers was altered in this year, and cases related to the protection of the environment were transferred to the hands of the new Parliamentary Commissioner for Future Generations on the basis of a new legal norm. Transfer as a result of practical agreements and co-operation under the legal regulation has entered into force. From then on complaints related to the environment have been processed and dealt with by the new Ombudsman's office as stipulated by Acts on the Protection of the Environment and on the Ombudsman.

This year the number of complaints, despite the transfer of the above-mentioned tasks, has grown by almost ten per cent, yet we succeeded in keeping pace with it despite the fact that neither the number of associates nor the budgetary support has grown. The growth of the number of complaints to this extent is presumably explained by problems related to the economic and financial crisis as well as to growing familiarity due to the more active work of the Ombudsman. It gives food for thought from the angle of constitutional rights that it is for the first time since the institutionalisation of the multiparty system that a single party has been governing and a one that is the legal successor to the party that had managed the earlier one-party system. One may be able to assess in the longer run only whether this change had caused any transformation in the quantity and nature of problems related to citizens' complaints and those related to citizens' rights and in the field of the reactions of authorities. Besides the significant deterioration of the economic and social situation it is the partisanship of order and the strategy of 'zero tolerance' asserted in the field of law and order that may be identified as an autonomous area to which complaints and the ex officio Ombudsman's investigations may be focused.

There have been no significant changes in respect to the two-thirds majority Acts such as the one on assembly under the conditions of the emerging political polarisation. Part of the changes initiated by the government were reviewed by the Constitutional Court such as issues of regionalisation, hate speech, assembly, and some other elements are being under constitutional revision (such as more rigorous rules of the Penal Code). As Parliamentary Commissioner for Civil Rights I have consistently taken steps against anomalies and their suspicion caused by the authorities and public service providers deriving from the shortcomings of regulation and from the bad habit of official superciliousness. I have repeatedly initiated the modification of legal norm passages leading to abuses, or called for a new regulation, and also the repeal of old ones, and a further development of the order of procedure and administration in a citizen-friendly direction. The authorities have mostly taken my suggestions positively, and as far as we can monitor it, a similar feedback is

arriving from the citizens as well. Failures do not discourage us, for we do not only work for the present.

The further development of our organisation and order of procedure has been conducted by the same aims as our basic activity, namely: transparency, efficiency, European models and democracy. This development will never be completed, therefore we are glad to receive the opinion of every interested critic. In addition to operation aiming at the possibly most complete and fastest processing of complaints received we have strengthened a topically concentrated pro-active style, more over, in some cases, where it seemed to be necessary from the aspect of the assertion of citizens' rights, even applied a provocative style. In 2008 we focused our activities on children's rights including the development of legal skills, problems related to the right to assembly and to the situation of the homeless, and we have already launched our project on the right to strike which would stretch over to the year 2009. Conferences, workshops, competitions and exhibitions were organised on the topics of the projects, and we tried to utilise the interest of the media in forwarding our messages more effectively to decision makers as well as to the citizens. In 2009 we would continue to work on the children's rights project which focuses on violence among children as well as against them. A new focus will be monitoring the rights of participants in public transport as well as processing the special problems of those living with various impairments. Our projects are permeable, in other words children, for instance, living with impairments will be focused on separately. We also wish to put the human rights problems of uniformed citizens and the staff of the professional army into the focus of attention.

The Report itself presents the main trends and events of the various areas in a structure corresponding to the constitutional rights for the year 2008. All that is given in a hopefully commonly understandable form. The focused statements of our projects are forwarded to the targeted audience in separate publications (so-called 'ÁJOB' /Parliamentary Commissioner for Civil Rights/ bulletins). From 2008 on we have published three bulletins dealing individually with issues of homelessness, children's rights and assembly.

In general we have grown the number of our communications in the dissemination of knowledge, in journalism and in scholarly publications, and hopefully we have also raised their standard. Our volume of papers entitled "Human Dignity – without Barriers" embodies the organic contact between the Ombudsman and the citizens, the state organs as well as the European Ombudsman culture. This publication also contains some of the children's drawings, photos and essays submitted for the competition of similar title, as well as papers written by the Human Rights Commissioner of the European Council, of eminent foreign and domestic representatives of law and political science and by myself and my associates. The publication of this volume was supported by the Office of the National Assembly, by the Ministry of Social Affairs and Labour, the Ministry of Justice and Law Enforcement, the National Police Headquarters and the Csányi Foundation.

The openness and publicity as well as citizen-friendly nature of the Ombudsman's activities are promoted differently by the complaint days in counties which were organised six times in 2008. As these meetings, organised jointly with the Administrative Offices have enhanced the number of complaints in the given regions and presumably have significantly increased the people's knowledge about our institution as well, they may become an organic part of our operation in the longer run.

Openness, publicity and citizen-friendliness asserted by our operation are served by a user-friendly development of our homepage, with special regard to promoting legal knowledge of children and youth addressed by an autonomous children's rights homepage. Our participation in events arranged by organisations of children, policemen, soldiers, the homeless and of people with impairments also aims at addressing specific target audiences, where we try to offer opportunities for recording complaints, and for exchanging views on special problems.

The aim of the internal transformation of the organisation and procedure was to assert a balanced handling of the processing of complaints received, the investigations launched ex officio as well as the implementation of the projects. We have to react dynamically on the challenges of our environment, currently for instance to the fact that the number of new cases received by 20 February 2009 was 72 per cent above the quantity of the same period in the previous year, in other words the further enhancement of the function processing the incoming complaints is inevitable.

In 2008 the lack of co-operation among the constitutional organs and the protracted vacancy of some posts of parliamentary commissioners resulted in a long and inevitable deputizing for nine months in the case of the Commissioner for Data Protection. This has pointed out that the constitutional and legal regulation of the election and substitution of commissioners as in force today is a problematic one, and puts an unjustly big burden on the deputizing commissioners; further on it endangers balanced operation. Therefore I propose to the National Assembly to consider and debate on letting the Parliamentary Commissioners responsible for the protection of the basic constitutional rights carry on in their office if the National Assembly does not elect their successors in time as it is the practice of several European countries.

Here I wish to call particular attention to the contradiction that in Hungary the institution of the Ombudsman has been developed by the continuous strengthening of the specialist ombudsmen, and by the continuous enlargement of their competencies and staff, whereas the Government and legislation have neglected the development and strengthening of the office of the Parliamentary Commissioner for Civil Rights dealing with the full spectrum of citizens' rights. Obviously it is us who shoulder all the tasks constituting the backbone of the institution of the Ombudsman in the country as well as internationally, and it is not accidental that a single parliamentary commissioner does the entire sphere of tasks in the decisive majority of the EU Member States with specialist deputies.

Prof. Dr Máté Szabó

1. Some Important Events of the Year

1.1. Programmes

1.1.1. Events

During 2008 the dialogue between our institution and the civil sphere as well as various professional groups became livelier, as well as topical project activities in the framework of which the associates of the joint Office have organised almost fifty events or participated in their organisational work.

The international activities of the Parliamentary Commissioners have also grown and not only as a result of the growth of the number of ombudsmen. The Commissioners and their associates have typically participated in professional events held in European locations.

In the framework of the Children's Rights Project

6 May. Opening of the exhibition on "Fear in Children's Literature"



Opening conference and the presentation of the homepage of the Children's Rights Project

31 May – 1 June

Participation in the first weekend of the event called Children's Island. The aim of the participation for the first time was that the Ombudsman should express by his personal presence how important he considered a broad

familiarisation with the rights of children, as linked to his Children's Rights Project. The programmes were developed so that the target audience of the event, namely every child in the age group between 4 and 12 as well as their parents may find an interesting occupation for themselves.

27 October. Closing conference presenting the results of the first year.
20 November. Participation on the Day of Children's Rights.

In the framework of the Right to Assembly Project

20 April. Participation in the Policemen's Day. The appearance of the Commissioner and his associates at the event could offer an opportunity to indicate the outstanding role of the working relations between the Ombudsman and the police in the protection of citizens' rights. Participation also offered an opportunity to strengthen prejudice-free citizen's thinking and to stress the citizen-friendly nature of the set of state institutions.

19 May. Workshop discussion: a critical analysis of the 12-year old Ombudsman's practice and charting the map of problems related to the exercise of the right to assembly.



Guest presenters at the workshop on the right to assembly

27 November. Workshop discussion on the new challenges appearing as a consequence of the No. 75/2008. (V. 29.) resolution of the Constitutional Court

In the framework of the Project on Homelessness

3 March. Exhibition of homeless artists

15 April. Workshop discussion on homeless existence

20 May. Workshop discussion on becoming homeless

19 September. "Care for the Homeless 2008", a national conference held in Balatonföldvár

22 September. Signing the Social Charter. The Commissioner, recognising that the exclusion of the homeless, intolerance shown by the society towards them and the duty to render assistance to them by every member of the society has become indispensable, and that there are questions emerging in public life, provoking constitutional thinking that harp on the possibilities of action by the Ombudsman, was the first to sign the Charter jointly drawn up with the Public Foundation for the Homeless.

14 November. The night of the homeless. The programme organised each year this time was continued in the presence of the Ombudsman and his associates, and on that occasion the Parliamentary Commissioner presented and discussed the anthology of homeless authors entitled "From Dusk to Dawn" in a tent set up on Heroes' Square.

17 November. Closing conference on the results of the project.

In the framework of the Project on the Right to Strike

12 December. Workshop discussion on the legal regulation of strike.

Other events

15 April. Results of the logo competition announced.

2 June. Announcement of the results of the children's drawing competition entitled "Respect of Human Dignity."

13–16 August. Participation in the Island Festival. Visitors were welcome by lotteries on basic rights and to four roundtable discussions in the Parliamentary Commissioner's tent. A discussion related to the Children's Rights Project was about cases of juvenile crime and their expected consequences. The discussion related to the Project on the Right to Assembly gave practical skills on the exercise of the right to assembly. The third discussion guided the young interested ones into the world and maze of finances and banking, and finally we had a discussion with the guests on zero tolerance and on objective responsibility on the big stage of the Civil Island.

15 December. Announcement of the results of the photo and essay competitions.

1.1.2. International Relations

In 2008 the participation of the Office of the Parliamentary Commissioner in the international legal life, in the work of international organisations (International Ombudsman's Institute /IOI/ and of the European Ombudsman's Institute /EOI/) has become more intensive and developed further.

The international desk officer of our Office has created a newsletter entitled Hungarian Ombudsman Newsletter addressed to international organisations and partner institutions, containing the work of ombudsmen, news, and useful links. Its first issue was published in November 2008.

Working relations based on mutual co-operation have been further activated and developed with the Human Rights Commissioner of the European Council, with the European Ombudsman and the Ombudsmen of the Visegrad Four.



Participants of the Ombudsmen's meeting of the Visegrad Four



Visit of European Ombudsman Nikiforos Diamandouros

1.1.3. Applications, Exhibitions

The Parliamentary Commissioner announced a logo competition for designing a logo for the series of programmes entitled “Human Dignity – without Barriers”. Students of secondary art schools could submit their works. The designer of the prize-winning logo was Gábor Lakatos, a student of the Budapest Vocational School for Fine and Applied Arts.

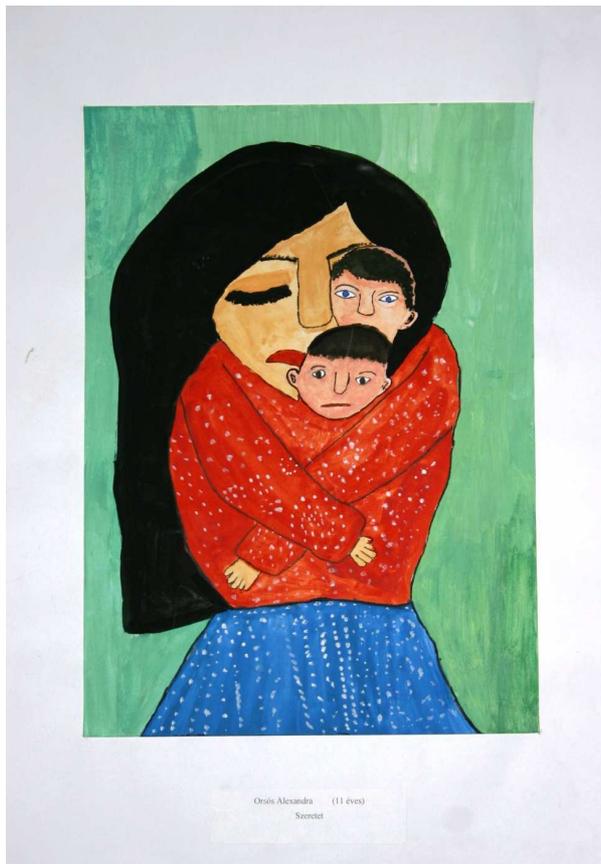


The prize-winning logo

The applications announced by the Parliamentary Commissioner for Civil Rights in the year 2008 were supported by the Csányi Foundation, by the Budapest Zoo, the Ministry of Justice and Law Enforcement, the House of Hungarian Photographers, the Association of Hungarian Photo Artists, the National Police Headquarters and the Ministry of Social Affairs and Labour.

The Parliamentary Commissioner for Civil Rights has paid special attention to the assertion of human dignity and the basic rights deriving from it, particularly to children's rights, to the right to assembly as well as to the problems of the homeless in 2008. During the course of his work the Parliamentary Commissioner has not only focused on the investigation of specific cases but considered it important to broadly publicise problems and anomalies revealed in relation to the realisation of basic rights and that the broadest possible strata of the society should feel responsible for solving those problems and abuses.

For this purpose he announced competitions of children's drawings, photos and scientific essays. The prize-winning works are to be published in a volume edited by us in 2009.



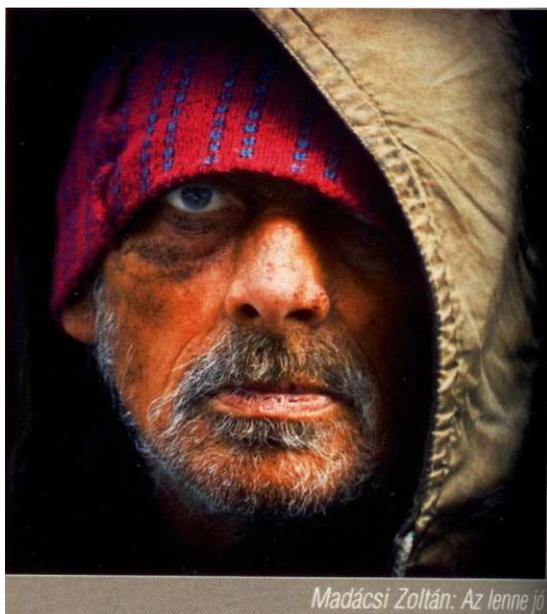
A prize-winning drawing: Alexandra Orsós, 11 years of age: "Affection"

Of the almost fifteen hundred entries sent in for the children's drawing competition entitled "Respect of Human Dignity" the jury honoured two with first, three with second and two with third prizes, and awarded extraordinary prizes to

another eleven drawings. Pupils of primary and secondary schools could participate in the competition with a special category for children receiving art education and another for those in a disadvantageous position. The aim of the Ombudsman was to have the children contribute to making his work known in the widest possible circle by their visual representation. The Csányi Foundation granted special prizes to four entries, the National Police Headquarters gave special prizes to three drawings, and the Ministry of Social Affairs and Labour granted ten extraordinary prizes to participants in the competition. We have exhibited 257 works.

Altogether 29 essays were submitted for the competition entitled "Respect of Human Dignity", announced for college and university students. Participants of the scientific essay competition were students of the Social Sciences Faculty of ELTE University, the Faculty of Arts of the University of Miskolc, Pázmány Péter Catholic University, as well as the Faculties of Law of Pécs and Szeged Universities of Sciences, and also of students of the Social Science Faculty and the Department of International Relations of the Budapest Corvinus University, of the Kodolányi János College, and of the Faculty of Applied Art of Szent István University. The professional jury also awarded the special prizes of the Ministry of Justice and Law Enforcement and of the National Police Headquarters besides the regular prizes. The prize-winning and otherwise honoured works would be published in a volume managed by the Ombudsman in 2009.

The installations necessary to the exhibition which was opened on 15 December were supplied by the House of Hungarian Photographers. Altogether 148 works were submitted by 35 applicants to the announcement of the competition. The prize-winning works were published in the January–February issue of the periodical entitled "Digitális Foto Magazin".



First prize-winning photo: "That Would Be Good" by Zoltán Madácsi

Exhibitions installed in the office of the Parliamentary Commissioner

A specific relationship was established with the "We Exist – Association of Creative Artists of the Homeless", the artists of which could exhibit their works in the building of the OPC and could perform their pieces. An intensive call for attention could start with this event in the spring of 2008.

At the exhibition entitled "Fear in Children's Literature", consisting of entries submitted for the competition announced by the periodical Magic Pencil and the Association of Children's Book Authors and Illustrators works of children's book illustrators were displayed. The exhibition confronted the viewer with important questions such as: Why is a child abandoned and why would he/she become one? Where do the fears and anguish of children come from? What to do if our child bites his/her nails, if pees in the bed at night, if he/she does not like to fall asleep?

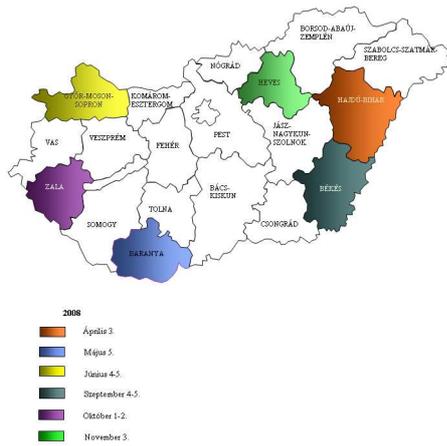
1.1.4. Visits to Counties

Familiarity with and acceptance of the Ombudsman's institution by the citizenry has significantly grown during the past almost 14 years. Yet, experience shows that people living in smaller settlements constitute a smaller proportion among plaintiffs in comparison to their numbers. Therefore the Commissioner, while following earlier practice, would like to enhance the frequency of the possibility offered to residents of the countryside to personally tell their complaints at the county headquarters.

On 'grievance day' announced in the local press the Commissioner's associates recorded the complaints of citizens who either registered in advance or came without preliminary announcement. Based on the hearings they either supplied the plaintiffs with adequate information in the interest of the possible settlement of their cases or started the investigation of the case right on the spot and began the collection of the necessary data from the authorities concerned.

We wish to express our thanks to the heads and associates of the offices of public administration for organising our visits. In the next picture the Commissioner is consulting with heads of offices of public administration about visits to counties among others.





Dates and venues of visits to counties

In the counties visited citizen activity has significantly grown. In addition to letters dropped into the box of complaints placed in the venues the number of complaints sent to the address of the OPC has also grown, and the total number of those people who personally came without prior appointment to present their complaint was also significant.

1.2. Press Reaction

Media mirror of the Parliamentary Commissioner's activities in 2008

In 2008 the activities of the Parliamentary Commissioner for Civil Rights could be traced in publications, in his office's homepage and in his statements published through the mediation of news agencies, in the news of the printed and electronic media, in reports, interviews and communications. The Commissioner has also presented his most important themes of investigation, their meaning and importance, his working method and findings, and even occasionally his legal philosophical considerations and practice in articles published in newspapers and special publications. Deliberately applied active and reactive elements were present side by side in the Ombudsman's interpretation of publicity. As a novelty of the Ombudsman's set of tools the children's rights homepage was created, and the governing slogan of the Parliamentary Commissioner for Human Rights: *Human Dignity without Barriers* has become generally known through the media.

Reliable statistical data based on large sampling have been available since April 2008, when the contract signed with the Observer Budapest Media Monitoring Co. Ltd. entered into force. Prior to that the registration of appearances in the media was done on a relatively narrow basis.

According to the records of the period between April and December 2008 4279 items of the printed press, 2843 items in radio and television stations

and 4532 occasions in the online media were about the activities of the Parliamentary Commissioner for Civil Rights (or related to it).

The media was paying great attention to findings, statements and recommendations of all the annual investigations that could command the greatest public attention and preoccupy the largest number of readers and viewers, and the media was mostly looking for positions taken by the Commissioner that could be linked also to daily news. The response to the three central themes of investigation (assertion of the right to assembly, children's rights and homelessness) of the year 2008 was outstanding.

Articles and interviews related to the right to assembly multiplied particularly in periods directly after public events and demonstrations and partly after reports on the investigations on the spot. Children's rights came to the foreground by daily press items and after the results of investigations partly launched on the basis of complaints and partly started ex officio, in 2008, characteristically due to the problematic functioning of the signalization system of child protection and of the child welfare services. The media 'discovered' conditions leading to homelessness, the specificities of homeless existence, and the possibilities of ways out of it partly upon the Commissioner's initiative but occasionally in periods most difficult for the homeless (summer is typically not a period favouring the issue). The Commissioner's message was dominant in reports and interviews going beyond daily news items, it was telling that human dignity is the right of all as well as equality before the law is a requirement.

In 2008 further topics, without a full list, provoking greatest media interest were the following: the closing down of the National Institute for Psychiatry and Neurology and of the National Institute for Addictology and patients' rights violated as a result; the legal regulation of the right to strike and the problem of sufficient services; the spread of violence at school; parking systems and parking companies, the practice of additional fees; the behaviour of the inspectors and security guards of the Budapest Public Transport Co.; loans by banks, fast loans and the registration tax; checking vehicles in traffic with foreign registration plates; the protection of the Ombudsman's associates during their official work.

The national media also paid great attention to the results of the public opinion poll repeated in 2008 after ten years by Szonda Ipsos according to which the Ombudsman is the third one in the list of public confidence among all the institutions in Hungary.

In keeping with its specificities the national media only gave indications but the local media dedicated a large space to the Ombudsman's initiative, preparation and events of hearings of complaints in counties. The county and township papers and local radio and television stations first of all stressed that the Parliamentary Commissioner for Civil Rights primarily helped the assertion of the rights of those people who, for some reason or another were unable to turn to the OPC. This way as well as by presenting further pieces of information the local media have contributed to improving legal consciousness.

2. Assessing the Situation of Constitutional Rights

2.1. Projects

The Parliamentary Commissioner investigates and redresses individual and collective citizens' grievances. The tasks, however, of a modern institution protecting basic rights, striving also to efficiency and the prevention of anomalies and violations of law, keeping in view European standards, cannot end here, provided the limitations of its powers allow for further opportunities.

One of the characteristic features of the Ombudsman institutions is that the commissioners have significant freedom in interpreting their own tasks and jurisdiction (including its limitations), in the interest of protecting human rights. In view of the outstanding significance of the protection of constitutional rights the Acts on Ombudsmen stipulate the *ex officio* procedure by the Parliamentary Commissioner for Human Rights within relatively broad limitations. It also means responsibility as well as an opportunity the Commissioner has to utilise. The Ombudsman's interpretation of law in fact may be capable of substituting for the interpretative function of basic law judicature which is unfortunately missing from the Hungarian system of public law.

In addition to and closely related to the Ombudsman's reacting (reactive) role we are of the view that a pro-active interpretation of role is also necessary. Pro-activity is not at all without precedent: it is manifest partly in the *ex officio* launched comprehensive investigations which proved successful before. The implementation of the so-called project-method in 2008 was yet another important step on the way towards a pro-active protection of basic rights. Based on the earlier Ombudsman's practice and long-term thinking, at least for a period of one year, he launched three basic rights project but a fourth one was added to them by the second part of the year. When launching a project two preliminary issues had to be studied in addition to the topicality of the theme, namely the contents and characteristics of the given basic right and whether there were such organs that could be investigated by the Ombudsman (such as the police, local governments, etc.), consequently has the Ombudsman any opportunity to shape the practice of the implementation of law from the angle of basic rights besides mapping the environment created by legal norms?

The project method can be particularly effective besides the investigation of individual complaints when the basic rights and particularly the human dignity of an exposed social group, unable to assert its rights or to complain is violated, or when conspicuously grave or massive violations of rights can be experienced in a given field.

Based on the above conditions the right to peaceful assembly (project on the right to assembly) was chosen from among the communications freedoms. The Ombudsman, with regard to being a quasi commissioner for children's rights deriving from the Act on the Protection of

Children, has been investigating the assertion of children's rights, and particularly the possibilities of enhancing legal consciousness also within the framework of an autonomous project (project on children's rights). Based on an investigation conducted in 2007 by the Ombudsman, the Commissioner announced his basic rights project dealing with the human rights of the homeless, the protection of their human dignity, and the system of handling and preventing homelessness by the state under the title "Human Dignity without Barriers". The fourth project was launched in the second part of 2008, which wished to explore problems related to the right to strike in view of basic rights and problems of other aspects of the issue.

Naturally, different emphases prevail in the various investigations by the Ombudsman in the case of a classical right to freedom or of a social right, because they occupy different positions in the system of basic rights, and different roles of the state are attached to them. In the sphere of rights to freedom, and particularly in ensuring human dignity and equality before the law the Parliamentary Commissioner's law-protecting attitude is decisive, whereas the primary aim in the case of social rights and ensuring equal opportunities it is basically raising problems and coordination, the promotion of dialogue between the parties.

Work done in the framework of projects had a set choreography: wording the series of theses offering the theoretical foundations was followed by the elaboration of a detailed map of problems, and next came the setting up of a detailed annual plan of investigations. The Ombudsman stressed as a prominent objective co-operation and communication with the organisations, experts and civil organisations concerned, further on to promote the improvement of practice in the given area, moreover, he also regarded it important to have an exchange of information and shaping of outlook going beyond the actual study. Regular consultations, professional conferences and workshop discussions, as well as the announced professional and art competitions were common points of the various projects. Activities aiming at the enhancement of legal consciousness and shaping public opinion have addressed different target groups: in addition to the stakeholders this circle included their narrower environment, experts getting in touch with them, and society and public opinion at large.

2.1.1. Project on Children's Rights

The Act on the protection of children expressly makes, with special emphasis the task of the Parliamentary Commissioner for Civil Rights to protect children's rights.¹ Based on the Act the Parliamentary Commissioner assists the protection of children's constitutional rights by his specific means. Accordingly it is the Commissioner's task to investigate anomalies affecting children's constitutional rights if he learns about them, and to initiate general or concrete measures in the interest of redressing them. Based on authorisation, the Parliamentary Commissioner for Civil Rights would pay particular attention to the assertion of children's rights during the full period of his mandate as sort of a separate Commissioner for Children's Rights, and would accord priority to the investigation of complaints submitted by children or complaints related to their interests.

