# Report

## ON THE ACTIVITY OF THE PARLAMENTARY COMMISSIONER FOR THE RIGHTS OF NATIONAL AND ETHNIC MINORITIES

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THE RIGHTS OF NATIONAL AND ETHNIC
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National and Ethnic Minorities

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# Introduction

You are holding a subjective summary of 2008 focusing on minority communities and filtered through the cases of our office. How was 2008?

In many respects we can regard it as forward-looking year of positive change. It proved possible to solve the case of the German theatre in Szekszárd amicably, and since then there has been peace between the national-level self-government and the county general assembly. As a result of our involvement the case of the Slovenian folk museum in Felsőszölnök began to be resolved. In Tótkomlós the fate of the Slovakians' museum moved in a positive direction. During our tour of the country we saw well-functioning national minority nurseries and schools. Through the House of Opportunities Network we managed to develop increasingly well-functioning co-operation with local professionals wishing to assist the minority communities. We received increasing numbers of cases through them, which means that we can help more and more people in this way. Very good relations have developed with civil organisations involved in the minority sphere. We consult with them on important issues and develop joint opinions. We have also joined forces with the academic sphere. We signed co-operation agreements with the Hungarian Academy of Sciences and several other institutes. Joint academic work and analyses are in progress. We paid our respects to the memory of minorities researcher István Kemény by setting up an award in his name. The report reveals the results achieved in the past year through restructuring and making the work of the ombudsman more dynamic.

In other respects, however, we have witnessed a deepening social crisis, and as we know minority communities are usually the losers of such crises. The year began with the manifestation of the apparently absurd concept of "Swabian crime". At that point we did not yet know what lay ahead. The year continued with the case of the Slovakian centre in Pilisszentkereszt, which even caused international complications. Following many "effective" actions currently the local population is protesting against the construction of any community centre. In the course of the summer the concept of "criminal poverty" manifested itself again as an overwhelming social need due to the social welfare system which for decades has been poorly structured and not properly thought through. Local politicians expressed the basic need to punish "scroungers", frequently in an unlawful way, and they found support for this in national politics.

Discriminatory and hateful content expressed in a comparatively reserved way in 2007 became part of general political discourse in 2008. The primary target was the Gypsies. We have been saying in vain for a long time that freely

allowing hate speech would have severe consequences in the long term. Specious legal arguments essentially defending hate speech have also paved the way for this.

The frequently hypocritical and ambiguous political statements of the political elite have also played a large part. Failure to speak out because of fear of losing popularity has contributed to the development of the severe social situation. Of course the Roma political elite is not blameless either: in the past 20 years it has not been powerful enough in rejecting measures that instead of serving social integration were really just for show, and in demanding real solutions. Those Roma people were also mistaken who believed that the state will solve all their problems, as were those non-Roma people who let themselves be convinced that Gypsies can be blamed for everything. As a result of the above, basic moral boundaries collapsed, triggering the rapid spread of violence. As a result people using the Gypsies as scapegoats for their own interests were exonerated for inciting social hatred.

In the past year the number of cases dealt with by the office of the Minorities Ombudsman doubled. In spring 2009, at the time of drafting the report, one spark is enough for social tempers to erupt. At the start of the 21st century the minority communities are afraid of what the future holds.

Chapter I

# Experiences concerning the exercise of minority autonomy



## 1.
## Conceptual problems of the Minorities Act

Act LXXVII of 1993 on the Rights of the National and Ethnic Minorities (hereinafter: Minorities Act) defines the minority rights. These provisions, however, can mainly be regarded as mere declarations, and further legislation in specific sectors is needed to enforce them. Such legislation, however – excluding the field of education – is still lacking, or is not yet complete. While minority rights have been recognised, the necessary institutional and procedural guarantees are not yet in place for these rights to be enforced.

The national and ethnic minorities represent a constituent part of the state, according to Hungary's Constitution. They have the right to parliamentary representation, which would be enforceable by granting them legal concessions. In the past decade and a half and more numerous ideas have been put forward to ensure minority representation, but Parliament has not framed a law to this effect.

