

# Report

ON THE ACTIVITY OF THE  
PARLIAMENTARY COMMISSIONER FOR THE  
RIGHTS OF NATIONAL AND ETHNIC  
MINORITIES

2007

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National and Ethnic Minorities

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# Introductory thoughts

The 2007 annual report – uniquely among the reports of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities – has been written in a spirit of duality. This can be explained by the fact that after twelve years in office the mandate of the first minorities' commissioner expired in the summer of 2007, and a new minorities' commissioner was elected by parliament to enter office in the second half of 2007.

Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (Ombudsman Act), which has been amended several times, does not prescribe whose task it is to prepare the report in such a case, i.e. when two ombudsmen were in office during the period covered by the report. Nevertheless, based on an interpretation of the provisions of the law it can be inferred that the parliamentary commissioner currently in office is responsible for writing the report.

A new era began in the history of our institution when the second ombudsman took up office. Whereas in the first half of 2007 our daily case load declined and cases were no longer launched *ex officio*, in the second half of the year our work gained an entirely new momentum. Greater emphasis was placed on legal protection work, and the development of a more direct, more accessible and more assertive ombudsman image got underway. The previous minorities' commissioner judged it important to play a neutral mediatory role between the political sphere and the minority communities, whereas the new ombudsman has openly undertaken to act as a fighting advocate for people of minority identity.

This in fact appears to be necessary given the social changes that have occurred in the past year. Seeking consensus is not possible when an ulti-



matum-type situation has arisen and, for example, when in certain settlements the school gates can be shut in the face of Gypsy pupils. The new minorities' ombudsman in July 2007 had to confront such cases from the outset, when – in a manner without precedent – a few weeks before the start of the academic year in September – the Csörög village local government closed the village's only school.<sup>1</sup> The severity and discriminative nature of the case, which was in violation of minority rights, is illustrated by the fact that the former pupils at the school with the exception of the Gypsy children were able to enrol in schools in the neighbouring settlements, whereas none of the neighbouring settlements wished to accept the Roma pupils. In such a case the only possibility is to raise the alarm among politicians and the public and call attention to the untenable nature of the situation.

We can also report on another case without precedent, namely the series of events organised by the political party named Jobbik (Movement for a Better Hungary), which in our view were expressly anti-Gypsy and, closely related to this, the establishment of the Hungarian Guard and its demonstrations against 'Gypsy crime'. In our view by having the Hungarian Guard march on the streets of settlements inhabited by members of the Roma community, Jobbik and its leaders overstepped a psychological boundary: there is no sense in compromises against such forms of intimidation they used, and a determined, condemnatory stance is called for. On the initiative of the minorities' ombudsman, the whole Hungarian political elite spoke out against this phenomenon. President of the Republic, László Sólyom declared firmly that: 'In addition to the fact that their ideology is reprehensible, in practice such actions create an immensely damaging atmosphere, which clearly hinders the advancement of the social integration of the Roma'. Prime Minister Ferenc Gyurcsány took a similar line: '...there is no longer any moral excuse for anyone failing to distance themselves openly, because after our national tragedy, the Holocaust we can no longer speak of innocent anti-Semitism or innocent Hungarianism.'

The emotions which flared up produced new phenomena in the history of the Hungarian printed and electronic media. New forms of incitement to

<sup>1</sup> We have given here the name of the settlement, and have done so consistently in the report in those cases where the event attracted national press coverage and anonymity would serve little purpose.

hatred have appeared with increasing frequency. Even those who consider themselves serious journalists now write about 'Swabian crime' and not only about 'Gypsy crime'. It is just a matter of speculation which will be the next ethnic group to be fitted with this unscholarly and generalising tag. New social collaboration is needed against scaremongering content appearing on the internet and various press organs, since it is to be feared that superficial, sensationalist and irresponsible reporting could trigger situations potentially even ending in clashes between ethnic groups.

In addition to the individual cases mentioned above, naturally the minorities' ombudsman also needs to confront political leaders with sweeping promises made in the past, and seek more effective opportunities to take action.

One such debt on the part of the Hungarian political elite is the unsolved and therefore anti-constitutional nature of the parliamentary representation of the minorities. It is now time for action, and continuing to hold out promises has less and less credibility. In 2008 the Minorities Act is 15 years old. It would be welcomed if the parliamentary parties recognised that they could write history if the parliamentary representation of the minorities is achieved as a symbolic gesture. If, however, they are not willing to take on this task, then there is only one honourable thing to do: cancel the relevant legislative passages and try to explain to everyone why they held out this promise for so long.

A similarly important question is to what extent those in public life judge it important that Hungary have an independent body – the minorities' ombudsman – whose task is to take effective action against ethnic-based discrimination which poisons social coexistence. If so – and responsible politicians can hardly think otherwise – then the reconsidering of the ombudsman's powers should not be delayed, with the creation of the conditions for us to work effectively.

In such cases naturally we do not merely express our desires. Even in this short space of time we have actively cooperated by producing professional materials, concepts and drafts of legislation.

How successful will the work of the new minorities' ombudsman be in the coming years? One essential condition is trust, which is demonstrated in one respect by vulnerable people contacting our office with their grievances. We feel that we are on the right path here: in the second half of 2007,

when the new ombudsman came into office our total caseload rose by some 35%. The growth could be experienced in every case group. Some 18% more complainants turned to us than in the previous year. The statistics also reveal that we took an active part in the legislative process. In 2007 we gave our opinion on some 40% more statutory instruments than in the previous year. An even more significant change than the rise in the number of cases is that we made as many recommendations, initiatives and legislative proposals as in the previous two years combined. In the period covered by the report roughly 10% of investigations which we launched based on complaints or ex officio closed with such a measure.

Based on the above we believe that the members of the minority communities have confidence in the new ombudsman. Now it remains to hope that the representatives of the political parties support those who would like the protection of frequently defenceless people of minority origin to gain new impetus in the interests of social peace.

The new ombudsman trusts in this.

# The ombudsman's duties and instruments at his disposal

## 1.

### The role of publicity and its revaluation in the ombudsman's work

A one-sided picture of the national and ethnic minorities emerges from the Hungarian media, here including both the printed and electronic press. The lay person often is not even aware who the term of national and ethnic minorities actually includes, and many people imagine that it also extends to the communities of religious minorities and immigrants. Essentially, however, everybody is aware that the largest Hungarian minority is the Roma. This is true to such an extent that in the everyday use of the word – and by no means only among non-professionals – the word 'minority' or 'ethnic group' is used as a synonym for the Gypsies.

The state (the Government, the bodies of Parliament and legal defence bodies alike) has not drawn up an adequate strategy for providing information about the minorities or a concept for how they are portrayed in the media. We do not wish to pass the responsibility onto the press, but it is a fact that only those events are regarded as having real news value which outrage and shock public opinion, particularly if a crime occurs or an event which is liable to stir up emotions.

Although all the national and ethnic minorities have national minority programmes within the public service media, typically and in fact their viewers or listeners are limited to members of the given minority, and these programmes – primarily due to their short duration and unfavourable programme structure – generally are not suited to giving the full picture concerning the real situation of the minority group or community.

We regard the Government's information strategy as inadequate. As a

result it is the task of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities to reconsider his role in the sphere of information as well.

‘The ombudsman’s most important weapon is publicity’. What does this mean in reality? It means that based on the Ombudsman Act any of the parliamentary commissioners may make a public a case which they have investigated and the disclosed improprieties, thereby ‘stigmatising’ the offender. Naturally using such publicity is most effective if a considerable proportion of the public supports the stance of the ombudsman, and in some way expresses their condemnatory attitude.

In order to keep the public properly informed it is necessary for the parliamentary commissioners to take a stand on almost every question, release press statements and make their views public.

The second half of 2007 signalled the start of reforms in this respect. The reforms which need to be implemented or continued in terms of information are essentially twofold. Firstly, information provided in cooperation with the parliamentary commissioner needs to give a more complete and accurate picture of the actual situation and problems of all the national and ethnic minorities, and not merely be restricted to topics ‘snatched up’ by the press, i.e. the public should not form a picture of the minority communities based exclusively on news which is negative in content.

Secondly, the media strategy of the minorities’ ombudsman needs to be more up-to-date than at present, which means that we continually need to make clear our stance and value judgement on events taking place in public life, and the public needs to be kept informed about what action would be desirable and what is dictated by the principle of constitutionality and rule of law.

The cataloguing and raising awareness of certain problems and shortcomings has already got underway – at the same time as the new ombudsman took up office. These include above all solving the parliamentary representation of minorities which has been delayed countless times and settling the issue of the scheduling of minority programmes in the media.

The minorities’ ombudsman needs to do more than in the past to raise legal awareness. With this aim in mind – and to meet the requirements of the present – the modernisation of our homepage and its uploading with fresh content has begun. In the medium-term the introduction of a new

client-friendly handling of cases seems feasible according to which complainants can track how their cases are progressing and can receive up-to-date information about questions that interest them.

In our deeply-divided society, in which a referendum question or striking political confrontation is capable of overshadowing all other issues, our aim is that the most important forces in society regardless of political affiliation at least reach consensus on this question, namely that in a country describing itself as a state founded on the rule of law and democracy the violation of minority rights and discrimination on any kind of ethnic basis is unacceptable and unworthy.

## 2.

### One fundamental condition of the ombudsman's work: quality legislation

The minorities' commissioner is obliged to proceed on questions falling under the Act on National and Ethnic Minority Rights. This is only possible if the necessary system connecting procedural rules, rules for scope of competence and legal institutions is in place. *Central and local legislation today attracts criticism from at least three angles:* the drafting and framing of legislation is at a lower level from a professional point of view than possible under the circumstances; codification is not sufficiently democratic; and the investigation and correction of the application of statutory instruments and of desired or unintended effects is lacking.

Although minority self-governments have the right to give an opinion on the drafts of statutory instruments affecting the given minority in this capacity, there is no enforceable, transparent procedural order or penalty for omission of this.

According to the Ombudsman Act the main field for safeguarding fundamental rights is combating actions of public administration bodies which cause an impropriety (*maladministration*). Participation in the legislative process is necessary to prevent and eliminate improprieties which have been disclosed. Frequently it is only possible to implement the commission-

er's recommendations by amending a statutory instrument since precedents are not of binding force in our constitutional system.

According to the regulations in force, if according to the standpoint of the ombudsman an impropriety relating to constitutional rights is the result of the superfluous, ambiguous provision of a statutory instrument or of some other legal instrument of state direction, or that of the absence (insufficiency) of the legal regulation of the given issue, *in order to avoid the impropriety in the future the commissioner may propose the amendment, repeal or issue of the statutory instrument (some other legal instrument of state direction) to the body entitled to issue legislation or some other legal instrument of state direction*. The body requested is obliged to notify the parliamentary commissioner of its standpoint or eventual measures taken within sixty days. The bodies consulted generally give a positive response by the deadline, and agree with the issue of a statutory instrument or legal instrument of state direction, and yet the legislation is not framed. The commissioner has no other recourse than to indicate the legislative omission in the annual parliamentary report, but this is not in direct connection with legislative and deregulatory plans.

In comparison with the above, the commissioner's right to address to the *Constitutional Court* is merely of a supplementary nature. This is as it were the final means to propose that a dispute with the legislature or the body entitled to initiate legislation be settled primarily concerning the existence of the impropriety and its violation of fundamental rights and the Constitution.

In our view the main guarantees of quality legislation lie in *harmonising the written rules of public administration consultation with the professional training and practice of participants*. In itself this guarantees the prevention and avoidance of countless improprieties. The minorities' commissioner, as a result of petitions received, ex officio investigations and comprehensive investigations, has accumulated extremely broad knowledge of application of the law which it would be a serious error to disregard during the legislative process. Secondly, quality legislation has to show respect for fundamental rights by supplementing and complying with procedural and consultation rules.

As far as the drafting of legislation is concerned, the order of business of the Government does not take into account the legislative proposals of the parliamentary commissioner. Regrettably the parliamentary commissioner

is not informed of how the implementation of his recommendations is proceeding, i.e. whether his legislative proposals have been approved.

Based on the above it is therefore clear that only those legislative recommendations made by the minorities' commissioner addressed to the usual bodies involved directly in legislative tasks can count on entering the legislative process at all. The fate of our legislative proposals which go through the 'proper' channel for governmental public administration consultation is incidental and unpredictable.

If, however, we do get into the consultation process through certain ministries, we regularly receive no feedback concerning the acceptance or rejection of our observations, and we are informed of the quality of the 'end product' at the same time as citizens from the bulletins or legal compendiums.

It is far from clear who is really responsible for this situation and with what deadline and whether the commissioner who made the recommendation should be included in the drafting process, and whether he may give an opinion on the draft to implement his own proposal.

One impact study performed by the Government states that: 'Hungarian legislative processes, although they have their strengths, in many respects do not meet the international principles of quality legislation. There are numerous areas for improvement in terms of legislative scheduling and implementing procedural rules. One of the most important of these is improving the assessment of likely consequences and promoting legislative decision-making based on knowledge of such effects. In order to progressively eliminate Hungarian public administration failings experienced in the area of legislative impact studies which can also result in non-compliance with the provisions in force concerning legislation it is necessary to improve the level and quality of impact study activities.'

In other words the rules for regular cooperation with law enforcement organs is lacking, and as a result the assessment of law enforcement data, legislative proposals and effectiveness, as well as the forecasting of legislative effects is not guaranteed on the central and local governmental level. The Government is also aware of this.

The Government is handling deregulation in connection with the modernisation of public administration and state services. The Parliamentary Resolution on the National Development Policy Concept states that



‘Unwarranted administrative burdens on enterprises and citizens need to be reduced when applying statutory instruments, and there needs to be a switch to quality legislation. Within this the obligatory nature of the impact analysis of government (legislative) decisions will receive particular emphasis. The aim should be the long-term calculability of regulations. In the sphere of the judiciary it is further necessary to reduce the procedural time.’

It would therefore be important for the parliamentary commissioner’s report and debate on the report to be channelled into legislative tasks.

According to Resolution 30/1991. (VI. 5.) of the Constitutional Court: ‘In carrying out its duty the Government shall cooperate with the civil organisations concerned. This represents a methodological recommendation on how the Government performs its activities’.

Overall it can be established that there is no statutory provision, nor practice developed by the governmental bodies to connect the knowledge, experiences and recommendations of law enforcement and legal defence bodies, including the minorities’ commissioner, which can promote quality legislation with the drafting and deregulation processes, planning of legislation and impact analysis. There is much work to be done in this field, particularly in drawing up projects aimed at quality legislation and in modernising the rather outdated legislative law. *The failure to do so can be regarded as a particular impropriety in regard to minority rights.*

### 3.

## Regulations on the scope of authority of the parliamentary commissioner, or what is missing from the Ombudsman Act?

The change of ombudsman provided the opportunity to review – beyond the role played in legislation – the scope of authority and instruments available to the minorities’ ombudsman and the statutory instruments defining his duties. Taking into account the practical experiences of the past terms, we came to the conclusion that in addition to taking advantage of the role of publicity there is also a need to extend the Ombudsman’s other licences.

Reviewing our licences we observed that whilst our ‘passive’ investigatory licences are adequate, on numerous points there is a need to extend our ‘active’ licences, particularly in connection with enforcing the principle of equal treatment and making more precise which cases and bodies we may investigate. We also made numerous proposals concerning the practical applicability of the Ombudsman Act.

### 3.1.

#### Forums entitled to take action against discrimination

The Constitution sets out a prohibition on negative discrimination, which is ‘heavily penalized by law’. The constitutional ban from 2003 has been comprehensively set out by the Act on Equal Treatment and the Promotion of Equal Opportunities.

There is the possibility to enforce the provisions of the Equal Treatment Act before several parallel forums, namely the Parliamentary Commissioner for the Rights of National and Ethnic Minorities, the Equal Treatment Authority (EBH), the general commissioner, the consumer protection, employment and summary offence authorities, as well as the civil and labour courts.

The Parliamentary Commissioner for the Rights of National and Ethnic Minorities – as can be seen from the earlier reports – since the establishment of the institution, for more than 12 years has consistently taken action in cases concerning negative discrimination towards minorities.

The commissioner’s scope of authority is likewise defined by the Constitution, which states that ‘It is the duty of the parliamentary commissioner (ombudsman) for civil rights to investigate, or to have investigated, any impropriety of constitutional rights that has come to his attention, and to initiate general or particular measures for the redress thereof.’

The Minorities Act likewise states that ‘any form of violation of the principle of equal treatment with respect to minorities is prohibited.’ The original formulation of the provision above was ‘any form of negative discrimination against minorities is prohibited’. The current text took shape when the Equal Treatment Act was adopted and Hungarian law adjusted the phrasing of all provisions prohibiting negative discrimination to the new terminology introduced in the Equal Treatment Act. It follows from the

above that (in addition to other bodies) it remains the duty of the minorities' commissioner to take action if the rights of persons affiliated to the national and ethnic minorities are violated. The procedures of the different bodies can visibly take place in parallel.

This solution is justified by the fact that discrimination against persons affiliated to the national and ethnic minorities often takes place alongside or linked to improprieties or violations connected to other minority or constitutional rights. In addition it should be stressed that our office since its establishment has accumulated a great deal of experience and expertise in handling discrimination cases.

The fight against negative discrimination has been present since 1995 in all areas of the minorities' commissioner's work. It arises in the investigation of individual petitions, comprehensive investigations, and the commissioner has actively (frequently pro-actively) participated in anti-discrimination legislation. In addition the prohibition of discrimination is also stressed in the commissioner's awareness-raising, educational activities.

The minorities' commissioner's farsightedness is shown by the fact that he dealt with the phenomenon of indirect discrimination well before domestic legislation did, and defined and applied this concept in the light of international regulations and practice.

### 3.2.

**Why is it necessary to extend the scope of authority in the field of enforcing the principle of equal treatment?**

In Hungary discrimination on the grounds of national and ethnic origin represents a considerable problem in numerous areas of life, both in terms of severity and frequency. We repeatedly encounter the phenomenon of discrimination in the spheres of education, healthcare, housing, services as well as judicial and other authority activities. The existing forum system – in its current form – is not capable of taking effective action against the complex phenomena of racial discrimination.

Discrimination can originate from a statutory instrument or other (individual or organisational) action, omission, measure or conduct.

Discrimination based on a statutory instrument can be eliminated by amending or repealing the given provision. This requires the organ dealing

with discrimination cases to have the necessary scope of authority to initiate this process. The minorities' commissioner has such a scope of authority: if we observe an impropriety we turn to the legislator (or organ issuing another legal instrument of state direction) or we initiate the procedure of the Constitutional Court or prosecutor's protest.

If the violation of equal treatment was caused by an individual measure, we can proceed based on the operative laws in force, but our powers are limited by the Ombudsman Act.

Our licences to remedy improprieties caused by individual conduct are very limited. If we cannot establish the well-grounded suspicion of crime, summary offence or infraction of discipline, there is the possibility of taking several kinds of measures.

To remedy the impropriety – at the same time as informing the body concerned – we make a recommendation to the supervisory body of the offending body, or we can make an initiative to the given body. However we do not have effective instruments to enforce the contents of our recommendations and initiatives. The personal authority of the commissioner and/or publicity can provide the necessary pressure.

Discrimination, however – as a unique legal, sociological and socio-psychological phenomenon – needs to be combated through a special set of instruments.

According to the regulations in force, we can proceed in cases of negative discrimination based on affiliation to the thirteen minority groups protected by the Minorities Act. Racial discrimination, however, generally does not occur based on whether the person in question falls under the scope of the Minorities Act or not. Discrimination can affect refugees, or any EU citizen or foreigner with visible external properties who is residing in the country under another or no legal title, or a Hungarian citizen of a nationality which does not fall under the scope of the Minorities Act. Report no. 3 issued by the European Commission against Racism and Intolerance on Hungary stresses that anti-Semitism and the situation of refugees are a considerable problem in Hungary.

In order, therefore, that we can effectively and uniformly offer protection against negative discrimination based on national and ethnic origin, skin colour and other properties that can be included under racial origin, we regard the following amendments as necessary:

- a) Our scope of authority – in cases falling under the scope of the Equal Treatment Act – needs to be extended to the private sphere as well. At the same time it is necessary to pay attention to defining public services and the two amendments need to be made with each taken into account.
- b) The possibility needs to be created for the ombudsman, preserving the flexibility of his procedures, and at the same time observing the constitutional principle of legal certainty, to apply genuinely effective legal consequences which are suited to the nature of discrimination and comply with international standards.
- c) In terms of taking action against racial discrimination, the scope of authority of the minorities' commissioner needs to be extended to the all potential groups of injured parties. With respect to cases of multiple discrimination, it needs to be stated that if one aspect of this falls under the scope of authority of the minorities' commissioner, then the commissioner is also entitled to proceed.

### 3.3.

#### Extending the sphere of bodies which may be investigated

It is possible to turn to the ombudsman, if the suspected offender is an authority or public service provider.