In addition to the task and authorisation granted by the law there are several important arguments for placing the protection and assertion of children's rights as well as enhancing legal consciousness into the focus of the Ombudsman's full six years of mandate and activities, and even prioritizing a field each year separately. Today's children will become the adult citizens of the society of the future, and whatever is the legal knowledge of children, their ability to assert their rights and interests today the same would be those of adults. Besides and through children one can address parents and experts getting in touch with children. Thus the Commissioner can influence the legal knowledge and the development of the ability to asserting the rights of broad circles of the society.

The long-term aim of the project on children's rights is to improve the realisation and implementation of children's rights, to better assert children's interests and consequently to improve the social situation of children. Therefore the primary target group of the project on children's rights is that of children. The aim of the project is to see to it that children's rights and basic rights should not only mean abstract and complicated legal concepts for the young and child-age segments of the society, but that they should have a real and live contact with those terms. They should consider how rights figure in their life, what they mean and why they are important; they should ask questions and word problems.

Education is one of the most important channels of teaching about children's rights. Knowledge not only about law but of human rights and children's rights should be emphasized in the primary and secondary-school curricula and in daily teaching, and this is not only a European Union trend and requirement but the responsibility of the country. The other target group of the project is adults getting in touch with children. In fact it is a precondition to the actual assertion of children's rights that people making decisions about issues directly affecting children and experts professionally dealing with children should also have updated knowledge of the rights of children and their outlook should

¹ Act XXX of 1997, Art. 11, paragraphs (2)–(3) on the Protection of Children and on the Administration of Guardianship.

also be permeated by the set of values embodied in children's rights. The aim of the project is to 'demand' from the state to continuously monitor the knowledge of children's rights and basic rights of children as well as adults in touch with them, of parents, teachers, administrators of guardianship and experts of children's protection, and to promote the expansion of knowledge by its own specific means.

It is characteristic of investigations related to children's rights that they are mostly launched on the basis of submissions by adults and parents. The complaints characteristically pertain to two areas: the procedure of guardianship offices and the measures taken by institutions of public education. In addition the Parliamentary Commissioner has ex officio conducted several comprehensive investigations in the framework of the project this year.

Of the investigations a prominent one was the *Study of basic child welfare service in Pest County*², and exploring how the local governments comply with their obligations of supplying basic child welfare services as prescribed by the Act on the Protection of Children. The antecedent of the survey was another one conducted by the former ombudsmen in Komárom-Esztergom County in 2006 in a similar topic, which, after his election the Parliamentary Commissioner continued in Pest County within the framework of the children's rights project.

During the course of the investigation the Parliamentary Commissioner has found that the rights of children guaranteed by the Constitution may be violated, not everybody has equal access to the basic supply of child welfare services, there are too few experts, and legal regulation offers an opportunity to local governments even to realise their obligations for the protection of children formally.

In his report the Commissioner has pointed out that family carers are present in small villages only for a couple of hours per week, or children's welfare services having an autonomous family carer are unable to fully perform their tasks, usually they are unable to manage crisis situations. There are too few experts, and the special services of child welfare centres are not accessible. Temporary care of children is not solved because substituent parents and transitory homes are missing. All in all children and their families living in different sizes of settlements cannot have equal access to child welfare services. This creates an adverse situation regarding the realisation of the basic rights of children to protection and care.

In addition to initiatives addressed to the various institutions and their maintainers the Commissioner has recommended to the Government to survey the system of basic care of children and the regulation of its financing with the help of the Ministry of Social Affairs. He requested the president of the Hungarian Chamber of Medical Doctors to pay special attention to their obligation related to the operation of the signalling system of child protection during the course of the extension training of doctors. The Ombudsman requested the Minister of Education and Culture to study the possibility of including basic knowledge on

² No. OBH 5158/2007

child protection into the curriculum for the training and extension training of educationists.

During the course of his investigation exploring the *interrelationships between the assertion of children's rights and the responsibility of the media*³ the Commissioner has found that the children and youth programmes should be effectively (or at least realistically) forwarded to the addressees. A serious hindrance is that neither the parents nor the children can draw far-reaching conclusions from the classification of the given programme items. The Commissioner has also pointed out that it should be the task of every programme broadcaster in Hungary to actively and responsibly participate in making children conscious of their rights.

In the interest of redressing the identified anomalies the Commissioner requested the National Radio and Television Commission as manager of the Broadcasting Fund to study how the broadcasters should produce and broadcast programmes presenting children's rights. He proposed to domestic broadcasters to study the possibility of properly calling the attention of viewers and listeners to programmes specifically meant for children by preliminaries and presentations of programmes. Further on he initiated the study of the possible alternatives of increasing the awareness of children's rights on a higher level than it is today. The Commissioner proposed to the National Assembly to study the system of financing public service broadcasters in the interest of fully performing their legal obligations.

The Parliamentary Commissioner has launched an *ex officio* investigation for exploring the *conditions experienced in the juvenile detention institutions* as well.⁴ The findings of this investigation are given in greater detail in the chapter on the right to human dignity. It should be noted, however, in relation to children's rights that the Commissioner's associates also held on-the-spot investigation in three correctional institutions also doing preventive detention (in Debrecen, in Szőlő Street and Rákospalota of Budapest) by way of comparison, exploring the conditions of placement there. In the report of the Commissioner based on experiences he pointed out that preventive detention in a correctional institution better serves the realisation of the constitutional right of children to the proper protection for their physical, mental and moral development. Therefore the Commissioner has proposed to the Minister of Justice and Law Enforcement to ensure the realisation of the constitutional rights of minors in preventive detention, in keeping with their special position, by the modification of the respective legal regulations.

It should be mentioned among the results achieved by the investigations that the modification of the Act on the Protection of Children is currently with the legislators. It would define what the consequences would be if members of the signalization system of child protection missed their duty of signalization and co-operation. Based on a news item the Parliamentary Commissioner launched an

³ No. OBH 2057/2008

⁴ No. OBH 4841/2007

ex officio investigation⁵ in relation to the *shortcomings of the operation of the signalization system of child protection*. The investigation has found out that the family carer of the child welfare service was aware of the dangers threatening children being brought up in family. The family carer, the district nurse, the paediatrician, educationists and the notary had been in touch with the family bringing up seven children for years. Earlier even police action was taken because of violence in the family. The investigation has found that though the authorities and service providers meant to protect children were aware of the endangered position of the baby, they did not perform their duty of signalization, co-operation and information prescribed by the Act on the Protection of Children. They did not take those effective measures in time that would have terminated the imminent endangerment of the child, and by that omission they caused the anomaly related to the child's right to special protection, and could not prevent the ensuing tragedy.

The activities of the Parliamentary Commissioner related to children's rights are not limited to the use of traditional Ombudsman's tools. The Commissioner protects children's rights by a special set of means adjusted to promoting their realisation, and, in addition to dealing with individual cases of complaint he lays special emphasis on ex officio investigations, and himself co-operates in actions improving legal awareness and shaping public opinion as well as establishing direct contact with target groups and organising mechanisms of co-operation in the spirit of pro-active legal protection by the available resources.

The most significant element of creating direct contact with children and the young is the *homepage for children* (www.gyermekjogok.obh.hu). The aim of the homepage is that the Commissioner may address the primary stakeholders in the virtual space favoured by them and may give them information on the constitutional and children's rights, on the Ombudsman's activities and investigations, on the possibilities of legal protection ensured by him and also about important issues related to children. The homepage is primarily addressed to children in their own language, but according to feedback there have also been many adult visitors to it. It is important that the contents of the homepage can be shaped by the children as well by questions and proposals.

In the framework of the project the Commissioner seeks and develops direct contacts with experts dealing with children, because it is indispensable in the interest of realising the aim of the programme, namely the assertion of children's rights and interests of top priority that he may share the experiences of his investigations with children, with civil and other professional organisations and experts involved in the protection of children's rights. The results of this year were discussed in two events. On 16 October, at the professional workshop discussion, held in the Office of the Parliamentary Commissioners, the Commissioner surveyed the experiences of the investigation of the basic provisions of child welfare with the invited child protection experts, and discussed the possible further steps. Another important event of the project in 2008 was the conference on children's rights held in the Headquarters of Hungarian Telecom

⁵ No. OBH 1024/2008

on 27 October, where results and issues related to the first year theme of the project, namely to the enhancement of legal knowledge were discussed. More detailed information can be found about these events, the presentations given there and about others also in the Project Bulletin on Children's Rights.

Protection against violence

For the year 2009 the Parliamentary Commissioner has indicated as the theme of the year the short term and long term measures that can be taken towards exploring the causes behind violence committed against children (inside the family, in institutions and sexually), as well as aggressive manifestations (crime, in school and elsewhere) of children and steps towards their prevention.

In addition to setting this focus the Commissioner continues to regard the expansion of the enlargement of knowledge about basic and children's rights as of particular importance. It is a general and positive experience that children and young people who really know their basic rights and values closely related to them (pluralism, tolerance, democratic decision making, listening to the other one, etc.) would less manifest behaviour towards others the end of which would be the commitment of violent acts.

2.1.2. Project on the Right to Assembly

The right to assembly is partly a prioritized basic right to communication and partly the problem of protests and demonstrations is an important indicator of the stability of democracy, therefore in 2008 the Parliamentary Commissioner paid particular attention to the realisation of the right to peaceful assembly as well as to issues related to this right within the framework of the autonomous project on basic rights.

In the framework of this project he investigated among others how the law enforcement organs, in this case the police handle reports and how far their measures taken during events, as well as police practice related to ensuring the right to assembly, together with the elements of legal safeguards of legal regulations meet the requirements set by the Constitution, and whether the realisation of basic rights is assured. During the course of the project the Commissioner was in search of other, earlier unusual ways, techniques of investigation and forms of co-operation besides the traditional Ombudsman's tools that could jointly more effectively promote his activities for protecting basic rights.

If exclusively the mere facts are seen, it becomes clear that the Commissioner and his associates participated in more than fifty events that fell characteristically under the validity of Act III (Gytv.) of 1989 on the Right to Assembly or were closely related to it. Participation in state and local government events open to all as well as the various modes of the expression of opinion by groups as their corollaries also justified participation besides the fact that the police repeatedly acknowledged them as events covered by the right to

assembly. In the case of the latter ones it was the protection of the right to self-determination (private sphere) besides the freedom of opinion that was in the focus, consequently the associates could monitor procedures of identification, the way of entry, the search of dresses and packages, security, etc. in the venues of events.

The Commissioner has so far summarised the experiences of on-the-spot investigations into the realisation of the right to assembly, acquired in 41 events, in five comprehensive reports.⁶

In addition the Commissioner has also explored several complaints expressly related to the realisation of the right to assembly.⁷ There were several cases, such as the Hempseed demonstration, the Trianon demonstration, or the trade union demonstration held upon the call of the United Public Service Strike Committee, which were monitored by the Commissioner's associates, but they did not learn any anomaly related to basic rights, therefore no report was drawn up in those cases.

All in all it can be stated that in 2008 there was no major event in public spaces in Budapest where the Parliamentary Commissioner and his associates did not conduct investigation.

In his reports the Commissioner has drawn up a complex map of problems related to the right to assembly. During the course of his investigations he identified anomalies in relation to the realisation of the right to assembly as follows:

- The manner of announcing an event [electronic reporting]⁸,
- The timeliness of reporting [events reported within the 3-day deadline],⁹
- Identifying the organiser of a non-reported event,¹⁰
- In relation to measures to be taken as a result of the report ['waiting' by members of a civil organisation in front of the Municipal Law Court],¹¹
- To the grave endangerment of the undisturbed operation of the organs of popular representation or of the law courts,¹²
- To the so-called concurring events [in relation to phenomena accompanying the LGBT-march],¹³
- To practice of entry to the various events [22–23 October 2008],¹⁴
- To the so-called issues of the protection of institutions [in relation to the

⁶ 7–15 March 2008 (OBH 2058/2008); 11 April 2008. (OBH 2452/2008); 5 July 2008, LGBT-march (OBH 3262/2008); 20 September 2008 (OBH 5266/2008); 22–23 October 2008 (OBH 5642/2008)

⁷ OBH 2952/2008; OBH 3628/2008; OBH 3765/2008 OBH 5593/2008; OBH 3197/2007; OBH 4583/2007; OBH 4685/2007; OBH 5642/2007

⁸ OBH 5642/2007

⁹ OBH 2642/2008

¹⁰ OBH 3628/2008

¹¹ OBH 3765/2008

¹² OBH 5593/2008 and OBH 3765/2008

¹³ OBH 3262/2008

¹⁴ OBH 5642/2008

LGBT-march¹⁵ and the events on 20 September],¹⁶ further on

– To limitations of the expression of opinion during the exercise of the right to assembly [massive throwing of objects on marchers],¹⁷ and

– Anomalies in relation to dispersion [measures taken at Clark Ádám Square]¹⁸.

Of issues mostly not of the right to assembly, but in practice affecting it the Parliamentary Commissioner took up problems related to the identification of policemen¹⁹ and police reports and their investigations by commanders²⁰, and has found anomalies on the basis of experiences. During the course of these investigations the Commissioner has found anomalies related to basic rights in several cases and for their redress he applied practically all his means ensured by the Act on the Ombudsman.

The Commissioner proposed the subsequent control of norm of the Act on the Right to Assembly and of the various injuries of some stipulations of the Government order²¹ in his reports. The former one has become null and void because after his proposal was made the Constitutional Court annulled the stipulations criticised by him independently and partly on the basis of identical as well as partly similar reasons. The assessment of the latter proposal is in progress.

The Commissioner, keeping in view the set of points worded in his report, proposed to the National Assembly to create the rules of safeguard concerning competing gatherings by supplementing the Act on the Right to Assembly, and to define the earliest date for reporting the beginning of the event. So far conciliation among the five parliamentary parties has not been concluded on the modification of the Act on Assembly.

In the interest of redressing and preventing anomalies related to the right to assembly the Commissioner has proposed that the National Assembly should make the wording of the Act on Trespasses more exact to meet the constitutional requirements of the Constitutional Court set by its resolution No. 75/2008. (V. 29.) AB. Following the Ombudsman's report the Act on Some Modifications of Acts necessary in the interest of protecting public order and the administration of justice has modified the Act on Trespasses.

The Commissioner requested the Deputy Chairman of the Supreme Court acting as Chairman and the Chief Prosecutor to consider a motion for a procedure of legal unity in relation to the interpretation of the freedom of expressing one's opinion. The Deputy Chairman of the Supreme Court acting as Chairman has sent the college stand of the Penal College of the Supreme Court worded after the receipt of the Commissioner's letter. It should be noted that the National Assembly modified the specification of the act of truculence in the Penal

¹⁵ OBH 3262/2008

¹⁶ OBH 5266/2008

¹⁷ OBH 3262/2008

¹⁸ OBH 2452/2008

¹⁹ OBH 2057/2008, OBH 5266/2008 and OBH 5642/2008

²⁰ OBH 2452/2008

²¹ Paragraph 40/A of Govt. order No. 218/1999. (XII. 28.) on various trespasses.

Code in late 2008.²² Consequently it has become a qualifying circumstance of law-breaking committed in group and gravely disturbing public peace, and it should be seriously punished from 1 February 2009 on. On the other hand, the lawmaker has supplemented Article 271 of the Penal Code by an interpretative stipulation according to which “physical impact of attacking nature on another person also qualifies as violent behaviour even in a case if it is not suited for causing bodily harm”.

The Commissioner requested the Minister heading the Prime Minister’s Office to ensure that the bags and garments of participants in state events should not, in the future, be checked by security companies guarding property but by the police, if necessary. According to the Minister’s differentiated position entry would be regulated by security companies guarding property in the future as well in the case of events organised by state organs in public spaces where the cultural features dominate and there is no circumstance suggesting danger which would justify the participation of the police. In the case of state events, however, when official state commemoration is held in relation to the various festive occasions, ensuring order in the event as well as checking the baggage and garments of participants should be primarily done by the police. The Commissioner has accepted this answer.

The reception and effect of initiatives taken towards the National Police Chief Commissioner is a rather mixed one. Thus the Police Chief Commissioner challenged the majority of what was stated in relation to the dispersion of the crowd on Clark Ádám Square as well as to massive detention, and accepted only initiatives taken in respect of police reports and of investigations and documentation by commanders.

The identification of policemen is the only area where, despite the fact that the Ombudsman has repeatedly signalled the problem, not only that any progress was seen but the Commissioner has exposed further anomalies in his reports²³. It is indicative that besides this sphere of problems the Commissioner has not repeatedly expressed any recommendation because of the same or similar problem.

All in all it can be stated that the majority of the Ombudsman’s initiatives have been accepted by the National Police Chief Commissioner and

- He has ordered supplementing their internal guidelines related to the topic of reporting on events which makes it clear to all police organs that reports made by electronic letters should be received and registered;

- In case the person reporting on the demonstration has no opportunity to make the report in the manner and form as prescribed by the Act on the Administrative Procedures and Services of Authorities his /her attention has to be called also to repeating his/her statement in keeping with the valid legal norms²⁴ and in a form that has legal effect;

²² Act LXXIX of 2008 on certain modifications of the law necessary in the interest of protecting public order and the administration of justice. The ombudsman did not review the Bill.

²³ OBH 5266/2008 and OBH 5642/2008

²⁴ Art. 3 of the No. 15/1990. (V. 14.) order of the Ministry of Home Affairs on police tasks related to the security of events.

– He called attention of the executive cadre to the safeguarding significance of the full implementation of measures stipulated by the security plans in the interest of an actual realisation of the obligation for the protection of institutions indispensable to the exercise of the right to assembly;

– The findings of the report No. OBH 5642/2008 will be considered when preparing the methodological guidelines to be elaborated in the interest of the uniform performance of enhanced inspections;

– He took steps so that the Emergency Police and the cadre of the county (capital) police headquarters should get acquainted with the rights of the parliamentary commissioners, and further on he took measures so that the heads of police organs should present the contents of the report to their subordinates during the course of the extension training of the superiors;

– During the course of the modification of the Rules of Clothing expected in the near future after the comprehensive supervision of the respective regulation by a ministerial order they will see to it what kind of uniform regulation can guarantee the identification of policemen even better;

– The security deputy of the Chief Commissioner of the Budapest Police Headquarters has repeatedly called the attention of the respective cadre to fully observe the relevant norms and their word by word implementation in the interest of proper identification;

– Special attention will be paid to controlling the observance of the rules ensuring the identification of policemen;

– The police would comply with citizen requests aiming at getting acquainted with the older norms not yet figuring on the homepage of the police;

– To ensure that the security of events and the related police measures should comply with the stipulations of the valid legal norms several written texts of assistance, methodological guidelines and manuscripts were sent to the Police Officers' College and to all the law and order enforcement secondary vocational schools and to the country police headquarters.

Further on, there were also steps taken by the Ombudsman that were partly or fully rejected by the National Police Chief Commissioner. The Parliamentary Commissioner has maintained his earlier stand in relation to those measures. The deadline available for a repeated answer has not expired up to the closure of this manuscript.

If only what is mentioned above is considered, particularly the completion of investigations and measures taken on their basis they could even be classified under the traditional tools of an Ombudsman. The methodology of on-the-spot investigations and the experience of the almost continuous presence in the public space have not at all been 'traditional'. The project did not only limit itself to the conduct of the already mentioned investigations but, in addition to evoking the attention of broad civic publicity it was also targeted by a scholarly approach to the topics and the development of a demanding professional discussion related to it.

This is the reason why the Parliamentary Commissioner has not only

concentrated on the investigation of specific cases but he also considered it important to make the problems and anomalies discovered in relation to the realisation of basic rights broadly known and that ever broader strata of the society should feel responsibility towards the solution of those problems and anomalies. This was served by the announcement of children's drawing, photo and essay competitions. The submitted works, with the exception of the photo competition, have dealt with the current issues of the right to assembly in a significant proportion.

2.1.3. Project Launched for the Protection of the Rights of the Homeless

“Human Dignity without Barriers”

In the next, already third Ombudsman's cycle that started in the autumn of 2007, we wished to introduce several innovations and revive hitherto less used opportunities in the interest of the realisation of human rights. We intended to process some issues of major significance, well reflecting social problems and demanding creative and co-operative solutions within the framework of a project, based on a precise scenario and programme, with adequate professional background and presented them to the profession, to the public and to the political decision makers.

The reason why this project was launched was that people live among us who cannot 'go home' simply because they have nowhere to go, there is no house, flat or even a small room that is their own or could be their shelter: these people live in the street without a roof over their head. It is mostly in spring and summer if we observe the eyes of people sunbathing in parks or glance at their dress when it becomes immediately clear that they are not spending their leisure their life just there, on that bench. In order that someone should become a person languishing in the streets and parks, in railway stations sometimes a family tragedy is enough, a divorce or just loneliness, a couple of wrong decisions or bad company. The loss of job can also be among the causes with growing frequency, but in many cases alcohol or drugs force one ultimately to the street. We also know very well that a lonely person may more frequently lose everything if there is no one to care or help him/her in a critical situation.

There are typical situations of life among the numerous causes of homelessness from where there is a straight road to poverty and hopelessness. The elderly, the young leaving state foster care, the mentally ill or just patients who 'were sent home' because the hospitals were 'cut to smaller size' or locked down like the National Institute of Psychiatry and Neurology, but who often were sent out just to the street. We have paid particular attention to loans and to the development of the so-called debt trap, and also to the means of more effective protection of the rights of the clients of banks and to the importance of debt settlement. In addition we also dealt with the opportunities of people released from penitentiary facilities, with the contradictions of the national housing

situation and the anomalies of the automatism of judiciary restraint. There are a growing number of young, uneducated people among those living in the streets who have no chance of finding a job and who are consequently in an almost totally hopeless situation.

It is true for all possible solutions that they are complex and meant for long term. There is building social flats for rent among them, subsidies assisting home making and sub-rents, or helping to acquire skills. There are good examples, well functioning systems: in some cases legal regulation can help, elsewhere there is need rather for the promotion of legal knowledge, a client-friendly procedure and humanity. As contrasted to public belief a more efficient prevention of homelessness is hindered not only by the shortage of funds: social prejudice suggesting that one may become homeless only out of one's own fault represents a grave problem.

Therefore there is need for social and professional dialogue in which an agreement is to be developed around basic rights and the protection of human dignity, and the Commissioner for Civil Rights would continue to co-ordinate that dialogue. A conference dealing with the protection of the rights of the homeless and analysing the possibilities of a way out was held in the autumn.

We have organised such workshop discussions as integral elements of the project where the invisible background was also emerging. The Commissioner attempted to explore the problems of becoming homeless, of homeless existence and of the ways out from the angle of basic rights and he also tried to encourage a debate by society and the profession related to homelessness. In fact the realisation of the rights of homeless people, while it raises a plethora of social and legal issues, does not or only occasionally appears in scholarly, professional and institutional structures. At the same time there is possibility and also examples of solution, or at least of mitigating major trouble. It is topical to sum up the domestic experiences but it is also necessary to get acquainted with the European model.

The Ombudsman called for a workshop discussion in the interest of these aims under the title "***Dialogue instead of Arm-rest***" in April 2008.

It was the unambiguous experience of the workshop discussion that the protection of the rights of people without shelter, living in deep poverty, their integration into society and the restoration of marginalised dignity was a long, difficult and complex task demanding dedicated experts and common effort by the state, civil organisations and the society. It was for the first time that experts of organisations and institutions dealing with the homeless had a dialogue upon the Ombudsman's initiative. Though institutions providing for the homeless, civil organisations, churches, the ambulance and experts of the police, mayors and the Ombudsman approach the same problem from different points of consideration what links them is the respect of human dignity as a basic right.

It was stated at the conference held in the ceremonial hall of the OPC that visible homelessness was only the 'tip of an iceberg' and the danger of becoming homeless potentially threatens hundreds of thousands. This threat includes several elements from the housing mafia to the loan policy of banks,

from the growing cost of public utility services to the fate of those who are acquitted from state foster care.

The problem of homelessness requires not a single or short term action. Actually the need for prevention, care and provision as well as reintegration into society is present simultaneously. Managing problems deriving from homeless existence is not merely a financial issue. The local government of Nyíregyháza for instance arranges for employment, day care and organised house rent subsidies together with civil and ecclesiastic organisations to prevent people from becoming homeless. In addition provision for the homeless based on individual autonomy and co-operation costs less than placement in institutions accompanied by a number of adverse side-effects.

The issue of the homeless cannot be solved by their exclusion, and homelessness cannot be identified with crime. According to police statistics annually 300 to 400 criminal acts can be associated with homeless people, who also are often exposed victims.

It was the unanimous finding of the conference that the experts had to consider also the points of local governments and of the society. It cannot be accepted, however, that with reference to the 'interests of the society' arm-rests should be fixed on benches serving as 'accommodation' for the homeless symbolically as well as in practice, in order to drive them away and exile them to the territory of other local governments.

The series of conferences on how people become homeless was continued with the motto of "**Prevention Should Be the First Step**" in May 2008.

Representatives of civil organisations involved, experts of institutes, the Ministry of Social Affairs and Labour, the Hungarian Banking Association, of local governments and the police had another dialogue on the causes provoking homelessness. The participants agreed that the state had to dedicate more significant energies to prevention. This freedom-friendly solution is more efficient and cheaper than the management of homelessness as it has evolved. A position has to be taken up against stigmatisation and prejudices, and forms of co-operation have to be found instead of sanctions in which the state, jointly with civil organisations, would figure as an ally of citizens in trouble.

Consequently there is need for social and professional dialogue in which an agreement evolves around the protection of basic rights and the protection of human dignity, and the Commissioner for Civil Rights would continue to co-ordinate this dialogue as the Ombudsman referred to the guiding principle of the project in his closing words. The next conference focusing on the protection of the rights of the homeless as well as analysing the possibilities of a way out was held in the autumn.

"**Ways Out**" was the title of the conference closing the project. Its central topic was looking for ways out of homelessness. We could collate the views of experts with the stand of the Government also in the conference. There was agreement in that the so-called system of institutional care provision

was able and suited to manage acute situations. A sufficient holding capacity was available in night shelters and transitory homes; there were enough 'low threshold' reception places, the 24-hour health care provision has been in operation and those who live in the street can have access to cooked meal too. Representatives of the civil organisations are of the view that the two end points are not considered either in their structure or in their concept: neither prevention nor integration or guided return to society was efficient among the problems of becoming homeless.

Though there were elaborated programmes,²⁵ there was resolute intention, yet there was need for an even stronger call word. This vigour and joining of forces was stressed by the document entitled "Social Charter – Human Dignity – without Barriers"²⁶ and a first signatory of which the Parliamentary Commissioner invited and is consistently inviting state and local government leaders and the eminent representatives of the profession to join in who can act in the interest of homeless people.