The Minorities Commissioner in co-operation with the presidents of the national-level minority self-governments drew up a concept on parliamentary representation. The national-level minority self-governments agreed that they would regard a law as acceptable which offers all 13 minority communities a realistic chance of achieving parliamentary representation. On 5 September, 2008 in a joint letter with the presidents of the national-level minority self-governments we called on the Government to begin drafting a bill on the parliamentary representation of the minorities and to negotiate this with political decision-makers. At the time of completing the report we had not received a written reply to this request.

Defining the fundamental minority rights in a law was a necessary and forward-looking step. This decision, however, also has the undesirable consequence that the minorities legislation is applied in isolation, i.e. the circumstances are unjustifiably restricted in connection with which its provisions are enforced. It is common for the right to opinion of the minority self-governments to be recognised at most on educational and cultural questions. We therefore propose to

Parliament that mandatory consultation with the minority self-governments be included in those laws which are of particular importance for the living circumstances of the minority communities, for example environmental protection and protection of the built environment.

The legal definition of minority community has remained unchanged since the law was framed. The legislator endeavoured to define criteria which are clear and substantial elements of recognising a community as a national or ethnic minority. These criteria are as follows:

– the given ethnic group is in a numerical minority in the population of the state;
– its members are Hungarian citizens;
– the ethnic group has a history of at least a century of living in the Republic of Hungary;
– it can be distinguished from the rest of the population by its own language, culture and traditions;
– it demonstrates a sense of belonging together, which is aimed at the preservation of the above, and the expression and protection of the interests of their communities which have been formed in the course of history.

At the time of comprehensive amendment to the Minorities Act in 2005 the only element of the concept of minority which provoked debate was the requirement of Hungarian citizenship. The Minorities Act sets out to promote the preservation, cultivation and passing down to future generations of the existence, culture, traditions and languages of the minority communities regarded as native to Hungary. It also expresses this by prescribing that – at least in a legal sense – only Hungarian citizens may be members of the minority communities.

These regulations, however, do not mean that individuals without Hungarian citizenship cannot take part in minority public life, and cannot make use of certain minority public services. So for example anyone may be a member of a minority organisation formed based on the right of association, and it is not a requirement for participation in minority education that the pupil be a Hungarian citizen. Lack of Hungarian citizenship, however, represents a real disadvantage and excludes the possibility to exercise rights in two areas: minority language rights and minority self-government elections.

A natural person who comes under the effect of the Minorities Act may use the language of the given minority in both spoken and written form during public administration authority procedures. This entitlement does not apply to non-Hungarian speaking persons who are not Hungarian citizens. As a general rule if they bear the costs of translation and/or interpreting they can request that the public administration authority judge their application written in their native language or a mediatory language.

According to the provisions of the Constitution, adult persons recognised as refugees, immigrants or foreign citizens settled in Hungary may vote in the local government elections, and EU citizens – with the exception of the office of mayor – can be elected as members of the representative body based on their domicile. By contrast, citizens of the minority native countries – if they do not have Hungarian citizenship – may not participate in forming minority self-governments.

Some national-level minority self-governments complain that the election law regulations exclude persons from the post of minority self-government representative who have been living in Hungary for decades and are active participants in the public life of the minority. In their view language knowledge and commitment to the traditions and culture provide greater entitlement to participate in minority self-government elections than whether the given person has Hungarian citizenship or not.

Those persons may participate in the minority self-government elections who declare that they belong to the given minority, and request that they be entered in the minority electoral register. The current regulations do not make it possible for the veracity of this declaration to be checked by the election bodies, or disputed by the minority community concerned. There is no possibility for legal remedy against entry in the register even if it is clear that the given person made a declaration which does not correspond to their real identity. In order to eliminate such abuses we believe it is necessary for the minority communities to be involved in compiling the electoral register.