The Ombudsman Act does not define public service or public service provider. The lack of legal definition firstly can lead to confusions about scope of authority and conflicting interpretations of competence. Secondly, and more importantly, it means that by taking a narrow, conventional interpretation of the law, those services with a huge customer base offered by the private sector can be left out of this sphere (for example retail, the hospitality industry, tourism, the majority of financial services, internet services etc.). The uncertainty concerning our scope of authority regarding the services offered by the private sector is a problem, since numerous glaring improprieties concerning fundamental rights occur in this sector.

A legal definition of public services therefore seems indispensable. We propose that the law stipulate that public services are those services which on the basis of contractual obligation satisfy basic needs of the population.

It is necessary for the definition of public service based on the above to

be included among the explanatory provisions of the Ombudsman Act, i.e. so that it would not merely extend to the minorities' commissioner and to processes connected to enforcing the principle of equal treatment, but to all of the ombudsmen.

In cases concerning racial discrimination we would like our scope of authority to be extended to include employers in the private sphere and persons and organisations receiving state support.

### 3.4. Effective system of legal consequences

Genuinely effective action against discrimination can be promoted by using instruments which take into account the complexity of negative discrimination as a social/sociological phenomenon. Discrimination in Hungary today is not a unique, deviant type of behaviour. Instead in many cases such conduct is accepted and enjoys wide social support. Those who practise discrimination often encounter the agreement and support of society, whereas sanctions under the current legislation generally react to discriminative forms of behaviour as deviancies.

Currently only civil law regulations serve the reparation of the person who has suffered an injury, however this is a lengthy (the court proceedings last on average one to two years) and expensive process which requires a lot of patience and high ability to enforce one's rights.

According to Article 15 of Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 'the sanctions, which may comprise the payment of compensation to the victim, must be *effective, proportionate and dissuasive*.' A starting point in interpreting these terms is the case law of the European Court. Although this is connected to cases of sexual discrimination, according to international experts the rules which were framed earlier also apply to racial discrimination cases.

The European Court defined two fundamental criteria in respect of sanctions: the principles of effectiveness and equivalence. Only those sanctions qualify as effective which restore equality if it has been violated, i.e. offer the injured party appropriate reparation. In the view of the European Court effective sanctions are reparative – i.e. their primary function is not

punishing the offender, but redressing the rights of the injured party. According to this, in employment-related discrimination cases, for example, compensation or (in the case of dismissal) re-employment are suitable means of restoring equality. The aim of the compensation is to bring the injured party into the situation they would be in if the discrimination had not occurred. According to the practice of the European Court, effective sanctions both offer appropriate reparation to the injured party and have a dissuasive effect on the offender.

The principle of equivalence or freedom from discrimination means that sanctions for a violation based on community law must be in proportion with sanctions for the violation based merely on domestic law (i.e. a different sanction cannot be imposed regarding the violation based on community law and violations based on domestic law.)

There are numerous international documents which address the principle of reparation. In this respect ECRI's recommendation No.7 on national legislation to combat racism and racial discrimination, and the accompanying explanation contain particularly precise guidance.

The document emphasises the importance of sanctions which enforce the rights of the injured party, in particular non-financial forms of reparation, or specific sanctions for the given circumstances. In addition it expressly recommends preventive sanctions: imposing an obligation on the discriminator connected to positive measures. For instance, the discriminator could be obliged to organise for its staff specific training programmes aimed at countering discrimination in cooperation with the institution responsible for ensuring equal treatment. This type of obligation in the long-term may result in changes to the discriminative attitudes of those violating the law, and can have a longer-term social impact.

The ideal system of sanctions, therefore, would be progressive: reparative sanctions or pro-active sanctions involving trainings would only be followed by repressive sanctions if the offender repeatedly violates the law (issuing a fine, making public the resolution, closing their premises, etc.).

In view of the unique nature of discrimination, the traditional legal status of the ombudsman as an independent constitutional organ, and experiences gained in tackling discrimination, by further developing the instruments at our disposal we regard the solution given below as suitable for legal consequences which can be applied by the minorities' commissioner.



In the course of our work – based on the flexibility which the ombudsman is granted as to which procedures he uses – we have used a solution-based approach aimed at settling disagreements peacefully through talks. The key issue is that the full circumstances of the case need to be taken into account, including the fact that in certain cases the discriminator and the person discriminated against will remain in contact with each other (for example teacher-pupil, doctor-patient, notary-local resident etc.), so if according to strict legal considerations we simply ‘administer justice’, we will not necessarily make the life of the complainant easier in the future.

In our view reparative, solution-based legal consequences are primarily suitable. This means that with the facilitation of the ombudsman’s staff, the parties endeavour together to find a suitable solution which suits both parties. (Reaching such an agreement can also be a useful solution in cases – not without precedent in the practice of the ombudsman – where we cannot establish or prove that equal treatment has been violated, but the conflict between the parties needs to be resolved.) We would put this agreement in writing, and it should be regarded as on a par with legally binding, executable public administration resolutions.

If it is not possible to reach agreement in this way, we would address a recommendation to the offender, drawing their attention to the fact that if they do not comply we have the right to initiate the procedure of the Equal Treatment Authority by sending the files establishing negative discrimination, and that the client can turn to the court to defend their rights.

The Equal Treatment Act should govern in a special chapter on the minorities’ ombudsman the scope of authority of the minorities’ ombudsman in cases concerning the violation of equal treatment based on racial, ethnic and related properties.

### 3.5.

#### Extending scope of authority to cover potential subjects of racial discrimination

According to the preamble of Directive 2000/43/EC ‘any direct or indirect discrimination based on racial or ethnic origin as regards the areas covered by this Directive should be prohibited throughout the Community. This prohibition on discrimination should also apply to nationals of third



countries, but does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation.’

The directive therefore applies uniform rules to taking action against racial discrimination affecting the different groups, but the Hungarian procedural scopes of authority are not uniform. The Minorities Act, in terms of the rights of minorities, distinguishes between different groups of persons not of Hungarian nationality or citizenship: the subjects of minority rights in the traditional sense are exclusively the thirteen ‘historic’ minority communities. Racist and discriminative conduct is not based on the legal status or national and ethnic identity of the victim, but on external features, and possibly their language, language use, etc. Accordingly the scope of the Equal Treatment Act extends to all potential subjects of racial discrimination in a loose sense. It is therefore necessary to extend our scope of authority to all groups of persons discriminated against according to racial origin but based on their different properties in order to protect the right to equal treatment. It is likewise important that we be able to proceed in all cases of multiple discrimination when one of the factors of discrimination is racial origin.

#### 4.

### Extending scope of authority by making regulations on scope of authority more precise

The relationship of the commissioner’s procedures to those of the judiciary has always been among the ‘neuralgic’ questions of our work which legally has not been satisfactorily regulated. In practice the solution developed that if we became aware that a court procedure was in process concerning the case, we terminated our investigation, regardless of what phase the given court procedure was in. According to the amendment to the Ombudsman Act effective from December 2007 ‘the parliamentary commissioner may not proceed in a case in which a court procedure has been launched to review the resolution, or in which a binding court ruling has been conceived.’



The phrasing of the law, however, is not clear-cut, since it remains questionable when the court procedure begins whose independence has to be guarded.

We therefore regard it as necessary for the courts *ex officio* to inform ombudsman if he is already proceeding in a case that their substantial procedure guarded by the law is in progress. The ombudsman could proceed until receiving such notification. With this aim we recommend an appropriate amendment to the Act on Civil Procedure and Criminal Procedure by extending the rules concerning the content elements of indictments and preparation for court hearings.

Relations in terms of scope of authority between the judiciary and the ombudsman should be clearly regulated in the interests of legal certainty, rather than being settled through legal interpretation.

## 5.

### The conditions of modern administration: proximity to clients, electronic case management and relations with society

#### 5.1.

##### More effective minority protection and proximity to clients

Since the beginning of the minority commissioner' work, a strong inequality has been observable in the regional distribution of cases, revealing (based on the addresses of the complaints) both strong city-centricity and Budapest-centricity, with more than half of the complaints coming from Budapest.

This implies the high likelihood that there is a large sphere of (potential) complainants for whom our office is not accessible, firstly due to the difficulties and high cost of travelling and secondly lack of awareness of our office (including our competency, our procedural rules and our contact information).

The principle of proximity to clients is generally accepted and is present in the various public administration authority procedures. The need, therefore, has rightly arisen for us to ensure that as many potential clients as pos-

sible be able to exercise the right of turning to the minorities' commissioner in the proximity of their place of residence (or workplace). We are speaking of a (potential) sphere of clients who possess extremely little or incorrect information concerning the possibilities of enforcing their rights, and who moreover due to anxiety caused by their social situation, health situation or 'otherness' or simply due to their financial situation are hindered in settling their grievances through a legal defence body which can only be reached in Budapest. It frequently also causes them difficulty to put their complaints, objections and grievances in writing.

It is necessary, therefore, to set up permanent places where complaints can be made in other regions of the country.

Having local offices close to clients does not only encourage potential complainants. It also sends the message to the 'offender' that violations of the law will not remain without consequences.

For this task we chose the Network of the House of Opportunities (Network) which is under the control of the Ministry of Social Affairs and Labour, since this programme was organised to offer help to disadvantaged target groups who for some reason are not capable of taking up the career opportunities generally accepted in society without external assistance.

It can, therefore, justifiably be assumed that due to the physical proximity and greater familiarity with the Network – whose profile is extremely many-sided – many more people than at present will feel the courage to raise their complaints and grievances on the spot, thereby providing a greater chance of remedying these. We therefore signed a cooperation agreement with the Ministry of Social Affairs and Labour, in the framework of which the staff of the Network will participate in further training organised by our office, following which they will cooperate in the work of receiving complaints.

## 5.2.

### Modernising the handling of complaints: electronic administration and case management

2007 also brought changes in terms of how we keep in contact with our clients. We updated our homepage in order to make it easier for our clients with Internet access to obtain information and to send their complaints to us electronically.



On our homepage we inform our clients about the cases in which they may turn to our office. All our contact details are available on the homepage: our postal address, telephone number, fax number and the contact details of the Complaints Office of the Office of the Parliamentary Commissioners.

In the course of a procedure initiated electronically it is naturally possible for the administration of the case to switch to 'traditional' correspondence. In their electronic submission the client can request to receive the reply by post in printed form, rather than electronically.

In the future in order to offer a better service to our clients we are planning the introduction of new IT solutions. We are continuing the development of our webpage with the aim of keeping clients as widely informed as possible. Bearing in mind the fundamental principle of the modernisation of public administration, our aim is to create an electronic interface which will make it possible to receive and exchange information quickly and easily.

### 5.3.

#### The relationship between the Constitutional Court and our office

The parliamentary commissioner institution and the Constitutional Court are both organisations created to protect constitutional rights.

A significant difference, however, is that whilst the Constitutional Court unpacks and makes applicable (visible) its precepts concerning fundamental rights through abstract legal interpretation, our office in connection with concrete, individual cases examines whether there has been an impropriety relating to constitutional rights, and interprets the provisions of the Constitution in this framework. Naturally in the course of our procedures we are also bound by the operative terms of Constitutional Court resolutions. In addition, however, we also take into account the terms of those justifications which can provide orientation in questions of application of the law investigated by us. For example, in order to disclose negative discrimination for several years we have used the necessity-proportionality test drawn up by the Constitutional Court for assessing the constitutionality of restrictions on fundamental rights.

In the past years we only requested in a few cases that the Constitutional

Court annul provisions giving rise to an impropriety. Typically in order that a statutory instrument be amended or repealed we contacted the legislator or the minister in charge of drafting the law directly. On several occasions, however, using our standpoint and legal interpretation public administration offices, civil organisations or private persons requested that the Constitutional Court carry out a norm control.

In the future we would like to strengthen the working relationship between the two legal defence institutions.

It is a well-known fact that the persons drawing up local government decrees frequently use the statutory instruments adopted by other representative bodies as a 'model'. In the event that the Constitutional Court annuls a provision that another local government has already built into its own statutory instrument, it would be reasonable to expect the representative body to end the existing unconstitutionality through an amendment to the decree. In our experience, however, in many cases this does not occur. The local governments 'sit and wait' and continue to apply the statutory instrument which is in breach of the Constitution.

We therefore recommend an amendment to the Act on the Constitutional Court, which would make it possible for the chairperson of the Constitutional Court – at the request of the initiator – to preclude the application of a provision which is identical to or in content corresponds to a provision earlier declared unconstitutional as a temporary measure until the panel reaches a decision.

Giving the chairperson of the Constitutional Court such a scope of authority would not mean curtailing the powers of the panel. At the same time, it would be in the line with the fact that currently the chairperson has the right to act independently, since according to the law 'the chairperson of the Constitutional Court forwards petitions submitted by unauthorized entities to an organ having the authority to make the petition while he rejects manifestly ungrounded petitions'.

This solution would promote quicker action against legal provisions which are clearly unconstitutional. A further beneficial effect would be that it would encourage legislators to observe the requirement of constitutionality.

The chairperson of the Constitutional Court judged our proposals worthy of consideration.

#### 5.4.

### The new 'quality' relationship to be developed with leaders of the public administration offices

At the start of December 2007 our office invited the leaders of the public administration offices and their agencies to a 'mini conference'. Essentially this was a special work meeting with the primary aim of establishing relations, and which gave us the chance to propose to the public administration offices that in future we discuss our standpoints on questions of legal interpretation, and endeavour to reach a common conclusion.

The reason for this initiative was that a significant proportion of our cases are connected to the operation of local governments and minority self-governments. More than once a complaint has been made because dialogue between the municipal government and a minority self-government has stalled, disagreements have intensified and the two public law bodies which theoretically are on the same level have interpreted differently the legal provisions which are relevant to their cooperation.

It is widely known that the public administration offices play a very important role in auditing the legality of the local governments and minority self-governments. The notary of the settlement (or chief notary in a county) for the purposes of legality auditing is obliged to present all records to the leader of the public administration office, who can make a legality observation on the resolutions and local statutory instruments (decrees) contained in the records. Not infrequently complainants who consider that their rights have been violated themselves initiate the issue of the legality observation and simultaneously request that the Parliamentary Commissioner for the Rights of National and Ethnic Minorities take action.

There cannot be a dispute on powers between two bodies with different scopes of authority; however it is expressly unfortunate if the parliamentary commissioner and the leader of the public administration office come to conflicting conclusions when examining a case. This is particularly worrying if unclear legal concepts have given rise to the differing legal standpoints.

In our view the aim of the parliamentary commissioner and the leader of the public administration office is the same, since the task of both is to

ensure compliance with constitutional order and legality although using different instruments.

Uncertain legal concepts and ambiguous provisions in laws and other statutory instruments create legal uncertainty from the outset, which in general we have to regard as inappropriate.

The instruments of the public administration offices include the entitlement or obligation to bring a suit in all cases of failure to comply with the legality observation within the given deadline. The public administration trial or constitutional court proceeding which necessarily follows in such cases can be decisive and such rulings naturally have an effect on the prestige of the public administration office.

The meeting initiated by the parliamentary commissioner, therefore, was aimed at offering a new type of partnership with mutual advantages to enable both the public administration offices and the ombudsman to perform their duties defined by law more effectively.

The minister of local government and regional development who was present at the meeting welcomed this form of cooperation and the leaders of the public administration offices (and sub-offices) were also in agreement.

The first meeting with the leaders of the public administration offices, therefore, was very promising, and we regard it as one of the key tasks for 2008 to develop and give content to a detailed framework for this cooperation.

## 5.5.

### New chapter in relations with the civil sphere

The success and publicity of the work of the minorities' commissioner can be greatly increased through cooperation with various civil organisations which work in the areas of legal protection, equal treatment, and protecting minority rights and interests. Under the Ombudsman Act the procedure of the commissioner is flexible and is not tied to complaint and method of proof or instruments. It is this flexibility which is making this legal institution more and more popular worldwide, since it is possible to take action depending on the nature of the given complaint or the individual circumstances of the complainant. As a result civil organisations can play

several roles: they can submit a complaint, assist or in some cases act on behalf of a specific complainant, initiate an investigation on behalf of several potential complainants, act as an information source or as a partner by providing significant data for a procedure to be launched ex officio, and give publicity to the result, conclusions and recommendations of an investigation before the wider civil and professional public and in the media. Civil organisations, therefore, can greatly contribute to the tasks performed by the minorities' commissioner in terms of minorities' public opinion and protecting the rights and interests of minorities.


The role played by different kinds of civil organisations in our flexible procedures, providing publicity and at times criticising or helping to develop strategy, requires that the person holding the position of minorities' commissioner have a clear notion concerning partnership with the civil organisations.

During the period covered by the report – in view of the change of ombudsman – civil organisations were only involved in specific complaint procedures when the occasion arose. In several procedures the minorities' commissioner relied on the publications of the Legal Defence Bureau for National and Ethnic Minorities (NEKI), Amnesty International and the Hungarian Helsinki Committee which disclose cases of negative discrimination and the circumstances in which they occur.

In the past year, however, we have made steps towards developing a strategic partnership and we wish to strengthen this in the following main directions:

- a) Cooperation with civil organisations in trainings for the various target groups.
- b) An exchange of views with the civil organisations is particularly necessary when planning comprehensive investigations and prior to strategic cases.
- c) In the field of judicial legal development there is the possibility for broad cooperation: in the role of *amicus curiae* the minorities' commissioner can join forces with rights advocates preparing a professional legal opinion.
- d) The situation concerning minority special rights, in particular cultural and educational rights, the use of native language and the right to one's own culture differs from settlement to settlement. It is therefore





indispensable for there to be regular exchange of information with organisations based mainly in the countryside which deal with protecting the interests of minorities, minority culture and education. This can be facilitated through personal meetings, contact through the minorities' commissioner's interactive homepage and other forms of cooperation.

It is a cause for concern that in the Hungarian media the minorities are at best spoken of schematically, and generally in a pejorative sense. Civil organisations, including journalist associations, can contribute to the development of a more realistic and more subtle picture of the minorities and their organisations in the media, the necessity of legal protection and the condemnation of prejudice and extreme viewpoints.

# An 'old but new' task: representation of the minorities

## 1.

### Formation of the 2<sup>nd</sup> Minorities' Round Table

On 30 January 1991 nine minority organisations established the Round Table for the Hungarian National and Ethnic Minorities. The Round Table wanted none less than to be recognised by the government as a partner in the drafting process of the Minorities Act.

Following the adoption of the Minorities Act, the Round Table ceased. The minorities currently do not have a serious rights enforcement role even on questions directly affecting them. Over 15 years the minorities have not been able to enforce their right guaranteed by law to parliamentary representation. Nor has it proved possible for minorities to take on a substantial cooperative role in drawing up the laws which determine their fundamental rights.

This prompted us to strengthen the interests-enforcement ability of the minorities and – recognising the results of the 1<sup>st</sup> Round Table – to initiate the establishment of the 2<sup>nd</sup> Minorities' Round Table particularly in the interests of promoting the achievement of parliamentary representation. We wished to create a consultative forum, which would enable the minority communities to join forces and provide a framework for drawing up common aims and coordinating the measures needed for their realisation.

The national-level minority self-governments reacted to our initiative favourably. All 13 presidents signed the declaration of intent on establishment of the 2<sup>nd</sup> Minorities' Round Table.

We requested that the leaders of the minority self-governments and experts discuss and give their opinions on the following topics: parliamentary representation and amendment of the Minorities Act, and related ques-

tions of legal entity, the minority electoral register, the minority self-government elections, candidature and the question of preferential mandates. In addition we debated current questions of the management and financing of minority self-governments and dealt with the issue of the minority media (primarily native language radio and television programmes).

One of the declared aims of establishing the Round Table was for the minority communities to take a joint stand to solve the question of parliamentary representation. We endeavoured to promote this by drawing up our conceptual proposals and consulting with the presidents of the national-level minority self-governments on them at several sessions. As a result of this a concept was drawn up which can be professionally defended and has the support of the minority communities.

Creating consensus is also important because currently this is the only mature concept that is suited to being discussed by the government.

## 2.

### Possible solutions to the parliamentary representation of the national and ethnic minorities

We regard those legal regulations acceptable in terms of constitutionality and minority rights which satisfy the conditions below:

- a) taking into account the constitutional framework, all 13 minority communities should be offered a realistic chance of gaining a mandate as parliamentary representative;
- b) the minority parliamentary representatives should be elected by minority citizens using the advantages defined by law;
- c) the minority parliamentary representatives should have the same rights as parliamentary representatives elected according to the general rules, with the exception that they may only join the parliamentary faction formed by the minority nominating organisations (parties).

In order to enforce these requirements, we regard it as necessary to amend the provisions of the Constitution. The Constitution needs to state that: *'In order to enforce the right of minorities to representation, the laws of the Republic of Hungary grant advantages in the course of electing parliamentary and*

*local government representatives. The minority parliamentary representatives are elected by minority electors.'*

If the members of the majority society were also able to participate in the election of minority representatives, owing to their numbers, they could decisively influence the result of the election.

In order to register minority electoral citizens, a minority electoral register needs to be created. It makes sense to link this in some way to the register prepared for the minority self-government elections.

Minority voters are included in the register at their request. The compilation of the register needs to be referred to the competence of the committee elected by the minority community. The committee needs to be authorised to judge whether the applicant is a member of the given community or not. Inclusion in the register can be refused according to a procedure defined by law if the statement of the individual is not based on their real identity, but is made with the intention of abusing the election system.