A special connection has been established with the "*We Exist – Association of Creative Artists of the Homeless*" the artists of which could exhibit their works in the OPC and even sell them. After the preparation of the project actually this was the event by which the intensive raising of attention began in March 2008 during the course of which the homeless artists could also present the physical and mental struggles of this hard form of existence to the broad public.

The programme entitled "The Night of the Homeless" organised each year (14 November 2008) was held this time in the presence of the Ombudsman and his associates, when the publication of the anthology of homeless authors entitled *From Dusk to Dawn* was presented by the Ombudsman in a tent pitched on Heroes' Square.

Specific Ombudsman's investigations were conducted into the following issues within the framework of the project:

- Removal of arm-rests of public benches and the removal of the homeless due to urban image (the so-called 'arm-rest' report laying the foundations of the project);²⁷
- Aspects of the debt spiral causing homelessness;²⁸
- The questionable practice of juridical writ of execution;²⁹
- The procedure of the security guards of the Budapest Public Transport Co. at the Kőbánya-Kispest Metro Station, and activities of security personnel in night bus services;³⁰

²⁵ The expert's proposal entitled "Where to? The Possible Framework of a National Strategy for the Homeless" was completed in autumn for the Government of the Hungarian Republic; its authors were Péter Gyóri and Márta Maróthy.

²⁶ The publication of the document was initiated by Miklós Vecsei, President of the Public Foundation for the Homeless and Ombudsman Dr Máté Szabó.

²⁷ OBH 2641/2006

²⁸ OBH 1600/2008

²⁹ OBH 4027/2006

³⁰ OBH 5009/2007

- Access to certificates and cards entitling one to get health care;³¹
- Evacuation in Kispest;³²
- NATO summit and plans for the removal of the homeless from the small forest of Kispest;³³
- The situation of the homeless in the streets of a housing estate in Veszprém;³⁴
- Anomalies in legal norms related to residential address, place of stay and financial provisions;³⁵
- Operation of day shelters and their closure during the weekend.³⁶

The Commissioner particularly called the attention of the National Radio and Television Commission to the human-rights challenges of the reality show aiming at presenting homeless people and the Commission had actually identified circumstances violating human dignity.

2.1.4. Project on the Right to Strike

The Parliamentary Commissioner has launched a comprehensive project exploring all the relevant basic rights aspects of the issue in the interest of the realisation of the fundamental constitutional right to strike and of elaborating it in practice. The project on the right to strike, launched in the autumn of 2008, was already the fourth in the series of the Ombudsman's proactive project series. Strikes of the recent past involving large crowds and the broad legal, professional and social discussions manifest in relation to them have in fact proved that the rules of legally exercising the right to strike have not yet been properly elaborated in the Hungarian legal system. The Commissioner wishes to promote the exercise of rights by those who strike as well as citizens who, 'suffering' from strikes may also exercise their rights within the framework ensured by the Constitution and with guarantees of the rule of law by spelling out dilemmas of the basic right, by mapping the emerging questions and by communicating them to the organisations involved as well as towards the public.

First of all the theoretical theses and the problem map were elaborated within the framework of the project, in which apparently the most neuralgic items of the Hungarian right to strike were collected and systematised. Though the right to strike ensures the possibility of the employee to turn against the employer, in other words it does not emerge in public authorities but mostly within conditions of employment in which cases it is not within the jurisdiction of the Commissioner to take steps, yet the specific situation should also be kept in mind that strike as a tool of pressure may inevitably cause disadvantage in certain cases to a *circle*

³¹ OBH 3761/2008

³² OBH 4976/2008

³³ OBH 5094/2008

³⁴ OBH 2347/2007

³⁵ OBH 2560/2007

³⁶ OBH 1916/2007

of persons outside employment. In practice this disadvantage appears in relation to organs the *activities of which fundamentally affect the population*, namely when work is stopped by employees of organs providing public services (or less frequently those exercising competencies of some authorities). Viewing the events of the 'history of strikes' to date they have significantly affected (reduced or suspended) services provided to the population when employees of railways or public transport, of public and higher education, and those employed by health care went on strike. A suspicion of anomalies related to basic rights emerging in this dimension *already lays the foundations for the jurisdiction of the Parliamentary Commissioner.* Based on the elaboration of theses as well as the map of problems the Parliamentary Commissioner launched investigations in four priority areas.

The investigation aimed at exploring certain legislative problems related to the Act on Strikes³⁷ which studied the coherence of the Act and the Labour Code (henceforward LC). Studying the text of the Act on Strikes the Commissioner has found that the legislator caused anomalies related to the requirement of legal safety when it did not initiate the modification of the Act on Strikes so that its actual text may be adjusted to the LC. It is cause to anxiety that the legislator has not noticed this omission in relation to the continuous publication of the legal norm. Due to the above anomaly and for its avoidance in the future the Parliamentary Commissioner has proposed to the Minister of Justice and Law Enforcement to initiate the modification of the Act in question.

During the course of his investigation related to the obligation of public service providers to give information³⁸ the Parliamentary Commissioner stated that it causes anomalies related to the constitutional rights of access to data of public interest as well as to the freedom of transport (free movement) if the public service provider or the one ordering a public service does not, or does not adequately meet its obligations related to information.

The aim of the investigation was to find out where and in what form the citizens can obtain information about the possible strike, its beginning and duration in case of a threat to strike, and if there is strike information concerning the adequate services that should be provided. In this respect the Parliamentary Commissioner requested information from leaders of the Hungarian State Railways (MÁV) Co., and of the Budapest Public Transport (henceforward: BKV) Co., and also from those who commission a public service, from the Ministry of Transport, Communications and Energy, as well as from the Mayor of Budapest. The Ombudsman turned to the Minister of Justice and Law Enforcement with the question of whether any Bills were drafted in his Ministry that would promote the definition of the extent of adequate public service in the case of the individual public service providers, and if it has not yet been done do they plan to do so, or whether the drawing up of such legal norms is already in progress.

Based on the answers received, the Ombudsman has found in relation to the obligation to give information that every information and fact (announcing the

³⁷ OBH 3060/2008

³⁸ OBH 2533/2008

strike, its beginning, duration, service to be provided during the strike, its extent, etc.) is a datum of public interest, which has to be made public without delay by the organ performing a public task. It is the duty of the public service providers in transport to promote and ensure the exact and rapid information of public opinion, for if proper information is not given employees using public transport are unable to adjust to the strike situation in time and this may lead to a loss of working hours and the eventuality of other damages.

The Commissioner has proposed a solution by passing a legal norm in the interest of redressing the anomalous situations explored, further on, he also proposed that the business rules of transport public service providers should include their obligation to render information in the case of strike and also its precise form as well as those legal possibilities that would be available to users of the public service in case information was not given.

The Ombudsman's investigation into the issue of adequate services to be provided in the case of strike was³⁹ launched as a result of complaints received on the occasion of the general strike announced in December 2007 by the Democratic League of Autonomous Trade Unions for an uncertain period of time. Several people turned to the Commissioner with their complaints related to the means of transport deleted because of the strike, primarily people who had a monthly season ticket and daily travelled to their workplace by train. The complainants claimed that they could not or could only with significant additional cost reach their place of work. All of them lived in villages that could not be reached by any other means of public transport excepting trains and as the service provided returned some money from the price of tickets purchased in advance because of the deleted regular trains only to those who could use another kind of public transport instead of trains, such as coaches of a regular service, the complainants had no way of being refunded, neither their additional expenses were covered.

The Parliamentary Commissioner has stated that the requirement of legal safety as well as the constitutional right to free transport may be violated if in the case of general strike of employees of public transport the population cannot have access to public services of mass transport because, due to the shortcomings of legal regulations, the employees and employers are not interested in concluding agreements about the still adequate services.

The Commissioner has also pointed out that if the public service provider ensured its duty of performance in the case of the missing public service in its business regulations in an unjustifiably too narrow circle, or, as it was the case under survey, not in a predictable way, namely the assertion of claims for compensation (restitution) it also created anomalies related to the requirement of legal safety and to the right to fair procedure.

In his report the Parliamentary Commissioner has stated as a principle, that public services satisfy basic, elementary and massive needs, and missing them cause significant disadvantages to the citizens. Therefore it is the duty of an organ providing public service to ensure adequate, at least sufficient service to

³⁹ OBH 5649/2007

those who use that service. In the given case, but generally too, as experience shows, ensuring a still adequate service is missing because the parties involved cannot agree on its extent during the talks preceding the strike. According to the Commissioner's stand the lack of inclination towards compromise can be traced back to legal stipulations therefore he again pressed for a piece of legislation that would settle the problem.

In his report the Commissioner has also pointed out that public services should be ultimately ensured by the state and the local governments. Therefore in a case when a public service satisfying the basic needs of citizens and functioning on a still acceptable level cannot be ensured it is also the task of the state (local government) to see to it that the possibility of refunding of the damage the citizens suffer because of the missing public service should be ensured by proper legislation. According to the current regulation in force, however, compensation is due only if the illegality of the strike was proved by the judiciary.

The Commissioner has stressed that though the Act on Strikes only allows for the exercise of the right to strike by public service providers only if they ensure the still satisfactory service, the judicial practice considers strikes legal even if such service is not available. It means that citizens who are forced to pay for the additional costs due to the strike could be refunded by the service provider only if the latter one exercised a kind of fairness due to the lack of the proper legal regulation. In this case too the Commissioner has called attention to the necessity of an early legal regulation of the problem.

As to the right to strike of those being in professional service and in relation to the right to strike of law enforcement employees the Parliamentary Commissioner has turned to the Minister of Justice and Law Enforcement and asked for his stand whether it was necessary and well-founded to fully ban the right to strike of the professional cadre of the law enforcement organs. Further on, he put the question whether a mechanism can be evolved which would fill in the gap (those shortcomings) by more flexible and relaxed means that is caused by the total prohibition of the right to strike in this field.

2.2. Investigations Exploring the Realisation of Constitutional Rights

This chapter wishes to present in a concise and easily understandable form the *trend of the realisation of basic constitutional rights in 2008* through the practice of the Commissioner for Civil Rights, and also to collect and analyse the possible *conclusions* and to *mediate* them to organs of legislation and the implementation of law as well as to the broad publicity.

The Commissioner has taken the specificities, principles of arrangement and rules of the Constitution and its interpretation by the Constitutional Court when systematising the Ombudsman's practice, the definition of topics and their order of precedence during the period under survey. The presentation of the practice is done in altogether four thematic sub-chapters dealing with trends

related to the right to life and human dignity, the rights to communications, social rights as well as requirements deriving from the state based on the rule of law.

The order of the sub-chapters partly corresponds to the constitutional order of the values of basic rights and to the specificities of their scholarly systematisation, and partly it also offers an insight into the method and direction of the Ombudsman's practical work. In fact the Parliamentary Commissioner primarily studies whether the basic subjective rights (and human dignity in particular) were violated in the given case, and he would consider this only if it was found out whether the given procedure, decision or omission was objectionable from the angle of the principles of the state based on the rule of law and of legal safety.

Each thematic sub-chapter on basic rights opens with a brief theoretical introduction, followed by the presentation of the general trends, next the focal points (areas of particular interest) identified on the basis of cases received in 2008 would direct attention to the most important reports and groups of reports belonging to the given field of basic rights. In addition to presenting the Ombudsman's reports in the year 2008 the issued resolutions figure in a prominent part of the Report together with those rejected complaints for which the Commissioner had no legal possibility to act due to the lack of powers, but they reflected the trend and were typical, therefore it is worthy of directing the attention of political decision makers as well as of law enforcement to them.

In view of the fact that the Act on Ombudsmen permits the Commissioner to present to the National Assembly those 'problematic' cases in his annual Report for which the respective organ contacted did not evolve a meaningful stand or did not take the necessary step, or the Ombudsman does not agree with the stand or measure taken and may ask for its investigation by Parliament. Therefore the Report for the year particularly indicates these cases with the intention of presenting them to the National Assembly.

Basic issues related to the authority of the Parliamentary Commissioner

According to Article 16, paragraph (1) of the Act on Ombudsmen anyone can turn to the Ombudsman if, according to the person concerned, an authoritative organ performing a public service has created some anomaly related to the rights of the person submitting his/her report during its activity.⁴⁰ Under 'anyone' every Hungarian, foreign or fugitive person, natural or legal entity, or organisation not having legal entity should be understood. The second passage of the paragraph prescribes the full utilisation of all the possibilities of legal remedy in public administration, excluding the judicial revision of a public administration ruling, excepting if the possibility of legal remedy was not ensured right from the outset. Paragraph (2) of Article 16 of the Act states that the Commissioner can proceed ex officio even (for instance on the basis of a signalization or report received or of

⁴⁰ From 1 December 2007 the Act on Ombudsmen, setting out from more than a decade of practice of the Parliamentary Commissioner, defines the concept of anomaly related to basic rights, accordingly the violation of a basic right or its immediate danger may be classified under this category irrespective of whether it is the result of action or omission.

a news item in the press) in the interest of eliminating an anomaly related to basic rights, provided the conditions included in paragraph (1) exist.

It should be mentioned separately in relation to the legal obstacles in the Ombudsman's procedure that no investigation is possible in a case of an authority in which a judicial procedure was launched for revising a resolution (of public administration), or in which a legally valid judicial ruling was passed. It is an essential condition of procedure that a submission can be forwarded to the Commissioner within one year after a legally valid resolution of public administration if there was any, and the possibility of investigation is available only for procedures launched after October 1989.

The Ombudsman's practice, without claiming totality, considers the following as within the purview of an organ doing public service:

- Organisations performing tasks specified by the Act on Local Governments,
- Organisations participating in the administration of state subsidies (state subsidies for housing, earmarked state monetary funds, organisations participating in granting other state subsidies),
- Institutions of health care,
- Public transport companies of localities (and of distance transport),
- Universal electronic service providers,
- The universal postal service provider,
- Broadcasters with respect to public service programme items,
- The Hungarian News Agency,
- Institutions of higher education,
- Insurance companies offering compulsory liability insurance services,
- Public utility service providers,
- Motorway operators.

The closing stipulations list the investigation of what organs does not fall within the Ombudsman's jurisdiction (total exclusion) because they do not qualify as authorities: they are the judiciary, public prosecution (excepting the investigative organ of prosecution), the National Assembly, the Constitutional Court, The State Audit, and the President of the Republic.

2.2.1. Right to Life and Human Dignity

The Hungarian Constitution, since its amendment passed in Act XXXI of 1989, *specifies in the first place the right to human dignity together with the right to life as part of man's inviolable and unalienable rights*. According to Article 54 of the Constitution every person has a birthright to life and human dignity in the Republic of Hungary and no one can be divested of it. Nobody can be exposed to torture, to cruel, inhuman and humiliating treatment or punishment, and it is particularly prohibited to carry out medical or scientific experiment on a human being without his/her consent.

The right to life is of absolute nature; it cannot be limited and precedes every other right. The Constitutional Court has explained that paragraph (1) of Article 54 and paragraph (1) of Article 8 *makes the protection of human life "the primary task of the state"*. The duty of the state in "respecting and protecting" basic rights does not expire after it has refrained from their violation but it also means that it has to ensure conditions necessary to their realisation.⁴¹

The Constitutional Court regards the right to *human dignity* as an expression of the so-called "general personality right" which contains further partial entitlements such as: the right to self-determination, general freedom to act, the right to private sphere, the right to the free unfolding of the personality, the right to self-identity, the right to a name. The general personality rights are constituents of "organic law", such a subsidiary basic law which may be referred to by the Constitutional Courts as well as the judiciary for the protection of the individual's autonomy in all cases if none of the concretely named basic rights can be applied for the given circumstance.⁴²

The interpretation of the prohibition of torture as well as of cruel, inhuman and humiliating treatment emerged in the practice of the European Court of Human Rights.⁴³ *Torture* assumes such grave and intentional cruelty which cannot be identified without serious physical and mental damages. *Inhuman treatment* or *punishment* may not necessarily cause physical harm but it does definitely cause strong physical and mental suffering. The essence of *humiliating treatment* or *punishment* is that it provokes a strong sense of fear, mental suffering and a sense of inferiority which is suited for breaking the person's physical and mental resistance. It may happen primarily in hierarchical and closed organisations and institutions where persons affected are in an exposed position (police, armed forces, penitentiaries, psychiatry and residential institutions).

Trends of the realisation of the right to life and human dignity

The *Parliamentary Commissioners* have always paid special attention to the study of the realisation of the right to life and human dignity. The injury of this right has been identified several times in residential institutions (homes for the elderly, the handicapped or of children), and in the inadequate conditions of placement and work experienced in institutions of health care, psychiatry, refugees, police, penitentiaries, armed forces and often in relation to cases of death. The shortcomings of personnel and objective conditions are always closely correlated to the right to human dignity of people placed and working there.

So far the Ombudsmen have not exposed torture as a result of any of their investigations.

⁴¹ Resolution No. 48/1998. (XI. 23.) of the Constitutional Court

⁴² Resolution No. 8/1990. (IV. 23.) of the Constitutional Court

⁴³ Ireland v. the United Kingdom, judgement of 18 January 1978, Series A No. 25.

As a result of investigations conducted in relation to police measures and the use of the means of force the Commissioners have disclosed anomalies related to life and human dignity as well as to personal freedom in several cases due to the violation of the requirement of proportionality. The Commissioner has stated that the placement and cuff linking of a plaintiff interrogated as witness in a police room for interrogations in a procedure of trespass gravely violated the requirement of proportionality, and hence the plaintiff's *right to personal freedom*. The Budapest and the National Police Chief Commissioners have repeatedly challenged the Commissioner's stand but ultimately they have accepted his arguments.⁴⁴

The defence of the right to life and human dignity, similarly to the practice followed up to now, has occupied a central place in the Ombudsman's activities in 2008 as well.

Anomalies related to the right to life and human dignity

The state's obligation to protect life

The Parliamentary Commissioner launched ex officio an investigation regarding the *right of children to life* as well as to *particular protection* when he learned from the press that in November 2007 a 13-month old baby died of famine in a small village of Szabolcs-Szatmár-Bereg County.⁴⁵ The investigation found that a grave omission of persons (family doctor, specialist doctor, district nurse, family carer, policemen) who were aware of the endangered situation of the baby also contributed to the tragedy. The endangerment of the baby was not signaled either to the child welfare service or to the child welfare authority hence no measures were taken to eliminate it.

The Ombudsman proposed to the Minister of Social Affairs and Labour to initiate the modification of the Act on the Protection of Children that would contain also the legal consequences for the omission of the obligation for signalization and information. The Minister accepted the proposal but so far the modification has not been passed during this reporting period. As a result of the Ombudsman's initiative the organs concerned launched a disciplinary procedure against the family carer and the acting policemen and also ordered the extension training of the district nurse and the family doctor. The case is presented in detail in the chapter on the project on children's rights.

The Ombudsman, in view of the violation of the right to life, launched an ex officio investigation in relation to the manslaughter that took place in the Department of Psychiatry of the St. John Hospital in November 2007, which was committed by a psychiatric patient on another patient.⁴⁶ The Commissioner investigated *to what extent and in what manner the right to personal freedom of a patient in a condition dangerous to others can be restricted* in the interest of protecting the right to life of the patients and staff of the psychiatric department.

⁴⁴ OBH 3251/2007

⁴⁵ OBH 1024/2008

⁴⁶ OBH 5112/2007

According to the Act on Health Care only the personal freedom of a patient of endangering or of directly endangering behaviour can be restricted in any way (by physical, chemical, biological or psychological method or procedure). Limitation may last only and may be of such an extent and nature that is indispensable to averting danger. These restrictions, however, did not prove sufficient in the given case to eliminate the patient's endangering behaviour. The Commissioner has found that the inadequate conditions of therapy and the lack of the continuous co-operation between experts of health care and of the police have caused an anomalous situation in relation to the constitutional rights of the patients and staff of the department of psychiatry to life and human dignity as well as to personal safety.

The Commissioner has recommended to the Minister of Justice and Law Enforcement to order unambiguous co-operation for the policeman on duty with the psychiatrist specialist. He suggested to the Minister of Health to establish a special psychiatric department or section for the safe and adequate care for dangerous and/or directly dangerous patients not yet under a juridical ruling in the focal hospitals. The Minister of Justice and Law Enforcement did not support the recommendation because in his view it was not the task of the police but of the specialist staff treating psychiatric patients to control aggressive patients. All in all the Minister of Health did agree with the findings of the report and promised the setting up of psychiatric departments or sections of enhanced security systems. The Commissioner has accepted the answers received.

The Parliamentary Commissioner, in the interest of *protecting the right to life* launched an ex officio investigation when a baby of 20 months and its grandmother in Pécs, and a four year-old girl of Bonyhád lost their lives in a traffic accident when they were crossing the road in the properly marked pedestrian crossing. The Ombudsman considered it necessary to *survey* the measures taken by the respective organs as well as the general *situation of pedestrian traffic*.⁴⁷

In 2007 nearly three thousand and five hundred people were hit in Hungary, almost every third of them at pedestrian crossings. According to the Act on Road Traffic particular attention should be paid to the location and indication of points of pedestrian crossing and to the safety of pedestrian and cyclist traffic. Children, the elderly as well as people with impairment of mobility or of other impairments participating in traffic should be particularly protected.

The Parliamentary Commissioner has stated that the establishment, maintenance and, if justified, the development of pedestrian crossings is in direct relationship to the *obligation of the state to protect life*. In this context the protection of the life of children and their education about safe traffic is of particular importance. The Ombudsman has requested managers of public thoroughfares via the Ministers of Local Government and of Transport, Communications and Energy to study the adequate quality of road crossings,

⁴⁷ OBH 3045/2008. Previous to this the Commissioner had conducted an investigation into the case of a pedestrian crossing dangerous to life and not developed in keeping with the regulations in the village of Páty (OBH 4737/2007). The body of elected representatives decided for the rebuilding of the traffic junction.

and if necessary to prepare a plan of action for enhancing the safety of pedestrian traffic. The Minister has sent the report to the director-general of the Hungarian Public Roads Public Benefit Co. to take the necessary measures. The Commissioner has also requested the Minister of Education to find out whether the current practice of teaching pupils about safe pedestrian's traffic was adequate. The Minister has not given his answer up to the closing date of the Report.

The Parliamentary Commissioner has repeatedly investigated the *living and working conditions of explosives experts* in the context of the right to life. In 1997 an ex officio investigation was launched because of an accident during the course of which two experts doing their duty lost their lives. The Commissioner had made several recommendations and studied their implementation in 1999. Based on the recommendations the Government order on the performance of explosives disposition tasks was issued. A new investigation was launched after a fatal accident during the performance of a task of disposition in 2000. In view of the time passed and the importance and dangerous nature of the task a posterior investigation became justified in 2008. The Ombudsman investigated ex officio the operation of the Explosives Squad and Navy Battalion No. 1 of the Hungarian Army, paying particular attention to the personnel and objective conditions and to the remunerations.⁴⁸

It also derives from the *objective obligation of the state to protect life* that the state has to maintain such institutions and to continuously guarantee their effective operation which protects the life, physical safety and health of the citizens. Such institutions are the police, the ambulance, the fire brigades, and also organs entitled to perform tasks of explosive disposition. Explosives experts of the army are exposed to constant danger to their life even in comparison to employees of the law enforcement organs. The state has to compensate enhanced duty by enhanced obligations: it has to strengthen not only their physical protection but has to guarantee enhanced levels of infrastructural conditions: prominently high income, effective communication among them, educational opportunities and proper rest.

The Ombudsman has found that extended service duration is not extraordinary but a general practice in the case of the explosives experts and it is exclusively compensated by payment. This order of granting leave causes anomaly regarding the right to rest. In his report the Commissioner stressed that the income of the explosives experts does not reflect the importance, social usefulness and the highly dangerous nature of the job they do. In addition explosives experts of the armed forces suffer unjust disadvantages compared to the explosives experts of the police in respect of their additional allowances which violate the requirement of equal treatment as well as the right to equal payment for equal work.

The Commissioner has requested the Minister of Defence to arrange for the proper placement and working conditions of the explosives experts, to study the theoretical and the actual number of their staff as well as the performance of

⁴⁸ OBH 1259/2008 Registration numbers of earlier reports are: OBH 6883/1997, OBH 4908/1999, OBH 5274/2000

overwork, its compensation and the order of granting them leave; he should also see to it what the possibilities are for ensuring an income corresponding to the importance and dangerous nature of the explosives experts' work and how their additional allowance can be increased.

According to the information given by the Minister the modernisation of the technical equipment of the battalion is treated as a priority task and steps have been taken to manage the shortage of staff. The Commissioner, however, continued to regard the increase of the additional allowance as indispensable to the elimination of the shortage of staff, therefore he did not accept the Minister's stand concerning the system of additional allowances. The explosives experts of the armed forces are exposed to continuous danger when removing explosives therefore the basic obligation of the state in protecting life should also be asserted in respect to the system of additional allowances. No answer has been received to the recommendation maintained, but the Bill No. T/6748 contains the increase of the additional allowance.

The prohibition of cruel, inhuman and humiliating treatment and detention

The Parliamentary Commissioner ex officio launched an investigation after having learned that a juvenile detainee died in the Juvenile Penitentiary of Tököl in October 2007.⁴⁹ At first suicide was identified but after a few days there emerged the suspicion that the detainee was killed by another minor locked up with him in the same cell.

According to statistical data the number of violent crimes committed to the injury of other detainees by inmates grew in 2007. The situation is particularly alarming among minors in respect of violent acts of indecency (the number of cases was more than doubled compared to 2006). Therefore the Commissioner extended the investigation to *explore the conditions of detention of minors* in respect of which his associates conducted an on-the-spot survey in the juvenile penitentiaries (of Tököl, Kecskemét, Szirmabesenyő and Pécs) as well as in youth custody centres also confining under remand (in Debrecen and Budapest).

Detainees commit grave, violent acts against each other only in the *juvenile penitentiaries* housing a large number of inmates (at Tököl and Szirmabesenyő); no such case happened in Pécs and Kecskemét.⁵⁰ Violence of detainees against each other is not part of the penitentiary measure and it should be prevented by the state by all possible means. The realisation of the rights of juvenile detainees corresponding to their special situation can be ensured in small institutions and their placement in cells for two or three persons.

⁴⁹ OBH 4841/2007

⁵⁰ In Tököl there are 192, at Szirmabesenyő 115, in Pécs 50, and in Kecskemét 30 (of which 10 for females) places. After the on-the-spot investigation at Szirmabesenyő the Commissioner contacted the Chief Prosecutor of Borsod-Abaúj-Zemplén County and called his attention to minors, because according to the assessment of his associates the danger of victimisation (repeatedly) was particularly great in their case. According to the Chief Prosecutor's information prosecution has transformed the plaintiff upon request of the defence counsel who proposed the alteration of the place of detention of the minor person with special regard to the act of indecency committed to the detainee's injury and the lack of any possibility of separation and the specification of the youth custody centre of Debrecen.