## 2.
## The minority self-government system

The Constitution declares protection of national and ethnic minorities among fundamental rights. This protection includes ensuring collective participation in public life. Since the change of regime the legislator tried to solve the representation of minorities in the decision-making procedures of local governments using various solutions.

Between December 1994 and October 2006 in the local self-government elections one candidate per settlement and per minority could gain a mandate with fewer votes than the representatives elected according to the general rules. The beneficial mandate made it possible for the minority community to participate with voting rights in the decision-making of the local government through its elected representative. The fact that anybody could register themselves as a minority candidate by declaring that they belonged to a given minority, however, resulted in abuses. Parliament abolished the minority election law concession.

As a result the possibility for minorities to enforce their interests decreased in most settlements. The minority self-governments unanimously request that the beneficial mandate system be reinstated.

The legislator also wished to promote representation of the minority communities on the committees of the local governments. With this aim the legislator recommended that the representative of the minority self-government be elected onto the local government committee. The local governments, however, are frequently reluctant to involve representatives of the minority self-government as external members in committee work.

The president of the minority self-government may participate in the open sessions of the local government body or committee as a mediator with right of consultation, and closed sessions if an issue affecting the given minority is on the agenda. It is also a legal requirement that the opinion of the mediator must be sought prior to drafting a local government decree affecting the rights and obligations of the minority, and local government measures generally affecting the situation of the minority. Despite these legal provisions, we regularly receive complaints that minority presidents are not allowed to take part in closed sessions and do not have the chance to give an opinion on local government decisions. Limiting the mediator's participation in closed sessions results in restricting an essential element of minority autonomy, namely participation in decision-making on local public issues.

The most important form of collective participation in the public life of minority communities is the minority self-government. Several circumstances, however, hinder effective representative work. Support given from the central budget does not cover the expenses associated with the running of minority self-governments as a body. The local governments are obliged to provide minority self-governments with the conditions for them to run as a body, in particular use of premises, postal, delivery, typing, copying, tasks and the associated costs. Since the regulations do not specify the content of this obligation, the extent to which it is fulfilled depends on the financial possibilities and the willingness to co-operate of the local governments. The most recent amendment to the Minorities Act also fails to provide a suitable framework for the representative tasks of the minority self-governments to be performed.

## 2.1.
## The rights of minority self-governments to maintain institutions

The coming into force of the Minorities Act created the theoretical possibility for minority self-governments to maintain institutions on both a local and a national level. However, detailed regulations for the transfer of institutions were lacking and the necessary financial background was not guaranteed.

At the time of the 2005 amendment to the Minorities Act several new elements were added to the provisions on transfer and maintenance of institutions. According to the legislation in force the institution is obliged to transfer the maintenance right based on the request of the national-level minority self-government if the school or student hostel performs a regional or national-level minority task based on its foundation deed and all pupils participate in minority education. It is also obliged to do so if an institution which exclusively performs a minority cultural task fulfils the cultural needs of the given minority.

The National Self-Government of Germans in Hungary decided that it wished to assume the maintenance right to the Szekszárd-based German Theatre in Hungary. The Tolna County Council, however, was not happy with this plan.

The institution is home to Hungary's only professional German-speaking theatre group. The county council founded the theatre and the German state also provided significant funding. Based on a co-operation agreement effective from 1 January 2004 the national German self-government exercised right of agreement on fundamental questions affecting the running of the theatre. The national German self-government, however, saw assuming the maintenance right as a guarantee that an exclusively German-language theatre would remain in the long term. The general assembly of the county council, however, decided to request that the Constitutional Court review the legal provisions regulating transfer of the maintenance right, and at the same time deferred its decision on handover of the theatre. In the course of our investigation we established that this resolution was in violation of the law, because the county council shall not refuse the transfer of the maintenance right, and shall not tie it to any condition. The general assembly accepted our initiative and withdrew its resolution. We then invited the presidents of the minority self-government and the county council to a consultation. Their viewpoints came closer, and finally the agreement was reached that in future the county council and the national German self-government will

jointly run the theatre in the form of a partnership to maintain the institution, and they will co-operate to reach decisions as equal partners.