In order for the decisions made by the committees to be as thorough as possible, the objective criteria of belonging to the minority community need to be defined, and these must be applied during the process for inclusion in the register.

The list of names included in the minority electoral register needs to be made public.

For a minority organisation (party) to put forward a list, the signed recommendation of 10% of the electors included in the electoral register, but at least 500 electors, should be required.

The territory of the Hungarian Republic should form one constituency per minority.

Electoral citizens featuring in the minority electoral register would be able to vote, in addition to the individual candidate, for either the minority list or the regional party list.

It would be possible to gain a mandate from the national list with the same number of votes from the minority list as from the list of non-minority parties, with the difference that passing the 5% election threshold would not be a condition.

As a supplementary rule we therefore propose: if there is no possibility of gaining a mandate by the means above, that per minority the organisation achieving the most votes, but at least 1,000 votes, be entitled to a preferential mandate.

# Minority self-government system

## 1.

### Topical problems of the minority self-government system

With the amendment to minority legislation in 2005 the legislator's aim was to ensure the enforcement of constitutional rights during the election of minority self-government representatives. The legislator declared that the operation of the minority self-government would be regulated with clear legal provisions.

The adopted law, however, in our experience does not fully meet this aim.

The new legal provisions do not offer sufficient protection against election abuses. Fundamental safeguards are lacking to ensure that minority self-governments are really created by the communities which are intended to be represented.

The complaints we received also show that despite the legal amendment numerous legislative failings can hinder the functioning of the minority self-governments.

## 2.

### The 2007 regional and general minority self-government elections

In spring 2007 we carried out an ex officio investigation to review whether the new legal provisions are suitable for the election of regional and national-level minority self-governments within a constitutional framework, and whether they make it possible to take action against abuses.

The Constitution authorises national and ethnic minorities to create local and national-level minority self-governments.

In the municipal minority self-government elections 122,845 persons voted. At the national-level minority self-government elections just 10,093 electors had the right to vote, among whom 9,909 did so.

The indirect electoral system ‘distorts’ the results, since it is not necessarily the organisation with the greatest electoral legitimacy that gains the most mandates. Under the indirect electoral system it is not guaranteed that voting citizens of the individual settlements can participate in electing the national-level self-government representing them with a proportion of votes that corresponds to their numerical proportion within the whole minority electoral community. We propose a switch to direct elections.

At the municipal minority self-government elections 233 nominating organisations were registered, of which 213 formed an independent or joint list. At the national-level minority self-government elections, however, just 39 nominating organisations gained the right to form a list.

We recommend that the legislator grant the possibility to form a list in the regional and national-level minority self-government elections to as wide a sphere of nominating organisations as possible – naturally within sensible limits.

In addition to the Budapest minority self-governments which already existed, now for the first time regional-level representative bodies were elected. The number of regional self-governments formed was 57. In every county at least one regional minority self-government was formed. Nevertheless, some 20% of the total regional minority self-governments were elected in Budapest.

As a result of the 2007 general elections every minority was able to form national-level self-government.

Our investigation clearly established that the new regulations do not provide an appropriate legal framework for the creation of minority self-governments. The possibility remains that persons not affiliated to the given minorities can influence the election results.

The regulations also need to be reviewed for the reason that the election process is unjustifiably lengthy and expensive.

The election process got underway in May 2006 with the sending of election notifications and ended in March 2007 when the representatives



received their mandates. That means that the minority communities were preoccupied with preparing for the elections for almost a year.

The creation of minority self-governments is a fundamental constitutional right, whose cost is borne by the state. It is reasonable, however, to expect the legislator to find a solution which allows the elections to be held undisturbed whilst keeping expenditure within reasonable limits. The current legislation does not satisfy this requirement because considerable excess costs arise due to the fact that the municipal, regional and national-level minority self-government elections do not take place at the same time.

We recommend that in the course of legislation legal guarantees be drawn up which ensure that:

- a) The minority communities can directly elect the members of the regional and national-level minority self-governments at the same time as the municipal minority self-government representatives;
- b) It be possible to announce regional minority self-government elections in those counties where it is justified by the number of municipal minority self-governments formed;
- c) Organisations with real community support be able to form a list at the elections;
- d) Clear legal provisions should govern the exclusion of the possibility of multiple candidatures.

### 3. Review of new rules on the operation of the minority self-governments

The enforcement of numerous provisions of the Minorities Act amended in 2005 throws up practical problems.

During the period covered by this report our office received the greatest number of requests for our position statement in connection with the mediator institution.

The rights of the mediator are exercised by the president of the minority self-government.

In numerous settlements a problem is caused by lack of clarity as to which

are the points on the agenda when the minority president as mediator may participate in the closed session of the representative body or committee of the local government.

We regard it as a fundamental requirement of legality that the bodies of the local government interpret the concept of 'issue affecting the minority' – in line with the intention of the legislator – as broadly as possible, i.e. that the mediator not be unreasonably excluded from closed sessions.

The Minorities Act – as a result of the legal amendment not being sufficiently well-considered – does not regulate clearly the instances when the president of a minority self-government has to resign.

The Minorities Act does not regulate the refunding of expenses of minority representatives. Expenses can arise in the course of performing tasks connected with minority self-government membership. In our view minority representatives can rightly ask to be reimbursed for their travel expenses to the sessions of their own body against the annual budget of the minority self-government.

Several national-level minority self-governments raised the grievance that the new legal provisions encroach upon the language rights of the community they represent.

The notary has to be invited to the session of the municipal minority self-government, regardless of whether or not they speak the given minority language. The minority communities object to this provision because they fear that it will strengthen linguistic assimilation.

#### 4.

### Minority self-governments and local 'high politics'

In general it can be said of the Roma organisations and minority self-governments that in the past ten years they have become politicised: they reflect the leftwing/rightwing division within national politics. This is widely known because some of the Roma organisations even indicate their political affiliations in their name.

Fewer people are aware that the possibilities of the minority self-governments to enforce their rights and interests generally speaking unfortunate-





ly are a function of national and mainly local politics. The local government candidates need the minority self-government candidates, or to be more precise the minority community as a voting basis and the minority self-governments can only carry out real activity in the interest of cultural autonomy with the budgetary support of the local governments. Local governments under leftwing leadership, however, primarily support leftwing minority self-governments. Rightwing local governments likewise primarily support rightwing minority self-governments.

There is no need for us to analyse the damaging effect of party politics on the enforcement of minority rights, and we shall give here just one typical example.

*From one small settlement – where Slovakian minority and Hungarian residents had lived side by side peacefully and in agreement for years – we received three requests for our position statement. In fact, on numerous occasions we conducted informal talks with the parties on other questions too by telephone and on site on one occasion.*

Since the latest elections the new leadership of the village, although on several occasions it had said how important it regarded the preservation and continuation of the national minority culture as, in practice repeatedly brought resolutions which the Slovakian self-government perceived as being anti-Slovakian.

The first victim of the disagreements was the bilingual local newspaper which the municipal and the Slovakian self-government had published jointly for thirteen years. Due to the conflict between the two bodies – the municipal government was no longer happy for pages in Slovakian to appear in the local government paper.

*The other area of discord was the national minority school. The Slovakian minority self-government would have liked knowledge of the national minority language to be one of the conditions for the post of director of the Slovakian national minority school, but it was not able to achieve this. The minority self-government only managed to have it included as an advantage in the job description after considerable struggles, using to a considerable extent the position statement of the ombudsman. The complicated nature of the local relations is indicated by the fact that a German minority self-government was also formed in the settlement in 2006 –*

*partly traceable back to the old but new failings of the minority election system – which wanted to exercise rights to agreement in connection with the appointment of the director of the Slovakian national minority school.*

In our position statement we explained that the minority self-governments had the right to agreement in establishing the application conditions which the municipal government as maintainer of the institution announced for the post of director of the minority school.

In order, therefore, that the right to agreement not become devoid of content it is legally justified for agreement not simply to be restricted to the act of the appointment but for the minority self-government also to be included in the preparatory phase within reasonable bounds.

It is important that the maintainer of the institution can only decide to use the possibility of according an advantage if candidates are otherwise equal, if it publishes the criteria on which this is based in the job announcement, and, when assessing the applications does not violate a fundamental right by applying these criteria, does not give an unconditional advantage and does not exclude the consideration of individual criteria.

## 5. Complaints concerning the decision-making mechanism of the Public Foundation for National and Ethnic Minorities in Hungary

The Government as part of state support for minority public affairs created the Public Foundation for National and Ethnic Minorities in Hungary (MNEKK).

The board of trustees of the public foundation consists of 21 members, who are partly from the government parties, partly from the opposition parties, delegates from the government and the national-level minority self-governments, and an individual delegated by the president of the Hungarian Academy of Sciences.

Suspicions have been raised that the MNEKK's application system benefits the political interests of a certain political group. Many people suppose

that support for the minorities has become politically biased and that decisions are made on a subjective basis.

It does in fact give food for thought that the safeguard rules of the Act on the General Rules of Public Administration Authority Procedures and Services do not apply to the procedures and decision-making mechanisms of the public foundation. The legal status of the public foundation is that of (civil) legal person, whose operation is governed by its Deed of Foundation, Organisational and Operational Statutes and the Civil Code. If we add to the above the two well-known facts that – regrettably – minority groups to a considerable extent have gained party political colours and pluralized: we have to see that it is necessary to take decisive steps in order to end the suspicions and preliminary reservations of applicants, even if these reservations are completely unfounded.

We wish to draw attention to two problems:

1. In the application-assessment system of the public foundation the aspect of independent professionalism is not sufficiently pronounced.
2. The board of trustees does not justify its decisions to reject applications and this is rightly open to criticism.

## 6.

### **Self-governments in a disadvantaged situation through no fault of their own and notarial districts, notarial districts and minority autonomy**

Municipal governments in a disadvantaged situation through no fault of their own can claim supplementary support in order to be able to continue functioning. However in settlements with a population of below 1,000 residents this extra central support can only be claimed if they belong to a notarial district. The state not only supports the creation of notarial districts with a considerable normative contribution (HUF 532,000 – HUF 870,000/notarial district/month), but also with this aim applies the instrument of budgetary pressure to small settlements: if they are in a disadvantaged situation through no fault of their own these can only

maintain their ability to function by creating a notarial district or joining a notarial district.

The question becomes a minority problem if settlements inhabited by national and ethnic minorities are forced for budgetary reasons to create a notarial district. The current regulations only have regard to the number of residents and the geographical location of the settlements concerned (to be more precise, villages with fewer than a thousand residents which are adjoining within the county) and minority rights criteria do not arise.

*Two related complaints drew our attention to the problem. They requested our help for the local government of a Romanian settlement to be exempted from the obligation to join a notarial district, and for non-adjoining settlements within the county offering Romanian nationality teaching to be able to create a notarial district.*

The North Alföld Regional Public Administration Office had also dealt with the case and had denied exemption to the obligation of joining the notarial district.

We established that based on the current regulations the decision made by the public administration office was lawful: in the absence of legal conditions it could not have granted the request. The budgetary law does not grant the public administration office the possibility of consideration when reaching its decision: exemption has to be given if the conditions set down in law exist, and in every other case approval has to be denied. (In the given case there was no geographical obstacle to the two neighbouring settlements creating a notarial district. The village could have created a notarial district with two neighbouring settlements, and there was no neighbouring notarial district which could have rejected the request to join.)

The conclusion of the public administration office was also correct that formally the administrative and school maintainer (offering minority education) partnerships are not connected, so there is no obstacle to the two forms of partnership operating with different partners.

The membership of the notarial district and the notarial district ('notarial district office'), however, can have an effect on the emergence of minority rights.

For minority settlements belonging to the notarial district the enforcement of minority rights is clearly a more important local public issue that

for the settlements without a minority population. It can be supposed that on this basis they will judge and value differently the notarial district and the work of the district-notary, given that the notarial district among its tasks of preparing local government decisions, as well as executive and independent tasks is involved in the enforcement of minority rights.

## 7.

### Current questions of state support and management of minorities

The method, level and legislative background to the financing of minority self-governments has experienced a radical change in just half a year. According to the rule applied from 1 January, 1996 the budget of the local minority self-governments forms the local level of the state budget.

At its September session the 2<sup>nd</sup> Minorities' Round Table declared that the national-level minority self-governments do not wish to feature as central budgetary bodies and operate on the central level of the state budget. In the unanimous view of the minority leaders this is incompatible with self-governmental independence.

In connection with maintaining an office the minority leaders also said that their financing is at the same level as several years back.

We proposed the Minister of Finance to review the budgetary support of the national-minority self-governments and assess those costs which can arise during the establishment of an office structure appropriate to budgetary management, and following consultations to draft the necessary amendment motion for the draft budget law.

The Minorities Act also grants the national-level self-governments the right to give an opinion on the draft of the budget act. This right was not enforced in the course of planning the 2008 budget.

The past quarter demonstrates failings in cooperation on the part of the ministry responsible for consultation, so our aim looking to the future is to form a closer and more cooperative relationship when it comes to drafting legislation which concerns the situation and rights of the national and ethnic minorities.

## Education cases

### 1.

#### The concept of the phasing-in system

Even in December 2006 we drew the attention of the Ministry of Education and Culture (OKM) to the fact that a ministerial decree (hereinafter: directive) restricts the definition of phasing-in system interpreted in the Public Education Act, and is therefore in breach of the legislative hierarchy. We indicated that the statutory instrument unjustifiably restricts the right of parents and pupils of minority origin to choice of minority education as well.

We made several legislative proposals. Among other things we initiated that the Minister of Education amend the directive to the effect that the introduction of minority teaching in a phasing-in system be made possible in the lowest school year concerned, and that syllabus requirements and communicative linguistic abilities be determined in relation to the introduction of the minority teaching.

The Minister informed us that – taking into account the right to agreement of the minority communities – the directive would be amended following the amendment of the national basic curriculum, and then our proposal for regulating the phasing-in system would again arise.

Since the amendment to the national curriculum did not take place in 2007, the amendment of the directive also did not arise.

## 2.

### Certain questions concerning higher education studies pursued in the native countries of the minorities

Although following the transformation of the higher education system in summer 1990 every Hungarian citizen has the possibility to pursue their higher education studies abroad, this is of particular importance for students belonging to national minorities. In view of this, the state supports the higher education studies of students of minority origin in their native countries.

Despite the existing supporting regulations and positive measures, in the course of our investigations and when giving our opinion on draft legislation sent to our office for our opinion, from year to year we encounter provisions which hinder the exercise of minority rights.

*In autumn 2007 the deputy president of one Romanian minority self-government requested the help of our office. The complainant objected that from 1 April 2007 the legal basis of the healthcare system has changed, which disadvantages students of minority origin studying in higher education institutions in their native countries. In his view the amendment to the legislation violates the right of the minorities to preserve their identity.*

When we examined the legislative environment we established the following:

According to the Act on Eligibility for Social Security Services and Private Pensions: 'Hungarian citizens studying at a secondary level or higher education institution full-time' are entitled to healthcare, but foreign colleges and universities in the native countries of the minorities are not included under the definition of higher education institution. It follows from this that students at foreign higher education institutions who have Hungarian citizenship and a permanent residence in Hungary are automatically not entitled to healthcare in Hungary. (Naturally by paying the healthcare contribution they can become entitled to care.)

In order to ensure that the rights of minorities are enforced, we requested that the Minister of Health Care prepare an amendment to the Act on

Eligibility for Social Security Services and Private Pensions, granting that Hungarian citizens with a permanent residence in Hungary belonging to one of the minorities and pursuing higher education studies in their native country also be entitled to free healthcare.

The investigation of the parliamentary commissioner is continuing because we did not accept the negative response of the minister responsible.

### 3.

## School segregation: causes and consequences

The school integration of disadvantaged pupils is impossible in a social environment which sees poor and/or Gypsy children as blocking the development of the children of families of higher social status. In the absence of strong social solidarity, the school system of any society can only mirror and reproduce social inequalities. There has been much research showing that this is the case in the Hungarian education system. Its ability to level out opportunities is extremely low because the economic-social environment in which it operates exerts a strong pressure on it towards segregation. As numerous respected researchers have shown, segregation particularly afflicts the Roma minority, and a significant proportion of Gypsy pupils are segregated using open and covert selection methods.

Characteristically the significant proportion of the Hungarian Roma population live in depressed areas where for almost 20 years now there have been no work opportunities, and the residents, in particular those belonging to the Roma minority, are unskilled. If we add to geographical segregation the fact that according to some research studies in a quarter of schools the proportion of pupils from outside the catchment area – based on parents' free choice of school – exceeds 30%, and more than half of pupils come from outside the catchment area in one in eight schools, then it becomes clear why the relationship between the inequalities in the performance of schools and pupils and the social status of parents is so strong. The pedagogical autonomy of schools and the possibility of more or less of selecting between pupils, as well as the autonomy of the local governments



as school maintainer make this selection mechanism almost impossible to monitor, tackle and reverse.

Parents with the right to free choice of school, as those who ‘order’ teaching services and dictate the competition between schools, repeatedly succeed in persuading the school directors or the local governments as school maintainers that disadvantaged and/or Roma pupils should attend a separate school or at least a separate class.

In the longer term the impact of the above is immeasurably damaging because the inequalities which can be measured in school results and the proportion of pupils continuing their studies have a negative effect on the competitiveness and the economic growth of the whole society.

#### 4.

### Is it necessary to establish minority identity in court cases launched on the grounds of school segregation?

One of the key problems of ‘segregation lawsuits’ is that – due to the data protection rules – the only Hungarian minority which can be recognised fairly well through its racial markers, the Roma, are ‘invisible’ to the law. To be more precise, since in public interest court actions those affected by segregation do not participate as one of the parties, having them make a declaration on their minority identity is impossible and the court has to treat the establishment of segregation according to origin as an expert question. The starting point, therefore, is whether the recognisable external manifestation of presumed or real identity as an internal state of consciousness can be an expert question, based on which the intention of segregation can be demonstrated.

According to the interpretation of the European Commission, the protection offered by Directive 2000/43/EC extends to anybody who ‘suffers negative discrimination because the discriminator thinks or supposes that they belong to a certain race, religion etc. even if this is not the case.’

The Equal Treatment Act – in line with the above interpretation of the Commission, and with the sociological conclusion that in terms of discrimination the decisive question is not what origin the person discriminated

against declares themselves to be, but of what origin they are thought to be by others – gives a consistent solution to the above problem: banned discrimination can take place based on both presumed and real properties. In addition the Equal Treatment Act prohibits discrimination based not only on ethnic affiliation, but also on skin colour and other external features. The rules for burden of proof are also in line with this.

According to the Equal Treatment Act, the relevant question is not the actual ethnic affiliation of the persons who have suffered negative discrimination based on the constitutional right to assume identity, but whether the discriminator could have thought based on external signs or other characteristics that they belong to the given minority. The person asserting the claim – according to the letter of the law – only has to show that this is likely, rather than actually prove it. This means that establishing and proving minority identity is not a key question in segregation cases.

## 5.

### From our educational discrimination cases

In the annex to last year's report, we published in full our report on the teaching of Roma pupils in Csörög. In the course of our investigation we established that the representative body of the Sződ local government through the school placement of the children according to place of residence had directly discriminated against and segregated some of the children, and also practised indirect discrimination and segregation on an ethnic basis.

*In 2007 we faced a new problem: the right of 29 pupils from Csörög to basic-level education was put at risk.*

Sződ decided to close the 'small school' which earlier had taught some of the Csörög Roma pupils in a segregated manner, but the physical circumstances were not available for placing all of the Csörög children. Although a teaching partnership of indefinite duration was established between Csörög and Sződ, Sződ only undertook cooperation up to a certain number

of pupils determined by the physical capacity of the school. As a result of this the access to basic education of 29 pupils (pupils entering year four and year seven and ten pupils entering year one in the 2007/2008 academic year) became uncertain.

On our initiative it proved possible to find places for the pupils for the start of the 2007/2008 academic year with the cooperation of the Ministry of Education and Culture, the Education Office, the competent public administration office and civil organisations, however the general aspect of the problem has not yet been solved.

In this case we had to face the fact that some local governments are not happy to form partnerships with those settlements where a lot of Gypsy pupils study, or would study if there were a school, and as a result the right of these children to basic-level education is at risk. In the given case a municipal government without its own school network cannot perform its obligatory municipal government task of ensuring general school education because none of the neighbouring settlements are willing to form an education partnership with it.

The current regulations do not offer a solution to such situations. Free partnership is one of the fundamental rights of self-governance. According to the current regulations nobody may force the local governments into forming partnerships, however in some cases obligatory municipal government tasks can only be solved in the framework of such a partnership.

In order to remedy the constitutional violation arising from the legislative failing we turned to the Minister of Justice and Law Enforcement, and the Minister of Local Government and Regional Development with a legislative proposal. The professional working group which was established as a result of our initiative drew up two legislative proposals for the creation of a (forced) contract, according to which another local government or organisation provides the public education service in the place of the local government failing to do so.

*We received a complaint from parents living in a small settlement that the local Roma children from 1 September 2007 would attend a city school where the proportion of Roma children is already high. The complainants wanted the Gypsy children to be able to continue their studies in different schools rather than in one place.*

The main site of the city elementary school is located in the centre of the city. The pupils in the upper classes study there. German national minority language teaching takes place in the majority of the classes, but according to the information provided by the local government in every year there is also a class which follows the general curriculum.