The Commissioner has found that the placement of juvenile detainees at Tököl and Szirmabesenyő *directly endangered their right to life and human dignity*, and violated the right of children to the necessary protection and care for their proper physical, mental and moral development. He has made a proposal to the Minister of Justice and Law Enforcement to elaborate an exact plan of action that would ensure the legal detention of minors. According to information given by the Minister the crowding of the two large-capacity penitentiaries has been reduced by the development of a new area at Tököl, and also the modification of the legal norm was prepared for the separation of minors and young adults. According to the Minister a modification of the legal norm and also of attitude are needed for the interest of extending possibilities of personal hygiene. The Commissioner has requested the commanders of institutions to indicate in writing to the respective prosecution in each case if altering the place of detention was justified because of the young person being endangered.

In the *youth custody centres* supervised by the Ministry of Social Affairs and Labour the conditions of the placement of youngsters as well as employees and the working conditions of the latter ones were far more favourable than in the juvenile penitentiaries. The young ones did not commit violent acts to the detriment of each other. The conditions of detention on remand of juvenile persons are described in detail in the chapter presenting the project on children's rights.

The Ombudsman also conducted on-the-spot investigations in three county penitentiaries (in Kecskemét, Pécs and Debrecen) and found that the saturation of penitentiaries primarily for people (adults as well as minors) taken into custody (so-called remand houses) was extremely high (more than 200%!) which affected not only the situation of detainees but also of the employees rather negatively.

Custody cannot be punishment brought forward in time; currently, however, the principle of 'separate treatment' corresponding to their situation cannot at all be asserted. The Commissioner has found that the placement of those in custody and others incarcerated for trespasses on three-tier beds and the *crowded cells mean inhuman and humiliating treatment and punishment*. He made a recommendation to the Minister of Justice and Law Enforcement suggesting that he should take measures to reduce the over-crowdedness of the remand houses, if necessary, by the modification of law. The Minister did not accept the recommendation but the Commissioner upheld it because the number of people in custody grew by 510 in a year, by December 2008.

The Ombudsman forwarded his report to the Deputy Chairman of the Supreme Court acting as its Chairman and also to the Chief Prosecutor requesting them to call the attention of judges and prosecutors proceeding in criminal cases to the findings of the investigation.

The Parliamentary Commissioner traditionally pays great attention to the protection of the constitutional rights of *foreigners detained for purposes of foreigners' administration*, because they are in a particularly exposed situation not knowing the Hungarian language and the domestic conditions; therefore their possible ability to complain is also limited. The Ombudsman and his associates

conducted an on-the-spot and unexpected investigation in the guarded hostel of the Police Headquarters of Győr-Moson-Sopron County in May 2008, and checked the housing conditions of foreigners placed there. The investigation has not found anomalies related to constitutional rights, but the Commissioner suggested that the county Police Chief Commissioner should see to the maintenance and replacement of objects in the community room and of benches located in the area meant for spending time in fresh air.⁵¹

Basic rights deductible from right to human dignity

The complaint of a woman incarcerated for trespass raised the grave injury of the *right to self-determination deductible from the right to human dignity* as well as of the right to *legal remedy*.⁵² The plaintiff was condemned for 30 days of incarceration by the jury for committing prohibited prostitution. She submitted an application in the penitentiary facility for breaking off her incarceration in view of her ten-week old pregnancy, because she was unable to keep the baby for not having shelter and for having to look after minor child already. The application was rejected by the Gödöllő Urban Judiciary with the following justification: “... *the Judiciary will not lend assistance to the realisation of such deviant, otherwise legally defined and allowed act within a certain circle, which leads to the extinction of embryonic life and which is condemned by general moral attitude. After the birth of the child, if the person under legal procedure is unable to safeguard its upbringing, there is possibility for giving the child for adoption.*” The plaintiff had no right to appeal against the ruling.

The possibility of terminating pregnancy, in the case of a grave, critical situation of the pregnant woman, up to the 12th week of pregnancy is ensured by the Act on the Protection of Embryonic Life. The Constitutional Court has stated that it was not against the Constitution if the law allowed for the termination of pregnancy provided the pregnant woman was in a grave crisis situation.⁵³ According to the Act on Trespasses the judiciary has to break off the implementation of incarceration without consideration if the hospital treatment of the condemned becomes necessary. In fact persons in incarceration cannot be placed in the prison hospital of Tököl.

According to the Act on the Parliamentary Commissioner for Civil Rights the judiciary cannot be considered an authority therefore a judicial ruling cannot be revised by the Ombudsman. At the same time he informed the plaintiff that she could sue the Judiciary of Pest County for causing damage in juridical competency and she could even turn to the European Court of Human Rights. In addition the Commissioner requested the Minister of Justice and Law Enforcement to dedicate special attention to the necessity of creating the possibility of legal redress against juridical decisions when elaborating the new

⁵¹ OBH 2886/2008

⁵² OBH 5124/2007

⁵³ 48/1998. (XI. 23.) resolution of the Constitutional Court

code of trespasses. The respective modification of the Act on Trespasses entered into force on 1 February 2009.

During his working visit to Hajdú-Bihar County the Parliamentary Commissioner examined the work of the health care institutions of the County, how ambulance and emergency care were functioning and how health care providers co-operated. In his report he stated that participants in rescue operations often have to face a difficult situation because of conflicts between *the objective obligation of the ambulance service for saving lives and the right to self-determination of the individual*. Decisions can be made only after assessing the actual circumstances in a conflict of special basic rights how far the obligation of immediate urgent care extends and at what point it is overwritten by the right to self-determination guaranteed within the sphere of patient's rights. An example of this is when the patient rejects care on the spot while his/her life is in imminent danger but the patient is conscious, or when the primary care was given hospitalisation is refused by him/her.

The Ombudsman has surveyed the legal background and police practice of the objective-based sanctioning of driving under alcoholic influence (the so-called zero tolerance) and worded several anomalies and constitutional reservations in relation to several basic rights during the course of investigation. In his report the Commissioner stressed that drunken driving endangers the basic rights, the life and physical safety of the participants of traffic. Haphazard control and sanctioning of drunken driving cannot be objected to by themselves, and can even be demanded for in the interest of protecting the basic rights of other people. It can be expected from the state, however, that it should pay attention to the realisation of basic rights when creating and implementing the set of sanctions.

According to the Ombudsman it is far simpler for the authorities if they take away the driving license from the accused when the procedure is launched but such considerations 'simplifying procedure' cannot motivate the lawmaker to make disproportionately restrictive rules. A more effective measure against drunken driving can be created by predictable regulation and consistent law enforcement, and, in addition to sanctions the enlightening campaigns and initiatives of the police also have a significant role.⁵⁴

In the framework of the children's rights project the Parliamentary Commissioner ex officio investigated the realisation of the basic rights of those being brought up in the special children's home of Szedres, ensuring care for eleven boys struggling against problems deriving from the consumption of alcohol/drugs and operated by the Bezerédj Palace Therapy Foundation.⁵⁵

The Ombudsman has found that the Organisational and Operational Rules of the institution prescribed personal search, if necessary, undressing to underpants and doing alcohol test after a boy returns from leave. If the child returns from leave under the influence of a psycho-active substance he would be punished by one-month isolation and no leave, and if a child tries to escape the

⁵⁴ OBH 2567/2008

⁵⁵ OBH 1748/2008

punishment is two months of isolation. According to the Commissioner those measures resembled penitentiaries rather than institutions of child protection. Restricting basic rights may be justified in the case of children struggling against drug and/or alcohol problems in the interest of their defence, but the *limitation of basic rights to personal freedom* can be based on legal authorisation only. The Commissioner has requested the head of the social and guardianship office to professionally supervise the institution and to take the necessary measures.

The Ombudsman also launched an ex officio investigation because of the *violation of the right of children to particular protection and to human dignity* in the case when the 16 to 18 year-old students of a vocational secondary school of Kaposvár participated in the exercise of mass dispersion of the Police Headquarters of Somogy County with the permission of their headmaster.⁵⁶ The Commissioner has pointed out that the students were in a potentially dangerous situation during the exercise, one of them was even slightly injured though the institution had to ensure that the education and teaching of children should take place in a safe and healthy environment. The students participated in the exercise within the framework of a lesson, they had no choice. The school did not ask permission in writing from the parents and did not even inform them in advance.

The Commissioner mentioned in particular in his report on investigating the ticket-controlling activity of the Budapest Public Transport Co. that it violated the passengers' right to human dignity if the associate of the Company checking the tickets spoke in an objectionable tone about the passenger's behaviour or the lack of a ticket, irrespective of legality, or behaved with the passengers in other humiliating ways. He also stressed that when the entitlement to travel was being checked the associates of the Company were not in a superior position to passengers, they only checked the fulfilment of a contract. Even the possibility of checking and additional fees do not mean that persons doing the job exercised the rights of an authority because the Public Transport Company was just as much a private party in respect of the contracts involved as the passengers availing themselves of its services. In the Hungarian legal system organs of the state and local governments have jurisdiction of an authority and private individuals' identity can be checked by the police; legal subjects of private law cannot exercise the rights of authorities.⁵⁷

During the course of investigating a complaint related to the right to assembly the Commissioner reached the conclusion on the basis of the police report received that participants of a political event were shadowed or monitored by policemen after the event was declared as completed, and the aim was exclusively hindering a laser projection. According to the Commissioner it is gravely doubtful even from the angle of the protection of personality rights if the police, since there are no guaranteed legal conditions (suspicion of a criminal deed) conducts an activity that qualifies as secret collection of information not subject to judicial permission. According to the Commissioner's stand it is

⁵⁶ OBH 4685/2007

⁵⁷ OBH 3078/2008

unacceptable that anyone and particularly members of a political movement should be monitored and shadowed in relation to their political activity. The Commissioner found that the police procedure caused an anomaly related to the right to self-determination deductible from the right to human dignity. Therefore he turned to the National Police Chief Commissioner among his suggestions to call the attention of the police cadre that secret collection of information unrelated to juridical permission could be done exclusively in the case of conditions laid down in the law. In his answer the National Police Chief Commissioner pointed out that the fact of shadowing had become known by the plaintiff therefore it could not be regarded as a secret one. But he also acknowledged the fact that shadowing people involved was unjustified.⁵⁸

The Ombudsman conducted investigations on the basis of complaints in cases when the exercise of the plaintiff's basic rights was hindered by the failure of issuing documents.

The Parliamentary Commissioner has found that one of the fundamental preconditions of the realisation of constitutional rights was that the person entitled should be able to testify to his/her identity as well as Hungarian citizenship. The plaintiffs got into a situation not by their mistake but as a result of the shortcomings of the respective legal regulation that they were not entitled to have any kind of certificate issued by the authorities necessary to exercising their basic rights which also caused anomalies from the angle of the state's obligation to protect basic rights. The Commissioner proposed to the Minister of Justice and Law Enforcement to initiate the modification of the respective legal norms. The Minister accepted the initiative but its implementation has not been done.

The Parliamentary Commissioner also investigated the injury of the *right to having a name as deducted from the right to human dignity* on the basis of a complaint.⁵⁹ The plaintiff and his wife got married during their university years and later on both of them obtained doctor's titles. The validity of the wife's identity card expired but the documents office, saying that the husband obtained the doctor's title after they got married, refused to register the husband's doctor's title in the wife's identity card.

The subjective law says that the wife may use the husband's name as he uses it thus emphasizing that they belong to the same family derives from the protection of marriage and the institution of the family as well as from the right to name as a basic constitutional right. The Ombudsman has stated that the omission of the Government, besides violating the requirement of legal safety, has caused an anomaly also in relation to the right to name as a basic constitutional right, therefore he recommended the modification of the order. The proposal has been accepted but the modification of the legal norm has not yet been done.

Realisation of the right to asylum and to human dignity

⁵⁸ OBH 5593/2008

⁵⁹ OBH 1132/2008. The Constitutional Court stated in its resolution No. 58/2001. (XII. 7.) AB that the right to one's own name was a human right in itself, which enjoyed absolute constitutional protection.

The Ombudsman conducted an investigation of *foreigners living in the Reception Station of Refugees of Debrecen* on the basis of a news item.⁶⁰ In June 2008 five residents of Afghan citizenship of the Reception Station climbed up to the 30 metre-tall relay tower near the institution because their case was too slowly handled by the respective authorities and they did not receive the proper documents. In July 2008 fighting in the crowd occurred in the Reception Station because of using the internet and because of protests against atrocities that happened during the subsequent police intervention about sixty residents of the Station intended to climb the 'tower', and next day a bigger group of foreigners protested peacefully at the entrance of the Station.

The foreigners are located in one of the three reception stations operating in Hungary for the different phases of the assessment of their application for the right to asylum. After they submit their application they usually stay for 15 days in Békéscsaba, and next they stay in Debrecen until their application is assessed and entered into force, which may be protracted for years particularly if even a juridical revision is availed of, and those who are already acknowledged as refugees live in Bicske. Placement adjusted to the phases of procedure for the right to asylum, however, disregards that it is not expedient to keep foreigners belonging to certain nationalities or ethnic groups in the same institution, because due to different religious, historical and cultural conflicts their co-existence cannot be ensured or it is possible only at the cost of great difficulties. The majority of the residents of the reception stations have undergone grave trauma, they are people worn down by the events that had made them flee and by the difficulties during their journey, and many of them suffer from post-traumatic syndromes.

The investigation has found that there was neither any official survey of trauma nor institutionalised psychological care at the station. The capacity of the three-member social and refugee care-giving group was extremely small if the administrative and other tasks were considered and the approximately four hundred residents of the station, coming from about forty countries and requiring special care were seen. As an adequate number of social workers with proper qualifications was missing there was no institutional conflict management, and no mediation was available in the reception station. Friction was common among traumatised people arriving from a large number of different cultures who often did not read and write, did not understand Hungarian and the local conditions, finding it difficult to endure the lack of activity and those involved try to settle conflicts in the way that was usual in their own culture because professional assistance was missing.

The Commissioner called attention to the fact that violent breakages of order often leading to personal harm have become more frequent in the reception station compared to the earlier years, and he stated that the lack of an official survey of trauma and of institutionalised psychological care caused anomalies in respect to the *right to asylum*. He made a recommendation to the

⁶⁰ OBH 3339/2008

Director-General of the Office of Immigration and Citizenship (henceforward: BAH) to take measures ensuring the official survey of trauma and psychological care. Further on he recommended to the Minister of Justice and Law Enforcement to revise the fixed cadre of the reception station and to arrange for the employment of further social workers.

The Ombudsman has also stated that it also causes anxiety in relation to the right to human dignity besides the requirement of legal safety from the angle of the objective obligation of the law to protect basic rights that the foreigners acknowledged as protected ones did not receive any personal document of identification testifying their legal status. The reason was that the Ministry of Justice and Law Enforcement did not initiate the necessary modification of the legal norm and the creation of rules concerning the documents of the protected ones. Therefore the Parliamentary Commissioner proposed the modification and supplementation of certain legal norms.

In relation to police measures that took place in the Reception Station the Ombudsman had found that the associates of the police headquarters caused anomaly related to their *duty to protect human life* in June 2008, making it possible for the fifth demonstrator to climb the structure by not closing the area surrounding the relay tower for mobile phones and the road leading to it. The County Police Chief Commissioner had taken measures for taking to disciplinary task those who had made that omission.

The very fact that police force was used to stop the fighting that had broken out in the crowd in the Reception Station in July 2008 did not cause an anomaly related to constitutional rights. The entry of the police to the female hostel and to the hostel of single men, and particularly the manner those premises were searched was an anomaly regarding the *right to the inviolability of private residence*. Residents of the female hostel were also shocked by the fact that their garments were inspected by the male policemen of the Action Department. Policemen did cause an anomaly related to the *right to human dignity* when they made offensive and despising comments about Islam and its followers.

The manner of the implementation of police measures ordered because of the July events shows that the police cadre are not trained for dealing with foreigners coming from different cultures and for managing their conflicts if any; and their multicultural knowledge was missing. The Commissioner initiated the necessary measures to be taken by the County Police Chief Commissioner in the interest of preparing the cadre for peaceful conflict management, for mediation as well as for their multicultural training. The Police Chief Commissioner accepted the initiative.

Realisation of the demand for equal treatment

The Parliamentary Commissioner also investigated the realisation of the demand for equal treatment on the basis of certain complaints. The prohibition of discrimination means that everybody should be treated by law as equal, as of equal dignity, and the points of the distribution of entitlements and favours should

be determined by the consideration of individual aspects by equal measure.⁶¹ The Constitution does not prohibit all kinds of differentiation, only those that violate the right to human dignity, are arbitrary and are without any rational justification. If a different regulation pertains to a homogeneous group within the given concept of regulation this runs counter to the prohibition of discrimination, excepting if the distinction has a constitutional reason of proper weight.

The Ombudsman has identified an anomaly related to the prohibition of discrimination in the case when a director-general of a hospital run by the municipal government issued a new regulation not approved by the maintainer, in which the payment of fees was set differently for the employees of the Dialysis Centre offering public service and operating in the hospital compared to the other health care employees of the institution. The Commissioner suggested the revision of the rules to the Municipal Assembly maintaining that institution.⁶²

The danger of discrimination emerged in relation to *checks intending to screen those who run vehicles registered abroad with the intention of tax evasion* done by the National Command of the Hungarian Customs and Finance Guard (henceforward: VPOP). The Commissioner stated that investigations related to vehicles of foreign registration plates did not serve the exploration of causes and redress of the problem, but mean the 'symptomatic handling' of the problem, and it is constitutionally questionable that the VPOP inspected only those who used cars registered in Slovakia.⁶³

2.2.2. Freedoms Related to Communications

In Article 61 of the Constitution the declared freedom of speech has an eminent place among the basic constitutional rights: according to the interpretation of the Constitutional Court⁶⁴ it is directly at the head of the catalogue of basic rights, only next to the right to life and human dignity in the hierarchy of fundamental rights. The reason is the outstanding significance of the freedom of opinion, which rests on a dual foundation: partly it offers an opportunity to the individual for subjective self-expression and hence freely unfolding the personality, on the other hand, it offers an almost unlimited social communication which is one of the most significant preconditions of the realisation of democracy. Nowadays the interpretation of the freedom of speech has been very broadly interpreted, also because of its forms of manifestation; therefore it is more proper to speak about rights to communication than merely about the freedom of speech. Every such right belongs to the sphere of rights to communication which ensures the possibility of publishing information (communications message) in any form. The freedom of the media can be classified under this heading, but looking at a broader sphere even the right to assembly and complaining may also belong

⁶¹ Resolution No. 9/1990. (IV. 25.) of the Constitutional Court

⁶² OBH 5303/2008

⁶³ OBH 3596/2008.

⁶⁴ Resolution No. 30/1992. (V. 26.) of the Constitutional Court

here. The divergent topics of the investigations that emerged in relation to rights reflect this complex image.

The rights to communications penetrate a significant part of complaints the Parliamentary Commissioner receives. Due to this extensive feature there are rarely cases that are exclusively related to communications rights. Only those cases were included in this part of the Report where issues related to communications rights determined the nature of the case or constituted a significant aspect of the investigation.

The freedom of the media

The number of investigations involving broadcasters or procedures of the media authority significantly dropped in 2008 in comparison to the previous years: the Commissioner launched only two investigations ex officio and one on the basis of a complaint. The National Radio and Television Commission (henceforward: ORTT) terminated its procedure sanctioning the broadcaster after the investigation launched ex officio in relation to the programme entitled “The Price of Truth” because it had no authorisation to investigate a public service programme. The Commissioner launched an investigation on the basis of complaint in relation to the programme entitled “The Great Opportunity” during the course of which he contacted the media authority but this procedure has not been terminated during the reporting period. The Parliamentary Commissioner investigated the relationship between the freedom of the media and the right of children to information as well as to protection and care in the context of the project on children’s rights. The major findings of the Report included the statement that the broadcasters did not meet their legal obligations merely by the proper classification of programme items which prescribe the broadcast of an adequate number of high standard programmes for children and youth and contents that are useful also for children and young people. The Parliamentary Commissioner contacted several broadcasters requesting them to report on their programme items for children. As the answers show the service providers do not pay the necessary attention to broadcasting programmes that are really addressed to children besides the compulsory classification, and none of the broadcasters screen programmes aiming at making the viewers conscious about children’s rights. The Ombudsman called on the ORTT as well as the programme providers to suitably call the attention of viewers and listeners to programmes particularly meant for children, and to broadcast programmes that present children’s rights. Those concerned accepted the Commissioner’s initiatives in their answers and informed him about their measures already done or planned (such as increasing the proportion of programmes expressly addressed to children, or plans of enhancing awareness of children’s rights, addressed to children).⁶⁵

Communications aspects of the right to assembly

⁶⁵ OBH 2057/2008

In several reports focusing primarily on the right to assembly the study of the contents of the right to the free expression of opinion as well as the possibilities of restricting it by the state also emerged. Though the right to assembly has characteristics of political rights yet one cannot disregard the fact that it is one of the most significant rights to communication: partly the realisation of an event carries a kind of communications content, and partly the event may ensure an opportunity for expressing opinion.

In his report the Commissioner stated that throwing various objects (eggs, stones, Molotov cocktails) as a form of expressing opinion cannot under any circumstances enjoy constitutional protection. He also stated that in the case of a hermetic blockage of the area of assembly (route) the rights to communication are violated because the message cannot reach precisely the addressees, the viewers of the process of communications. Thus vacating the area of demonstration carries in itself the direct danger of anomaly related to the freedom of expression. In the case under survey it was the participants of the LGBT⁶⁶ march of 5 July 2008 who were attacked by those standing along the route throwing things at the marchers, despite the fact that the police totally isolated the event from the street environment in most places. The Ombudsman studied how the police could have secured the march so that the participants would not suffer from atrocities, yet the opinion intended to be expressed should reach the addressees. The Commissioner sent his report to the Deputy Chairman of the Supreme Court (henceforward: LB) functioning as its Chairman and to the Chief Prosecutor by way of information asking them to consider the proposition of a process of legal unification so that the procedures in cases of throwing objects should be uniformly carried out. The Deputy Chairman of the LB functioning as its Chairman informed the Commissioner that the Penal College of the LB discussed certain questions of the legal interpretation of the criminal act of truculence in their session on 29 September 2008, and created the College stand No. BKv. 71. According to that stand throwing objects typically unsuited to do harm to other persons (such as eggs) may realise an act of slander. An act of slander committed in a public place, if its performance is conspicuously against a community, may be suited for identification as truculence, therefore it should be examined whether the conditions of this criminal act have been fully realised.⁶⁷

The legal qualification of truculence was modified by the Act on the Modification of Certain Acts in the interest of protecting public order and the operation of the administration of justice. The lawmaker, in addition to making the commitment in a group gravely disturbing public order a qualifying condition and ruled for its more serious punishment from 1 February 2009 on, has supplemented Article 271 of the Penal Code by a regulation according to which "a physical impact of attacking nature qualifies as violent behaviour even in the case if it is not suitable for causing bodily harm". (The Ombudsman did not

⁶⁶ The march of 5 July was organised by the Rainbow Mission Foundation, the abbreviation stands for all the sexual minorities such as lesbians, gays, bisexuals and transsexuals.

⁶⁷ OBH 3262/2008

comment on the proposed Bill.)

The report studying the procedure of the police was also directed to communication realised within the framework of the right to assembly in which the Ombudsman stated that it may have an effect identical to preliminary control of the communication otherwise censorship if the announcement of an event to be held within the framework of the right to assembly would have to contain also the description of the manner of the expression of opinion. In his complaint the representative of the social initiative called "Politics can be different!" objected to the police prohibiting the use of laser light technique on stage in their event previously announced. The policemen acting on the spot did not give legal justification of prohibition and refused to take minutes even. According to their oral communication it would have disturbed the work of MPs if they projected anything on the walls of Parliament. The Commissioner found out that the procedure of the police was anomalous in respect of the requirement of legal safety deriving from the principle of the state based on law as well as the freedom of opinion, and he requested the National Police Chief Commissioner to take measures for teaching skills related to the right to assembly and to call the attention of policemen and their immediate superiors to the fact that the Constitution protects opinion irrespective of its content of value and truth. The National Police Chief Commissioner partly challenged the Commissioner's findings but accepted the initiatives.⁶⁸

At the state celebrations on 23 October 2008 the police cadre on the spot received a clear order to check the identity of persons expressing their opinion outside the cordon fences (shouting, using rattler, carrying fliers, etc.) and others who had "tricolour band or whistle hanging around their neck" and to conduct them out of the area. The Commissioner stressed that wearing a tricolour band or a whistle by itself appeared as a kind of expression of opinion (protest) in the public place events of our big cities. He pointed out that the effect of the police measure implemented against the expression of opinion by wearing a tricolour band or a whistle would be assessed similarly to the (preliminary) prohibition of communication, in other words it is to be considered as a measure with an effect equal to censorship. According to the Commissioner the order issued to the Security Cadre concerning identity checks and escorting out certain people did not meet the requirements set against the limitations of the freedom of opinion and elaborated in detail by the Constitutional Court, and the police unnecessarily restricted hence violated the essential content of the right to the expression of opinion. The National Police Chief Commissioner challenged the Commissioner's findings. The Ombudsman did not accept the answer in this respect and maintained his measures taken unchanged, further on he requested the National Police Chief Commissioner to repeatedly consider his stand.⁶⁹

The right to self-governance and the freedom of the expression of opinion

⁶⁸ OBH 5593/2008

⁶⁹ OBH 5642/2008

The expression of opinion in the context of the functioning of elected bodies of representatives constitutes the second group of cases related to rights of communication about which even two reports were drawn up. Two complaints received from the town of Mohács offered ground for an investigation into the collision of the freedom of speech and the right to local self-governance. The effectiveness of the Ombudsman's reports is indicated by the fact that the mayor proceeded in keeping with the Commissioner's recommendation concerning the first case on the occasion of the second one.