In 2008 we learned of a dispute concerning the farm museum in Tótkomlós.

The owner of the farm museum is an agricultural company, but it was actually run by the Slovakian Self-Government. The owner of the museum announced that they wished to reclaim the right to use which was transferred by contract. We closed our investigations by making proposals which if implemented would ensure the long-term lawful operation of the farm museum.

The National Slovenian Self-Government informed us of a plan of theirs which they had been waiting for years to implement. The self-government wishes to run a folk museum in Felsőszölnök, the centre of the Slovenian community in Hungary, but had not managed to raise the costs of purchasing the property.

The Hungarian state for a long time was not willing to offer concrete financial assistance to carry out this plan. We communicated the request for support of the Slovenian community to the member of the government in charge of minority affairs. A satisfactory solution resulted. Based on an individual decision, the Hungarian state provided HUF 15 million in non-refundable support for purchase of the building. The Slovenian self-government intends to finance the remainder of the purchase price from Slovenian and Hungarian application funding.

These cases drew our attention to the need to comprehensively review the situation of minority cultural institutions beyond individual investigations. We expect to be able to make known our observations and proposals in next year's report.

## 2.2. Regional-level representation

For more than a decade the Minorities Act only made it possible to elect local and national-level minority self-governments. From the outset, however, the lack of a county level caused a problem. In 2005 Parliament framed a law governing the election of regional (county) self-governments. As a result of regional and national-level minority self-government elections held on 4 March, 2007, 57 regional minority self-governments were formed.

The minority communities unanimously welcomed the possibility to elect regional self-governments. Today, however, it is increasingly being questioned whether the county level is needed because they do not have clearly defined

tasks or powers and their financing is not guaranteed. The regional minority self-governments represent the minority community living in the given county. Keeping in contact with the local minority self-governments in the county and travelling represents a major additional cost, but this barely features in financing from the central budget. In its current form the funding system is not adequate to ensure the financing of the regional self-governments in a predictable way and to allow for planning.

In addition to personal conflicts, it is likely that financing problems and lack of clearly defined tasks also played a part in the fact that three regional minority self-governments announced their dissolution in 2008, as a result of which by-elections had to be held.



## 2.3. Problems concerning the financial management of minority self-governments

In 2007 the Government passed a decree on the set of conditions for task-based funding from the central budget and accounting rules. Our experiences indicate that it did not succeed in drawing up regulations capable of promoting the independence of the minority self-governments to a greater extent.

In 2008 we received regular complaints concerning the failings and operational difficulties of the task-based funding system.

In June 2008 the 13 national-level minority self-governments sent their opinion regarding the new support system and proposals concerning financing regulations in a joint letter to the Prime Minister. This letter, however, did not achieve the desired effect. As far as we are aware, the Government still does not plan substantial changes to the system of task-based support, and regards the current system as adequate.

In last year's report we drew the attention of Parliament to the fact that for several years the national-level minority self-governments have not been substantially involved in the process of consultation on the central budget.

Such consultation failed to occur – in violation of the law – during the framing of the 2008 budget law. The Prime Minister's Office only called together the presidents of the national-level minority self-governments after the bill had been submitted to Parliament, and merely informed them of the items of the budget which affect the minorities.

We asked the minister in charge of the Prime Minister's Office to take the nec-

essary measures to allow the minority self-governments to exercise their right to give an opinion without delay. In his reply the minister stated that the national-level minority self-governments were able to make proposals concerning the elements of the budget affecting minorities, and the processing and forwarding of these proposals took place according to the established organisational rules.

We did not find this governmental measure sufficient to prevent the problem from occurring in the future. In November 2008 we turned to the minister in charge of the Prime Minister's Office with the legislative recommendation that by amending the relevant law provisions

- the regulations concerning the budgets and financial management of the minority self-governments and their bodies be made clear, with particular regard to the regulations and procedural rules for the use of left-over budget;
- a guarantee be developed that the right to opinion of the national-level minority self-governments is exercised to ensure meaningful and reliably scheduled consultation on budgetary questions concerning minorities.