The pupils in the lower classes study in a different building. This school is also located in the centre of the city and German national minority language teaching takes place. With the exception of years three and four, here too there is a class which follows the general curriculum in every year.

The other site is located on the edge of the city, and is attended by pupils from both the upper and lower forms. National minority teaching does not take place. To quote from the city local government's Equal Opportunities Programme: '... the small number of multiply disadvantaged children is mainly concentrated on the housing estate on the edge of the city. Here until the legislative amendment to the definition of disadvantaged and multiply disadvantaged situation, the proportion of disadvantaged pupils was found to be 70% ...'

In its letter the local government also described that the city's Roma population which at most represents 2-3% of the whole population mainly lives in the housing estate area of the city. The reason for this is that the labourers of Gypsy origin who work in the factories operating here live on the housing estate. According to the information provided by the local government, as a result of the reorganisation the proportion of Gypsy children at the school near the estate is around 30%, whilst the proportion of Gypsy pupils studying at the main site of the school is around 1%.

Based on our investigation we established the following irregularities:

- The Public Education Act prescribes the public nature of competence tests, but we could not get official results from the Ministry of Education and Culture.
- The definition of multiply disadvantaged situation infers that the parents have been contacted, informed and have given a voluntary declaration. However, in the current legislative environment it cannot be checked whether all the parents have been contacted and whether they have been given adequate information about the purpose of supplying the data and how the data will be handled.
- Since the local government could not refer to any positive legal autho-

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risation for the segregation, and also informed us that Gypsy minority education does not take place in the school near the estate, the difference in the proportion of pupils of Roma origin between the main site of the school and the school near the estate has to be regarded as unlawful segregation.

The local government is preparing to submit an application: they are planning changes which would solve the current 'school debate'. According to the application they would begin the expansion and modernisation of the main site of the school, and in parallel with this they would close down the school located near the estate. According to the plans, in the future every child from the city and the small settlement could study at the main site of the school, so if the application is successful the current ethnic-based unlawful segregation could be eliminated.

Since it is the obligation of the local government to take action against the unlawful situation as soon as possible, and because the elimination of segregation cannot depend on the success of an application, we addressed to the city representative body with the following recommendation:

- a) modify the catchment areas in such a way that segregation can not occur on an ethnic or racial basis,
- b) ensure that Roma children living in the small settlement can also study at the main site of the school, i.e. from the following year create general curriculum classes at the main site of the school with a mixture of children from the city and the small settlement and solve the transport issue by using a school bus,
- c) in the case of already existing class structures, the pupils from the small settlement currently attending the school near the estate should be given a preparatory course, with the help of which they can take an exam to assess if they have reached the appropriate level, and can join the classes at the main site of the school where national minority teaching takes place.

At the time of writing the report we had not yet received the reply of the municipal government to our recommendations.

# Maintaining institutions – closing down institutions

## 1.

### Closing down institutions – a new phenomenon

In the past years we have experienced that some municipal governments – due to their worsening budgetary situations – are finding it increasingly difficult to keep their institutions running, and in many cases try to reduce their expenses by merging or closing these.

Minority self-governments through their right to agreement theoretically can prevent such efforts, however due to their high level of dependency on the local governments frequently they cannot undertake to veto the decision of the maintainer. If, however they take on the local government concerning the planned closure of an institution, they can only enforce their right to agreement at the end of a lengthy and complicated procedure.

## 2.

### Legislative failings concerning minority cultural institutions

*In one Trans-Danubian town the representative body in 2005 – before the amendment to the minority legislation – decided to merge the public culture office and the library. The minority self-government did not agree with the decision.*

The two institutions, beyond general services, also performed tasks connected to the public culture of the local German community. In our view the



public culture office and the library qualified as German minority institutions, so the agreement of the minority self-government should have been sought before merging them.

The statutory instruments in force at the time did not lay down the definition of a minority cultural institution, which enabled the local government as maintainer to dispute the right of the minority self-government to agreement. The representative body took advantage of the legal loophole that the Minorities Act only grants the right to agreement on questions concerning the education of members of the minority, whereas there is no such provision in connection with public culture.

*During the period covered by this report we received another complaint from the president of the minority self-government. In connection with the recruitment of a director for the merged institution (which performs both public culture and library tasks) the right of the minority self-government to agreement was not taken into consideration.*

This time we conducted the investigation based on the new provisions of the Minorities Act.

We established that the basic activity of the institution includes those German nationality public culture and library tasks, which featured in the deeds of foundation of the public culture office and the city library that had been closed. The institution in its current organisational structure carries out multiple national minority activities.

Based on the above we came to the conclusion that this was a question of a German national minority institution, whose leader can only be appointed with the agreement of the minority self-government.

The representative body rejected our proposal to retract the resolution on the appointment of the director and to ensure the right of the minority self-government to agreement. We next turned to the public administration office, but despite our recommendation it did not make a legality observation.

According to section 6/A (2) f) of the Minorities Act a minority cultural institution is a cultural institution whose task primarily is the preservation and practice of the minority culture, traditions and community language use. According to the interpretation of the public administration office the

reference to 'primary' task expresses order of importance. In its view, the institution does not correspond to the legal definition because 'public culture tasks associated with the national minority feature among general public culture tasks, on the same level as them, without order of importance'.

We do not agree with this standpoint. In those settlements where there is only one public culture institution, this has to perform tasks affecting not only the members of the minority community, but also the whole of the population.

In the given case our initiatives and recommendations were without result. The minority self-government in a settlement with rich national minority traditions cannot enforce its right to agreement. The main reason for this is that the phrasing of the explanatory provision adopted in the course of the 2005 amendment is imprecise, so we recommend its further amendment. In our view a public culture institution should be regarded as a minority institution if it organises a minority programme regularly – at least on a monthly basis.

### 3.

## Cases concerning exercise of the right to agreement

The fundamental task of national minority teaching is the transmission of the national minority language, the cultivation of the minority culture, and as such is the most important minority public issue. The most important tool in achieving the cultural autonomy of national minorities – assuming they do not maintain their own institute – is the exercise of the right to agreement and giving an opinion. The proper exercise of the right to agreement presumes real cooperation and dialogue. In the case of appointing a director this means consulting on the application conditions, providing information about the applications received, interviewing applicants jointly etc.

*Our office was contacted by one local minority self-government which complained that the municipal government had neglected to seek their agreement when appointing the director of a national minority nursery which counts as a minority institution.*



In the course of the investigation it emerged that the minority self-government concerned subsequently gave its agreement (following the appointment of the director), so there was no need for further measures in the given case. However, since ‘retrospective’ agreement makes this licence a formality only and empty of content, we called upon the notary in their own scope of authority to take the necessary measures to ensure that the rights to agreement are enforced in future.

*One municipal government wished to disregard the right to agreement of the local minority self-government when closing a school cooperating in minority education on the grounds that the designation of minority education in the school’s deed of foundation did not comply with the legal requirements. In their view as a result we cannot speak of minority education at the school, and consequently the minority self-government has no right to agreement.*

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In the event that the precise designation according to the law does not feature in the deed of foundation, but from the other circumstances it is clear that Gypsy minority education was carried out at the school, the maintainer referring to their own neglect cannot regard education as void which has actually taken place. The maintainer did not carry out either a legality or professional check as to whether minority education was taking place in compliance with the laws, yet it claimed the grant for Gypsy minority education every year.

It is a general legal principle that nobody shall be entitled to refer to his own actionable conduct in order to obtain advantages. The local government shall not decide only to apply those statutory instruments which are advantageous to it. By paying back the grant it is not possible to retrospectively declare as void a form of education that has been taking place for four years. This would also violate the principle that legal practice should follow the spirit of the law. In our position statement therefore we stated that the local government may not call into doubt retroactively the existence of Gypsy minority education; and nor may it dispute the right to agreement of the Gypsy minority self-government on the question of closing the school. The municipal government accepted our legal interpretation.

*One municipal government asked for our position statement on the question of whether the local minority self-government was abusing its right to agreement. According to the complaint the minority self-government wished to veto the elimination of segregated education by rejecting the resolution of the municipal representatives.*

There are two elementary schools in the settlement. One of these is a minority institution and offers bilingual national minority education. From an administrative aspect the settlement's only nursery also belongs to it. The other school is the so-called Hungarian school. The nursery operates on two sites: in addition to the central large nursery there is also an outlying nursery. Only children of Gypsy origin attend the outlying nursery.

The municipal government wished to separate the national minority nursery from the national minority school. By closing the outlying nursery and expanding the large nursery, it wished to integrate the children from the outlying nursery into the large nursery by providing a school bus service.

The local government justified its plan with the need firstly to end the segregation of the Gypsy children, and secondly since the majority of the Gypsy children go on to study in the Hungarian school rather than the national minority school, the non-national minority school has become segregated, and Hungarian parents prefer to enrol their children at the national minority school. This means that in class 7 and 8 there will no longer be the requisite number of pupils, and the following year it can be assumed that even fewer parents will choose the Hungarian school. In time this school will not only become segregated, but will have to be closed.

In the given situation the local minority self-government had the right to agreement on every question of reorganisation affecting the minority educational institute. The local minority self-government insisted on the existing structure and interpreted every attempt at reorganisation, including the separation of the nursery from the joint institution (national minority nursery and school) as an attack on national minority education.

The separation of the nursery was not justified by economic arguments.

The municipal government wished to make its decision on the grounds of equal opportunities. It claimed that there were some Hungarian parents who did not want their children to learn in the national minority language,

yet there was no nursery where this was ensured. This was contradicted by the fact that as far as we are aware all the parents requested national minority education for their children of nursery age.

Based on the information at our disposal the outlying nursery came about as a result of spontaneous segregation. This, however, does not free the municipal government from the obligation of eliminating it.

The local minority self-government did not dispute its obligation to eliminate the estate nursery and was willing to support integration under appropriate conditions, which can also be achieved without separating the nursery.

To summarise what we established: the elementary school due to the fall in pupil numbers will not be able to comply with the provision for the minimum number of pupils in a class. However, this problem may not be solved to the detriment of independent national minority teaching.

#### 4.

### Transfer of institution maintainer rights to municipal and regional minority self-governments

*A Budapest regional minority self-government requested our position statement on conditions for taking over two cultural institutions maintained by the Budapest city council. The president of the national-level minority self-government concerned wished to support this.*

We informed the regional self-government of the following: the Minorities Act grants the theoretical possibility to both the national-level self-governments and the municipal and regional self-governments to found and to take over institutions, but there is no rule based on which at the request of the municipal or regional self-government – even within narrow limits – the municipal government or county government would be obliged to hand over the maintainer rights to an institution.

Local and county governments, exercising their powers of consideration, may only hand over the scope of duties and authority which may be transferred to a minority municipal or regional self-government if a special

three-way agreement is signed on the obligatory content elements prescribed by the Minorities Act.

One compulsory content element of the agreement is that in the event of difficulty in performing the relevant tasks, with the agreement of the national-level self-government the transferred scope of tasks and authority can be withdrawn.

The national-level self-government not only gives an opinion on municipal or regional self-government taking over the institution, but is also the (third) subject of the agreement signed with the local and the county government.

We therefore informed the Budapest minority self-government that the ‘recommendation’ written by the president of the national-level self-government has no legal effect. With a one-sided declaration even the body of the national-level minority self-government cannot transfer to another minority self-government the right to initiate obligatory transfer of institution, however there is a possibility for three-way agreement.

In conclusion it can be established that there are so many conditions for municipal and regional self-governments taking over the maintainer rights to an institution, that in reality this is a formal, rather than a real possibility.

## 5.

### Who protects the primary interests of children when public education institutions are closed down?

The Hungarian state recognises the right of the child to development as an interest of special importance which taking precedence over all other rights and interests ‘stands above all else’.

This fundamental concept is exclusively interpreted by one statutory instrument and even that does not give an exhaustive explanation. According to the Public Education Act, in the organisation, direction, operation and fulfilment of duties in public education, the interests of the child above all else must be taken into account when reaching decisions or taking measures. On this basis for example a decision on reorganisation made in the local government’s scope of authority as maintainer of a school is



unlawful if it does not ensure the appropriate standard of teaching to the children affected by the reorganisation and/or represents a disproportionate burden to them. The Public Education Act judges such situations particularly severely. It states that a decision made by the maintainer or the school which violates the principle of equal treatment or is contrary to the interests of the child above all else is void.

In the interests, however, of protecting local government autonomy as protected by the Constitution, nobody may pass judgement on local government decisions. The public administration office may investigate local government decisions exclusively within its powers of legality audit which is a non-hierarchical audit process and not an authority procedure. Moreover, since the local government makes a decision on school closure exercising its powers of consideration, the public administration office shall only examine the lawfulness of the decision.

The question is not whether the local government may reorganise the public education institution, and whether the decision is justified, expedient, economical, and reasonable. Nobody may dispute this. However, it can be disputed whether in carrying into effect the decision which falls within the sphere of local government autonomy there are children's rights which are required to be enforced, and which the public administration office has to pay regard to in the course of its procedure.

In our view, the investigation of the child's interests above all else is a substantial investigation which in the course of a school closure considers whether the reorganisation represents a disproportionate burden to the pupils and whether the appropriate level can be ensured under the new circumstances. A decision in violation of the interests of the child above all else is void. If the decision was made by a local government or its bodies, only the public administration office is entitled to launch a court action to remedy the violation. This rule also applies to representative body decisions which violate the rights of the school board, the student council, and the parents' association. If, however, the public administration office does not have the scope of authority for a substantial investigation of such decisions, then – in view of the public administration office's monopoly on launching court actions – the local government decision in violation of the precedence of the interests of the child above all else cannot be remedied through the judiciary.

*One city government decided on the closure without legal successor of an elementary school which it was the maintainer of. In connection with the school closure two petitions were sent to two different ombudsmen. According to the complaint addressed to our office, the school closure violated the rights of the Roma pupils because the skills-based teaching carried out at the school which promoted integration cannot be ensured in the future. The other complaint, requesting an investigation referring to a violation of the rights of pupils and parents, was addressed to the Parliamentary Commissioner for Civil Rights. When the procedure began the minorities' commissioner was acting on behalf of the general commissioner, so combining the cases our investigation extended to minority rights and all other constitutionality aspects of the school closure.*

Based on the comprehensive investigation, in connection with the right to give an opinion we drew attention to the fact that although the content of the opinion given does not bind the local government, it is nevertheless more than merely a formal right. Its significance is that by influencing the decision-making process it can compel the decision-maker to further consider the issue. The parents' association and the school committee essentially were not able to exercise this right in the course of the procedure prior to the closure of the school without legal successor.

In connection with the timing of the procedure for giving an opinion, we informed the local government that the decision-maker is obliged to give those with the right to opinion a deadline for setting out their viewpoint which enables a decision to be reached as a body, and ensures time to become familiar with, interpret and debate the information as necessary to give a well-founded opinion, in view of the fact also that, as in this case, there can be a need for further information to be supplied. The local government complied with this obligation after the decision had been made, so the parents' association could not exercise its rights.

We established that in the course of the procedure two local government resolutions had been conceived: the first closing the procedure for giving an opinion on amendment to the action plan, and the second the decision on closing the school without legal successor. Before the closure of the school there should have been a separate procedure for giving an opinion, but this did not take place.

In connection with expert opinions, we drew attention to the fact that the

function of the professional opinion of an expert featuring in the expert list of the Education Office is to offer substantial help to local governments requesting expert advice and county governments giving a professional opinion to decide whether the ‘proposed solution ensures the continued performance at the necessary level of the given activity or service.’

We established that the public administration office had not proceeded with necessary care in the course of its legality audit.

We therefore addressed to the Minister of Education and Culture, and the Minister of Local Government and Regional Development requesting that

1. They issue joint legal guidance containing the protocol for the reorganisation of schools which should be more detailed and comprehensive than that currently available.
2. They initiate a legislative amendment in order that the public administration office, in the course of legality audits concerning local government decisions made with the powers of school maintainer, be able to nominate the Education Office as an expert.

*We received a complaint in connection with the closure of an elementary school without legal successor in one city of county rank concerning the violation of the right to free choice of school of the parents of the mainly disadvantaged Roma pupils, the merely formal nature of the agreement procedure preceding the school closure, and the unsolved problem of transport to the school receiving the pupils of the school which had been closed.*

We established that the local government’s school network operational and development plan (hereinafter: action plan) did not include ideas concerning the closure of the elementary school without legal successor, i.e. the local government – according to the action plan – was intending to improve the school, rather than close it.

We established that the local government did not take into account that it needed to conduct two procedures which impact on each other but are nevertheless independent: for the preparation (amendment) of the action plan and for the closure of the school.

We established that the professional opinion of the chairman of the county general assembly for several reasons was unsuited to produce a legal

effect: according to the Public Education Act in the given case a person without the necessary scope of authority (the chairman of the county general assembly or one of the deputy chairmen on his behalf) gave an opinion in a way entirely unsuited to fulfilling the legislative function, without substantial investigation, without being familiar with the action plan and following the decision to close the school.

In order to remedy the constitutional improprieties disclosed and to prevent future legal violations, we made an initiative to the city government of county rank.

The city government following receipt of our report discussed its content in detail, and accepted all of our initiatives without reservations, objections or professional observations with a representative body resolution. The mayor of the city of county rank, however, without convening a general assembly informed us that they themselves had planned the majority of the initiatives even before receiving the report or had already implemented them, and presented certain measures taken as though they were responses to our initiatives.



# Social, housing and child welfare cases

## 1.

### Introduction

In 2007, similarly to the previous year, a significant number of complainants turned to our office due to their housing difficulties and violations of the fundamental right to social security and children's rights. In the second half of the year the number of such petitions received further increased.

As in the previous year, in 2007 petitions concerning violations of social, housing and children's rights were made exclusively by persons belonging to the Roma minority. The complainants are disadvantaged people living in poverty, and are socially marginalised and generally struggling with employment problems. The complainants addressed to the minorities' commissioner because they thought that the decision which they objected to or failure to act by the bodies concerned in some way could be connected to anti-Gypsy prejudice, i.e. that they were disadvantaged or did not receive sufficient help or support because they are members of the Roma minority.

Our experiences frequently concurred with the impressions of the complainants: in many cases the staff of the authorities and institutions performing public services dealt with Roma clients in a prejudiced manner. In social cases, however, generally it was only possible to establish a violation of the fundamental rights to social security, legal certainty and legal remedy and children's rights. In most instances the violation of the principle of equal treatment, i.e. that the complainant was negatively discriminated against because of their minority origin could not be demonstrated. The

reason for this, for example, was that the measure or omission of the authority – possibly in violation of fundamental rights – was not directly connected to the minority origin of the complainant or it was not possible to prove this. The difficulty in general was caused by the lack of suitable data for comparison, which partly followed from the current data protection regulations.

## 2.

### Deepening poverty and problems concerning benefits

In benefits-related cases received in 2007, complainants frequently referred to their hopeless situation, severe livelihood difficulties, and economic and social process which seem unchangeable, as a result of which they live in permanent poverty and are marginalised. In their petitions they requested support to alleviate their financial concerns, and contested and raised grievances concerning the negative decisions of the municipal government or notary to their applications for support.

#### 2.1.

##### Complaints concerning normative benefits

*From a city in Central Hungary, a Roma family requested financial support from our office to bring up their three children, with particular regard to their child who has a chronic illness. We contacted the mayor who replied that the complainant was eligible for regular child protection benefit for all three children, but neither parent had requested that the benefit be established. The sick child would have been entitled to prescription exemption as a subjective right, but the parents had not applied for this.*

According to the Act on the Protection of Children and Guardianship Administration (hereinafter: Child Protection Act), the parent of the child is entitled to be informed about forms of support available, and to receive assistance in raising the child. The Child Protection Act declares that it is the task of the child welfare service to provide information concerning

children's rights and forms of support ensuring the child's development to promote the child being raised in the family, and to help in accessing such support.

We are convinced that in this case the parents were not given appropriate and comprehensible information about the social and child protection forms of support, which based on the statutory instruments they were eligible for. As a result of such information not being provided the rights of the children were violated, as well as the fundamental right of the complainant to legal certainty and social security as set down in the Constitution.

We called upon the municipal government to review the current rules and system of the mayor's office and the family help and child welfare service for providing information, and to make any necessary changes. We recommended that the client contact the family help and child welfare service in order to be able to claim the social and child welfare benefits for their children in an appropriate and timely way.

## 2.2.

### Violations connected to 'paternalist' thinking

In certain settlements located in disadvantaged regions, as a consequence of poverty, particular forms of offering assistance arose which can be described as 'paternalist' in a negative sense. These further deepened the distance and divisions between the disadvantaged Roma population and the staff of the local government.

*One local government of a small settlement formed an agreement with a citizen in need, to offer financial aid in view of their difficult social situation in the form of an 'advance', with which they could settle their electricity bill debts. The complainant objected to the fact that the 'advance' was later deducted from their social support.*

In the course of our investigation we established that the local government decree on the rules for allocating social benefits did not include any provision based on which support or temporary aid could be given in the form of an 'advance'. Giving an 'advance' is also not recognised as a form of support by the Act on Social Administration and Social Benefits.