In the first case the plaintiff complained that the mayor hindered him in contributing to the public hearing of the body of representatives. Before denying him speech the mayor asked the plaintiff about what issue he wanted to speak, and when he started his contribution word was withdrawn from him without any preliminary warning. The public hearing of the elected body is a special session; the rules of the meetings of the elected body pertain to it according to which a contributor who has diverted from the topic under discussion, or used offensive expressions not fitting the meeting should be warned before the word is taken from him. A question regarding the content of the contribution before it begins and its preliminary prohibition on the basis of its contents (a kind of 'censorship') do not meet the set of requirements for the limitations of the freedom of speech. Therefore the Commissioner suggested to the mayor to keep up the order of the discussion in keeping with the organisational and procedural rules on the occasion of public hearings, further on he called the attention of all the leaders of local government organs to pay particular attention to the proper conduct of public hearings.⁷⁰

In the second report connected to the topic⁷¹ the Ombudsman stated that the local government was capable of doing his tasks only if undisturbed operation was guaranteed and the related constitutional values may even represent the limitation of the free expression of opinion by the citizens. In the particular case a citizen of the audience present in the public meeting of the elected body of representatives stood in the middle of the conference room with an Árpád-striped flag in hand. This time the mayor called him to end his demonstration and immediately leave the place. After the ineffectual call he asked for the help of the police but the person involved did not obey to the police request. Next the policeman in charge stated that "the /citizen/ ...did not show a behaviour vouchsafing further police measures or would make his removal necessary", therefore he terminated police action. Almost all the members of the elected body were outraged by the citizen's behaviour and were forced to continue work in a closed session.

According to the Commissioner's opinion the police did cause an anomalous situation in relation to the principle of the state based on law as well as to the right to local governance by omitting action. In the interest of redressing it and of its future prevention he requested the National Police Chief Commissioner to take the necessary measures. The National Police Chief

⁷⁰ OBH 3139/2007

⁷¹ OBH 2952/2008

Commissioner did not share the Commissioner's opinion and did not see a legal opportunity besides the current regulation for the police to take measures against persons disturbing the sessions of the elected representatives. The Commissioner did not accept the answer and has maintained his initiative without any alteration.

The freedom of artistic expression of opinion

The issue of the freedom of the artistic expression of opinion, a specific form of expressing opinion emerged in a single case when the Ombudsman called attention to the shortcomings of the protection system (mostly regulatory) of art works in public places. He stated that the deficient regulation carried in itself the immediate danger of anomaly related to the objective obligation of the state to protect basic rights, to the right to ownership as well as the freedom of artistic life. He stressed further on, that the use of art pieces in public places expressly for the purposes of advertisement could not enjoy the particular protection that was due to the freedom of the expression of opinion. The preliminary consent of those entitled was necessary to the use of art works for such purposes. The investigation which was the basis of the report was launched in the wake of a campaign of advertisements when installations made of red paper in the shape of a guitar were fixed around the neck of several statues in public places of Budapest without any preliminary permission. Any of the Municipal Public Spaces Maintenance Company, the Municipal Inspectorate of Public Spaces, the Budapest Gallery, or even the Mayor's office did anything against the campaign of advertisements carried on without the owner's consent. In view of all this the Parliamentary Commissioner requested the organs concerned to develop effective measures for the collective protection of the works of art placed in public spaces which the organs concerned have done. Further on, he recommended to the Minister of Justice and Law Enforcement to study together with the Minister of Education and Culture how the protection of art works in public spaces could be ensured more effectively. According to the Ministers of Justice and Law Enforcement and of Education and Culture the problem was known by the Government too, and the justice portfolio regarded it as its prominent task together with the other Ministries concerned.⁷² The creation of a new regulation of trade in non-ferrous metals was also in progress in the defence of statues.

Other issues

The Commissioner stated in a stand that the police cannot make the work of the trade union representing the rights and interests of policemen impossible, but he also stated that the trade union and its activists at work cannot hinder the operation of the police. In the case under survey the activists of the Ready-for-action Trade Union of the Hungarian Police were distributing publications and

⁷² OBH 4687/2007. Further on it should be noted that according to information received the creation of regulation pertaining to trade in non-ferrous metals was in progress and would also keep in mind the solution of the problems identified.

leaflets at the main entrance of the Security Service of the Police (currently Emergency Police) to policemen. The secretary-general of the trade union complained that the person on duty at the gate was ordered to check the identity of and call the activists to leave. The safety cameras recorded that the trade union activists distributed publications not only in the public space in front of the gate but also inside the fence. They stopped vehicles moving there to give the leaflets through the windows and they disturbed the flow of traffic. Taking into consideration all this the Commissioner was of the view that the identity check was justified and was not running counter the valid legal norms and it could not be qualified as harassment or discrimination. He also found it proved that the activists left the area upon request voluntarily and not upon a call. No report was drawn up about the case, the Ombudsman merely informed the secretary-general of the trade union and the National Police Chief Commissioner in the interest of preventing future misunderstandings. So far no answer has been received to the information either from the Police Chief Commissioner or from the trade union.⁷³

The case in which the plaintiff complained that the local government did nothing for four months about his public interest statement and did nothing to terminate the condition criticised produced an anomaly related to the right to complain which can be considered primarily as a political right but could also be fitted among the rights to communication and causing the violation of the right to legal remedy. The citizen submitted his proposal about a case for the protection of possession to the notary but the latter one did not answer to his complaint within 30 days as prescribed by law and passed a resolution only later on, after the mediation of the office of public administration. In his report the Ombudsman stressed that the obligation of the organ of public administration for passing resolutions was of the significance of safeguards, its issuing in time served rightful private and public interests no matter whether the procedure was launched upon request or ex officio. He called the attention of the notary to its significance and to the exact respect of deadlines set by the law in the interest of avoiding similar anomalies. The notary of the settlement concerned accepted the Ombudsman's appeal.⁷⁴

2.2.3. Social Rights and the Right to Ownership

The realisation of the economic, social and cultural rights, subsequently *social rights* in brief, belonging to the second generation of basic rights *presupposes active state interference* into the private sphere. As contrasted to the classical rights to freedom the state obliges itself to offer certain 'services': part of the material resources is taken away and redistributed among the citizens. Social rights include *the right to the possible highest level of physical and mental health* and the *right to social security*; further on the *right to work* and *the right to culture*,

⁷³ OBH 4726/2007

⁷⁴ OBH 3706/2007

including particularly *the right to education* can also be classified under this category.

Social rights, such as the *right to the possible highest level of physical and mental health* (Art. 70/D), the *right to social security* (Art. 70/E) do not qualify as subjective basic rights, their assurance means such a constitutional task in the framework of which the state is obliged primarily to run the network of health and medical care and educational institutions, to provide for the means to care in case of the expected deterioration of the condition and circumstances of the individual, such as a result of old age, illness, disability, and to organise and maintain the system of social insurance. The right to health is closely related to the right to life, and it derives from the obligation of the state to protect life, whereas the right to social security contains a minimum needed to existence to be guaranteed by the state which is indispensable to the realisation of the right to human dignity.

The Constitution speaks sparingly about the *right to culture*, including the *right to education* (Part. 70/F); therefore several elements of constitutional significance and of safeguards appear resembling catalogues in Acts on Public and Higher Education. The nature of the right to education varies depending on participation in public or higher education. The *right to public education* partly means entitlement (right to learning, the freedom of learning), and it also means obligation (compulsory education) the conditions of which are created by the state. The *right to higher education* is realised according to the Constitution when higher education is accessible by all based on the individual's abilities and those participating in it receive financial support.

The *right to employment* (Art. 70/C) consists of two elements, one is the 'right' to work, to doing a job, which includes a state employment policy consisting of job creation and preservation and a policy managing unemployment, and the second one is the freedom of choice of occupation (which is a right of subjective nature). The freedom of combination at workplace is closely related to the right to employment which also includes the availability of the right to strike by employees collectively in the interest of asserting their economic and social interests within the framework set by the Act on Strike. In view of the fact that several problems related to basic rights can be observed in the valid regulation concerning the right to strike, the Commissioner dealt with this area within the framework of an autonomous project on basic rights from the autumn of 2008 on. More detailed information can be found about investigations related to the right to strike and about the related experiences in the chapter on projects.

The discussion of issues related to the *right to ownership* is justified by the fact that it has several social limitations making the significant limitation of the owner's autonomy constitutionally possible in view of the interests of the community. The right to ownership can be restricted by the state for public interest as it is declared separately by the Constitution; moreover it can be taken away, appropriated under certain conditions of safeguards (Art. 13). The Ombudsman's practice related to the limitation of ownership has been focused for a long time on demanding the organs within the sphere of his jurisdiction to

respect the rules of safeguards and their assertion, the development and upkeep of a clear legal environment in relation to cases of forced restriction and withdrawal (exceptionality, retribution) as well as in relation to certain authority procedures of the land registry offices.

According to the authoritative interpretation of the Constitutional Court and the subsequent Ombudsman's practice the state is obliged to preserve the given *level of protection* when ensuring social rights which can be reduced only in exceptional cases and under exceptional conditions, by creating the necessary balance. The differing measure of basic law, such as the necessity of enhanced state intervention instead of keeping aloof demands an interpretation of the role of legal protection from the Commissioner that differs from the typical one. In the case of social rights the Parliamentary Commissioner for Civil Rights has to speak up in the interest of protecting the needy and the exposed social groups against the constitutionally unjustified reduction of the level of protection. This justified, among others the Commissioner to *launch a project of basic rights in the interest of protecting the rights and human dignity of people living without shelter*, one of the most exposed and marginalised people's groups. More detailed information can be found about some of the investigated cases related to the health care and social systems carried on ex officio or based on complaint during the reporting period in the project chapters of the Report.

General trends of the realisation of social rights

The *dual trend* that could be observed for a long time in relation to 'social cases' did not change in 2008 either: The *largest number of submissions, calls to attention* arrived in relation to these issues from the citizens, at the same time it was in these cases that *refusals, mostly due to the lack of jurisdiction* with information given were the results. During the reporting period the Parliamentary Commissioner received several complaints in relation to financial social allowances. The tone of a large part of submissions clearly indicates the despair of the poorer strata of the society because of their deteriorating living standards: they write about their hopeless condition, the lack of jobs, the high maintenance cost of their housing which is often impossible to be paid for, or about their deteriorating health status as well as insoluble housing situation, asking for help and support from the Commissioner.

In several cases the Ombudsman found that the authority concerned respected the relevant rules, therefore as his respective power was missing he could only *call the attention of the local governments in question to the person in difficult social position*, and *informed the plaintiff* about other possibilities available within the framework of basic social care, and primarily about the institution of family assistance also offering advice for the personal conduct of life. The overwhelming majority of complaints received were continued to be related to social provision because of the rejection of applications for regular social allowance and free medicines.

There were also cases when, in the view of the Parliamentary Commissioner, the problem observable in relation to gaps in legislation or

implementation *did not reach the level of anomaly related to social rights or other basic rights*, therefore no recommendation could be worded on the basis of the Act on Ombudsman. In justified cases he regarded it important to *signalise the problem and to make a proposal of alternative solution* pointing out that the suggested legal solution or practice would be favourable from the aspect of the realisation of basic rights. Experiences of the reporting period confirm the assumption that calling attention to and making proposals by the Ombudsman in issues related to basic rights and professional ones have *serious significance*.

Transitory insolvency may be the result of several reasons, and significant changes may occur in the personal conditions of those receiving debt management services; therefore the Commissioner *recommended* to the Minister to *consider the initiation of a legal solution that was more flexible, proportionate and would more effectively promote prevention*. Such a possibility would be among others to cut the 24-month deadline shorter, or that the local government should be given the opportunity for consideration, but also the principle of gradualness could be asserted so that a shorter moratorium could be granted for the first time and a longer one for the second time.⁷⁵

Realisation of social rights and the right to ownership ***The health care system and the right to health***

It is a growing trend also in relation to the system of health care and the right to health within the sphere of social law that the *number of submissions asking for help falling outside the Commissioners' power* has been growing. People turning to us ask for the interpretation of a specific problem, the collation of certain legal norms and the analysis of some economic and sociological symptoms, or 'only' object to the behaviour and attitude of employees of health care.

The Parliamentary Commissioner dedicated special attention to the problems related to the functioning of the system of health care and those deriving from its transformation and structural change in progress already in his Report on the year 2007. In April 2007 the *closing down of the National Institute for Psychiatry and Neurology* (henceforward: OPNI) and in September the *liquidation of the active beds of the Children's Hospital of Buda*⁷⁶ called for and encouraged the Commissioner to *issue stands*.

The Parliamentary Commissioner stressed on each occasion that changing the major systems, such as the system of health insurance cannot in themselves be criticised from the point of basic rights. The structural change taking place in health care, a rearrangement of the holding capacity of inpatient caregiver institutions and the transitory problem of institutions deemed to be

⁷⁵ OBH 2084/2008 (No report was prepared about the case.)

⁷⁶ OBH 2465/2007 and OBH 2530/2007. It should be noted here that as a result of the stand the Committee of Human Rights, Minorities, Civic and Religions Issues put the discussion of the situation of OPNI on its agenda for 17 April 2007, and even held a session on the spot on 22 May 2007, where, however, no meaningful resolution was passed. In view of the fact that the Ombudsman's proposals made in his stand were not accepted by the respective portfolio or by the Specialist Committee, the Ombudsman considered it necessary to explore the situation by an investigation on the spot.

closed down *pointed beyond the closure of individual institutions*, and raised the study of the obligation of institutional care provision of the state from the angle of basic rights.

According to the Commissioner the principles, however, applied for the transformation of hospitals provoking major reactions have not considered or to a very small extent only such specificities like the special needs of children or psychiatry patients. The statement made earlier continues to hold true for the year 2008 tension and forced solutions as corollaries of the *significant changes of the legal background* as well as the transformation of the institutional structure and the limitations of financing have produced several situations that *provoked rapid reaction, explanation and interpretation*.

The basic activity of OPNI was outpatient and inpatient care for and rehabilitation of patients of adult and child psychiatry, specialist care of clinical psychology and addictology, and intensive care for stroke patients. The resolution of the Minister of Health dated on 9 March 2007, withdrew all the beds from the institution thus reducing inpatient care to nil from 1 April onwards. The single-person decision of the Minister, the procedure of liquidation followed by her caused anomaly by the violation of the rules of the Act on State Finances and also in relation to the requirement of legal safety deriving from the principle of the state based on the rule of law.

The closing down of OPNI created a situation of anxiety for the mentally handicapped or patients suffering from neurological illnesses as well as for employees of the health care system and ultimately for the entire society. The Parliamentary Commissioner, in his report based on the available documents and on-the-spot visits *explored a series of serious professional problems and others related to care provision, as well as anomalies related to the right to health*, and he also indicated that neither the profession nor the general public could learn the real causes of the closure of the Institute.

In his report the Parliamentary Commissioner stressed in particular in the opening part *summarising the problems in nine items* that the destiny of those patients meant the most serious abuses related to basic law who had occupied the eliminated beds and who were dismissed from the institution in the interest of the fastest possible reduction of the number of beds. Patients left without care belonged to that group in significant numbers, and many of them did not possess the ability to comprehend their illness due to their psychological disturbances. After dismissal these patients stopped taking their medicines, they did not go to outpatient clinics of nervous disorders, and as a result of their deteriorating condition they often ended up in the street, increasing the number of the homeless.

The closure of OPNI is also problematic in relation to the protective level of the right to health because as a consequence *care for stroke on European level was partly terminated*. Regions in the vicinity of Buda were left without care in this respect, because, due to the present condition of traffic the short, maximum 3-hour long duration cannot be kept within which the proper treatment of stroke in the brain should begin. Further on, due to the unprepared resettlement the destiny of several hundred chronic psychiatric patients became

uncertain who had been waiting for years for admission to the psychiatric residential care of OPNI. Innumerable drug patients were also left without care because it was only in OPNI where there was a department of addictology and drug out-patient clinic for the Buda side of the capital city. The Ombudsman also stressed that in view of the closure of OPNI *the acute psychiatric care for adolescents between the ages of 14 and 18 continued to be unsolved in the capital*. And, as a consequence of closure a high-level centre of education and research was wound up since three departments of the extension training of medical doctors as well as the university department of the specialist training of psychologists had been operating in that Institute.

All in all the lack of counter-balancing the reduction of the level of care as a consequence of the closure of OPNI, the reduction of specialist care or in certain geographic areas to a critical level and endangering hundreds of patients created an *anomaly related to the right to health*. The state has to pay special attention to any planned alteration in the various fields of the system of health care provision so that the protective level of the right to health should not decrease to a hazardous extent due to financial considerations only. It is the task of the state and of the health portfolio in this case, to see to it that its measures are planned and its proposals made for the co-ordination of the individual steps of structural change on the basis of considering the basic constitutional points of necessity and proportionality.

Parallel to the investigation related to the closure of OPNI and in close connection with it the Commissioner was forced to call attention in a communication to the fact that the outpatient addictological care provision was pushed to the brink of operational inability by the *closure of the National Institute for Addictology (henceforward: OAI)*. In his call for attention the Commissioner referred to the fact that as a consequence of the closure of that Institute there would not be any efficient background institution to the coordination of alcohol policy, and the alcohol and drug situation of Budapest may gravely deteriorate.⁷⁷

In 2008 those investigations by the Ombudsman were not without antecedents that surveyed *rescue and emergency care*, including the operation of the *alarm system* from the angle of the right to health and also of the obligation of the state to protect life, and the basis of these explorations in fact go back to several years.⁷⁸

During his *working visit to Hajdú-Bihar County* the Parliamentary Commissioner studied the work of the health care institution of the County, and particularly the operation of rescue and emergency care (The Regional Ambulance Organisation of the National Ambulance Service /henceforward: OMSZ/ of the Northern Plain) and co-operation among health care providers. During the comprehensive survey experts of the ambulance service repeatedly stated that the exact determination of alarm calls should be identified because it was a life-saving precondition. This is particularly significant in the case of persons asking for help who do not know the locality, are travelling and are on their way somewhere. The

⁷⁷ OBH 2371/2008

⁷⁸ See: OBH 1955/2002 and OBH 4047/2006

Report adds that the specification of the location may be suited also for screening the false alarm calls constituting more than half of the total and causing a lot of problems and cost. If the caller is unable to describe the exact place of the accident the mobile telecom service provider of the caller should be obliged to precisely give the co-ordinates with the help of the so-called *cell search* upon the request of the ambulance despatch centre.

The Commissioner found that the current insufficiency of the help system and the lack of the precise definition of the alarm caller's location may be suitable to cause anomalies of the right to life and bodily soundness, and in relation to the right to the highest level of physical and mental health.⁷⁹ Therefore the Ombudsman initiated that the government should repeatedly survey the alarm system of the ambulance service and to ensure, if necessary that the alarm call mechanism, including actual information should allow for the rapid definition of the location and for the reduction of the security transmissions to the minimum. According to information given by the Minister heading the Prime Minister's Office the government has decided upon the establishment of the European Alarm Call System and its development has been in progress.

Another investigated case similarly pointed to the operational problems of the alarm system. The Parliamentary Commissioner *ex officio* launched his investigation studying the circumstances and cause of a procrastinated rescue operation on the basis of *news related to a grave traffic accident*. The news item, provoking the investigation reported that the ambulance arrived on the spot 50 minutes after being alarmed, because they could not find the location of the accident even on the basis of information received from several callers, in addition there had been a dispute concerning competency between two police headquarters.

The investigation found that the *domestic operation of the uniform European helpline, No. 112* did not promote, and in cases expressly made it more difficult to organise the provision of help of a uniform outlook in its present form. According to earlier experience related to the operation of the alarm call delay in providing help could decisively be traced back to three reasons, such as several transmissions of the chain of alarm, the problem of identifying the caller's location, and to the possible distortion of information.

In this particular case the location of the accident could be identified only after longer time, and the documents and sound recordings supplied did not contain even a suggestion to anyone asking for information from the service providers. There was no meaningful communication among the participants; therefore they tried to find the injured independently from others. The Ombudsman has found that the *alarm system functioned inadequately*, as a result the location of the accident could not be precisely identified which meant the violation of the objective obligation for the protection of life and of the right to health. In the interest of change the Commissioner proposed to the Government

⁷⁹ OBH 2453/2008

to pay particular attention to do the legislative tasks necessary to the creation of a uniform system of help calls.⁸⁰

The operation of the social system and aids

The contents of the right to social safety can be interpreted partly in a developed system of social security and in a properly functioning institutional system representing constitutional values. During the Ombudsman's activities complaints or ex officio launched *investigations of complex nature*, based on signalization or a news item are frequent; they review the operational conditions, reorganisation and closure of an institution providing social care from the angle of basic rights. Here it is essential to call attention to the fact that *closing down an institution and the downgrading of its operational standards by themselves does not mean an anomaly related to basic rights*.

In 2008 the group of issues was clearly within the sphere of social rights, provoking major attention of the society as well was the *set of problems related to the valid system of social aid* and their management on local and national levels.

In May 2008 the Ombudsman ordered an investigation based on information in the press that the elected body of the local government of Monok prescribed in 2008 in a resolution that the payment of regular social benefit would be available only after public utility work done for certain duration. The local government also ruled in a resolution that parents otherwise entitled to receive child protection assistance would only get it if they regularly send their children to kindergarten and school. Some elements of that regulation were taken over partly or fully by other local governments (Ivád, Sárospatak) as well, and related the payment of social benefits and assistance to conditions.

The investigation extended only over the regulation of the local governments mentioned above, but *statements related to dilemmas concerning the analysed basic law were addressed to each and every local government through publicity*. The Commissioner stated that the local governments under survey defined conditions for the payment of regular social allowance as well as child protection subsidy in certain cases when legal authorisation was missing, or they were running counter to it, and even extending over it. According to the findings of the report the legal situation emerging as a consequence of the newly created orders violated the requirement of legal safety and raised the danger of discrimination because of the arbitrary implementation of law.

The local governments involved linked the payment of benefit as well as of *child protection assistance* in a manner not suited to the realisation of the *obligation for protecting children* and disproportionately to complying with compulsory education. The Ombudsman called attention to the fact that ensuring learning and compulsory education was of key importance from the angle of the healthy mental development of children. In this area, however, the operation of the signalisation system of child protection and the possibilities of effective

⁸⁰ OBH 3595/2008

measures based on law in force enjoy priority. Sanctioning careless parents is possible by valid law (such as sanctions of trespass), but that cannot extend over the withholding of benefits, because such a measure would hit precisely those whom the state wants to protect and defend, namely children.

The Parliamentary Commissioner requested the elected bodies involved in the investigation to redress the anomaly related to constitutional right and to wind it up in the future as well as to prevent it, and to nullify those regulations in which they had linked the specification and payment of regular social benefit as well as the child protection allowance directly to doing public benefit work and to meet the obligation of compulsory education of children.

In his answer the *Head of the Regional Office of Public Administration of Northern Hungary*, also affected by the recommendation stated that he agreed with the contents of the report, and initiated the nullification of the objected regulations at the three local governments. The Head of the Office attached a copy of his letters written to the mayors and to the elected bodies stating his objections concerning legality in which he called particular attention to the fact that if the local government did not redress the violations of legal norms the Office would turn to the Constitutional Court without delay, which was actually done somewhat later.⁸¹

Investigations related to the right to education

Complaints related to education continue to be characterised by mostly parents turning to the Parliamentary Commissioner for Civil Rights concerning the *operation of institutions of public education*, whereas it is *students* who rather complain against the *operations of institutions of higher education*. People continue to ask for information in several cases, at the same time the number of complaints expressly related to requests for information is of decreasing trend. This is partly due to the *creation of the mini site*, expressly and primarily *addressed to children* developed within the framework of the children's rights project. The aim of the homepage, besides giving information on basic rights and children's rights is that children may ask for information without procedural formalities, and may put questions as well as express their opinion.

The rules of the Act on Ombudsman expressly do not exclude the procedure of the Parliamentary Commissioner for Civil Rights in issues that the *Ministerial Commissioner of Educational Rights* investigates, but the Parliamentary Commissioner examines in each case complaints related to education whether the issue raises only the danger of the violation of rights related to the rights to education, or whether there is suspicion of other anomalies related to basic rights.

In a case related to the right to education the mother turning to the Commissioner objected in her complaint to the *intention of the school obliging the child to attend the same form once again because of the large number of rightfully missed lessons*. The parent had the child registered in another school

⁸¹ OBH 2972/2008

without discussing it with the head of the institution assuming a future decision of that institution; therefore the school did not pass a resolution obliging the pupil to repeat the same form. The Parliamentary Commissioner did not find a constitutional anomaly in relation to the procedure of the institution of public education in the specific case, because the mother had her child registered in another school on the basis of the form-master's preliminary oral information, for which the school could not be taken to task.

In view of the fact, however, that the head of the institution of public administration wrote in his answer that "the Act clearly states that a form has to be repeated if a pupil missed 250 lessons", in other words he suggested that if a decision had to be taken he would proceed in keeping with that regulation, the Ombudsman felt it was necessary to review that practice.

The current regulation by order has not been coherent and clear for the implementers of the law since the modification of the Act concerning assessment that entered into force on 1 September 2004. The Ombudsman stated that *the present form of the regulation by order carried in itself the danger of anomaly related to the requirement of legal safety deriving from the principle of the state based on the rule of law*, and he recommended the respective modification of the order to the lawmaker. The Minister expounded that the school had violated several legal rules, but according to his stand based on the valid legal situation the danger of anomaly related to the requirement of legal safety did not exist. At the same time the Minister informed the Commissioner that he would review the objected regulation by order in the interest of total unambiguity.⁸²

The Parliamentary Commissioner identified an anomaly related to basic law when investigating a case in which the committee of experts and rehabilitation linked the admission of a child requiring special education to a kindergarten selected by the commission to obligatory 'probation period', and, referring to that period the kindergarten unilaterally terminated the placement of the child by its resolution, disregarding the stipulations of law. The Commissioner turned to the head of the kindergarten to terminate a placement exclusively in keeping with the stipulations of the Act on Public Administration in the future, and he also initiated the revision of the organisational and operational rules and domestic order of that kindergarten. In addition the Ombudsman also turned to the maintainer of that kindergarten to take the necessary measures so that the internal regulations of the kindergarten may correspond to the legal regulations. The head of the kindergarten accepted the Commissioner's initiatives, the maintainer accepted the recommendation made, and the acceptance of the modifications is expected in early 2009.⁸³

The Ombudsman found by an investigation launched *ex officio*⁸⁴ that the measure taken by the mayor of Újpest as a result of which a pupil's existing legal relationship under compulsory education with a school was terminated without disciplinary procedure and the hearing of the pupil as well as without a valid

⁸² OBH 3207/2008

⁸³ OBH 1588/2008

⁸⁴ OBH 2223/2008

disciplinary resolution caused the violation of the right to fair procedure, the right to legal remedy, as well as the right of a child to protection and care as well as the right to education.