The minister in charge of the Prime Minister's Office informed us in connection with the legislative proposal that he considers the full exercise of the right to opinion of the national-level minority self-governments extremely important and positive change can be expected as far as budgetary planning is concerned. Despite this the new rules which came into force on 1 January 2009 do not represent significant progress in ensuring that the national-level minority self-governments can exercise their right to give an opinion.

## 2.4. Legality auditing of minority self-governments

The Constitution defines it as the task of the Government to ensure the legality auditing of local governments. Legality auditing means an investigation into whether the organisation, running, decision-making procedures and decisions (decrees, resolutions) comply with the statutory instruments. The body exercising these powers may only take action retrospectively to reinstate legality, i.e. it cannot hinder violations of the law, and at most can make issue a preliminary warning to prevent these. If the legality summons is rejected, there is a possibility of judicial review of the local government resolution, and the local government decree can be challenged before the Constitutional Court.

Between 1 January 1995 and 31 December 2008 the public administration offices were in charge of legality audits of local governments and local minority self-governments. In 2006 the Government made the public administration offices, which until then had operated at a Budapest and country level, regional.

The Constitutional Court judged the new regulations unconstitutional. Next the Government again defined the public administration offices as regional bodies, but the Constitutional Court also declared this law unconstitutional and annulled it.

In December 2008 legality auditing ceased, significantly hindering the operation of the minority self-governments. Until now if there was a dispute about the appropriate conditions for the running of the local minority self-government as a body not being provided, there was the possibility of requesting that the public administration office take prompt action. The public administration offices had to offer professional assistance at the request of the minority self-governments. Beyond giving advice on individual cases, they regularly organised trainings and talks for minority self-government representatives, where representatives of our office also frequently attended. The concern is that without such guidance some minority self-governments will not be able to apply appropriately the provisions on their operation, and in some cases many not even learn of legislative modifications.

It is also unclear what will happen to those powers which until now were exercised exclusively by the public administration offices. For example until now the Constitutional Court only investigated illegalities arising from violations of the procedures for framing local government decrees on the initiative of the public administration offices.

Currently therefore there is no public administration body in charge of legality auditing. The bodies which examine local government decisions in terms of legality (public prosecutor, judiciary, State Audit Office, ombudsman) are not capable of making up for this lack, because they do not carry out legality auditing regularly and ex officio, but on an ad hoc basis, largely in connection with reports and complaints.

We can therefore regard it as a serious violation of minority rights that the legality auditing of the local governments and the minority self-governments ceased in 2008. Parliament must end the current unconstitutional situation without delay.

# 3.
# Topical questions of minority education

## 3.1.
## Cases concerning the right to maintain educational institutions



The Minorities Act, which contains special rules of minority public education rights, and Act LXXIX of 1993 on Public Education, which sets out general rules, have both been in force for 15 years now. Despite repeated amendments to these laws, and numerous interpretations by ministries, public administration offices, the ombudsman and the judiciary on minority educational and cultural rights, we still encounter difficulties from year to year concerning application of the legislation.

While we stress the importance of consensus and the parties concerned using their common sense and having consideration for public interests (as apposed to a formal legal approach), we would like to draw the attention of Parliament to the fact that it is necessary to make the regulations more precise in the interests of legal certainty. In our view a legal norm cannot be regarded as unambiguous if its content is interpreted in conflicting ways by the bodies which apply the law.

By presenting the following legal case we wish to highlight the fact that the current regulations do not provide an appropriate, i.e. clear-cut, answer to circumstances not foreseen by the legislator. The question, however, is simple: does a local minority self-government have the right to agreement if the national-level minority self-government wishes to take over maintenance rights to an institution from the local government? Or phrased another way, can a local minority self-government prevent its own national-level body from using its rights to obligatory transfer of institution governed by a special procedure stipulated in the Minorities Act?