Consequently there would not have been any legal basis for the local government to regulate the conditions of paying an ‘advance’ in a local decree or to offer support in this form.

The practice of the local government was also unacceptable because the advance was later deducted from the social support paid to the person in need, so the crisis situation – due to the reduced amount of support remaining after deducting the ‘advance’ – arose again and was merely delayed in time.

The local government did not treat requests for payment of the advance as petitions. So it did not judge these according to the procedural rules for certain forms of support, and therefore did not ensure the possibility of legal remedy through the public administration route.

*In the same settlement it also emerged that the mayor and staff often loaned money to families in need from their own money.* The ‘private loans’ given by local government officials only represented a temporary solution, and in the long-term made the people vulnerable and dependent. If the person in need owed money to the mayor, then they were afraid of officially submitting a petition for temporary support.

The local government officials in other words tried to solve the livelihood problems of the families outside the framework of social support. As a result in the local government administration the interest-free loan which can be given by the local government as temporary support became blurred with the private loans. The experiences also raised the suspicion that the local government officials had attempted to get the private loans paid back by partly holding back the social support due to the complainant through an official route.

In order to protect the right of the complainants to social security, and the right to fair procedures which can be inferred from legal certainty, we turned to the representative body of the local government with an initiative. We requested that based on the local social decree they review the current situation of the family and take care of their social support in an appropriate way. We also initiated that the requests of clients who turn to the local government for support in all cases be assessed in the framework of a public administration procedure.

In order to avoid such improprieties in the future, we initiated the termination of the practice of giving loans in violation of the law. The represen-

tative body accepted our initiative, and in the future families in need can claim temporary aid in the form of an interest-free loan.

### 2.3.

#### A consequence of poverty, the epidemic risk

A case attracting media attention in which the mayor tried to force a solution to public health problems by withdrawing support deserves special mention.

*In August 2007 in a settlement located in a disadvantaged region an infectious hepatitis epidemic broke out. The epidemic was caused by the hepatitis A virus. According to reports in the press the majority of the infections occurred in the poorest part of the settlement inhabited by Roma. Around 700 residents received vaccinations as a result of which the infection did not spread further. In the press the mayor made statements in which he 'threatened' the disadvantaged Roma population with only continuing to pay regular social benefit and home-maintenance support to those with a toilet in the yard of their homes. The Roma people living in the settlement said that what had happened in the village severely offended their self-esteem and human dignity. They did not understand why it was necessary to turn a public health problem into a 'Gypsy question'.*

We carried out a comprehensive investigation on site extending to several areas.

In the course of the investigation we established decisively that the public health problem cannot be regarded as a minority question even if the hepatitis epidemic mainly affected Roma residents in the settlement. The manifestation of public health problems and the outbreak of epidemics were connected to poverty, crowded housing conditions and the lack of basic infrastructure and hygiene conditions, which is why Roma families were primarily affected because many more of them live in disadvantaged circumstances.

In order to remedy the public health problems we initiated that the representative body of the local government prepare a comprehensive action plan for the improvement of local health conditions taking into account earlier studies – with the professional support of the National Public

Hygiene Service, the cooperation of district nursing staff and GPs, and the involvement of the Gypsy minority self-government – containing concrete task schedules and outlining those responsible for these tasks.

The citizens of the settlement only learnt from the media that the mayor wished to tie the payment of benefits to conditions in order to improve the public health situation.

The mayor's idea, however, did not take the form of a decree, presumably because the representative body was aware that it does not have the right to frame such a statutory instrument.

In the view of the president of the Gypsy minority self-government the main problem was that the municipal government did not cooperate with the minority self-government when the risk of the hepatitis epidemic arose, so they were not able to join forces. Instead the mayor turned to the media, thereby humiliating the Roma people living in the settlement. The president of the minority self-government would like to develop closer cooperation with the mayor and the representative body. The aim of the president of the Gypsy minority self-government is for the mayor to solve the various problems together with the Roma.

In view of the above we initiated that the representative body of the municipal government, following appropriate preparation, put the question of cooperation between the municipal minority self-government and the local government on the agenda in order to improve such cooperation, and to consider and initiate the convening of a joint session of the local government and the municipal self-government annually or as needed in order to analyse and evaluate the situation of the Gypsy population, everyday relations and the performance of joint tasks.

### 3.

## Complaints concerning housing problems

In the past year we received the greatest number of social complaints in connection with housing problems.

Some of the complainants requested our help in settling accumulated utility debts, banking loans and other loans. Unfortunately from their

income many disadvantaged Roma families are unable to cover their living costs and/or instalments of loans taken out and live in fear that they will be evicted or that their house or flat will be auctioned.

Due to the low ability of the complainants to assert their interests we helped to remedy their cases by making official requests. For example, in order to delay homes from being auctioned we turned to the debt-collection agencies of the given financial institutes or the relevant public-service bodies. In some cases we managed to persuade the financial institute or public-service provider to sign a new instalment-payment agreement with their disadvantaged client. Our experience, however, is that adhering exactly to the new contracts continues to cause difficulties for our clients.

*In one village next to Budapest the properties of 50 Roma families were threatened with being auctioned due to the accumulation of instalments not paid from personal loans taken out at the start of the '90s. The Roma complainants requested our help to stop their homes from being auctioned.*

VI

We established that there had been no violation of the law and that discrimination had not occurred: the loans had expired a long time ago and the debtors had failed to pay the instalments, so the financial institute applied interest on arrears as established in the contract. As a result of this interest on arrears significant debts have accumulated from the low principal amounts, and the disadvantaged families are not capable of paying these.

In order that all those concerned receive precise information concerning further possibilities of reaching an agreement concerning the loans, the process of the bailiff and the stages of the enforcement, we requested that the mayor of the municipal government organise an information forum for those concerned where all such questions could again be clarified. To ensure the legal representation of the Roma families we contacted the county representative of the Anti-Discrimination Roma Customer Service Network run by the Ministry of Justice and Law Enforcement.

*One Budapest complainant contacted our office in connection with the procedure of an electricity company in view of the fact that in summer 2007 a debt of HUF 623,670 was established in her husband's name according to the statement received.*

*They received the possibility of paying off the debt in ten monthly instalments, so they would have had to pay HUF 63,367 each month. The complaint regarded these instalments as very high since her family lived from the minimum wage earned by her.*

The chairman of the electricity company – in view of the family’s difficult financial situation – granted a 24 month interest-free instalment payment for the existing electricity bill debt of HUF 623,670.

We recommended that our clients with utility bill debts consult the Network or the Héra Foundation, which can offer significant help to those in need if they have run up public utility debts.

We undoubtedly regard individual forms of help (for example the signing of new agreements for instalment payment or the cancelling of debts) as a significant achievement since the most important thing for the complainants is that their individual problem has been remedied. In these cases, however, it is useful to seek solutions which can offer help to several families in need. There are some settlements in Hungary where the accumulation of electricity debts has taken on vast proportions, and as a result the electricity service has been discontinued.

*One local Gypsy minority government indicated to us that in their town as a result of the accumulation of electricity debts, a significant proportion of the Roma families had been excluded from the electricity service.*

It emerged in the course of the investigation that the local government and the family help service were not aware of the number of families excluded from the electricity service. The local government barely knew about families facing such a problem.

In view of the above, we initiated that the representative body of the city government with the cooperation of the local family help and child welfare service assess those families and persons left without electricity, paying particular attention to the children affected. We also recommended that the president of the social affairs committee prepare an action plan detailing possible solutions. The representative body accepted our initiatives, and the assessment and preparation of the action plan are in progress.



*Specific data protection questions were also raised by one case in which we turned to an electricity company in connection with the instalment-payment request of a complainant.*

The electricity company, referring to its own data protection provisions, did not offer detailed information in response to our request, pointing out that they would only supply data and information based on written authorisation to the person in a contractual relation with them (in the given case the complainant who turned to us).

We found it unacceptable that a public service-provider refused to supply data and information, thereby hindering the investigation of the parliamentary commissioner. In order to avoid and prevent future legal disputes we requested the position statement of the data protection commissioner.

According to the data protection commissioner in this case the provisions of the Act on the Protection of Personal Data and the Publicity of Data of Public Interest should have been taken into account, according to which: 'In the proceedings instituted at the request of the person concerned, his consent to the handling of his necessary data shall be presumed.' In respect to our investigation initiated at the request of the complainant this would have served as the legal basis for data handling.

The public service provider accepted the position statement of the data protection commissioner, and we managed to arrange the case of the complainant successfully, through the signing of a new instalment-payment agreement.

*In 2007 in connection with the petition of a complainant relating to housing difficulties, we encountered the consequences of ill-considered legislation.*

The safeguarding by the state of the right to property declared in the Constitution encompasses the right of citizens to acquire property. This constitutional right is unnecessarily and disproportionately restricted by the provisions on judicial enforcement. The violation of the constitutional right was primarily caused by the fact that the regulations unconstitutionally gave local governments the right of pre-emption when properties subject to enforcement measures are auctioned.

In the given case the municipal government made use of the deficient legal provision for its own economic aims and to increase its assets.

*The Roma complainant raised the grievance that the municipal government had procured the property owned by her mother by taking advantage of the family's financial difficulties.*

*The family of the complainant ran a shop in a settlement to the east of the Tisza River. They were also involved in livestock breeding, but their business folded for reasons beyond their control. The mother of the complainant accumulated significant tax debts, and as a result the tax authority launched an enforcement procedure against her.*

The provision giving the local governments the right of pre-emption – which in this case served as the legal basis for the municipal government acquiring the property – was adopted by the legislature to take action against the so-called ‘housing mafia’.

In the previous electoral term, Parliament paid special attention to abuses concerning properties and local council flats. By granting the right to pre-emption to municipal governments the aim was to prevent properties put up for auction from entering the ownership of organised criminal groups. With this aim the individual MP's bill provided that: ‘the debtor and the persons living with the debtor are exempted from the obligation of vacating the premises if the municipal government purchases the property by exercising its pre-emptive right’. However, this bill was modified significantly in the course of the parliamentary debate. Several representatives and committees objected to the fact that this provision would restrict the right of disposal of local governments to the property in their ownership. Parliament finally adopted the law, but those provisions were left out which would have ensured that the aim defined by those who submitted the motion was achieved, so the majority of the provisions were annulled by the Constitutional Court on the day of the decision being published in the Hungarian Official Gazette.

One of the justifications for the unconstitutionality was that the local governments could make use of its pre-emptive right ‘beyond enforcing the legislative aims set out in the justification’. The pre-emptive right extended to all properties subject to enforcement measures, i.e. including

premises not serving housing purposes and agricultural land, regardless of the reason for the property being auctioned. The regulations, however, did not offer a guarantee that 'by exercising its pre-emptive right the local government use the acquired property in defence of the victims of the housing mafia'. According to objective consideration there was no reasonable ground for extra licences to be granted to municipal governments over other legal subjects, so the provisions which were annulled by the Constitutional Court violated the principle of equality before the law as set down in the Constitution.

It could be established therefore that in this case the process of the local government cannot be regarded as unlawful because it acquired the property of the complainant's mother based on a provision which was later declared as unconstitutional and annulled by the Constitutional Court.

It could not be proved that the local government wished to acquire the property in order to disadvantage the family due to their Roma origin. In our view the representative body, however, took advantage of being able to acquire ownership of the property for a fraction of the real market value. The local government formally complied with the provision on the pre-emptive right, but it proceeded in a manner which is not reconcilable with the intention declared by the legislature.

The measure of the local government rightly qualifies as a legal abuse because the exercise of the right was directed at an aim which was incompatible with its intended purpose, and led to the infringement of the rights and lawful interests of the complainant.

The procedure of the representative body is also objectionable because it was indifferent to the fact that it deprived the complainant and their family of the possibility of recovering from their financial difficulties. In the event that the complainant buys the property at the auction, the family can sell it at its real market price, or potentially mortgage it and restart their business.

Since these possibilities came to nothing, the risk is that the family will lose its housing property.

In summary: the grievance suffered by the complainant can primarily be traced back to ill-considered legislation. However, the Constitutional Court has already remedied the disclosed impropriety concerning the constitutional right to property by annulling the unconstitutional statutory instruments.

The new private owner, on signing the exchange contract almost immediately (still in July 2005) turned to the notary and the county public administration office and ‘reported’ the Roma population of the settlement on the grounds that building work was taking place without a permit on the area acquired.

#### 4. Cases concerning children’s rights

In 2007 the violation of children’s rights – as in previous years – most frequently presented itself indirectly in connection with cases concerning housing and social support, but we also received a complaint which expressly took issue with the activity of the child welfare and child protection bodies.

The violation of children’s rights connected to housing problems mostly frequently arose from the lack of financial resources and minimum living conditions.

*A complainant belonging to the Roma minority turned to our office in order to solve their housing problem. Their house had become uninhabitable due to flood damage, and the complainant had not received any aid, despite requesting support several times from the local government to reconstruct it. The substance of the house had continuously deteriorated and the building control authority of the first instance later prohibited it from being used. The local government placed the family in temporary accommodation, which however was structurally very poor. The walls in every room were damp, and the complainant believes that their child developed asthma because of this. The complainant objected that the local government did not offer effective help to solve their housing problem in the long-term.*

In view of the fact that according to the Constitution: ‘all children have the right to receive the protection and care of their family, and of the state and society, which is necessary for their appropriate physical, mental and moral development’ in the course of our procedure we made children’s rights the subject of a separate investigation.

It is the right of the child enshrined in law to receive protection against

environmental and social effects which are damaging to their development. The child also has the right to be given help to avert the situation threatening their development.

In connection with the child who became asthmatic as a result of the damp walls it can be established that the condition and environment of the temporary housing was unsuited to the child's longer-term accommodation, and was in violation of children's rights and the right to the highest possible level of physical and spiritual health.

The housing problem of the child cannot be solved independently from that of the parents, since it can be regarded as the most important basic principle of child protection that a child may not be separated from their family if they are only at risk due to financial reasons.

In the report on our investigation, in order to enforce the right to social security as well as protection of children's rights and the content of the Child Protection Act, we initiated that the leader of the family help and child protection service place greater emphasis on surveying the area under their responsibility, paying visits to those persons and families requiring help, including cooperating actively with the local government and the complainant's family to solve their housing problem and other social problems. The leader of the service accepted our initiative and the indications so far are that the relationship and cooperation between the Roma families and the family carers has changed for the better.

Based on the Child Protection Act, the child welfare service is one of the most important institutions of the child protection system within the framework of basic care. According to the Child Protection Act and the related executive decrees one of the key duties of the child welfare services is to detect and indicate children who are at risk, reveal the reasons for this and prepare a proposal for their solution.

In 2007 too we had a case where the child welfare service did not perform its duty as set down in law.

*A Roma woman was raising and caring for her three grandchildren in addition to her three children. The complaint objected among other things to the fact that she had not received any help from the municipal government in bringing up the children.*

The municipal government wrote in its reply that the child welfare service has no possibility granted by statutory instrument which would result in preventing or stopping children being put at risk for financial reasons, 'naturally they give clients who turn to them knowledge concerning managing their lives and household maintenance skills'. This attitude is unacceptable. According to the provisions of the Child Welfare Act, the child welfare service is a special personal service which defends the interests of children and whose tasks include preventing children from being at risk and remedying such situations using the methods and instruments of social work.

It also emerged that the family which was in an extremely difficult situation had not been informed appropriately concerning the forms of support that could be claimed and they were not given assistance in managing their official affairs. For example, they did not receive house maintenance support because the complainant did not submit such a claim. Nor did they receive the advance payment of child support by the state, or assistance to arrange this as soon as possible.

## 5.

### The role of the minorities' commissioner in drawing up strategies concerning the situation of the Roma minority

The Roma minority is the largest minority community in Hungary, and probably with the most specific situation. The members of the Gypsy communities have the same individual and collective minority rights as the other minorities. A significant proportion of the Gypsy population are multiply disadvantaged socially and economically, and live on the edge of society in both a physical and figurative sense. This marginalisation which has developed as a joint effect of numerous historical and contemporary factors is maintained or aggravated by prejudiced thinking on the part of the majority society, which is often manifested in discriminative types of behaviour. Discrimination frequently hinders even those Roma who have managed to overcome the other factors in starting out in individual areas

of life with the same opportunities as those of members of the majority society.

Due to the above, we have always placed special importance on offering professional help – as an outside observer – in the process of evaluating and developing governmental strategies aimed at improving the situation of the Roma population and aspiring to a complex approach. This was also true in 2007 when – respecting the boundaries arising from the ombudsman’s scope of competence – we actively followed the drafting of the Strategic Plan of the Decade of Roma Integration Programme and the related parliamentary resolution, and the draft of the government resolution on government measures for 2008-2009 to promote the economic and social integration of the Roma. We participated in the sessions of the Roma Integration Council, and set out our standpoint in writing on several occasions regarding the planned measures.

In drafting the government resolution, the framework of thinking was determined by the fact that the action plan was being drawn up in the framework of the Decade of Roma Integration Programme, which also defined the main areas for action. The Programme developed as cooperation between eight Central and Eastern European countries (Croatia, Bulgaria, Romania, Macedonia, the Czech Republic, Serbia and Montenegro, Slovakia and Hungary). The individual countries develop their own Strategic Plan within a jointly agreed framework for achieving the social and economic integration of the Roma. The Programme focuses primarily on the areas of education, employment, housing and healthcare.

The cornerstones of our standpoint were as follows:

A complex strategy serving the social integration of the Roma firstly needs to extend to eliminating discrimination, prejudices and negative social attitudes and creating good relations between the minority and the majority. The main instruments of this can be improving legal regulations, education, trainings and awareness-raising campaigns. Secondly, the target must be to eliminate the multiply disadvantages of the Roma – as a general rule by implementing general (social, education, housing, regional development, employment, healthcare) measures. In order to avoid social tensions it is an important principle that the target group of the measures, which are designed to alleviate disadvantages arising from social situation, should be defined by social indicators, i.e. the measures should not only tar-

get the Roma population. In addition, it is essential to guarantee and continuously investigate to what extent the general measures reach the Roma population, and contribute to the improvement of their circumstances. This involves applying the mainstreaming principle, which means examining on every legislative and executive level what impact the given measures have on the situation of the Gypsies and relations between the majority and minority society. With this aim in mind, it is of particular importance that those affected are involved in the process of planning, decision-making and monitoring.

At the session of the Roma Integration Council the nature of the target group was a constant issue, namely whether it makes sense to define the sphere of those targeted by the individual programmes according to regional, social or ethnic criteria. The eternal dilemma unavoidably came into the foreground again: who is Roma and who establishes this or may establish it. At the request of the Ministry of Social Affairs and Labour the minorities' commissioner took part in the meeting aimed at outlining the problem, and we also set out our standpoint in writing, according to which the state is not entitled – particularly without the knowledge and agreement of those concerned – to keep records of citizens belonging to the various minorities. Anonymous data collection serving statistical aims and state and political goals, however, would not violate the right to protection of personal data.

In order to remedy the problem in the longer term and more comprehensively we also recommended that it would be expedient to make the process and methodology of the 2011 census suited to surveying reliably the living circumstances of the Roma. Based on the above it would be possible to prepare a relatively precise and nuanced map of the Roma population in the country, which would make it easier to plan individual measures, since it would be possible to survey how large the Roma community is in a given geographical area and what problems it is facing.

In the EU institutions the need arose to draw up a complex strategy for improving the situation of the European Roma or possibly a special directive targeting the situation of the Roma population. The Ministry of Foreign Affairs prepared documents regarding those institutional and legal solutions which would be suited to remedying the problems of the Roma in the framework of the European Union most effectively.



At the request of the Ministry of Social Affairs and Labour, we put forward our standpoint. We recommended that the Ministry of Foreign Affairs of the Republic of Hungary initiate the creation of an independent Roma Affairs Directorate for the coordination of activities connected to the Roma. We also indicated the importance of the development of an active Roma expert network with the involvement of all directorates general.

# Cases concerning the various law enforcement bodies

## 1.

### Unique features of our investigations concerning law enforcement bodies

The minorities' ombudsman regularly receives complaints requesting that we investigate the activities and procedures of various law enforcement bodies – primarily the police and the prison service. Naturally the minorities' commissioner is asked to take action by people who feel that they belong to one of the national and ethnic minorities and who consider that in the course of the procedure of the law enforcement bodies mentioned above they have been discriminated against or suffered an injustice because they belong to a visible minority.

Investigating such complaints requires particular attention. In itself the fact that the individual members of one of the armed bodies of the state behave in a discriminative manner or in violation of the law not only reflects on the body in question and the person acting on its behalf, but can also reflect on the state as a whole.

What criteria can come into consideration when investigating a complaint concerning the police? First of all it is necessary to investigate the legal title of the measure, i.e. why it occurred and in the framework of what procedure. The question needs to be asked whether the ethnic affiliation of the person subjected to the procedure played or could have played a role in the procedure being launched. Particularly if a group or several persons are stopped by the police and asked to identify themselves, we cannot neglect the question of what proportion of those persons checked were Roma and non-Roma. Likewise, if a measure of force was used, it is necessary to investigate beyond the proportionality of the measure of force who

this instrument was applied to and in what circumstances. Beyond this, the investigation naturally needs to extend to the atmosphere in which the measure took place and the tone adopted by the police, and to what extent we can speak of relations between persons of equal dignity, or whether it is again a case of the police addressing people of Roma origin in a disrespectful way.