Abuses related to the limitation of the right to ownership

At first the *field of judicial procedure of distraint* should be mentioned in relation to the limitation and full withdrawal of the right to ownership. A characteristic feature of complaints arriving in relation to cases of judicial distraint is that in several cases the clients complain against the judicial procedure as well as decision serving as the basis of the proceeding of distraining, however, the *Commissioner has no jurisdiction* for their supervision. The detailed study of the complaint is also excluded if it expressly pertains to an issue that falls under the competency of the judiciary. A typical case is the assessed value of assets set by the bailiff, or the issue of the already collected debt and the sum of debt to be distrained, or the judicial definition of the manner of implementation in the case of a certain action, or ordering the suspension of the procedure of judicial distraining. In these cases the clients submitting complaints receive information about possible further legal opportunities (such as initiating a judicial procedure) in addition to the lack of the Ombudsman's jurisdiction.

In cases when the Commissioner has the authority to investigate it is first of all the *proportionate and gradual application of forced distraint that he inquires about*. Consequently the monetary demand has to be collected first from the debtor's available sums handled by a financial institution, or from his/her salary, remunerations, fees, etc. during the course of the judicial process of distraining. If it can be foreseen that the debt cannot be collected by distraining from wages or from sums handled by a financial institution within a relatively shorter period of time, any asset of the debtor can be sequestered for distraint. A real estate, however, can only be sold if the debt is not fully covered by the debtor's other assets, or could be covered only after a disproportionately long time. These rules do not mean an obligatory order, but express a basic principle to be treated flexibly and which has to be applied by adequate consideration by a bailiff in practice.

It was just the injury to this significant principle that was 'coded' in the rules of the Act on Judicial Distraint which was found by the Ombudsman during an ex officio investigation launched in 2006 *in relation to the rules pertaining to the inclusion of mortgagee*.⁸⁵ The suggestion for the modification of the legal norm was accepted by the Ministry of Justice and Law Enforcement in 2008, and the National Assembly voted on the modification in the same year.

According to the Constitution⁸⁶ the *real estate register* can perform its function among others if it functions on the basis of the principle of *public authenticity and publicity*. The public authenticity and publicity of the real estate register is one of the safeguards of the right to ownership, more specifically of the

⁸⁵ OBH 4027/2006

⁸⁶ 15/1995. (III. 13.) resolution of the Constitutional Court

right to the ownership of real estate. Therefore it is highly significant how the system of the real estate register functions in practice. The valid system of real estate register is based on the main ordering principle that a registration in the real estate register, which is of constituent validity, is necessary to the transfer of the ownership right of real estates as well as to the acquisition of the more significant ownership entitlements (such as the right to land use, usufruct, real servitude, right to mortgage). The ownership right of a real estate can be acquired only in an exceptional case without first having it registered in the real estate register (for instance by a ruling of an authority, or by prescription).

The Parliamentary Commissioner has stated that the *omission of the local government and the district land registry office* caused injury to the basic right to ownership of the plaintiffs because the mortgage right was wrongly registered violating the valid legal norms and it violated their constitutional right to ownership without a legal norm (legally existing cause of limitation) as basis. According to legal regulation the land registry office was supposed to ensure the public authenticity and legality of the register of real estates, the recording of the proper data of personal identification when the plaintiffs' ownership right was recorded even on the basis of legal norms in force at the time of the investigation. This is true despite the fact that the local government did have suitable possibilities of proceeding and could, in the case of adequate care, check the personal particulars of the debtor and thus prevent the emergence of that anomaly.

The Minister of Agriculture and Rural Development controlling and professionally governing real estate registers called the attention of the land registry offices upon the call of the Parliamentary Commissioner to proceed with enhanced circumspection when checking personal data.

The case was related in another aspect to *restitution* about which the plaintiff turned to the Parliamentary Commissioner because the district land registry office marked the starting point and direction of the division of the formerly undivided and jointly owned arable land upon the request of one of the co-owners where he had been using the land since 1994.⁸⁷ He learned about it only when he was to hand over the plot of land hitherto used by him to the applicant co-owner. He complained that the landed property was divided without his consent, further on he was of the view that his constitutional rights were injured by the procedure of the land registry office.

The Commissioner's investigative powers did extend over this case, and in his report he identified the omission of the district land registry office for not considering the actual condition of use that had developed on the spot and the omission of the county land registry office because it disregarded this circumstance in its procedure as second instance. They have created an anomaly related to the right to ownership (and to the principle of legal safety) by their procedure.

In the interest of avoiding abuses in the future the Commissioner called upon the head of the county land registry office supervising the district land

⁸⁷ OBH 5096/2007

registry office that the district land office should, in the future, *decide on the place and direction of landed property considering the condition of use that had developed earlier* when it was dividing property and should evolve the autonomous pieces of land accordingly.

It should be noted that a *complaint related to restitution* was received as late as in 2008 in which the plaintiff requested investigation into the issue whether a real estate earlier donated to the Church but subsequently nationalised was claimed back by the Church, or there was another case when the basic concept of the institution of restitution was challenged.⁸⁸

2.2.4. The Principle of the State Based on the Rule of Law and the Requirements Deriving from It

The Parliamentary Commissioner, when exploring the set of interrelationships behind a social problem satisfies the mandate given to him by the Constitution in an autonomous, objective and neutral way, by enumerating and collating exclusively arguments of basic law. During the course of his procedures he exclusively studies whether the measure and procedure of the investigated authority or public service organ formally and in content agreed with the principle of legal safety and with the individual basic rights.

In his reports and other manifestations the Commissioner consistently represents the principle that a state based on the rule of law can only be served by the means of such a state, and the violations of law can be responded to only by the manner of a state based on law, by the full observance of legal regulations and procedural guarantees, by the organ authorised for it, no matter how grave or outrageous those injuries may be. Those measures that are made by openly sidetracking legal norms are particularly dangerous to the realisation of basic rights, and are amply suited for negatively affecting the law-abiding behaviour of citizens and for shaking their faith in legal safety.

Statehood based on the rule of law – legal safety

According to paragraph (1) of Article 2 of the Constitution the Republic of Hungary is an independent democratic state based on the rule of law. The Constitutional Court has pointed out in several resolutions that legal safety was an indispensable element of the state based on law. Legal safety makes it the duty of the state to ensure that the entirety of law, its parts and certain partial areas as well as the individual legal rules should be clear and unambiguous, and their operation should be predictable for the addressees of norms. Thus legal safety does not only demand the unambiguity of individual norms but also the

⁸⁸ Several of complaints related to restitution after persons who died as prisoners of war in the Soviet Union. The investigation of the complaints revealed that part of the claimants did not know that according to law no restitution was to be given to relatives of people who died as prisoners of war prior to 1 August 1945.

predictability of the functioning of the various legal institutions.⁸⁹

The Constitutional Court has specified the predictability of the behaviour of the implementers of law as an indispensable requirement of legal safety.⁹⁰ According to that ruling the right of the client for a resolution made by public administration cannot depend on at what point in time the respective organ of public administration would decide upon the case to be dealt within its scope. In fact it is the constitutional duty of public administration to make a meaningful decision within the timeframe stipulated in cases within the range of its official function. Procedures of public administration cannot miss compulsory deadlines for despatching cases.

It is important to refer to the *requirement of the so-called constitutional penal code* consistently figuring in the practice of the Constitutional Court in the context of the principle of the state based on law. According to the Constitutional Court Article 8 of the Constitution is a basic rule guiding the exercise of the state punitive authority which, going beyond the general normative content of the state based on the rule of law protects the individual against the voluntaristic use of the means of the penal law by the state.

Right to fair procedure

The Constitutional Court has summarised its stand on the essence of the right to fair procedure in the following with theoretical significance. The requirement of fair procedure is such a quality that can be assessed by considering the total procedure and its circumstances.⁹¹ The right to fair procedure is an absolute right in the face of which there is no other basic right or constitutional aim which may be considered, because it is by itself already the result of consideration.⁹²

In the interpretation of the Constitutional Court it creates legal uncertainty if an organ of public administration exposes the citizens to unjustified vexation out of overzealousness or a mistaken interpretation of the legal norm.⁹³ According to the Commissioner an organ providing public service may create the same legal uncertainty.

The Constitutional Court has expounded that the activity of public administration as authority is legally protected public interest, it protects the rights and rightful interests of communities, public order and public safety, and it serves the assertion of legal norms made in the interest of protecting the life and physical soundness as well as safety and rights of individuals. If a resolution injures law it is not only the rights of the client authorised to submit an application for legal remedy that may suffer injury but public interest protected by law would also be violated. A resolution favourable for the client but violating law may injure public interest and the rights and lawful interests of others protected by the law on public administration. Therefore the demand for subordination to law and for

⁸⁹ 9/1992. (I. 30.) resolution of the Constitutional Court

⁹⁰ 72/1995. (XII. 15.) resolution of the Constitutional Court

⁹¹ 6/1998. (III. 11.) of the Constitutional Court

⁹² 6/1998. (III. 11.) of the Constitutional Court and 14/2004. (V. 7.) of the Constitutional Court

⁹³ 49/1995. (VI. 30.) of the Constitutional Court

legality is worded as a constitutional requirement in relation to constitutional decisions, similarly to legal safety.

Deadlines are such elements of the legally regulated procedures that stipulate the completion of procedures, including particularly the conduct of individual procedural acts and the exercise of certain entitlements or performance of obligations within a reasonable timeframe, they hinder that procedures become boundless, and at the same time ensure, among others, the possibility of exercising basic rights.⁹⁴

The right to legal remedy

Based on paragraph (5) of Article 57 of the Constitution everyone may seek legal remedy as stipulated by law against such rulings of the judiciary, of public administration or of another authority that violate the individual's right or rightful interest. The right to legal remedy can be restricted only by law. According to the constant practice of the Constitutional Court *"the immanent content of the right to legal remedy as a basic constitutional right is the possibility of turning to another organ or to a higher forum within the same organisation in respect of meaningful resolutions."*⁹⁵ The possibility of 'legal redress' is also necessary to the effective realisation of the right to legal remedy, in other words legal redress should formally as well as substantially contain the possibility of redressing legal injury.⁹⁶ According to the Commissioner's stand the significant content of the basic right to legal remedy extends over information on the possibility of legal remedy (or of its absence) as well.

Thus it is a basic obligation of the state in the nature of safeguards that the proceeding authority, a state organ has to inform the citizen about the availability of legal remedy during the individual procedures. Information on legal remedy has particular significance in the case of measures limiting personal freedom, and it also derives from the requirement of constitutional penal law as developed by the practice of the Constitutional Court.

General trends of the realisation of the principle of the state based on law

It is a fundamental requirement set in the face of the operation of the state and institutions exercising public authority that *this operation should be realised within the framework of the state based on the rule of law*. The tasks of the Parliamentary Commissioner, however, do not only extend over the authorities but also the activities of institutions providing public service. In the Commissioner's interpretation certain requirements deriving from the principle of the state based on law (provided they can be interpreted in the given context) should be realised *during the course of the activities of institutions providing public service* just as well as during the procedures of authorities.

⁹⁴ 23/2005. (VI. 17.) of the Constitutional Court

⁹⁵ 5/1992. (I. 30.) of the Constitutional Court, 22/1995. (III. 31.) of the Constitutional Court

⁹⁶ 23/1998. (VI. 9.), 49/1998. (XI. 27.), 19/1999. (VI. 25.) resolutions of the Constitutional Court.

In 2008 too, similarly to the earlier years, a large number of characteristic citizens' complaints were seen by the Parliamentary Commissioner that *he could not investigate due to the lack of jurisdiction* or because of *procedural obstacles* specified in the Act on the Ombudsman, but their mentioning cannot be missed just because of the typical nature of the cases and their characteristic features.

Several submissions were received in *relation to private pension funds* and the plaintiffs complained that according to the Act on Private Pension Funds those members whose total period of time spent at various private pension funds was over 120 months could not return to the pension system of social insurance. Citizens are confronted with this problem when their pension is calculated and pension to be paid by private pension funds does not reach the level of the sum people with identical parameters receive from the state pension insurance who had not been fund members.

The number of those complaints was also significant which objected to the long time needed to the administration of *cases of international pension* but in these cases the Commissioner could not take meaningful steps if the resolution was delayed by the protracted procedure of the foreign authorities concerned. People turned to the Parliamentary Commissioner with several submissions related to the field of taxation objecting to stipulations of legal norms. Many plaintiffs objected to the commencement of the procedure in relation to distraint for revenue, but the fact itself of distraining does not cause a constitutional anomaly.

Complaints were also received in relation to the *activities of financial institutions*, raising problems of distraint of debt, and the repayment of loans in instalments in ever growing numbers. Distraint in itself does not cause anomaly in this field either but it is a general experience that the plaintiffs were not informed either about their rights or their obligations. Plaintiffs presented several difficulties to the Commissioner related to bonds, loan redemption and optional contracts. Several people also objected to the decision of the Hungarian Financial Supervisory Authority on real estate funds and the modification of the law that laid its foundation.

Injury to the requirement of legal safety

A typical case of injury is if an authority or organ of public administration *proceeds* in a case while *transgressing its sphere of powers*. The most conspicuous example to this was offered by the mayor of Újpest when, gravely abusing his maintainer's authority, he expelled a pupil under the rule of compulsory education from all the schools of the district maintained by the local government. The Commissioner found that the mayor arbitrarily interfered into a disciplinary case between the school and the pupil when transgressing all legal norms of safeguard he ordered the 'expulsion' of the pupil violating the law from all the educational institutions of Újpest. The mayor acted by stretching far beyond his responsibility and authority and even running contrary to it: in his letter he ordered the educational institutions under his governance to a process violating the law. The mayor has no right for such a kind of interference and for

issuing an order of that form and content. The Commissioner considered it important to note that criticising the mayor's procedure did not mean that he thought relief of the consequences of the pupil's behaviour desirable. He stressed, however, that the state based on the rule of law can only be served by the means of a state based on law and only organs authorised for the purpose can respond to violations of the law by fully respecting procedural safeguards as becoming of a state based on the rule of law.⁹⁷

The office of public administration caused the direct violation of legal safety when it *overrode* the resolution of a tax authority of a local government annulling someone's duty to pay tax after a motor vehicle *with reference to a violation of a legal norm 5 years and 7 months after the resolution was delivered*. The invalidating resolution of the office of public administration would seriously endanger the realisation of legal safety even if there were no express legal stipulations for bona fide obtained and exercised rights, and the Commissioner is of the view that it does cause direct injury with special regard to these legal regulations.⁹⁸ According to the stand of the office of public administration its procedure did not violate any bona fide acquired and exercised right. For the Parliamentary Commissioner the starting point is always dilemmas of basic rights related to the implementation of law but often the anomaly can be traced back partly or fully to *the text of the norm itself*.

In the practice of the different organs of public administration the *issue of the manner and dimension of professional governance* raises problems from time to time. Here reference should be made to the practice of the Constitutional Court mentioned above according to which legal guidance created by not respecting the safeguards enclosed in law may easily become means of governance supplementing for legal norms and damaging the realisation of legal regulations which is incompatible with the requirement of the state based on the rule of law.

During the investigation into the police procedures against the *owners of the so-called moped cars* the Commissioner found that the circular of the head of division of the Central Inspectorate of Transport and the official communication of one of the regional directorates of the National Transport Authority (henceforward: NKH) were effectively applied as legal norms by the law enforcement organs, in some cases even running counter to the legal norms. In view of the resolution of the Constitutional Court and of the decade-long unbroken practice of ombudsmen the Commissioner found that the 'circular' not qualifying as an additional means of the legal tools used by state administration and created disregarding the rules of safeguards of the law on legislation but observed as norm by the addressees did produce an anomaly of the requirement of legal safety. Those authorities did also injure the requirement of legal safety, and particularly the police acting in cases of trespass, that had based their implementation of law on this legal norm or on other communications not qualifying as the additional means of the tools of state administration.

⁹⁷ OBH 2223/2008

⁹⁸ OBH 5419/2008

One of the heads of division of the former General Inspectorate of Transport and subsequently the head of division of NKH wrote in his *circular* addressed to the National Police Headquarters that it was the rules pertaining to cars that should be guiding and should be implemented when determining the kind of the vehicle in the case of moped cars. He did it when the moped cars are classified under the category of auxiliary motors and according to Community regulation classification is supposed to be identical in every Member State. It should be noted that the county police leader had already contacted the police organ under his supervision before the Commissioner contacted him and told the staff there not to implement the stand of the NKH violating the Constitution.⁹⁹

The Commissioner found that *the regulation for tax procedure gave unlimited authorisation to the Chairman of the Hungarian Tax and Financial Control Administration (henceforward: APEH) to do inspection beyond his sphere of authority* without any limitation by safeguards which meant injury to legal safety that can be traced back to a shortcoming of regulation. According to the Commissioner legal safety was injured, further on it involved the potential danger of the injury of the requirement of equal treatment if it was possible to order inspections outside the sphere of authority, disregarding the limitations by safeguards. The respective shortcoming was eliminated and thus the identified anomaly was redressed upon the Commissioner's signalisation already within the reporting period.¹⁰⁰

The Commissioner exposed similar problems in relation to the *objectively based sanctioning (so-called zero tolerance) of drunk driving*. He found that the contradictions of the regulation, particularly the lack of certain procedural safeguards (not being fixed on the level of legal norm) caused anomalies related to the requirement of legal safety deriving from the principle of the state based on the rule of law. The Ombudsman's investigation has found that none of the valid legal norms speaks meaningfully about tests with breath analyser, its consequences or about cases when the driver must give blood sample. It is only the non public internal measures of the National Police Headquarters that contain some guidance that do not qualify as a legal norm. The Commissioner requested the Minister of Justice and Law Enforcement to review the objected measures on the basis of the set of points laid down in the report, and also to define those rules of safeguards in a legal norm that are necessary from the angle of the realisation of the right to fair procedure. The Minister has not answered to the recommendation within the deadline set.

The injury to the principle of legal safety and constitutional penal law is also represented by the fact that no legal norm defines elements of key importance of the identification of responsibility by penal law and trespass (such as being affected and the blood alcohol level) for the practice of the implementation of law.¹⁰¹ Currently authorities dealing with trespass refer to the contents of the methodological letter issued by the National Institute of Forensic

⁹⁹ OBH 5413/2007

¹⁰⁰ OBH 5149/2006

¹⁰¹ OBH 2567/2008

Medicine when they have to differentiate between acts entailing penal responsibility and trespass and acts not running counter to law. The Commissioner requested the National Assembly to define rules of basic importance for delineating penal responsibility from that of trespass. The Chairman of the Committee for Constitutional Issues, Justice and Standing Orders informed the Commissioner that the Committee would study the issues raised by the report after conciliation with the Ministry of Justice and Law Enforcement and the Government Commissioner responsible for the New Order (programme) and would inform him about the elaborated proposals for measures to be taken.

The Commissioner could identify in several cases the injury of the realisation of legal safety deriving from the principle of the state based on the rule of law during his *investigations of organs providing public services*.

Though the Ombudsman's practice does not consider the bulk of the *activities of financial service providers* as public service, yet he did raise several basic issues in 2008 that affected or may affect those clients who use financial services that qualify also as public service. A decisive part of this proposition was worded in those two reports¹⁰² in which the Commissioner studied the realisation of the rights of the homeless as well as issues of how people become homeless and what leads them out of that condition.

The Commissioner noted as a typical problem that *public services for mass transport* (in Budapest, Miskolc, Debrecen and Szeged) *did not have business rules* prescribed by law and approved by the National Transport Authority, and the Urban Transport Co. of Miskolc did not even have a *licence of the railway authority*. The main reason of this anomaly is that in addition to the missing business rules and licence from an authority the *definition of the different 'passengers' rights' and safeguards* are also missing. The approval of business rules by the respective authority and the licence to be issued by the railway authority could ensure that the service provided properly guaranteed 'passengers' rights' and met all those operational conditions that are indispensable to the operation of railways, tram and metro companies.

The investigation into the public service of the Budapest public transport found that the document of the *BKV Limited Co. entitled "Conditions of travel"* was partly not approved by the organ of railway management, and partly it did not contain several such orders that were not related to the condition of travel but were related to it in several other aspects and should be part of regulations by all means, such as the manner of submitting complaints, the deadline of investigating complaints, issues related to compensation and restitution, the definition of the condition and possibilities of travel for people of impairments and the definition of the related safeguards, the deadline for the preliminary publication of the modification of tariffs of travel, and the regulation of substitution in the case if a means of transport is being hindered in operation. The service

¹⁰² OBH 1600/2008, OBH 4938/2008

providers promised in their answer to eliminate the shortcomings and it was mostly done since that time.¹⁰³

According to the investigations of the Commissioner the inadequate definition of the *general conditions of contract* did not only result in anomalies in public transport providers but also in the *field of financial services* mentioned above. In this year the Commissioner had repeatedly pressed for financial institutions providing financial services should change their contractual practice and make it unambiguous that in the case of changes what objective conditions controllable by the client may allow for the unilateral modification of the interest rates and costs of their credit contracts. A follow-up investigation was linked to an investigation conducted in 2007 on the basis of the submission of several plaintiffs once again identifying the injury of the requirement of legal safety and the principle of contractual freedom because of the abolition of the maximisation of administrative costs of OTP Bank. The earlier report¹⁰⁴ pointed out that the predictability and calculability of the conditions of the contract should be valid during its entire duration and also during the implementation of the general conditions of contract for it is a requirement deriving from the principle of legal safety. The injury is not caused by changes of the conditions but by the fact that the modification is done unilaterally, without the consent of the borrower or without any meaningful and causal justification, or on the basis of causes not included in the contract. The Bank challenged its obligation to give separate information about the real and causal reasons of increasing the maximum administrative costs and only informed the clients in the manner required by the current legal regulations.

The Commissioner *recommended to the Minister of Finance* to prepare and submit the modification of the Act on Credit Institutions and Financial Enterprises that *banks should not be entitled to modify the conditions of contract unilaterally and without limitation* in the case of credit and loan contracts of variable lending fees, and such modifications of contracts should be allowed for only in the case of meaningful and causal justification. According to the Finance Minister's information the modification of the Act on Credit Institutions would take place in the near future.

The *parking companies* that *obliged* owners of cars continuously parked in the same lot who missed paying the parking fee to *pay more fees* for the cars did cause frequent vexation in daily life and also the injury to legal safety on the level of basic rights. The Ombudsman's report states that the parking company continues to arbitrarily interpret the guiding order of the Assembly which does not authorise them to stretch over the legal regulations and attempt to encourage car drivers to respect the law. Under the impact of the Commissioner's recommendation the Municipal Assembly modified its order on parking which now precisely regulates the issues related to additional fees for parking in the same place and time.¹⁰⁵

¹⁰³ OBH 3078/2008 and OBH 5280/2008. It is of symbolic value that the Transport Companies of Miskolc and Debrecen have submitted their business rules for approval to the NKH already during the investigation.

¹⁰⁴ OBH 2958/2006

¹⁰⁵ OBH 5537/2007

As a result of another investigation into the issue of parking conducted in 2008 the Commissioner stressed that *the system of parking in the capital was not uniform*, and was based on different ownership conditions. According to the Commissioner's stand an injury to legal safety was also caused by the fact that the different zones of parking cannot be easily isolated by those who are not expressly familiar with the city, and it cannot be determined on the spot whether the given part of the road was under municipal or district management, and at the borders of the zone it is difficult to recognise to which parking company the given spot would belong. Thus it may happen that the owner of the car would purchase a parking ticket from a wrong ticket machine and the consequence may be the payment of punitive fees. Therefore the Commissioner recommended to the Municipal Assembly of Budapest the modification of the order for the purpose of the introduction of a uniform system of parking.¹⁰⁶

It may result in anomalies related to legal safety in the case of the services provided by certain public utility companies if the service provider introduces *disproportionate limitations because the consumer paid after some delay*. The Commissioner found that the gas supplier, by disregarding the disproportionateness between the consumer's debt and the legal consequence applied by the supplier, and by the fact that while switching off supply it did not respect the order of procedure and hence obliged the consumer to bear additional costs caused an anomaly related to the requirement of legal safety. The Commissioner initiated at the gas supplier to pay particular attention in the future to the observance of the rules laid down in the business rules as well as in the order of procedure, and further on it should see to it that the consumer's additional cost caused by switching off is to be refunded or credited it to his account. The service provider did satisfy the suggestions of the initiative.¹⁰⁷

Finally, the Commissioner found in relation to *the investigation of civil participation in the legislative process* that the current legal regulations do not guarantee the realisation of the right of civil organisations to preliminary reporting in the legislative process pertaining to the supply of electrical energy and gas, particularly when the authorised prices are set. The lack of relevant regulation also leads to anomaly related to the principle of legal safety deriving from the state based on the rule of law.¹⁰⁸

In relation to this issue the Commissioner had requested the Minister of Justice and Law Enforcement already in an earlier report to revise the respective legal norms and to initiate their modification so that the preliminary expression of the opinion of consumers' interest representations should be ensured. In essence the Minister did not accept the recommendation, and later on specified the Minister for Economy and Transport who is responsible for the issue. Consequently the Commissioner turned to the Minister of Economy and Transport to consider the regulation of the *right to the expression of opinion by the Conciliation Committee for Energy* and the framework of the exercise of that

¹⁰⁶ OBH 4090/2008

¹⁰⁷ OBH 5599/2007

¹⁰⁸ OBH 1445/2008

right on the level of an Act.¹⁰⁹

Injury to fair procedure

The Commissioner had to identify the injury of the right to fair procedure in many topics and in a large number of cases within them, similarly to the injury of legal safety and in close connection with it. The issues involved were not only concentrated in the sphere of cases of public administration in a narrow sense of the term, but occurred also *in the course of assessing applications for financial support or even during some public services*.

The Commissioner could explore such an anomalous situation at the borderline between legal relations of public administration and civil law where the anomaly can be traced back more or less to the lack or shortcomings of regulations. This problem area is the *case of dormant accounts in Switzerland* already investigated in the previous years. The earlier Ombudsman's report¹¹⁰ already pointed out under what constitutional arguments the state was obliged to find the still alive owners or the inheritors of the dormant accounts and in defining what proofs it would accept for the legal justification of the claims presented.

One of the most important requirements deriving from the right to fair procedure is that the affected party should be aware of the procedure concerning or against him, and that party should have an opportunity to expound one's stand during the procedure. These requirements were gravely injured in the case partly presented earlier, when the *mayor of Újpest expelled the pupil participating in compulsory education and assaulting his teacher* from all the schools of the district that were maintained by the local government. By his order the mayor excluded the assertion of all the procedural safeguards and did not make the hearing of the pupil injuring law possible, or to conduct a procedure of evidence, and to apply, if necessary, a disciplinary punishment on the pupil, in keeping with the principle of proportionality. The measure made by pushing procedural safeguards aside provoked the grave violation of the pupil's right to fair procedure.