One minority cultural alliance requested our help to ensure that the running of the minority school centre in the county capital be "balanced and smooth". In the view of the client, the running of the most important educational institution of the minority concerned was at risk due to the decision of the national-level minority government to assume maintenance of the institution. In addition to arguing that the standards achieved might fall, the client stressed that numerous members of the decision-making body of the national-level self-government do not belong to the minority represented, do not speak the

language of the national minority, are not familiar with its cultural traditions, and have weak legitimacy.

The concrete case raises the problem of abusing the freedom of declaring identity and the deficiencies of the minority electoral system. In addition – in a less obvious way – it indicates the failings and contradictions of the regulations on the transfer of institutions.

Although the legislator established that local minority self-governments and the national-level self-government are on an equal level, local minority self-governments, according to our legal interpretation, do not have any formal say in the agreement between the national-level minority self-government and the local government to transfer the institution, even if the running of the institution to be transferred largely qualifies (would qualify) as a local minority public issue.

This was the case in the client's situation: the majority of the pupils (at least 60%) at the multi-purpose institution (primary school, secondary school and student hostel) concerned belong to the local national minority community.

The legislator also presumed that minority communities would have identical interests and did not take into account the possibility of the minority communities becoming pluralized due to party affiliations. In some cases this may mean – particularly if the electoral basis of the various minority interest groups are geographically separate – that the interests of the local and the national-level minority self-government do not necessarily coincide, while the Minorities Act gives the national-level minority self-governments a "position of strength" in a narrow sphere.

Based on Section 47 (4) of the Minorities Act, at the request of the national-level minority self-government the local government is obliged to transfer the maintenance right to a school or hostel performing a minority task, providing that certain formal conditions are met. In the course of the transfer procedure, the local minority self-government does not even have the right to give an opinion, although the running of a local minority educational institution clearly affects local minority public life.

Conditions to be examined before the transfer of maintenance rights:

- whether the institution qualifies as a school or hostel performing a regional or national task, or – if due to the location of the members of the minority within the country it cannot perform a national or regional task – whether it fulfils the legal definition for institutions performing district tasks;
- whether it performs a minority task based on its foundation deed;
- whether every pupil participates in minority education;
- whether the opinion of the school or hostel, the school or hostel board, and in

the absence of this of the parents' association (community) and the school or hostel student council is attached to the request addressed to the local government as maintainer.

This Section of the Minorities Act does not allow the local government to refuse to transfer the maintenance right to the institution. The rule that the best interests of the child must come first as set out in the Public Education Act also apply here (as a fifth condition). Nevertheless, the possibility to refuse the decision with reference to the Public Education Act is essentially superficial: transfer of the rights to maintain the institution may not involve restructuring, which means that transfer of the rights to maintain the institution to the national-level self-government can only violate the best interests of the child in exceptional circumstances. Violation of the prohibition on "lowering" the standard of education (staff and material conditions and existing educational services) and "disproportionate burden" on these is almost inconceivable without merging or dividing up of institutions taking place.

The other key question in the course of transfer of the maintenance right is whether the local minority self-government according to the main site of the institution to be transferred has the right to agreement during the decision procedure.

One of the basic principles of legal interpretation is that special rules override general rules. A general rule shall only be applied if the special rule does not contain any provision for the given situation and legal relationship.

As a general rule the Minorities Act gives the right to agreement in the case of all local government decisions including education of members of the minority. However, since the Minorities Act established special procedural rules for the transfer procedure, those conditions override the general rule.

According to these, the local minority self-government does not have right to give an opinion even if local minority public affairs are clearly affected, in view of the fact that the local government is obliged to fulfil the request of the national-level self-government to take over the maintenance rights.

Exercise of the formal legal authorisation granted to the national-level minority self-governments may not involve violation of the interests of the local minority community. Of course the reverse also applies. Local minority politics is not allowed to block the enforcement of the rights of the national-level self-government by abusing the rights to opinion of the parents' association and the student council.