Below we shall present several cases in which those who turned to us found a police procedure or circumstances of detention objectionable for various reasons.

## 2.

### Presentation of cases concerning the police

In 2007 compared to the previous years the number of complaints received about police procedures rose. This is likely to be connected to the fact that in the past year the police force came under considerable criticism in connection with several cases. It is likely that society's dissatisfaction with the police emboldened people to request an examination of a real or imagined violation suffered in the course of a police procedure.

*In summer 2007 we became aware from the press that several local residents belonging to the Roma minority in a Northern Hungarian city suffered severe maltreatment during a police measure. The lawyer representing the aggrieved persons reported the police officers involved on suspicion of abuse of authority, assault during an official procedure, unlawful detainment and use of force, and forgery of official documents.*

After the case became public we turned to the county public prosecutor and requested increased supervision of the investigation. Although the county public prosecutor ordered that the case be treated with special priority as a matter of urgency, during the more than half a year following the start of the case, the facts of the case were not clarified sufficiently. The legal representative of the complainants made numerous observations in the course of the procedure.

*A complainant turned to us with a grievance about the procedure of police staff. In his letter the complainant explained that he had got into a row with the mayor of the settlement. The mayor called the police to the scene and the police officers – according to the claim of the complainant – without warning wrestled him to the ground and handcuffed him. In the course of being apprehended the complainant indicated that he had suffered injury during the handcuffing. In order to tend to the injury and establish the degree of the injury, the compliant was taken to hospital. Based on the medical opinion, the complainant suffered bruising on both wrists while being handcuffed, which qualified as an injury that can heal within eight days.*

Despite the result of the investigation by the commanding officer, the possibility of the principle of proportionality being violated arose. Police measures may not cause a disadvantage which is clearly not in proportion to the lawful aim of the measure. We therefore requested that the police procedure be investigated by the county public prosecutor.

We had not received a response at the time of completing the annual report.

*One complainant objected to his juvenile son having been remanded in custody and the lengthiness of the investigatory procedure, which in the complainant's view could have been connected to their Gypsy origin.*

According to the Act on Criminal Procedure, the court rules on ordering custody until the submission of the indictment on the initiative of the prosecutor. In view of the above rule, we have no possibility to investigate the complaint about the complainant's son being held in custody. The public prosecutor in the course of their review established that the investigation, in the current stage of the criminal procedure, was lawful and justified. In the course of the investigation no information arose to suggest that the origin of the complainant's son had influenced the investigating authority in the course of the procedure.

*One complainant turned to our office to make a complaint about the conduct and procedure of the staff of the central police station towards her life partner. The complainant informed us that they had reported the abuse suffered by their partner,*

*but the public prosecutor's investigation department had closed the procedure. The complainant supposed that this could have been connected to their Gypsy origin.*

In order to investigate the complaint, we addressed to the prosecutor general, who referred investigation of the case to the county public prosecutor and informed us of the following: the investigating public prosecutor conducted an investigation into the abuse suffered by the complainant's partner against unknown police officers of the police station on the grounds of the crime of forced interrogation and the offence of mistreatment carried out during an official procedure. In the course of the procedure no information or circumstance arose to suggest that the complainant's partner was discriminated against due to their ethnic affiliation. The documents sent by the complainant, for example photographs taken by mobile phone, were assessed by the investigating public prosecutor while considering evidence and by a medical expert as well. According to the public prosecutor, based on the information available the possibility could not be excluded that the life partner of the complainant suffered abuse in the basic case, since otherwise in the absence of a crime the case would have been discontinued. However the fact of the abuse could not be proved excluding doubt, so in the absence of proof the procedure was closed by the investigating prosecutor. We informed the complainant that if they had already exhausted all forums of legal remedy in Hungary suited to remedying the situation of the injured party, but they were not satisfied with the result, then they have the possibility of turning to the European Court of Human Rights.

*Another complainant objected to police procedures and measures in connection with her juvenile grandson. In her view her grandson being reported and the associated police measures could be connected to the fact that the complainant and her family members had early made a complaint to the Parliamentary Commissioner for the Rights of National and Ethnic Minorities.*

Nobody may suffer any disadvantage as a result of turning to the parliamentary commissioner. The Equal Treatment Act qualifies as retribution conduct which causes infringement, is aimed at infringement, or threatens with infringement the person making a complaint or initiating procedures

because of a violation of the principle of equal treatment, or against a person assisting in such a procedure. According to the provisions of the above statutory instruments, nobody may suffer any disadvantage because they earlier requested the investigation of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities.

In view of the fact that the suspicion arose that the complaint's grandson being reported and the resulting measures of the police procedure could be connected to the ombudsman procedure, we called upon the leader of the county police headquarters to conduct an investigation. In the course of the investigation it emerged that the complainant was mistaken in thinking that her grandchild had been reported, since the mayor of the municipal government had made a criminal report against an unknown offender and the police authority had ordered the investigation on the basis of the well-founded suspicion of vandalism causing minor damage. The investigation did not confirm the supposition of the complainant, so we did not regard further measures as necessary.

Among the complaints concerning police procedures and measures, there was also a case when, following our request for information, the leader of the police headquarters took exception to our letter and its content, and assured us that the staff of the police force under their command act in a way free from prejudice. We drew the attention of the leader of the police headquarters to the fact that our office does not presume that the staff of the given body or institution do not act appropriately or in this case in a prejudiced manner when performing their work. It is necessary, however, to draw attention to the fact that in the course of our work in numerous cases we have experienced objectionable measures on the part of the authorities during police and investigatory procedures launched against members of the Roma minority. For this reason we endeavour in every case to investigate the complaints as thoroughly as possible.

### 3.

## Presentation of cases concerning the penal bodies

Also in year 2007 too a large number of complainants turned to us objecting to the procedures of the detention bodies and the circumstances of detention. We received numerous complaints in which prisoners requested our help in being transferred to another prison. In most cases the reason for the request was the difficulty of staying in contact with relatives. On some occasions, however, it occurred that the circumstances of the placement, or abuse committed by the staff of the prison were the reasons why the complainants wished to be transferred to another prison.

*One complainant serving a sentence in prison wrote a letter to our office requesting help in being transferred to a prison closer to the home of his family.*

In order to investigate the petition, we turned to the National Commander of the Prison Service (hereinafter: national commander). The decree of statutory force on the execution of punishments and measures (hereinafter: Prison Codex) states that sentences are to be served to the degree determined by the court and the prison service where possible in the prison closest to the domicile of the sentenced individual. As we were informed – satisfying the provision of the statutory instrument above – the national commander made a favourable decision and permitted the transfer of the complainant to another prison.

We also received complaints in which prisoners requested help in gaining permission for an interruption of their sentence. Based on the Prison Codex, ‘the enforcement of a prison sentence may be interrupted due to an important reason – in the public interest or due to the personal and family circumstances and health of the detained.’

*One prisoner submitted a request for his sentence to be interrupted to the prison commander, on the grounds that he would like to be present at the funeral of his mother. In his complaint he objected to the fact that the commander of the prison had rejected his request.*

The leader of the prison provided the following information in connection with the complaint: following the submission of the request, the prison investigated the possibility of permitting participation at the funeral in the company of a police escort. The prison requested a police environment study, gathered information and analysed the previous criminal record of the prisoner. As a result of the thorough investigation, the prison did not judge it possible to permit the participation of the complainant at the funeral as an interruption of their sentence or in the company of a police escort, so it rejected the request.

According to section 22 (3) of the Prison Codex: 'Prisoners may visit a severely ill relative and be present at the funeral of a relative either under or without supervision. The governor of the prison may order the use of handcuffs and in exceptional cases may refuse permission for the visit or the prisoner's presence at the funeral.' There was, therefore, no violation of the law in view of the fact that the codex allows the commander of the prison the possibility of refusing participation at the funeral of a relative. (Regrettably we received the complaint too late – following the funeral – so we could not help in fulfilling the request.)

*In another complaint a prisoner complained that his request for interruption of his sentence – submitted on the grounds that his mother was ill and he needed to carry out work that had built up around the house – was not supported by the prison. In his letter he also requested our intervention in forwarding his request for special visiting hour to be permitted. He wrote that his family lives a long way from the prison and cannot visit due to their difficult financial circumstances, and the complainant could only meet with his relatives if temporarily transferred to another prison.*

In this case the national commander, having examined the case, provided the following information. The request for interruption of sentence was rejected by the commander of the prison because the attached medical documents were not suited to confirming the current state of health of the complainant's mother, and further it was not demonstrated that only the prisoner serving a sentence could perform the cited work around the house.



*Last year we conducted personal interviews with prisoners in two cases. There was a need for the interviews because the complainants without describing their concrete complaints requested the possibility of a personal meeting. In their letters they wrote that they did not 'dare' to write down their problems.*

We interviewed the prisoners – following prior notification – in the prisons. In both cases it became clear that among other reasons they had requested the interview because they had complaints concerning the conduct of the prison staff. In one case the complainant requested to be moved due to a concrete case of abuse committed by the staff of the prison. In the other case the complaint was about the prison instructor, because the prisoner felt that because of the opinion of the instructor they would not receive conditional privileges. The complainants saw the solution to their problems as being transferred to another prison. We asked the national commander for information concerning the possibility of transfer. In one case the national commander rejected the transfer request of the complainant, however our cooperation in the case of the second request proved successful: the transfer of the prisoner was allowed in the second instance.

When we made our on-site investigation we interviewed not only the prisoners concerned, but also the commanders of the prisoners and, where possible, the prison staff who were the subject of complaint. As a result of the investigation it could be established that the instructor in several cases had granted privileges to the complainant and supported the complainant's transfer request. The complainant's fear that their conflict with the instructor would influence their being granted conditional privileges was not justified because it was the instructor who made recommendations for such rewards, allowing the opportunity for the complainant's requests for privileges to be judged positively.

In the other case, in which the complainant referred to having been abused by the prison staff, it was not possible to prove that physical injury had occurred. It is also true, however, that in such cases providing proof is generally impossible. However, a complaint had been received in the past concerning the given prison in which the prisoner complained of having been abused by the staff. The military prosecutor investigated the case.

*Following the transfer of the prisoner to another prison, they indicated to their instructor that due to psychological problems they would like to be placed in a private cell, and would like to be allowed the use of a television set.*

We contacted the governor of the prison, who informed us in response that in the prison there is no possibility of being placed in a private cell, so the aim was to place the complainant in a cell community ensuring a calm atmosphere. This took place a few days following the complaint being made. In addition, in view of the fact that the in-house policy of the prison allow the use of a television set with a frame diagonal not exceeding 37cm, the prisoner was allowed use of a television.

#### 4.

### Potential aspects of an investigation concerning the law enforcement bodies

Conducting investigations concerning the law enforcement bodies and establishing responsibility is a very difficult and almost impossible task with the instruments of the parliamentary commissioner.

The law enforcement bodies are fundamentally closed communities within which there is a strong hierarchy, and autocratic leaders have a particularly wide scope of authority (power) in terms of judging the discipline and contravention of rules by those beneath them. It is primarily the commander who is entitled to investigate any violation of the law committed by members of the bodies, and there is only an exception to this if there is well-founded suspicion of crime. This means that an external body entitled to carry out an investigation generally has to rely on the opinion of the commander, even in questions which can be regarded as critical such as the lawfulness of use of weapons.

The comradeship of the members of the law enforcement bodies in a high proportion of cases can easily turn into complicity, i.e. a treaty of mutual protection and alliance, which does not allow real insight into the functioning of the body to those from outside. However, the prejudices present in society can also be observed among the members of the law

enforcement bodies. From the discussions carried out between them – especially if these also gain publicity through the Internet – it is not exaggerated to conclude that prejudices and in extreme cases even racism occur in the same proportion among the members of the armed bodies as in other social groups. The difference, however, is that in the case of the law enforcement bodies we are speaking of the prejudices and racism of persons in a position of power. This position of power can contribute to such aversions being expressed directly and without consequences.

In the long-term the solution can be to develop and refine the admissions methods, and for police training to include subjects which can promote the development of more tolerant, more accepting attitudes, as well as for there to be civil control over the operation of the police which is highly likely to bring to the surface forms of behaviour which are in violation of the law and unethical.

The other path – which can be taken in tandem with the suggestions made above – is for there to be more people of Roma origin serving in the law enforcement bodies. According to the leaders of the police and prison service, this was realised a long time ago, and so-called positive discrimination measures help the admission of police and detention service staff of Roma origin. In practice what this means is that if people of equal ability apply, those belonging to a minority must be given preference. Despite this, there is no reason for satisfaction, because there are disproportionately few young Roma people applying to join the professional armed bodies. In the course of 2008 – building on the experiences and subjective opinions of young Gypsy people currently working in the law enforcement bodies – we plan to examine using sociological and other methods how the distance can be closed between the Gypsy minority and the armed bodies.

## Hate speech – a recurring topic

### 1.

#### On hate speech again

We have already dealt with this topic on numerous occasions. We have analysed several times the resolutions of the Constitutional Court, which declared as unconstitutional the criminal law restriction of hate speech beyond incitement, referring to unwarranted restriction of the freedom of expression. Although section 269 of the Penal Code has laid down sanctions for the crime of incitement against a community in unchanged form for decades, this provision as a result of the restrictive interpretation of the court in practice has not proved effectual.

We pointed out that the justification of the Constitutional Court Resolution 30/1992 (V. 26.) stated that ‘... the dignity of communities can be a constitutional limit to the freedom of expression. Thus, the Decision does not exclude the possibility for the legislature to extend the scope of criminal sanctions beyond incitement to hatred. Nonetheless, there are other means available, such as expanding the possible use of non-material damages, to provide effective protection for the dignity of communities.’ The resolution, therefore, does not exclude the possibility of the legislature providing criminal law protection against hate speech, but not among crimes against public peace.

It also emerges from the resolutions of the Constitutional Court that it does not regard the instruments of criminal law as primarily suitable for restricting the negative offshoots of freedom of expression and freedom of the press, but rather civil actions threatening high level compensation for

non-financial damage [30/1992. (V. 26.) Constitutional Court Resolution, ABH 1992. 167., 178-180].

We have also presented repeatedly that the civil law instruments of personality protection only offer the possibility of prosecuting individual rights and are not suitable for protecting the dignity of communities without legal subject. The basic procedural rule of personality protection is personal prosecution of a right: the courts, in the case of publication of comments which are degrading to any of the communities, will dismiss the personality rights action due to the claimant (as a non-named and unidentifiable member of the group concerned) not having the right to bring such an action.

A community, as one of the external points of reference of the given person, is one aspect of defining self-identity. The right to belong to a community is unquestionably a personality right and a value which must be protected.

Freedom of expression has a place and can have a positive social impact (even if it is insulting) where there is a possibility for debate. There is no way of reasoning with self-serving invective, and the base and prejudiced degradation of certain social groups. It is not possible to argue rationally against claims of the genetically-based criminal tendencies of the Gypsies or perhaps the Swabians, Armenians or another minority, because the supposition itself is not rational. Extreme views voicing anger and rage must not receive greater protection than the injured community.

The legal institution of the public interest legal action can be suitable for protection of the dignity of the community and personality rights if it does not restrict the right to self-determination of another person. In cases, however, where the hurtful, offensive, degrading expression of opinion does not address a concrete person, this question does not even arise.

In our view, the bringing of public interest suits, which in an appropriately circumscribed way would offer protection to the groups in society which are most vulnerable precisely against the forms of behaviour described and which also damage the public interest, would not stifle freedom of speech.

Conduct violating the dignity of a minority community typically insults honour and/or reputation.

Injury of the dignity of the community occurs through arbitrary, unjusti-

fiably hurtful, degrading expression of opinion which does not correspond to even the basic rules of humane thinking and opinion-forming, or through claiming or reporting false facts, or showing true facts in a false light. Such conduct – using the power of publicity in a way that severely distorts views of the minority groups and harms the public interest – can blight co-habitation between the majority and the minority society.

In our view the right to launch a court action should be granted to the following:

1. the prosecutor generally, in view of the fact that the prosecutor has such a possibility in connection with other personality rights; 2. to the Parliamentary Commissioner for the Rights of National and Ethnic Minorities in the sphere of discrimination; 3. to civil organisations and foundations, leaving out the expression ‘of public utility or of exceptional public utility’, working towards the protection of human and civil rights.

We recommend restricting the right of civil organisations and foundations to launch a court action so that the nature and topic of the given case also decides which legal defence organisations may turn to the court. It would not be correct, if for example a gay organisation could launch a court action due to conduct violating the rights of a religious minority group.

## 2.

### The Hungarian Guard – a new anti-minority phenomenon in Hungary’s history

#### 2.1.

##### Formation, operation, political and social reactions and legal judgement

The Hungarian Guard formed as a civil association for preserving traditions and culture in August 2007 in connection with Jobbik (Movement for a Better Hungary), which triggered heated debate even weeks before its formation due to its black and white uniforms featuring the Árpád flag which are reminiscent of those of a paramilitary group.

The Guard was established and registered as an association which accord-

ing to its founding declaration wishes to be ‘part or backbone’ of a national guard to be set up, and, in addition to supporting and organising social and charitable missions, disaster management and civil protection, wishes to play an active part in ‘strengthening national self-defence’ and ‘law enforcement’ tasks. The slogans of the Guard are: belief, strength, will. With the cooperation of a former defence minister on 25 August the first 56 members of the Guard were initiated. The second initiation ceremony was held on 21 October 2007 at Heroes’ Square. At the event 517 new Guard members swore oath.

At the initiation 30 members of the organisation named National Garrison lined up wearing Hungarian army uniforms from the Second World War, and armbands similar to those of the Arrow Cross featuring the Árpád flag and depicting a runic ‘H’ letter in the centre, who concluded an ‘alliance of comradeship’ with the Guard. The foundation was accompanied by an antifascist demonstration of around 500-1000 people from left-wing and Roma organisations. In the Budapest Olympic park around 50 people from civil, anti-fascist and homosexual organisations protested against the formation of the Guard.

The Hungarian Guard from the start has emphasised a military-style outward appearance, but according to its statute it is not an armed body because the Hungarian Constitution bans the formation of armed bodies for political aims based on the right of public meeting. Nevertheless, its emphatic aim is to create the basis of the future ‘national guard’ which Jobbik is pressing for, because it thinks that in the event of a war situation – which the chairman of the association described as the threat of an attack on Hungary by the allied NATO member states neighbouring Hungary – there would be nobody to defend the county. Not long after its formation, in September 2007 the Guard went on a several-week tour of the county, and in Hungary’s larger towns and cities they held residents’ forums. In numerous places the places chosen as locations for the appearance of the Guard members were rejected or cancelled by those letting the properties.

The uniformed members of the organisation together with the members of the National Guard in December 2007 organised a demonstration against ‘Gypsy crime’, with the title ‘For the Public Safety of the Countryside’ in Tatárszentgyörgy, demanding the segregation of the Roma, at which the speakers presented Hungarian-Gypsy conflicts as the focus of

public safety in the provinces. In effect they depicted the members of the Gypsy minority as criminals, and the majority society as the victims of their crimes.

The western and Hungarian non-right-wing press, the current Hungarian Government and several local government representative bodies described the mentality and operation of the Guard variously as national radical and as a far-right paramilitary organisation. In the Hungarian left-wing press the adjectives 'fascist' and 'neo-fascist' were also used not infrequently.

By contrast Jobbik denied that it has started to develop any kind of private army and according to the founders the Guard is 'not a Nazi, not a fascist and not a paramilitary organisation, but simply Hungarian' and does not wish to continue the activities of the far-right organisations from the 1930s.

The President of the Republic, in connection with the debates surrounding the Guard, issued a short statement according to which he condemns both 'scaremongering' events and the 'manipulation of fear'.

The Budapest Prosecutor General's Office found the operation of the Hungarian Guard unlawful, because certain of its declared aims, such as performing catastrophe management and law enforcement tasks, do not feature in its statute. If the organisation does not satisfy the demand to function according to its statute then the prosecutor's office can request its dissolution. The leadership of the Hungarian Guard announced the amendment of the statute, and suspended but did not delete from the founding declaration the objectionable sections, including expressions on national self-defence and the National Guard alluding to the possibility of military-style operation.

In December 2007 the Budapest Prosecutor General's Office, on the grounds that the Hungarian Guard's activity is liable to violate the rights and freedom of and intimidate others initiated its dissolution at the Budapest Court.



## 2.2.

### Risks of the Guard's existence and operation in terms of minority rights

The prosecutor's office gave a public law judgement on the movement, the organisation and its rhetoric, so from a constitutional aspect we wish to add here only that it also fundamentally violates the principle of legal certainty since in a state founded on the rule of law citizens not only have to be certain that bodies exercising executive power will not apply legal sanctions and procedures to them without legal basis, but also that the social majority will not apply the principle, and much less practice of collective punishment (intimidation) against a given minority community.