A plaintiff presented an essential problem of the procedure by the state revenue authority to the Commissioner complaining that the tax inspection affecting him was *not done by the respective APEH Directorate but by an APEH Directorate of another county, not having competency* but ordered by the Chairman of APEH. In the case mentioned earlier complying with obligatory co-operation (travel, personal appearance) produced unjustified additional cost and loss of time to the plaintiff. It was found during the course of the investigation that the APEH Directorate proceeding appointed for the task by the Chairman did not only check some acts of procedure but did the all-round tax inspection of the

¹⁰⁹ OBH 1451/2004

¹¹⁰ OBH 3129/2005. In his answer given to the report the Deputy Secretary of State of the Prime Minister's Office informed the Commissioner in 2005 that they wished to find a solution for the problem in the near future. As there was no meaningful answer and measures taken the Commissioner again turned to the Prime Minister's Office which, in its answer in February 2007 gave information stating that no comprehensive regulation would be prepared and the claims of inheritors would be satisfied by the Ministry of Finance on the basis of judicial rulings.

taxpayers. At the same time the valid regulation did not meet the requirements set against the totality of procedure of public administration either at the time of the procedure of the revenue authority (2006–2007) or when the Ombudsman's investigation took place (2007–2008).

According to the Commissioner's stand it fundamentally injures the right to fair procedure if the Chairman of the revenue authority appointed an organisational unit for the inspection that was several hundred kilometres away from the taxpayer's residence in the given case instead of the unit of APEH with jurisdiction over the person involved, who had to be present in person, as a result of which the mere fact of the revision and participation in it produced unjustified cost in time and money. The lawmaker did harmonise the respective regulation with the constitutional requirements upon the Commissioner's recommendation.¹¹¹

During the investigation of the *regulation of zero tolerance announced against drunken driving* and the investigation of *police practice* on the basis of the regulation the Commissioner stated that the lawmaker expanded the immediate withdrawal of the driving licence unilaterally, without incorporating safeguards and the necessary technical development. As a consequence of the modification practically every disadvantage deriving from inflexible regulation and the shortcomings of technical conditions and equipment falls upon the driver. According to the Commissioner's stand the legal situation in which the regulation in question did not rule about procedural rules of safeguards (such as the possibility of returning the driving licence within a reasonable period of time) injured the right to fair procedure and it did not create conditions necessary to well-founded local investigations either.¹¹² It is a problem that the breath analysers changing colour by the alcohol content of exhaled air were unreliable: it was problematic if the driving licence could be taken away on the basis of the 'result' shown by such a gadget.

The Commissioner took the initiative towards the National Police Chief Commissioner suggesting that the police should use up-to-date electrical equipment measuring alcohol during on-the-spot inspections of transport safety. The National Police Chief Commissioner agreed to the contents of the recommendation and informed the Commissioner that the more obsolete indicator tubes measuring alcohol would be replaced by electrical tubes for air alcohol measurement within a year as latest. At the same time the National Police Chief Commissioner, after agreement with the Ministry of Justice also decided upon the revision of the measure taken by the National Police Headquarters (henceforward: ORFK) on the use of electrical alcohol test tubes by the police and on the elaboration of a new ORFK order concerning this topic. The Commissioner accepted the Police Chief Commissioner's answer indicating that he would pay particular attention to the actual realisation of his measures.

The organ of public administration causes injury to the right to fair procedure particularly when *it exposes the citizens to unjustified harassment out*

¹¹¹ OBH 5149/2006

¹¹² OBH 2567/2008

of excessive zeal or the wrong interpretation of legal norms during the course of its procedures and activities. According to the Commissioner's stand the procedure of the state revenue authority qualifies for challenge when it charged a taxpayer penalty for delay and tax fine whose totality of assets were sequestered by the investigating authority, thus the person involved was unable to satisfy that demand during the period of (about 7 years) sequestration. The revenue authority necessarily collided with the legal obstacle of sequestration when it tried to execute its claim, hence the revenue authority injured the right to fair procedure when charging tax penalty fine and another one for delay and particularly by implementing distraint after the obstacle was recognised. In view of the fact that the APEH revised the legality of sanctions after receiving the Ombudsman's letter of request and consequently abolished them no measures were taken by the Ombudsman in the given case.¹¹³

The Commissioner pointed out in relation to the *individual specification of the registration tax of motor vehicles* that without the real market value of cars it cannot be established whether it differed significantly from the value reduced by wear and tear as defined by the Act on the Registration Tax.

The practice that the procedure determining the individual registration taxes for vehicles imported from abroad can be conducted only *in a single place (Békéscsaba) in the country* and one has to wait for the completion of the procedure for ever longer time, even months, is also objectionable from the angle of the right to fair procedure and raises the danger of injury to equal treatment. A procedure like that does not only cause discomfort but excludes the possibility for the owner for quite a long time to properly use his/her vehicle under signs of the Hungarian authorities, legally and without restriction. The authorities concerned and the Ministry of Finance did not find it necessary to alter the order of procedure objected to by the Ombudsman.¹¹⁴

As the Ombudsman's investigations show the right to fair procedure was injured most in public transport in the field of public services. According to the Commissioner's stand it causes abnormality if the *public service provider of mass transport does not investigate the passengers' complaint*, would only answer them in general terms or the answer would lack factualness. It injures the right to fair procedure if the service provider fines the passenger for not having a prepaid ticket when it does not ensure the possibility of purchasing a ticket before getting in or buying from the driver. The latter case is a typical problem of Budapest, and the public transport providers of the cities in the countryside investigated by the Commissioner (Miskolc, Debrecen, Szeged, Pécs and Győr) all ensure the opportunity of buying tickets in the station or from the driver. It violates the passenger's right to fair treatment if the associate of the company checking tickets does not possess a certificate of his person and right to check, or it is covered, and if he/she does not tell his identification number upon the passenger's request.

¹¹³ OBH 2884/2007

¹¹⁴ OBH 2279/2008

The Commissioner pointed out that the demands of BKV for fines on the basis of the legal regulations pertaining to contracts for road passenger transport (by passengers of buses, trams and trolleybuses) would become statute-barred within one and not five years. *Further on, it fundamentally injures the right to fair procedure if the service provider harasses its passengers beyond the period of lapse in the interest of settling its demands deriving from contracts of passenger transport.* This is again an anomaly experienced only in relation to the activities of the BKV Co., and it did not emerge during the investigation of the public service activity of providers in cities in the countryside.

Finally, the Commissioner stated that the practice of BKV reducing fines and easing payment is *unprincipled and arbitrary* and it does not ensure that it would reduce its claims for people really in need on the basis of applications for equity, which practice violates the requirements of fair procedure and is suited for leading to unjustified discrimination. The Commissioner's recommendations regarding fines and the assertion of claims were challenged by the Director-General of BKV.¹¹⁵

Studying the field of financial services the Commissioner pointed out that the right of clients to fair procedure may be injured *in the context of the state's activities for the protection of consumers* if the state and specifically the PSZÁF did not ensure for the clients of financial institutions the level of protection ensured in the case of other services. The Commissioner considered it desirable in the interest of the realisation of the right to fair treatment that clients availing themselves of financial services should not only sign their contracts on financial services but should give their informed consent. In the view of the Commissioner an informed consent presupposes the obligation for active teaching, in other words the financial service providers should be obliged to explain the consequences of contractual stipulations.¹¹⁶

Finally, the Commissioner identified the injury of the right to fair treatment when investigating the activities of educational institutions in respect of a case when a college refused to issue the *diploma of one of its students* because a language exam was missing, because it did not take into consideration the regulation of waiving the language exam by law in its procedure.¹¹⁷

Injury of the right to legal remedy

Unfortunately there are cases when the Commissioner is confronted by the indirect but *full and unjustified withdrawal* of the right to legal remedy during his investigations. This is what happened in the case mentioned earlier, when a pupil manhandling his teacher was immediately excluded from every school of Újpest maintained by the local government on the basis of an *arbitrary 'order' of the mayor*. Neither the pupil nor the parents had any way to complain or to appeal

¹¹⁵ OBH 3078/2008

¹¹⁶ OBH 1600/2008

¹¹⁷ OBH 4765/2008

against the measure taken after the formless official letter of a few sentences containing the mayor's order, as contrasted to a decision of the head of the institution taken after an official disciplinary procedure.¹¹⁸

In his report *investigating the practice of awarding subsidies out of the National Cultural Fund (henceforward: NKA)* the Commissioner stated that the possibility of legal remedy was ensured in certain, but not available in other cases of subsidies that can be obtained from the subsystems of state finances. On the basis of the Constitution ensuring legal remedy is a requirement even in the case of the so-called 'other authority decisions'. Though he did not define the concept of 'other authority decisions' the Commissioner is of the view that decisions on the allocation of subsidies at the cost of the state budget should be regarded as such. A situation in which the regulation does not stipulate autonomously or indirectly the possibility of legal remedy results in that in the case of applicants for subsidies granted by the NKA the right to legal remedy was injured because of a cause that can be traced back to regulation. The Commissioner made a recommendation to the Minister of Education and Culture and to the Chairman of the National Cultural Fund as well as to the Minister of Finance in the interest of eliminating shortcomings and of developing the right practice. The Commission of NKA and the Minister of Education and Culture did not consider it necessary to alter the application procedure.¹¹⁹

The Commissioner stated *in relation to the assessment of the LEADER+ applications* announced in the framework of the Agriculture and Rural Development Operational Programme (AVOP) that the rules of the utilisation of the structural funds did not contain the possibility of legal remedy. This shortcoming of legal regulation results in the injury of the right to legal remedy in the case of those who apply for support deriving from the structural funds. In the interest of redressing those anomalies the Commissioner initiated the modification of regulation by the Ministers for Economy and Transport, of the Environment and Water and of Finance, and the alteration of the practice of assessment by the Minister of Agriculture and Rural Development. This initiative of the Commissioner has not met any meaningful attention either.¹²⁰

The *situation of those of background responsibility* in relationships of private (company) law appeared as a separate issue within the problematic of the clarification of the quality of the clients. The issue emerged in connection with a case of a deposit company under liquidation, when the general partner was responsible for the (tax) arrears of the company, but in the case of a possible tax inspection and the exploration of unpaid tax the revenue authority would not hear that person and the resolutions were only forwarded to the liquidator, thus totally excluding the taxpayer, bearing background responsibility, from meaningful participation in the procedure. Thus the general partner cannot exercise his/her right to legal remedy in respect of the tax arrears identified for the company to be paid for in many cases by the general partner. In the supplementary report of

¹¹⁸ OBH 2223/2008

¹¹⁹ OBH 3448/2007

¹²⁰ OBH 4785/2007

2008 of the basic case of 2006 the Commissioner stated that the identification of background responsibility would only meet the constitutional requirements if the person involved may know about the accumulation of the debt and had possibility to meaningfully interfere into it and hence he/she could expound his/her counter-arguments at least during the course of legal remedy. The revenue authority sees the safeguarding of this possibility of legal remedy possible by the implementation of the respective supervisory measure.¹²¹

In addition to the study of the client's quality the *wrong assessment of the content of the client's submission* may also result in an anomaly related to legal remedy. It was once again in the sphere of a building authority that a plaintiff presented a problem to the Commissioner when the second instance building authority assessed the submission intended to be an appeal by its content though called as complaint was not treated as an appeal but as a simple complaint and the authority communicated its stand to the plaintiff in a simple piece of information only. The fact that the office of public administration acting as second instance building authority did not assess the submission by its content resulted in an anomaly related to the plaintiff's right to legal remedy.¹²²

The sum of the obligatory duties may constitute a serious obstacle to the realisation of the right to legal remedy. This problem does not exist due to the institution of the right to register fees in the case of judicial procedures. In a case, however, related to the assessment of an application for tax reduction the Commissioner found that the payment of the duties on procedures of state administration related to first instance appeal may represent such an obstacle to taxpayers applying for equity, who are in most cases in a difficult financial situation, due to which they meaningfully consider whether to submit at all an application for legal remedy. Such a situation clearly causes an anomaly that may be traced back to regulations of duties and fees. Therefore the Commissioner worded a proposal that the regulation should ensure the right for objective register of duties for the taxpayers in the procedures of second appeal concerning applications for the moderation of taxes and an easing of payment.¹²³ The Minister of Finance did not agree to that proposal.

Protraction of procedure and the silence of the authority

Anomalies related to the protraction of procedures *can be experienced in a broad sphere* of the types of cases though it is not very frequent. Such cases occur in the procedures of the offices of public administration, of the police, the directorates of the state treasury, the state revenue authority, and of some notaries. Delay of the procedures can be traced back in some cases to the seemingly *sluggish administration without any specific reason* of the respective authority, and in other cases it emerged in relation to some *other procedural mistakes*.

¹²¹ OBH 1656/2006

¹²² OBH 5615/2007

¹²³ OBH 5407/2006

An example of the latter case was when the office of public administration assessed *after 6 months a submission formally called a complaint* against the resolution of the notary issuing a licence of operation because it was presented to the law court without the study of its content and hence without justification. Forwarding the case to the law court was unnecessary and a measure protracting the settlement of the issue without justification, and the plaintiff did not receive any information about the extension of the deadline of administration. The office of public administration could have assessed the application formally called complaint but clearly qualifying as an appeal requesting the annulment of the resolution of first instance and as such being an application for redress, because an application has to be assessed by its content even if it does not correspond to the name of the submission used by the client.¹²⁴

An office of public administration caused a grave anomaly when the claims for restitution submitted because the local building zones were altered *assessed them after more than half a year* against the 90-day duration set for procedures, and could not offer any explanation as to the cause of that delay. Several months or half a year passed in some cases between the different interim measures of the investigated procedures of the office of public administration. The deadline set for the administration of cases of restitution was significantly exceeded by that procedure in all the cases investigated. Hence the office did not ensure those safeguards that were supposed to serve the protection of the clients' interests.¹²⁵ A similar anomaly was caused by APEH when it conceded to the application of the plaintiff for refunding the value of the duty stamps that had become unnecessary after 10 months.¹²⁶

The problem of protracted procedure also emerged in the case of the police when it did not respect the *legal regulations guiding the handling of corpus delicti*; it did not arrange for the transfer of sequestered objects to the law court, and did not hand over those objects even when the judiciary ruled for the termination of sequestration and for handing them over. This delay in itself not only caused anomaly related to the right to fair treatment but also violated the constitutional right of persons to ownership.¹²⁷

The gravest anomaly in respect of protracted procedure was found by the Commissioner in connection with the *treatment of a complaint against noise by a notary* when, on the basis of the plaintiff's submission complaining against the extent of noise in the neighbourhood of a catering establishment the notary did not take any meaningful steps and only gave information about the operation of the assembly of representatives and their respective decisions, and sent the relevant order of the local government to the plaintiff. In his report the Commissioner pointed out that this information did not substitute for the necessity of making individual decisions in cases of an authority.¹²⁸

¹²⁴ OBH 5187/2008

¹²⁵ OBH 1980/2008

¹²⁶ OBH 5045/2007

¹²⁷ OBH 1681/2008

¹²⁸ OBH 2743/2008

The problematic of delay of procedures did not only emerge in the sphere of procedures of public administration, but also in some cases when a procedure was involved of *awarding structural subsidies jointly financed by the Hungarian budget and the EU budget*, not under the validity of the Act for Procedures of Public Administration was involved. According to the Commissioner respecting the deadlines in such procedures had the same important significance of safeguard as in the case of 'regular' procedures of public administration. Based on the respective regulation the plaintiff should have been informed about the outcome of the application within 60 calendar days of its submission, yet the assessment of the application was done several times longer than the deadline calculated from its receipt. The Commissioner regarded this delay particularly abnormal because the organisations participating in the administration of the application called upon the applicant, already exceeding their own deadline, to supply defects within a rather short period of time, three days counted from the date of their call.¹²⁹

Failing to give a meaningful justification of decision

One of the basic rules of procedures of public administration is that the authority acting is obliged to *clarify the facts of the case necessary* to decision making. During the procedure of evidence the administrative authority identifies the legally relevant facts and clarifies their authenticity. The justification of the resolution of the authority closing the procedure may be regarded as the official explanation for the decision, where the authority describes what facts it had established and what proofs it had used in connection with them. The proper clarification of the facts is particularly significant in cases when a summary procedure, simpler than the general one becomes possible as a consequence. The respective notary did not meet the *obligation of meaningful justification* when it was not becoming obvious without any doubt from the justification of his decision for eviction that the conditions of a summary procedure were actually existent.¹³⁰

The justification of decisions by authorities meets the requirements deriving from the principle of the state based on the rule of law if they *possess adequate persuasive force* concerning the contents of the resolution. The existence of that persuasive force lends the quality that can be rightfully expected from resolutions passed within the framework of a state based on law. The principle of the state based on law, however, would be injured if the explanation of the resolution did not extend over issues specified by the respective legal regulations, yet the ordering passage of the resolution made meaningful statements about the essence of the case, and prescribed obligations or identified rights.

Significant problems have emerged during the decisions made for awarding financial assistance by various applications in relation to *satisfying the*

¹²⁹ OBH 4785/2007

¹³⁰ OBH 4976/2008

obligation of justification. It is indispensable that the requirement of fair procedure should be asserted during the assessment of applications for financial support allocated from the state finances and a condition of which is the meaningful justification of the decision as well.

Hindering the work of the Parliamentary Commissioner

It is the task of the Parliamentary Commissioner for Civil Rights specified by the Constitution to investigate or have anomalies in relation to constitutional rights he learns about investigated and to initiate general or individual measures for their redress. In the interest of performing this task the Act on Ombudsman *ensures broad entitlements of control and the acquisition of information.* The Act stipulates the possibilities and manner of acquiring information, enlightenment and data from the authority or the superior organ controlling it involved in a given case. In case the Parliamentary Commissioner asks for data (information, explanation, etc.) on the basis of these rights the organ contacted by the Commissioner is obliged to meet those requests within the deadline (but not shorter than 15 days) set by the Commissioner based on the regulation of the Act on Safeguards.¹³¹

On the basis of authorisation by the Act on Ombudsman the Commissioner turned to the *autonomous bailiff to the court* during investigation requesting information and copies of documents to be sent to him within fifteen days in a case of complaint. The bailiff did not answer to the first request and his answer only arrived upon the second request and upon the call of the Hungarian Chamber of Bailiffs to the Courts. That answer could not be regarded as meaningful, further on the bailiff did not send the required copies of the documents of the case to the Commissioner. Due to the lack of co-operation *there was absolutely no possibility of conducting a meaningful investigation of the procedure* of the bailiff.¹³²

In 2008 several events took place during the course of which the exercise of the Commissioner's constitutional obligations was hindered or made difficult by some investigated organs or others affected by his investigations. It should be mentioned in particular that the *Ministry of Justice and Law Enforcement (henceforward: IRM)* often does not react upon his requests, and if it did that took place months after the duration of 15 days stipulated for answering. The IRM often significantly hindered the substantiation and completion of investigations within a reasonable period of time by its silence and delay.

The rather long duration of time, often several months that pass before an answer is received unfortunately affects the sphere of those investigations as well in which the authority strictly demands the observation of deadlines from the citizens. The APEH also sends in its answers to the Commissioner with great delay, after two or three, often four months instead of the 30 days stipulated for

¹³¹ Act on Ombudsman, Art. 18. Paragraph (10)

¹³² OBH 3691/2007

answering with reference to the full exploration of issues spelt out in the requests and to the development of a well-founded stand of the revenue authority. At the same time it is beyond doubt that the contents of information given by APEH to the requests are satisfactory and greatly promote the Ombudsman's investigations.

A different kind of difficulty emerged during investigations of financial institutions and insurance companies. The institutions involved are often unable to answer to the Ombudsman's requests because the respective legal regulations do not exempt them from their *obligation of keeping bank and insurance secrets* since there is no Ombudsman of general jurisdiction, and it was difficult to obtain individual authorisations from the plaintiffs for getting acquainted with their data that qualify as bank and insurance secrets. The Commissioner indicated the problem to the Minister of Finance whose respective recommendation was accepted by the National Assembly; hence this obstacle was removed by the end of the year.

During the course of an on-the-spot investigation announced in advance and related to the *right to peaceful demonstration* on 23 October 2008 the policemen safeguarding the site hindered the activities of the Commissioner's associates by searching their bags and garments, by identity check and calling them to leave the venue. They did it despite the fact that the Commissioner's associates informed the policemen about the reason of their presence, and identified themselves also by their official certificate. Subsequently both the Chief Commissioner of the National Police Headquarters as well as that of the Budapest Police apologised to the Commissioner, and also informed him that they had called the police cadre to the Commissioner's tasks and jurisdiction as well as his opportunities of procedure and investigation, and similarly to the related obligations of the police.¹³³

In summary it can be stated that in 2008 the Commissioner had disclosed a number of anomalies related to the requirement originating from the principle of the state based on the rule of law that had affected a certain and in some cases a relatively broad circle of citizens. In this issue it can be regarded as a major step by itself that the Commissioner called the attention of the respective organs and of the public to those anomalies. The measures taken were ended in positive result in several cases: the organs involved did change their practice upon the Commissioner's recommendation or initiative objected to. Unfortunately there were also cases when those concerned did not accept his recommendation based on clear and specific legal regulations.

2.2.5. Protection of the Right to Healthy Environment

The National Assembly modified Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights by Act CXLV of 2007 passed on 26 November 2007, which was supplemented among others by the subtitle "Parliamentary Commissioner for Future Generations". Thus a *separate commissioner's*

¹³³ OBH 5642/2008

institution was established for the protection of the constitutional right to healthy environment from the year 2008 on.

After the enactment of the new ombudsman institution the Commissioner for Civil Rights surveyed complaints related to healthy environment and under procedure in his office and only took steps in cases that required urgent measures, hoping for an early election of the new Commissioner. In view of his repeatedly failed election and his uncertain entry into office it was necessary in order to maintain the continuity of office work to inform plaintiffs turning to the Commissioner in cases related to the right to healthy environment or, to conduct investigations in the interest of protecting their constitutional rights in justified cases. Finally, the National Assembly elected Dr Sándor Fülöp Commissioner for Future Generations on 26 May 2008.

In May 2008 the Commissioner for Civil Rights drew up a list of cases currently under review that were related to the right to healthy environment and discussing it with the Parliamentary Commissioner for Future Generations he ordered their transfer. The *transfer of almost 40 applications* was done, and in view of the fact that at that time the new Commissioner did not have a professional team only those cases were transferred that were received earliest and others that required urgent handling.

On 24 September 2004 the associates of the Commissioners for Future Generations and for Civil Rights *discussed* the division of individual cases and the delineation of the types of cases. As a result of that consultation the office of the general Commissioner transferred another 18 submissions indicating that due to the complexity of the complaints it would mean difficulties in some cases to identify the Commissioner with procedural jurisdiction, hence (also) it was justified to *continuously maintain professional consultations* between the two offices.

2.3. Commissioner's Activities Related to Legal Norms

In this chapter of the Report proposals related to legislation and made on the basis of the Ombudsman's experiences in the year or were realised in 2008.

- Of the three proposals presented to the Constitutional Court by the Commissioner one was accepted by that Court in 2008. The Parliamentary Commissioner requested the declaration and annulment of paragraphs 15–16, 21–22 and 22/A as well as its Supplements Nos. 1 and 2 of Act C of 1990 on Local Taxes valid from 1 January 2009 due to similarity, and of Act CXXI of 2005 on Luxury Tax conflicting paragraph (1) of Article 2 and Article 70/1 of the Constitution as violating the principle of the clarity of norm.
- According to a report of the Ombudsman made in 2006 even the distraint of a small amount of debt deriving from a legal basis different from demand ensured by mortgage (entitlement) as a result of Act LIII of 1994 on Judiciary Distraint may result in the sale by auction of real estate owned by the debtor. The Ombudsman pointed out that this anomalous situation should be excluded if the

Act on Judiciary Distraint was modified and the mortgagee only received information of possible joining in together with the assessed value when it was determined, who then may decide upon joining in. The National Assembly passed Act XXXIX of 2008 which aimed at the modification of the Act on Judiciary Distraint. The above recommendation was incorporated into the Act. Hopefully the new regulation would help hinder the collection of loan on housing together with a debt of smaller amount which may contribute also to the prevention of homelessness.

- The Ombudsman recommended to the Minister of Justice and Law Enforcement in relation to the September–October 2006 events held in public places and to the related police measures to consider the definition of separate rules for spontaneous demonstrations as part of the reform of the Act on the Right to Assembly. He should also precisely define the manner of the individual identification of members of a police troop force deployed and to declare the proper rules for the assessment of complaints submitted against police measures corresponding to a fair and transparent procedure by a modification of the Act on the Police. Finally, he should specify the mode of coercive means that may be used by troop force by modifying the service rules of the Police and should consider waiving the use of rubber bullets or making the conditions of use stricter. The new service rule excluded the use of rubber bullets when dispersing crowds and prescribed the rules of safeguards when applying coercive means. In this context the commander's ordering was also regulated and the individual identification of policemen deployed in troop force as well as the rules of legal remedy against police action were also renewed. There was also a proposal to the National Assembly to modify Act LXIX of 1999 on Trespasses in keeping with the constitutional requirements worded by Resolution No. 75/2008 (V.29.) of the Constitutional Court because it continued to order the punishment of a trespass called abuse of the right to assembly.

- Proposal to the Prime Minister that the Government
 - Should elaborate the jurisdiction and the sphere of measures that can be taken by the Hungarian Financial Supervisory Authority and the National Authority for Consumer Protection. The proposal was realised by the modification of Act CXXXV of 2007 on the Hungarian Financial Supervisory Authority by Act XLVII of 2008.

- To make unambiguous the obligation of individual procedure in each consumer complaint. The proposal was realised by Act XLVII of 2008 on the prohibition of unfair commercial practice.

- The Commissioner also proposed to the National Police Chief Commissioner to set the rules to be uniformly applied for professional and rapid execution of a large number of arrests in an order. The request was rejected by the National Police Chief Commissioner but the methodology of the arrest of large number of people has been continuously improving which was accepted by the Commissioner as the realisation of his proposal.

- The Commissioner also proposed to the National Police Chief Commissioner to make accessible those police norms to all that contain rules pertaining to citizens as well. According to the Chief Commissioner's information

it was partly done on the homepage of the police and the respective citizens' requests were also met.