In the complaint case in question, more than a year had passed since the intention of taking over the maintenance rights to the institution had been announced. During this time several legal interpretations arose, which, when placed in order,

clearly reveal the differences in interpretation of bodies applying the law. Moreover, in some cases the stance of the body applying the law changed considerably. The most striking example of this is that the Ministry for Education and Culture first claimed that the institution has to be transferred, then later took the view that the agreement of the local minority self-government must first be obtained. Starting with the view that the interests of voters and the obligation to take into account the best interests of the child above all else are the only restrictions to transfer of the maintenance right to the national-level minority self-government, it finally decided that the local minority self-government has the right to agreement on the question of the transfer.

In our view if the content of a legal norm, for example due to provisions citing other statutory instruments, is not only difficult to interpret, but can lead to conflicting interpretations, then the need to amend that norm arises.

We recommend that that Parliament make clear the rights of national-level minority self-governments to take over institutions. In this framework several questions need to be clarified:

- When transferring the rights of maintainer to a multi-purpose institution is it necessary to examine the performance of national and regional task for each unit of the institution (the law does not settle this question) or (as with the definition of district task), if one of the units complies with the conditions, then the transfer of maintenance rights must be allowed for the whole institution. (We recommend this version.)
- The definition of district task is also ambiguous. The Public Education Act does not interpret this concept, but the Minorities Act, among the rules for mandatory transfer of the maintenance rights to institutions, adds a restrictive condition to the definition stipulated in the Public Education Act. According to this, at the request of the national-level self-government the maintenance right to a school or hostel performing a district task has to be transferred, "if due to the location of the members of the minority within the country the school or hostel cannot perform a national or regional task." The aim of the legislator was clearly to grant the possibility to the national minority self-governments of Hungarian minorities living concentrated in one area to assume maintenance rights, but did not govern the method of examining this. It is not clear therefore how and based on what criteria the location of the given minority within the country can be established.
- The right to agreement of the local minority self-government limiting the right of its own national-level self-government to take over the maintenance rights to an institution cannot be deduced from the regulations in force without concern. In our opinion, bearing in mind the plural minorities political sphere, the right to agreement should be laid down among the special rules of transfer.

Another case provides an example of the complicated nature of staffing decisions, and the interweaving of personal interests and formal licences.

In connection with the appointment of the head teacher of a jointly managed school qualifying as a Slovakian minority institution the Gypsy minority self-government of the settlement turned to our office to request our opinion. In the complaint it explained that while selecting a head teacher for the school which qualifies as a Slovakian minority institution, the Slovak local minority self-government had the right to agreement, while it had has no such licence, although roughly 30% of the pupils at the schools are of Gypsy origin. Gypsy education, however, does not take place in the school, and the Roma children also study in Slovakian.

The decision-making local government clearly violated the law in the course of appointing the head teacher of the Slovakian minority institution. The representative body was aware that the statement of agreement of the minority self-governments concerned is a substantial restriction to its decision, but nevertheless appointed its own candidate as head teacher. The statements of agreement of the three Slovakian minority self-governments concerned were requested, the negotiating procedure was conducted and a nine-member committee was established, but finally the local government appointed the individual whom it wished to appoint as head teacher at the start of the procedure.

We informed the client that the Minorities Act in connection with the appointment of head teacher gives the right to agreement to any minority self-government, if the institution qualifies as a minority institution, and the minority self-government represents the national and ethnic minority "concerned" by the education taking place in the minority institution: in this case the Gypsy minority self-government does not have the right to agreement.

The mayor of the settlement explained the decision of the representative body as being not primarily in favour of their own candidate, but against the other candidate. The latter individual for many years as deputy head teacher, and then as acting head teacher can be held responsible (the local government is considering legal action for compensation) for unlawful financial management of the institution and claiming grants falsely, established by the State Audit Office, based on which local government is obliged to repay HUF 18 million. The mayor also pointed out that the presidents of the three Slovakian minority self-governments with the right to agreement, the teachers of the school, and the parents' committee and the student council supported the candidate of the maintainer, the local government. The extremely low standard of the teaching is indicated by the fact that the students do not speak Slovakian, there are no pupils who have passed

a language exam, and not coincidentally numerous parents take their children out and send them to another school. The mayor also referred to the conclusion of one expert on the nine-member committee, according to which "the national minority programme here is very weak".