'The law enforcement of a state founded on rule of law may not deny anyone constitutional guarantees. These apply to everyone as a fundamental right. Based on a constitutional scale of values if constitutional guarantees are disregarded, even a just demand is not enforceable', the Constitutional Court stated.

In terms of the danger of the phenomenon for society from the point of view of the minorities, we have to refer to the well-known structure of risks arising from hate speech, consisting of three elements:

- a) The peace and calm of the social majority, i.e. public peace is put at risk, and already existing prejudices which do not bear rational argument held by the majority society are strengthened. As a result the public mood can assume a form which makes it easier for anti-minority groups to achieve their aims through the use of violence or threats.
- b) The feeling of safety of the given minority community is put at risk, since these movements – beyond the immediate effects of their appearance – clearly generate or strengthen anti-minority feeling, and make it more difficult for members of the given community to assume their identity freely, by as it were implying that 'otherness' is a 'crime' or unnatural state.
- c) Finally hate speech is liable to strengthen the organisation of groups – primarily consisting of young people with similar aims to the Guard – which show readiness to directly attempt to realise anti-minority objectives.

We have long been speaking of a greater danger than an abstract threat to public peace, which as we know – in connection with the ‘perpetration conduct’ of abusive speech – the Constitutional Court did not regard as serious enough to serve as a ground for fundamental legal restriction in a criminal law sense.

Unfortunately the earlier assumption, also shared by the Constitutional Court, seems to have proved false according to which the public after a time will cast off the worst of prejudiced and racist manifestations and the person using abusive language will stigmatise and discredit themselves, and so will unavoidably be confronted with public contempt.

It is also necessary to understand – and this new circumstance is responsible to no small extent for generating a feeling of emotional identification – that the rhetoric of the Guard includes the idea of society’s rightful self-defence, and drumming into the social conscience the notion that if the power of the state is helpless against ‘Gypsy crime’ then we have to take our safety into our own hands. Showing that the majority society has become the victim – without knowledge of the real figures and structure of crime – can even provoke solidarity reflexes in those, who otherwise do not have racist-type prejudices. However, in seeking those responsible for their more insecure social circumstances they are more receptive to perceiving a given ethnic group or groups as the scapegoat.

It is not coincidental therefore that in authoritative Hungarian legal literature, grave doubts have been expressed concerning the optimism of the Constitutional Court practice towards freedom of speech, according to which ‘intelligent public opinion’ can only take shape in open political debates, where the person using abusive speech stigmatises themselves. This can be the case, but only if we are really speaking of rational discourse and competing arguments which are worthy of being strengthened or even refuted.

‘But what arguments can be lined up against expressions such as ‘foul Gypsy’, ‘dirty Jew’ or ‘idiot, cretin judges’? ... communications which do not have this ability and which are unsuited to contributing to the development and maintenance of the communication sphere, may not lay claim to increased protection.’ According to the views of legal experts, it is not the content of the communication (however repellent and alarming this content is) that should indicate the boundaries of being prosecutable by criminal law, but the extent to which rational arguments can be brought against it.

### 2.3.

#### What action has the minorities' commissioner taken?

The Parliamentary Commissioner for the Rights of National and Ethnic Minorities at the beginning of December 2007 considered that the time had come in connection with the operation of the Guard and related racist manifestations to use the means of publicity and to call on the responsible-minded elected leaders of Hungarian society to speak out and publicly condemn extremist manifestations of similar content. In a letter dated 7 December 2007 addressed to the high public offices the minorities' commissioner stated: 'In an open European society which respects human rights it may not be allowed and may not be accepted that the leader of a movement which regards itself as politically legitimate make such declarations.'

A few days later the three ombudsmen in office issued a joint statement, in which they expressed their profound consternation at the increase in racist manifestations in Hungary.

President of the Republic, László Sólyom replied promptly to the parliamentary commissioner's level, in which he qualified the Guard's demonstration in Tatárszentgyörgy as expressly anti-Gypsy and secondly commented: 'In addition to the fact that their ideology is reprehensible, in practice such actions create an immensely damaging atmosphere, which clearly hinders the advancement of the social integration of the Roma.' In the letter he also said that he supports the minorities' commissioner in those efforts aimed at enforcing and protecting rights, ensuring the freedom of all and remedying the social situation of the Gypsies. In a subsequent letter to the President of the Republic, Ernő Kállai described the letter of the President as a historical act and a turning point in the fight against racism.

In the meantime the Government also made its position clear, since the Prime Minister – by means of the Government spokesman – condemned the demonstration held by the Guard on 9 December in the most certain terms. In a letter sent to the minorities' commissioner, the Prime Minister welcomed the initiative of the commissioner and pointed out that the Government even at the time of the formation of the Guard had described the Guard as unacceptable both in a moral and a political sense: 'the

Government at that time warned all those who form public dialogue and all important figures in public life that there is no longer any moral excuse for anyone failing to speak in clear terms or failing to distance themselves openly, since following our national tragedy, the Holocaust we can no longer speak of innocent anti-Semitism or innocent Hungarism.'

In the second week of December the ombudsman office received responses from those high public offices addressed expressing agreement and solidarity. The Speaker of the Parliament pointed out that at numerous public forums she had condemned and rejected all forms of scaremongering and incitement. The president of the Supreme Court took a similar line, by declaring that there is a need for more effective legislation against manifestations which violate the dignity of communities.

## 2.4.

### Some elements of an anti-racism strategy

From sociological and group psychology studies we know that prejudiced behaviour (or more precisely the system of views behind this which is fundamentally driven by emotional motives) cannot be changed by 'enlightening', rational argument in itself. It is not sufficient, therefore, to display the real situation of the target group of the prejudice and thus the false nature of the prejudice. It is necessary to dig deeper. The subject of the prejudice needs to be confronted with their own situation and the psychological and social reasons for their prejudices. A mass of social situations and personally undergone experiences need to be created for them, which will after a time force them to draw the conclusion that they belong to the majority taken in its multiple senses, but at the same time to numerous minorities, and that the majority-minority relationship is relative, changing and can be reinterpreted, i.e. that they can also find themselves at any time in the situation of the member of the minority which is discriminated against.

It is difficult to imagine an effective fight against prejudices without such 'light-bulb' experiences which gradually provide insight into the irrationality of prejudiced opinion that forms part of the emotional world of individuals and communities. This needs to be stressed because 'In this one-dimensional and therefore distorting domain, it is misleading to reduce the

increasingly dramatic conflict between the Gypsies and the ‘majority society’ and the resolution of this to merely nefarious prejudices, and an enlightenment struggle conducted against these.’

Applying the above to our topic and bearing in mind the above consideration, whilst still trusting in the strength of ‘plain speech’, we think that we would not be facing such a situation, if in the last decade and a half Hungarian society had received regular, objective, easy to understand orientation concerning firstly the development of the situation of the Roma in Hungary, and secondly the real figures, reasons and structure of crime in forums available or easy to access by all. Today of course we cannot yet assess what social layers the rhetoric of the Guard appeals to and with what strength, yet it can be claimed that even in worsening economic circumstances, when the feeling of security of the general population has been shaken, the ‘target community’ would be more protected if a well-founded public safety strategy spanning governments had been popularised.

Today the feeling that ‘the state does not protect me from crime’ is the real experience of an increasing number of people. This can now no longer be regarded as the remnant of the one-party period which treated public safety as a state monopoly. In addition to the feeling of the lack of prevention, it is also necessary to tackle the view which is gaining prominence in public opinion that the criminal investigation bodies and the judiciary do not, in connection with violations of the law that have already occurred apply swift and consistent sanctions that take seriously the principle of legality (a crime must not remain without punishment) and the need for justice of the social majority, in a way that is capable of offering compensation to the injured parties. Since one of the thrusts of the Guard’s rhetoric is that society has been abandoned when it comes to fighting crime, it is an increasingly urgent government task to shed light on the activity of the crime investigation and crime prevention bodies, and to show their real achievements and of course also areas where there is room for improvement. It seems clear that the bodies of the criminal judiciary cannot be left out of this process.

It is necessary to deal again with so-called subsistence crime (its proportions, types of crime, real damage caused, data concerning detection and calling to account), which has provoked strong social outrage, not because this behaviour for a second can be regarded as legally acceptable, but

because it is necessary to make public opinion aware that currently there are settlements where part of the population – without regard to ethnic affiliation – is forced to ‘choose’ a deviant lifestyle involving crimes against property simply in order to live.

We know that the factors behind prejudices are mainly society’s socialisation ‘workshops’, primarily the family, school, peer groups from the start of adolescence, and finally everything which young people from a vast number of public forums regard as setting an example for themselves or at least as respectable.

Behavioural problems arising from origin, hopeless poverty, addictions of parents etc. and the frequently accompanying social marginalisation cause basic problems such as lack of self-confidence which can easily start young people on the path towards minor crime, and then towards becoming criminals. In the same way it can also create violence-prone political emotions stemming from racist motives which certain ‘adult’ organisations are now ready to exploit and manipulate. Programmes therefore are needed as an alternative to venting energy in an antisocial way to occupy the leisure time of those young people who are at risk. These need to be affordable and provide transferable skills and knowledge. The programmes need to promote the development of social skills such as empathy, cooperation and integrity.

# International relations

## International cooperation and publicity

The activity of the minorities' commissioner is primarily directed towards questions concerning minority protection in Hungary. The effectiveness of this, the protection of minority rights and equal treatment set as a requirement for gaining EU membership, however, can only be judged on the scale of human rights and constitutional traditions. Cooperation extending behind borders and the forums of international publicity are therefore very important. The extension of international professional relations and exchange of experience will continue to play an important role in shaping the work of the ombudsman. In the period covered by the report we endeavoured to strengthen the forms of international cooperation on several levels.

We received numerous foreign delegations and informed them about the situation of the minorities in Hungary and our work. Representatives of the embassies of the Russian Federation, Italy and Germany visited our office. The aim of their visits was to become acquainted with the new ombudsman and his ideas, and to be informed about the situation of minorities in Hungary.

As part of the EU Twinning project, a Turkish expert group came to Hungary in order to study questions of equal opportunities, equal treatment and equality between the sexes. In cooperation with the staff of the general commissioner, we gave a talk on the key questions of anti-discrimination law, our complaints of this nature, our investigations and the operation of the office of the minorities' commissioner.

At the request of the civil organisation International Centre for Democratic Transition – in conjunction with the staff of all the parliamentary commissioners – we informed the leaders of the Kosovo ombudsman institute and the ‘Macedonian institute for the protection of human rights and freedoms’ about the work of the parliamentary commissioners in Hungary. The staff of the general and the special commissioners gave talks summarising the experiences of the ombudsman system in Hungary, followed by consultation by topic between the countries’ experts.

On 6-7 December 2007 a conference was held in the Danish city of Elsinore, attended by more than a hundred participants from and beyond Europe, focusing on examining those life situations and social groups where those concerned regularly face discrimination for several reasons (properties) at one time, i.e. they belong to more than one of those groups in society which is most vulnerable to not being treated equally. Academic research on this phenomenon began in the US at the end of the 1980s, and the concept first appeared in the work of the law professor Kimberlé Crenshaw, who examined the situation of Afro-American women titled ‘Critical Race Theory’. Kimberlé and her supporters called for a new research paradigm in order to investigate discriminative phenomena more profoundly and adequately. Firstly they sharply criticised the narrow investigation of discrimination afflicting minority groups which only looks at one reason (characteristic). Secondly, they pointed out that the various discriminative disadvantages add up or reinforce each other, making it multiply difficult to uncover and prove the existence of the phenomenon in a legal sense, and for the typical victims of multiple discrimination (for example disabled women, lesbians, young Muslim men following the 2001 terror attack in the US) to escape in a social sense. In the interests of ‘historical accuracy’ it is worth noting that the concept was finally adopted by the UN at the 2001 World Conference held in South Africa against xenophobia and racism, and so became accepted by international academic opinion.

The talks given at the Danish conference reinforced the impression that multiple discrimination – despite the results of sociological and legal research over the last decade and a half – still counts as the Cinderella of the European Union’s legal acts and the domestic law of the member states. The primary field where multiple discrimination manifests itself is the world of employment and the business sector. Researching the accumulat-



ing reasons, it emerged that there are six main properties based on which unequal treatment occurs: gender, national and ethnic affiliation, age, religious conviction (world view), sexual preference differing from that of the majority, and physical or mental disability. The various combinations of these characteristics provide the typical case groups of the phenomenon. At the same time, in concrete discrimination complaint cases, despite the rules of proof having been eased it is very difficult to convincingly prove one protected property alone as the motive for discrimination, yet alone several. The reluctance of those pursuing violations of the law to attempt to credibly prove the multiplication of the reasons (and the proportion of these) in concrete cases is therefore understandable. Interestingly even in those countries where it features as an independent category of unlawfulness or as a possibility for increasing sanctions (Germany, Austria, Spain, Romania), in legal practice it is hardly used. Here it should be noted that the question of multiple negative discrimination is lacking from the thinking of the Hungarian legislature and law-enforcers, so the conference could provide a basis for its dissemination in Hungary. This type of approach and treatment is missing from the Government (and local government) expert concepts and programmes for equal treatment and equal opportunities, and state-financed education and research projects. The one-dimensional approach of seeking one cause continues to be predominant, and in the future the minorities' commissioner needs to remedy this. Negative discrimination against those who are disabled, unemployed or children segregated in school is clearly linked not only to the Roma origin of those concerned, but to their other situation, requiring particular legal and administrative measures and support.

At the conference a recommendation was drafted to promote such special treatment, which in our future work we shall regard as directional:

- a) It is necessary to research in a far wider sphere and more intensively than at present the frequency of phenomena indicating multiple discrimination, the most typical types of multiplication of reasons in the various areas of society (including the private sector), the reasons for invisibility, the reactions of the 'victims' and the possibilities of spontaneous and institutional defence, and in connection with the above the effectiveness of national and international legal protection mechanisms and anti-discrimination programmes.

- b) Since the public law instruments developed to treat the phenomenon are insufficient on the EU level and the level of the member states, it is necessary in legislation to draw up mechanisms, which take into account the typical ways in which multiple discrimination occurs, sanctions, or which in the sense of procedural law are capable of preventing, disclosing and penalising multiple discrimination. The aim is for the fight against the variants of multiple discrimination, which for the main part remain unpunished, to become much more effective than at present.
- c) Since the phenomenon (and so some of the reasons) can be traced back to the socially disadvantaged situation of the individual minority groups compared to the majority, instruments of prohibition are clearly insufficient to reduce or eliminate the phenomenon, and so the introduction of social policy instruments serving equal opportunities and positive discrimination is certainly necessary.

In 2007 our cooperation with international organisation working in the field of the protection of human and minority rights continued. We wish to mention in particular that in summer 2007 Andrzej Mirga, the adviser on Roma and Sinti issues of the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights visited our office. At the meeting we discussed among other things the political representation of the minorities, the fight against discrimination and legal instruments for taking action against hate speech.

The European Ombudsman Institute contacted us with the request that we provide detailed information concerning relations between the Constitutional Court and the parliamentary commissioners in the area of defending human rights. We sent our analysis on strengthening the legal protection system and activating the relationship between the two legal defence organisations to the European Ombudsman Institute.

In 2007 we also continued our cooperation with European equal treatment organisations in the framework of Equinet. Through the intranet forum created between the equal treatment organisations we can exchange opinions directly on professional questions. This information flow and awareness of each others' work makes it easier so remedy similar problems at home, and contributes to the unified application of European Union anti-discrimination regulations.

In 2007 Equinet assisted the further training of staff of the equal treatment organisations by holding two trainings. One seminar dealt with legal questions of negative discrimination and issues of multiple discrimination. There were detailed talks discussing questions of the different levels of protection for discrimination based on the various properties and the relevant case law of the Court of Justice of the European Communities. Following the talks, concrete cases were interpreted and resolved in working groups based on the European Union directives on discrimination, the case law of the Court of Justice of the European Communities and national law.

There was the opportunity to compare the different approaches of the member states and potentially different interpretations. Intensive exchange of experience took place based on the possibilities allowed by the laws of the different countries and strategies that could be applied in the given cases.

The other Equinet seminar dealt with anti-discrimination trainings, namely what role trainings can play in the implementation of equal opportunities and the principles of diversity. At the meeting talks were given by partners who have been organising tolerance trainings for decades. In addition, the participants had the chance to personally experience the usefulness of some of the tasks from the trainings. The speakers stressed that such trainings can significantly contribute to altering prejudiced thinking, and to eliminating and preventing forms of behaviour that violate the principle of equal treatment. Based on the experiences of the seminar, the minorities' commissioner entered the organisation of tolerance trainings among his plans for 2008.

Monitoring international documents discussing minority rights, as well as the relevant case law of the European Court of Human Rights and the Court of Justice of the European Communities also provides important knowledge. The Ostrava case brought a particularly significant achievement, in which the Strasbourg Court again reinforced the application of numerous discrimination directives and detailed further aspects of them. The call to member states of the European Parliament resolution which was passed on application of Directive 2000/43/EC is a landmark document, particularly on the question of collecting precise statistical data. The directive stressed the importance of trainings on the aim and questions of the directive, including training of the staff of government bodies. The European Parliament also

called upon the member states to vest their equal treatment bodies with the appropriate scopes of authority so that they can take more effective actions against the phenomenon of discrimination.

*It emerges from the examples mentioned that cooperation with international forums is partly possible through events aimed at exchange of experience, familiarisation with good practices, legal defence experiences and based on personal consultations between leaders. To a lesser extent it means the implementation of international provisions issued on human rights primarily targeting negative discrimination and the use of case law.*

*In addition, in the future it is our intention to develop clear priorities and to take the initiative in certain areas.*

1. It is necessary to become more actively involved in providing a professional basis for and making public and opening to professional and social debate those national reports prepared for the UN, the Council of Europe and the European Union, which give an account of international obligations undertaken in the areas of negative discrimination, segregation, racial discrimination, social integration, language rights, cultural autonomy, employment, social rights and detention. As an example it can be mentioned that in October 2007 we gave our opinion on the report prepared for the Parliament on the situation of national and ethnic minorities living in the Hungarian Republic between February 2005 and February 2007, in which we regretted the absence of information on the activity of the European Commission against Racism and Intolerance, and urged for tasks undertaken based on the European Charter for Regional or Minority Languages to be extended to the Beás language. Nevertheless, in preparing reports designed to go before international forums, the system of cooperation between the various government bodies is not sufficiently developed. We therefore will take the initiative, since complaints made to the minorities' commissioner, and investigation materials in numerous cases can supplement, make more precise or refute reports which mainly focus on description of legislation and budget expenditure. For example, the effectiveness of government programmes for Roma integration and the assessment of the usefulness of European Union support and budget expenditure can only be judged comprehensively with knowledge of legal practice.

Secondly, we wish to give the representatives of minority public life and interests representation and legal defence bodies the opportunity to become familiar with and criticise the drafts of the national reports. The democratic nature of minority affairs specifically demands that national reports which have already been prepared and submitted be made accessible and open to debate by minority self-governments and civil organisations. We wish to cooperate in this.

2. It is necessary to speak separately about the activity of the Agency for Fundamental Rights (FRA) established in 2007 and based on the Monitoring Centre on Racism and Xenophobia (RAXEN). The reports on Hungary mainly dealt with reports on Roma and foreigners, discrimination cases and segregation court actions, beyond the description of legislation, whilst in the future the sphere of topics will extend to the application by the member states of the other rights featuring in the Charter of Fundamental Rights, and the writing up of good practices. It is regrettable that there was not any capacity for the continual observance, Hungarian translation and publication of this work, and the extensive dissemination of the joint reports. The methodology of the monitoring in particular would require analysis, for which the knowledge of the staff of the minorities' commissioner offers a good basis.

3. The dissemination of international case law in terms of the training and further training of civil servants, particularly in the area of equal treatment and minority special rights is sketchy. In the future we wish to place greater emphasis on conveying enhanced training methods and materials which we become familiar with at the various forums with local government staff, other public officials and law enforcement staff. In our view in the past years insufficient attention has been paid to thematically conveying information on of the forums of the Council of Europe, the EU and the UN which judge violations of the law, in such a way that this knowledge work its way into the daily practice of public administration. For this reason in several areas a lack of focus on human rights-based legal interpretation can be observed, which needs to be changed progressively through trainings.

4. Various mixed committees monitor the implementation of bilateral minority protection and cultural agreements signed with neighbouring countries. However, in preparing for this session and agreeing work schedules and priorities insufficient attention is paid to the processes going on in

the background and complaints known to the minorities' commissioner. There is a need for this mechanism to be transparent and accessible in the future to minority public opinion, minority organisations, self-governments and legal defence bodies. The committee minutes, the planned government steps and their financial resources also need to be public because without the minorities their implementation cannot be effective. In this dialogue the cooperation of the minorities' commissioner is of benefit to all parties. In particular the enforcement of minority language rights in the media, authority procedures and public education require greater efforts.

5. We wish to urge for the Hungarian ratification of the Council of Europe's Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms to make headway. The Protocol, which prohibits negative discrimination in the whole of the legal system, is in line with the principle contained in the resolutions of the Constitutional Court, so it is difficult to justify why the translation into domestic law of the Protocol signed in November 2000 is still being delayed.