- The Commissioner recommended to the National Assembly to create safeguards so that the jurisdiction of the Police should not be taken away by supplementing Act XXXIV of 1994 on the Police. The deadline for answer has not yet expired.
- The Commissioner repeatedly requested the National Assembly to carry out the investigation worded in the Ombudsman's report related to the financing of broadcasters. A repetition of the request was made topical by the survey of the practice of broadcasters related to the enhancement of the knowledge on children's rights conducted by the Ombudsman. The elaboration of an Act on Media Services has been in progress.
- He recommended to the National Assembly to specify the values of blood alcohol level and the related grades that are of basic importance to the separation of penal responsibility from trespass related to drunken driving on the level of law by supplementing the Penal Code. Preparations for the modification are in progress.
- The Parliamentary Commissioner turned to the Committee on National Security of the National Assembly as well as to the Minister without portfolio supervising the civilian national security services and proposed supplementing the Act CXXV of 1995 on the National Security Services. He would regard it significant as safeguards if the post facto control of the national security services would become possible in individual cases and he also outlined the concept of several possible alternatives. The Chairman of the Committee as well as the Minister ensured him of their co-operation, they did not reject the proposal for the modification of the Act but no meaningful progress has been made in the case.
- As a result of his investigation into the case of the "infant who died of hunger" the Commissioner proposed to the Minister of Social Affairs and Labour to supplement Act XXXI of 1997 on the Protection of Children and Guardianship Administration so that consequences of the omission of the obligation for signalisation stipulated in paragraph (2) of Article 17 of that Act should be consistently settled. According to the ministerial answer they wish to settle the issue by the modification of the Government order No. 331/2006 (XII. 23.) on the performance of tasks and jurisdiction related to child protection and guardianship as well as the organisation and jurisdiction of the guardianship authority so that the social and guardianship office should initiate employer's investigation if information was received about the violation of duty and should record penal information in the case of a grave breakage of duty. The Commissioner accepted this solution but his proposal has not been realised as yet.
- The Commissioner proposed to the Government to survey the system of basic provision for child protection, the regulation of its financing with the help of the Social portfolio, and should study the possibility how equal access to child welfare services and to transitory care could be ensured for children and their families living in small villages. He also requested the Minister of Education and Culture to study the possibility of incorporating basic knowledge of child

protection into the curriculum of teacher training and extension training. Government and the Social portfolio regarded the realisation of the proposal impossible under the current legal and economic environment. The Commissioner did not accept the answer and would table his proposal to the National Assembly within the framework of the present Report. The Minister of Education and Culture also did not share the Commissioner's opinion but stated that he would expect the latter one's view during the modification of the Government order No. 277/1997. (XII. 22.) on the extension training of teachers and educationist specialist exams as well as the emoluments and advantages of those participating in extension training.

- The Commissioner proposed to the Prime Minister the modification of the Government order No. 190/2004 (VI. 8.) on the compulsory liability insurance of running a motor vehicle so that the regulation should specify more exactly the responsibility of the insurance company and should exclude the possibility of the contracting client suffering disadvantage or damage because of omission within the sphere of the insurance company's interest while in contact with the client. The Minister of Finance made promised to consider the recommendation when the new regulation is prepared.

- A recommendation to the Prime Minister that the Government
 - Should supplement the stipulations of Act XCII of 1996 on Credit Institutions and Financial Enterprises so that every financial service provider should hand over information on the accessibility of organs of consumer protection to clients when signing a contract, the financial service provider should be obliged to teach the client, and the deadline for the assertion of claims after cancellation should be defined by law (these recommendations were not implemented);

- Should incorporate into the Bill (recommendation) under preparation for the prohibition of unfair commercial practice that loans at a cost over ten times the basic interest rate should qualify as indecent commercial practice (the Minister concerned did not agree with the proposal due to reasons of legal technique);

- Should modify Act LIII of 1994 on Judiciary Distraint so that there should be no opportunity for acquiring a residential property at half the estimated value (the Minister concerned and the financial service providers did not agree with the proposal).

- The Ombudsman proposed to the Government a satisfactory settlement in legal norm of the eligibility of homeless persons for health care provision as well as the circle of organs obliged to report on eligibility as well as the possibility to testify it by documents. The deadline for answering has not expired when the present Report was compiled.

- A proposal was made to the Government for the significant reduction of the administrative burden on the procedure of release of motor vehicles, and to the Minister of Transport for the modification of the order No. 5/1990. (IV. 12.) of the Ministry of Transport, Telecommunication and Energy (jointly called: KöHÉM) on the technical check of road transport vehicles so that the new, so-called procedure of vehicle naturalization may be introduced. The latter one was done.

- The Commissioner expounded that the Government once again should survey the alarm system operating on the territory of the Republic of Hungary (call No. 112), and it should ensure as necessary real information allowing the rapid identification of location within the alarm call mechanism related to the ambulance service and to reduce the security checks to the minimum. The insufficiency of the alarm system and the missing determination of the precise location of a person needing help may provoke anomalies related to the right to life and physical soundness. The Government accepted the Ombudsman's proposition and its realisation is in progress.
- Proposal to the Prime Minister on the adjustment of the text of the Government order No. 169/1999 (XI. 24.) on the issuance and handling of identity cards to the stipulations of Act IV. of 1952 on Marriage, Family and Guardianship in respect of the use of doctor's title. The addressee agreed with the recommendation but it has not yet been implemented.
- Proposal to the Minister of Finance on the modification of the content of Act CXII of 1996 on Credit Institutes and Financial Institutions and tabling it in the National Assembly which would ensure meaningful safeguards for clients of banks giving loans of variable fees so that they should not be entitled to modify unilaterally and without limitation the conditions of credit/loan contracts. According to the Minister's information the rules for the unilateral modification of contracts would be made more rigorous.
- The Commissioner initiated at the Ministers of Economy and Transport, of Environment and Water and of Finance the modification of the joint TNM-GKM-FMM-FVM order No. 14/2004. (VIII. 13.) on the general procedural rules of the utilisation of the Structural Funds and of the Cohesion Fund so that the regulation should create the possibility of legal remedy in the case of applications submitted for structural and cohesion subsidies as well. The Minister concerned did not accept the proposal.
- The Commissioner invited the Minister of Economy and Transport to cooperate with the Minister of Local Government and Regional Development, with the Minister of Justice and Law Enforcement as well as the Office of Mining and the organs concerned in the interest of modifying Act XLVIII of 1993 in order to establish harmony with the relevant stipulations of the Civil Code and the possibility of its uniform implementation. The modification should make it clear that the owner of the real estate is entitled to get compensation in the case of way-leave (forced way-leave) because of the location (building) of mining establishments, transport lines and equipment necessary to prospecting hindering the proper use of immovable property, and even in the case of way-leave of location compensation is due when the easement is established. The Minister accepted the recommendation but it has not yet been realised.
- The Commissioner recommended to the Minister of Economy and Transport to regulate the right to express the opinion of the Conciliation Committee for Energetics, available during the legislative process and the framework for its exercise on the level of law, with special regard to elaborating the detailed legal regulation of the right to reporting during the setting of

authorised prices by legal norms. He added that it was expedient to create the opportunity of civil (social) organisations to express their view during the legislative process for legal norms of branches regarding every significant public utility service. The Minister considered it acceptable that the Conciliation Committee for Energetics, an umbrella organisation for the organisations of interest representation should possess the right to express their opinion during the legislative process for the branch. According to his promise this proposal may be realised during the comprehensive modification of Act LXXXVI of 1997 on Electrical Energy. This, however, has not yet been done.

- The Commissioner proposed to the Minister of Education and Culture as well as to the Minister of Finance to modify the legal norms pertaining to the implementation of the National Cultural Fund so that the regulation may create an obligation to justify decisions when the applications are assessed and also the possibility of legal remedy. The recommendation was not accepted by the Minister.

- The Commissioner recommended to the Minister of Finance to initiate supplementing the Government order No. 273/2006. (XII. 23.) on the Hungarian Tax and Financial Control Administration (APEH) so that a procedure outside the area of jurisdiction may become possible only if proper procedural safeguards are available. According to the draft of the modification of the Government order this recommendation would be implemented.

- The Commissioner proposed to the Minister responsible for transport the modification of KöHÉM order No. 5/1990 (IV. 12.) on the technical check of road transport vehicles, the KöHÉM order No. 6/1990. (IV. 12.) on the technical conditions of the release and participation in traffic of road transport vehicles, and of the joint order of the Ministry of Transport and the Ministry of Home Affairs (jointly called: KPM–BM) on the traffic rules (KRESZ) and supplementing it in the interest of settling the legal position of the so-called moped cars so that they may fully satisfy the stipulations of the Guidelines No. 2002/24/EK of the National Assembly and of the Council. The deadline for an answer has not yet expired.

- Further on, the Commissioner recommended to the Minister of Justice and Law Enforcement to initiate the modification of paragraph (5) of Article 30 of Act CXXXV of 2005 on Assistance to Victims of Criminal Acts and on Mitigation of Loss by the State and supplementing it so that it may be clearly identified for the applicant for the mitigation of loss as well as for the authority assessing what can be regarded as a proper justification for the late presentation of the application. The Minister challenged the necessity of the modification of the specific norm and did not accept the recommendation after several exchanges of letters. The Commissioner accepted the answer though maintained without alteration what was written in his report because implementing his recommendation was not obligatory for the Minister.

- A request to the Minister of Justice and Law Enforcement was presented to revise the BM order No. 35/2000. (XI. 30.) on the issuance and withdrawal of documents of road transport, and should see to it by its modification that the internal coherence of the legal norm is created, and should define the procedural

rules of safeguards necessary to the realisation of the right to fair treatment, and he should abolish the rule according to which the driving licence should be immediately taken away without reflection from a driver on the spot who can be exclusively suspected with trespass only. Though the deadline for answering has expired, no answer has been received as yet.

- A proposal was made to the Minister of Justice and Law Enforcement to investigate jointly with the Minister of Education and Culture how more effectively the protection of art works in public places could be ensured. According to the answer of both Ministers the problematic was known to the Government, and the solution was considered as a priority task by the Ministry of Justice, jointly with other Ministries involved. The creation of a new regulation of trade in non-ferrous metals has been under progress.

- A proposal was sent to the Minister of Justice and Law Enforcement so that he should modify the IRM order on the Service Rules of the Police in order to prescribe a clear obligation for co-operation of the proceeding policeman with a psychiatrist specialist. He also initiated at the Minister of Health to set up a department or a section of a department in the focus hospitals where dangerous or directly dangerous patients not yet under a ruling of the judiciary can be safely and adequately treated. The Minister of Justice and Law Enforcement denied that complying with the Commissioner's recommendations was within his jurisdiction. The Ombudsman accepted the Minister's argument. The Minister of Health agreed with the Commissioner's statement and also promised the solution of implementation of the recommendation made to the Minister of Justice and Law Enforcement within his competency.

- A recommendation was made to the Minister of Agriculture and Rural Development to modify Article 12/F of Act II of 1993 on Committees Settling and Allocating Land as well as Government order No. 63/2005. (IV. 8.) on the detailed rules of the elimination of undivided common ownership that had been created during the proportionate allocation of land in order that the co-owner registered in land use but not applying for the division of property should also be included in the procedure for division. The Minister did not agree with the proposal. In view, however, of the Constitutional Court annulling some stipulations of resolution No. 115/2008. (IX. 26.) and its explanation (which had also dwelt upon the proper interpretation of the legal norm) the Commissioner accepted the Minister's position.

- The Commissioner recommended to the Minister of Social Affairs and Labour to initiate the modification of the legal regulation in force about the 24-month moratorium for participation in debt management service [paragraph (2) of Article 55/B of Act III. of 1993 on Social Administration and Social Allocations] which would allow to replace the objective time limit by a more flexible, proportionate legal solution and promote prevention more effectively. So far no response has been received from the Minister in relation to the proposal.

- A proposal was made to the Minister of Transport, Communication and Energy to consider the issues of responsibility related to compensation of damages caused by legal strikes (as well as compensation related to illegal

strikes), with special regard to cases of stoppages at employers with activities fundamentally affecting the population.

- The Commissioner requested the Minister of Justice and Law Enforcement to investigate in what way problems of ensuring sufficient service and the legality of strikes can be remedied by legislation. No answer has been received as yet, but the deadline has not expired.
- The Commissioner recommended to the National Police Chief Commissioner to withdraw the ORFK order No. 17/1996 on the use of electrical breath analysers by the police and, if necessary, to regulate in the form of order on the basis of paragraph (1) of Article 49 of the Act on Legislation the technical rules of control for traffic safety and the use of alcohol test tubes. The Chief Commissioner agreed with the recommendation, and the withdrawal of the old order and the issuance of the new one are in progress.
- A recommendation was made to the National Police Chief Commissioner to modify and supplement the ORFK order No. 12/2006. (IX. 27.) on the Rules of Clothing of the Police of the Republic of Hungary (Clothing Rules). According to the Chief Commissioner's answer the revision of the BM order No. 20/2006 (IV. 19.) on the garments and clothing rules of organs under the jurisdiction of the Minister of Home Affairs of the personnel entitled to receive uniforms including professional firemen of local governments is in progress and parallel to it preparations for the modification of the Clothing Rules has begun, during the course of which attention will be paid to the Ombudsman's recommendations.

3. Operation of the Commissioners' Joint Office

3.1. Report of the Office

The activities of the Offices of the Parliamentary Commissioner for Civil Rights, the Parliamentary Commissioner for Data Protection, the Parliamentary Commissioner for Future Generations and the Parliamentary Commissioner for the National and Ethnic Minorities' Rights are assisted by a joint office operating within the Office of the Parliamentary Commissioner. The tasks of the Office laid down in its Organisational and Operational Rules include the all-round performance of tasks related to the economy, the financial, accounting and labour management, further on the central registration and tasks of client service, activities related to organisation, keeping in touch with the National Assembly, as well as operating the library and our IT system.



In 2008 several changes took place within the organisation of the Ombudsmen's offices and the joint Office. In April there was a change at the head of the Office and Dr Attila Péterfalvi was appointed to the post. Dr András Jóri was elected by the National Assembly as Commissioner for Data Protection in 2008.

As a result of the modification of Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights in 2007 the organisational structure of the Parliamentary Commissioners' Office was altered: the institution of the general deputy of the Parliamentary Commissioner for Civil Rights was abolished, at the same time the organisational unit of the Parliamentary Commissioner for Future Generations was established. In 2008 the number of people working in the Parliamentary Commissioners' Offices grew to 168 by the end of December after the associates of Dr Sándor Fülöp joined in.

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Meaningful	26	68	176	183	186	184	182	185	193	103	106	107	101	134
Admin-	17	29	135	141	141	139	141	135	136	138	37	36	37	34

istrative														
Total	43	95	111	124	127	123	123	120	129	141	143	143	138	168*

The number of Parliamentary Commissioners and associates of the Office between 1995 and 2008.

The data of the Table show that the total number of staff grew by 30 people in 2008. The next Table shows the number of associates of the various organisational units without the Commissioners and the Head of Office as of on 31 December 2008.

	P. C. for Civil Rights	P. C. for Minorities	P. C. for Data Protection	P. C. for Future Generations	Office	Total
Head of Division	3	3	6	4	2	18
Dy-Head of Division	2	3	2	2	2	11
Head of Department	2			1	2	5
Associate with higher qualifications	32	9	30	20	9	100
Clerical staff	3	1	7	1	15	27
Manual worker	1	1	1	1	3	7
Total	43	17	46	29	33	168*

*Here the total number does not contain the Commissioners, the Head of the Office and the replacement of associates away for longer periods of time. (The list of the names of those associates who worked in the Office of the Parliamentary Commissioner for Civil Rights and in the joint Office is included in the supplement of the Hungarian version of this Report only.)

Settlement of the Ownership of the Headquarters in Nádor Street

Due to the activity of the new Head of Office negotiations on the clarification of the ownership of the headquarters under 22 Nádor Street between the Hungarian State Holding Company, the Mayor's Office of the Local Government of District V of Budapest and the Parliamentary Commissioners' Office ended July 2008, as a result of which the parties concluded a contract of exchange "for the transfer of the ownership right of the property against payment of difference in value". With signing the contract of exchange the headquarters of the Parliamentary Commissioners' Office in Nádor Street has become the property of the Hungarian State.

The acquisition and introduction of a system of registration that had been testified by all-round quality control has begun.

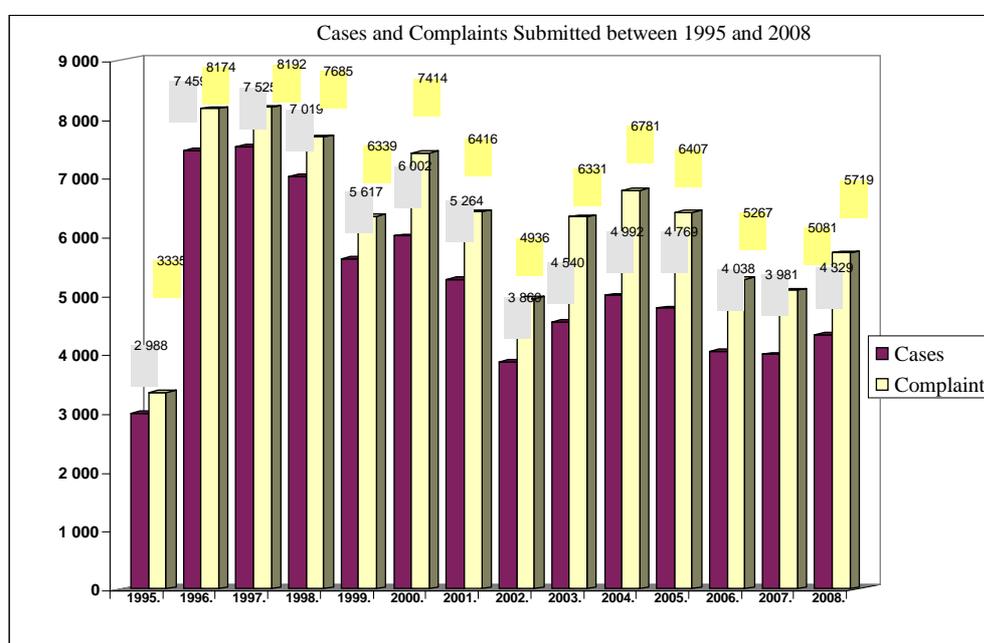
Dr Attila Péterfalvi
(sd.)

3.2. Statistical Data of the Year 2008

The following Table presents the number of cases and complaints received in 2008 and those received between 1 July 1995 and 31 December 2008:

Cases and complaints in 2008 and altogether since 1995		
	2008	Total
Cases	4329	72383
Complaints	5719	88077

In 2008 those turning to us worded 5719 different complaints in 4329 submissions. The number of people turning to the Parliamentary Commissioners for Civil Rights has been significantly fluctuating during the past years, but the decreasing trend of the past years seems to end because the number of people asking for legal protection, advice and support from the Ombudsman showed growth once again in 2008.



The majority of plaintiffs are city dwellers, and only almost every fourth submission came from people living in small villages. The residence of a plaintiff remained unknown if he/she did not indicate it among others in an e-mail message. This circumstance justified the Commissioner's offer to plaintiffs to

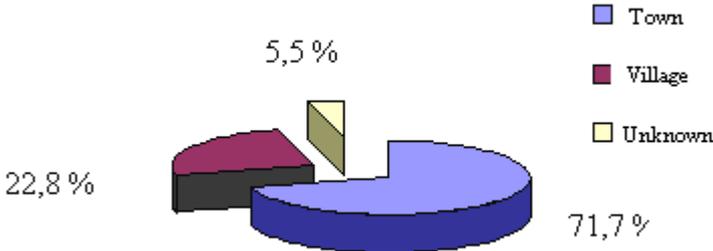
present their complaints nearer their place of residence, in the county headquarters or county cities.

While in 2008 5719 complaints were received we completed 5809 ones. We have taken yet another step towards the elimination of our arrears. Of the total of closed cases 6.5% was transfer to other authorities, 10% were terminated, and 68.1% was rejected with information given, thus ultimately we conducted meaningful investigations in 15.4% of the cases.

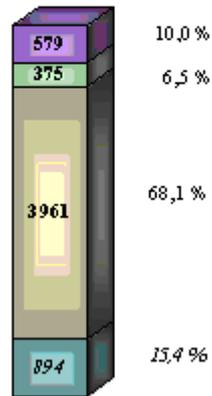
Almost half of the complaints were rejected after the completion of investigations, and we closed the investigation with a report in the case of 477 complaints. We worded recommendations in 15.7% of the investigated complaints that is in 140 cases.

In the year under survey we have worded 285 recommendations to various addressees in the case of 140 complaints. The addressees accepted 53.7% of our recommendations, and did not agree only in the case of 8.8% of complaints. When closing down statistics at the end of the year the deadline for giving an answer to us has not expired in 37.5% of our recommendations.

The overwhelming majority of the 285 recommendations were constituted by those cases (125), in which the organ investigated was requested to remedy the anomaly. This was followed by cases (65) when we initiated action by a superior organ. We initiated measures to be taken by various levels of legislators affecting legal norms in altogether 70 cases. This year we turned to the Constitutional Court in 2 cases with a motion. In 20 cases we only could call the respective organs upon proper implementation of law in the future.

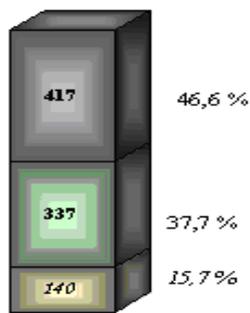


- Terminated
- Transfer
- Rejected without investigation
- Investigated



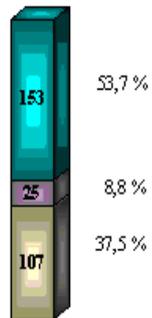
Completed Complaints

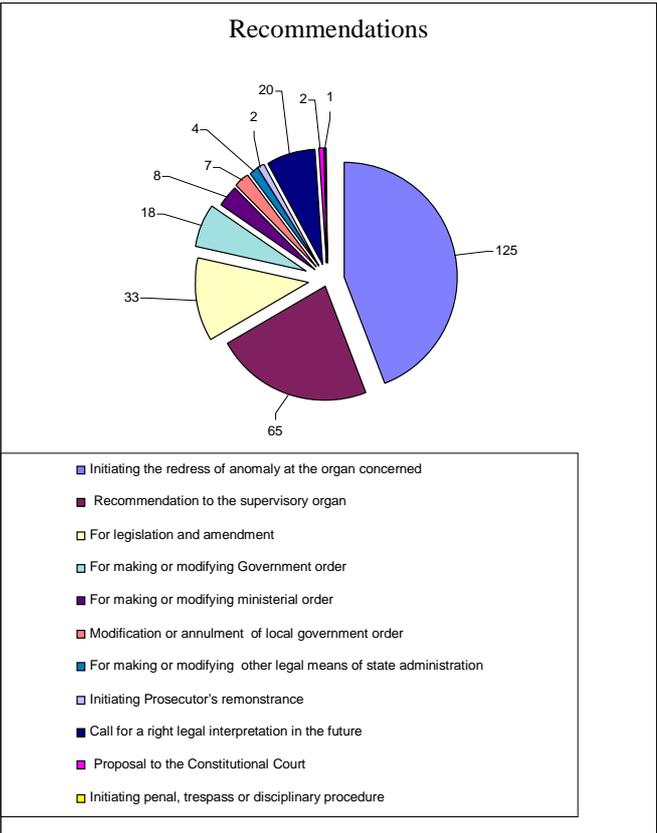
- Rejected after investigations
- No recommendation
- Recommendation



Investigated Complaints

- The addressee accepted the recommendation
- The addressee did not accept the recommendation
- The deadline has not expired





Anomalies related to constitutional rights as identified in our reports were distributed in the following proportions among the various basic rights:

4. Publications

Prof. Dr Máté Szabó:

Chapters of books

- 1968 in Hungary, in: Klimke, Martin – Scharloth, Joachim (eds.) (2008): *1968 in Europe. A History of Protest and Activism, 1956–1977*. New York: Palgrave, 219–229.
- Az ombudsmanok és a gyülekezés joga (The Ombudsmans and the Right to Assembly) in: Sándor Péter – Vass László (eds. (2008)): *Magyarország politikai évkönyve 2007-ről*. (Political Annals of Hungary for 2007) Vol. I. Budapest: DKMKKA, 500–526.
- (Kerényi Szabina): Transnational Influences on Patterns of Mobilisation within Environmental Movements in Hungary, in: Doherty, Brian – Doyle, Timothy (eds.) (2008): *Beyond Borders. Environmental Movements and Transnational Politics*. New York: Routledge, 107–125.
- Civil társadalmi hálózatok, mint a régió és a globális rendszer viszonyának közvetítői (Civil Social Networks as Mediators in the Relationship between the Region and the Global System), in: Bodó Barna (ed.) (2008): *Európai Unió és regionális politika* (The European Union and Regional Politics). Kolozsvár: Scientia, 141–157.
- A tiltakozás kultúrája a magyar civil társadalomban (The Culture of Protest in Hungarian Civil Society), in: Csefkóm Ferenc – Horváth, Csaba (eds.) (2008): *A demokrácia deficitje avagy a deficités hatalomgyakorlás* (The Deficit of Democracy or a Deficit Exercise of Power). Pécs: Pécsi Állam és Jogtud. Kar, 237–263.

Papers in periodicals

- Globális kommunikáció, civil társadalom, tiltakozás (Global Communication, Civil Society, Protest). *Fordulat, Új folyam.* 2008/1. 96–120.
- A szocializmus kritikája a magyar ellenzék irányzatainak gondolkodásában (1968–1988) (The Criticism of Socialism in the Thinking of the Trends of the Hungarian Opposition). *Politikatudományi Szemle*, 2008/1. 7–41.
- A demokrácia stabilitása és a gyülekezés joga (The Stability of Democracy and the Right of Assembly). *Rendészeti Szemle*, 2008/6. 3–26.
- Legal and Political Environment of NGOs in Hungary. *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominata. Sectio Iuridica*, Vol. XLIX. 2008. 23–55.
- Az emberi jogok fejlődésének fordulópontjain (At the Turning Points of the Development of Human Rights). *Beszélő*, 2008/11–12, 67–74.

Reports

- Civil éves jelentés 2006–2007 (Annual Civil Report. 2006–2007). in: *Civil Szemle* 2008/1–2. 8–12.
- A gyermeki jogok tudatosítása. Gyermekjogi projekt 2008 (Making Children's Rights Known. Children's Rights Project 2008). in: *Család-Gyermek-Ifjúság* 2008/5. 34–45.

Articles in newspapers

- Az állampolgárok pártján (On the Side of Citizens). *Népszabadság*, 16 August 2008.
- J és B és az erőszak (L and R and Violence). *Népszabadság*, 21 October 2008.

A liliputiak jogai Gulliver-honban (The Rights of the Lilliputians in Gulliver-land). *Népszava*, 21 October 2008.

Lakás nélkül...(Without Shelter) *Népszabadság*, 14 November 2008.

A demonstrációk kutatása, avagy a ló halála (Research into Demonstrations, or the Death of the Horse). *Közjogi Szemle*, 1 September 2008. Vol. I. No. 3. 16–17.

Köszöntő (Welcome Address). *Hasé*, 3 November 2008.