# Statistics

In the previous reports we did not attach a detailed explanation to the statistical data published. However, there were significant changes in our 2007 caseload, and it is necessary to mention the causes of these.

In the past two years the number of complaints we received fell. This was probably connected in part to the fact that the Equal Treatment Authority began operating during this period.

In the second half of 2007 this tendency ceased, and our total number of cases rose dramatically by some 35 percent. The growth could be observed in every case type. Some 18 percent more complainants turned to us than in the previous year.

The number of complainants requesting an investigation rose fundamentally in the second half of the year. Clearly the new ombudsman entering office, which aroused or strengthened the interest of the press in our work, contributed to this. Such news reports raised the profile of the institution, and also promoted the beginning of a dialogue on minority legal questions which for years have been judged as 'unsolvable' by political decision-makers. In 2007 the number of requests for us to provide a position statement or information also grew, which is a consequence of the amended provisions of the minority legislation being difficult to interpret and in some cases contradictory.

In the period covered by the report, we doubled the number of procedures launched *ex officio*. These include the investigations which we launched based on news reports, as well the analyses we prepared in connection with certain minority legal problems (for example parliamentary

representation of the minorities, gaining preferential mandates, or extending the scope of authority of the ombudsman).

It can also be seen from the statistics that we actively participated in the legislative process. In 2007 we gave an opinion on some 40% more rules of law than in the previous year. In this respect we are planning to develop even closer cooperation with the bodies responsible for legislation. This is particularly necessary in the case of the Ministry of Justice and Law Enforcement because during the report period barely 10% of requests for our opinion were received from this Ministry.

The parliamentary commissioner's procedures do not have a deadline determined by law. Regardless of this we find it important to mention that the rising number of cases has not resulted in our investigations being delayed. We were able to close more than 50% of our procedures based on complaints received within a month, and only 5% of investigations required more than six months. In the majority of such cases the complexity of the issue did not allow the procedure to take place more quickly, but there were also instances of the investigated bodies not displaying the cooperation that one would expect and failing to respond promptly.

A more significant change than the rise in the number of cases is that we made as many recommendations, initiatives and legislative proposals as in the previous two years combined. Roughly 10 percent of our investigations launched based on complaints or own initiatives closed with such a measure.

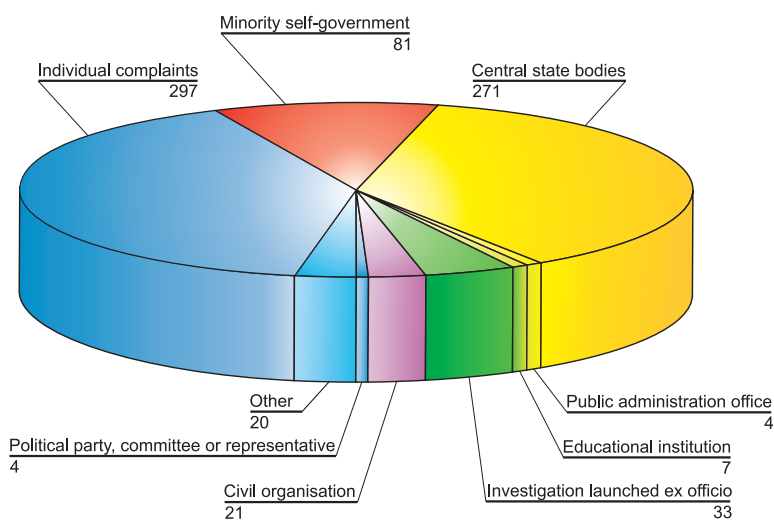
Some of the bodies concerned had not given a response to our recommendations and initiatives by the time of preparing the report. However, even now it can be stated that a greater proportion of our proposals have been accepted than previously. This is especially obstructive in case of recommendations, some 85% of which met with the agreement of the body requested to take measures. The acceptance of our initiatives approached 50 percent, which counts as a good result if we take into consideration that the body concerned thereby voluntarily recognised the fact that they had caused an impropriety.

We know that the level of cooperation of the given authority is also a fundamental condition of success. However, by taking determined action our aim is to be able to report on similar or even greater successes in the coming years.



## I. Distribution of cases in 2007 according to complainants

Individual complaints	297
Minority self-government	81
Central state bodies	271
Public administration office	4
Educational institution	7
Investigation launched ex officio	33
Civil organisation	21
Political party, committee or representative	4
Other	20
<b>Total</b>	<b>738</b>

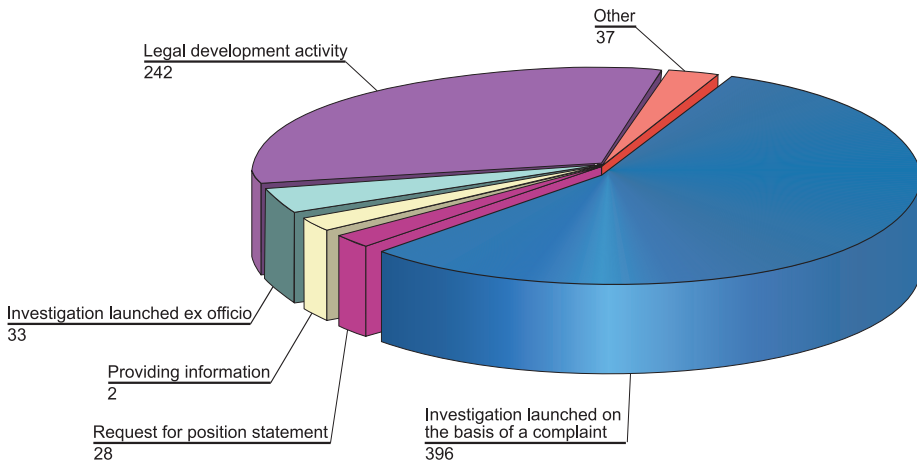


## II. Procedures launched based on cases in 2007

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Investigation launched on the basis of a complaint	396
Investigation launched ex officio	33
Providing information	2
Request for position statement	28
Legal development activity	242
Other	37
Total	738

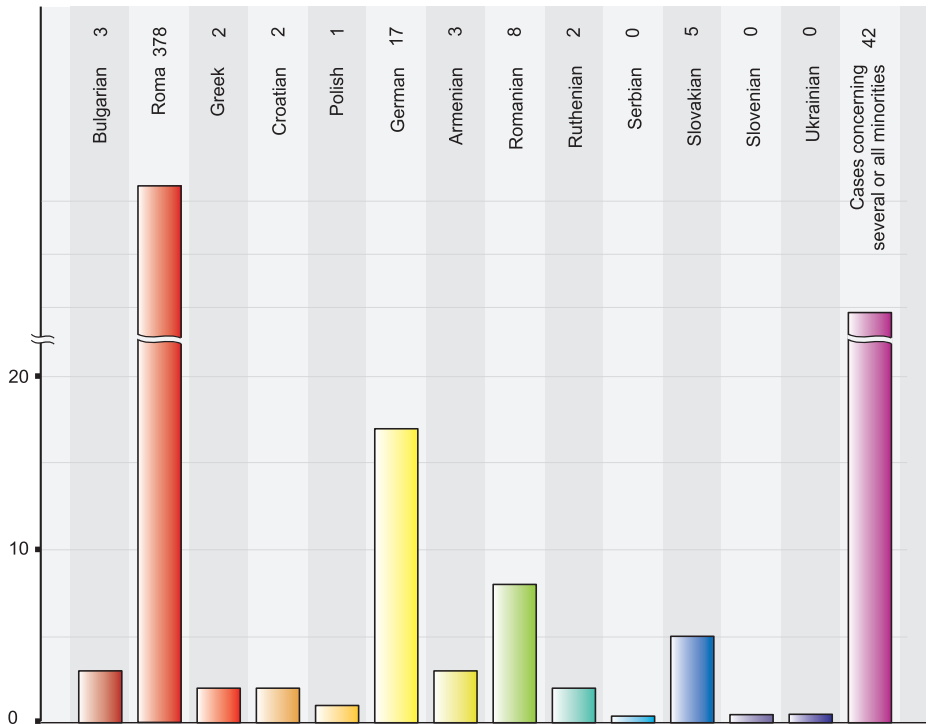
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III. The minority which the cases concerned\*

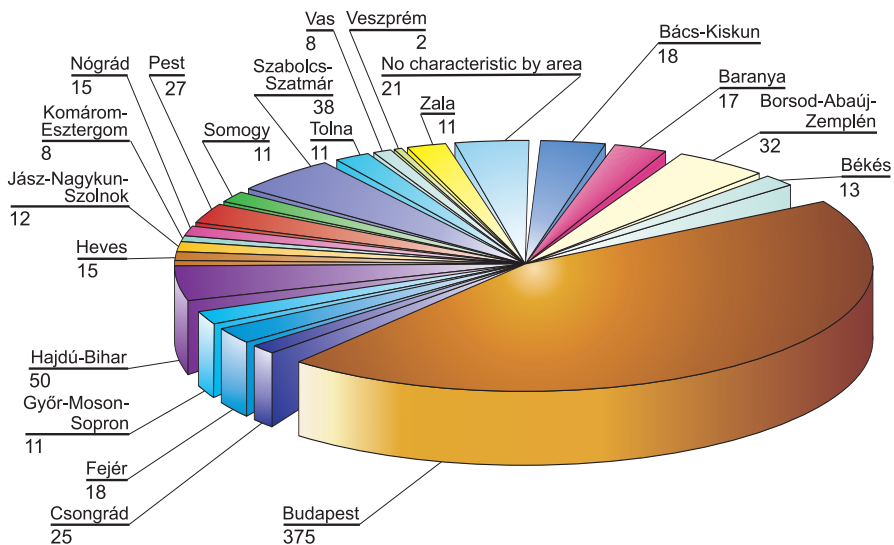
Bulgarian	3
Roma	378
Greek	2
Croatian	2
Polish	1
German	17
Armenian	3
Romanian	8
Ruthenian	2
Serbian	0
Slovakian	5
Slovenian	0
Ukrainian	0
Cases concerning several or all minorities	42
Total	463

\* One case may concern more than one minority



#### IV. Distribution of cases by area based on the address of complainants

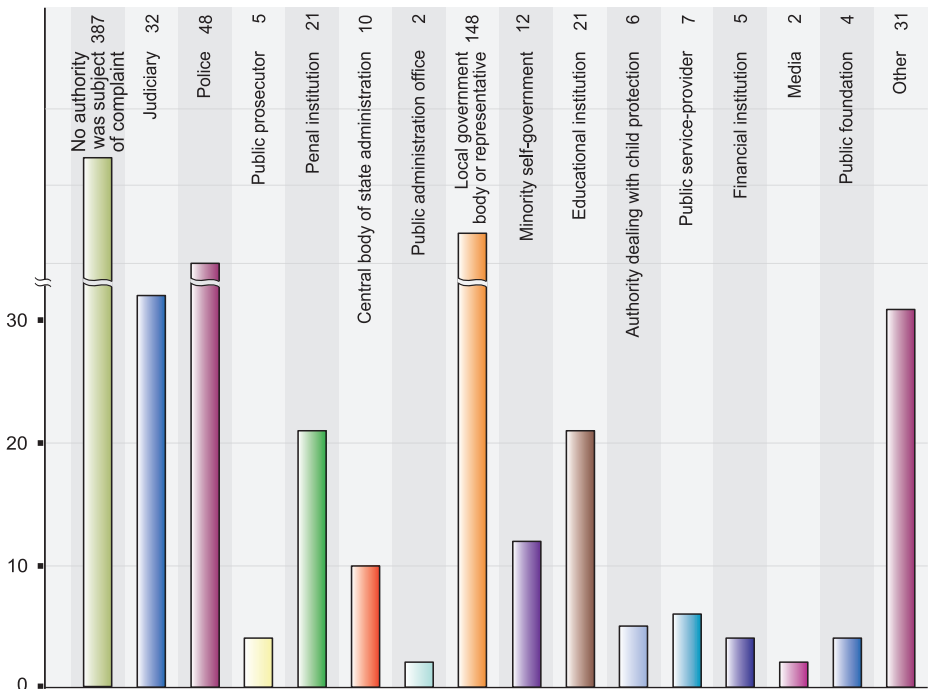
Bács-Kiskun	18
Baranya	17
Borsod-Abaúj-Zemplén	32
Békés	13
Budapest	375
Csongrád	25
Fejér	18
Győr-Moson-Sopron	11
Hajdú-Bihar	50
Heves	15
Jász-Nagykun-Szolnok	12
Komárom-Esztergom	8
Nógrád	15
Pest	27
Somogy	11
Szabolcs-Szatmár-Bereg	38
Tolna	11
Vas	8
Veszprém	2
Zala	11
No characteristic by area	21
Total	738



V. The bodies which the cases concerned\*

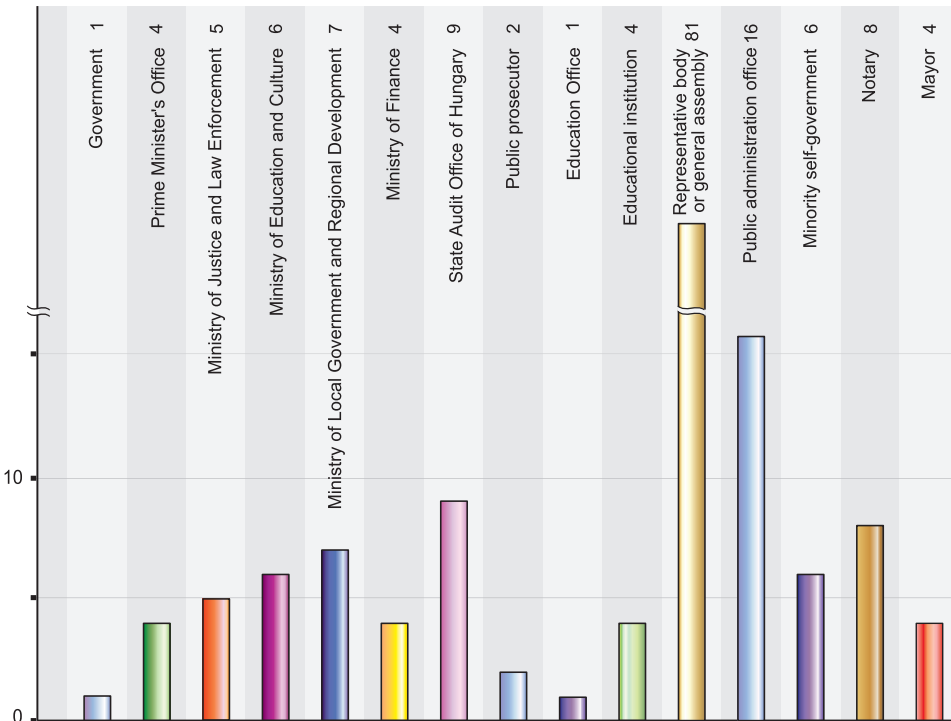
No authority was subject of complaint	387
Judiciary	32
Police	48
Public prosecutor	5
Penal institution	21
Central body of state administration	10
Public administration office	2
Local government body or representative	148
Minority self-government	12
Educational institution	21
Authority dealing with child protection	6
Public service-provider	7
Financial institution	5
Media	2
Public foundation	4
Other	31
Total	741

\*A given case may concern more than one body



VI. List of bodies to whom we made initiatives, recommendations and legislative proposals

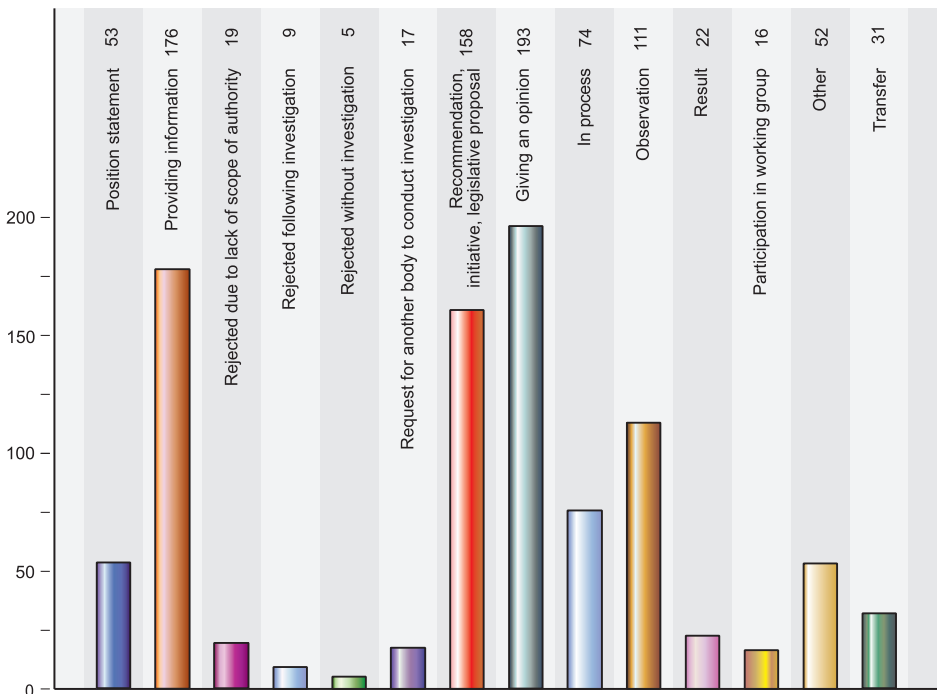
Government	1
Prime Minister's Office	4
Ministry of Justice and Law Enforcement	5
Ministry of Education and Culture	6
Ministry of Local Government and Regional Development	7
Ministry of Finance	4
State Audit Office of Hungary	9
Public prosecutor	2
Education Office	1
Educational institution	4
Representative body or general assembly	81
Public administration office	16
Minority self-government	6
Notary	8
Mayor	4
Total	158



## VII. Measures taken on the basis of our investigations\*

Position statement	53
Providing information	176
Rejected due to lack of scope of authority	19
Rejected following investigation	9
Rejected without investigation	5
Request for another body to conduct investigation	17
Recommendation, initiative, legislative proposal	158
Giving an opinion	193
In process	74
Observation	111
Result	22
Participation in working group	16
Other	52
Transfer	31
<b>Total</b>	<b>936</b>

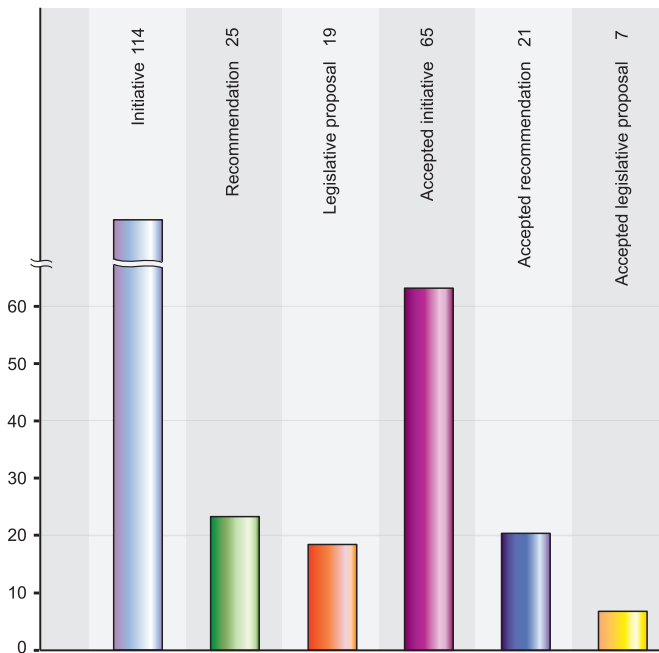
\*More than one measure may take place in a given case



VIII. Total number of initiatives, recommendations and legislative proposals\*

Initiative	114
Recommendation	25
Legislative proposal	19
Accepted initiative	65
Accepted recommendation	21
Accepted legislative proposal	7

\*In some cases the bodies to which we made initiatives, recommendations and legislative proposals have not yet sent their response.





# List of legislation

## Legislation referenced in the report and abbreviations used

Constitution. Act XX of 1949 on the Constitution of the Republic of Hungary

Act XXXII of 1989 on the Constitutional Court

Act LXV of 1990 on Local Governments

Act XXXVIII of 1992 on the State Finances

Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest

Act III of 1993 on Social Administration and Welfare Benefits

Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (Ombudsman Act)

Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (Minorities Act)

Act LXXVIII of 1993 on Certain Rules relating to the Rental of Residential Properties and Premises and the Alienation thereof

Act LXXIX of 1993 on Public Education

Act LII of 1994 on Judicial Enforcement

Act LXXVIII of 1997 on the Formation and Protection of the Built Environment

Act LXXX of 1997 on Eligibility for Social Security Services and Private Pensions and the Funding thereof

Act C of 1997 on Electoral Procedure

Act CLVI of 1997 on Public Benefit Organisations

Act XIX of 1998 on Criminal Procedure

Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (Equal Treatment Act)

Act CXIV of 2005 on the Election of Minority Self-Government Representatives and Modification of Certain Acts on National and Ethnic Minorities

Act CXXXIX of 2005 on Higher Education

Decree of statutory force No. 11 of 1979 on the Execution of Punishments and Measures (Penal Codex)

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