The public administration office following the rejection of its legality observations launched legal proceedings with the aim that the resolution which was in violation of the law be retracted.



## 3.2.
## Assessing demand for minority education

The Minorities Act defines the right to minority education as an individual and a community right. Persons belonging to the minority have the right to participate in native language education and culture, and minority communities have the right to initiate the creation of and participate in the development of the conditions for minority nursery teaching, minority primary, secondary and higher education, as well as supplementary minority education through the relevant national-level minority self-government, and co-operate with the local government in assessing demand.

The Public Education Act interprets the individual minority right as the right of the pupil and the parent of minority origin, while assessing demand for minority education is interpreted as the right of the minority self-government to participate in annual assessment of demand for "education in the language of the minority" (as a narrower sphere within the broader category of demand for minority education).

In the course of applying the law the failings and errors of co-operation between the local government and the minority self-government in assessing demand for minority education do not arise primarily from the internal contradictions of the legislation. We can point to numerous concrete examples of the assessment of demand, involvement in this assessment and launching minority education being unreliable because they are driven by the interests of the local government as maintainer of the institution. We have encountered cases of the local government only co-operating with the self-government for the minority whose native language it has already been able to provide teaching for in the past. There are also cases of the right of one minority self-government being used to weaken that of another self-government. Frequently it is forgotten that the right to minority education does not apply to everyone, but only to individuals of minority identity and minority communities. In some cases the organisation of minority education abuses the system.

One local government requested our opinion concerning the legality of an information leaflet written for the purpose of assessing "demand in the city for education in the language of the national or ethnic minority".

The information leaflet sent to us and the accompanying declaration contained references to statutory instruments without interpretation, but did not contain information needed to inform parents properly and allow them to reach an informed decision. Although several minorities live in the city, the assessment of needs was exclusively directed towards German minority teaching. The role of the minority self-government was also misinterpreted.

Having discussed the case with the Data Protection Commissioner, we informed the client that the legal representative of the child must be supplied with all information needed for a well-informed response. Legislative references in themselves – without an easily understandable and detailed explanation – are not adequate for that purpose. It is also essential to inform parents about who has the right to choose minority education, what the aim of this is, and make clear the most important rules concerning data management. The public education rights of minority parents are independent from an initiative by the minority self-government to organise minority education or the lack of such an initiative.

It is also necessary to inform parents that based on the right to free choice of school they are entitled to choose a nursery or school running a minority teaching programme appropriate to their own national or ethnic affiliation for their child. In addition parents need to be told that minority nursery and school education are not synonymous with foreign language teaching. The parents concerned also need to be assured that data protection rules will be adhered to. In this context they need to be informed that their declaration is voluntary, i.e. that it is not mandatory to supply data, that the data given will be managed exclusively by the local government clerk and the nursery or school head teacher, and that the head teachers and head teacher; the may manage the data supplied exclusively in the interests and framework of certifying demand for participation in minority education, until 31 December 2011, and that parents may view all records relating to themselves and request the modification or deletion of incorrect data.

We drew attention to the fact that in assessing the need for German minority education the German minority self-government may participate in informing the minority population. Since it is not entitled to manage public education data, it is not correct to indicate that parental declarations should be sent to the minority self-government. For reasons of data security and to exclude the possibility

of data being linked up, special data management rules need to be prepared for the data collection.

We informed the client that parents of minority origin – even without the initiative of the minority self-government concerned, or participation in assessing demand – may demand the organisation of minority education. The local government as institution maintainer is obliged to assess the demand for all minority education annually even without the initiative of the minority self-government. In the city concerned from the existence of minority self-governments it can be assumed that Gypsy, Greek, Romanian, and Ruthenian minority communities also live there in addition to the German minority, so we proposed that the questionnaire and the accompanying declaration be made suitable for assessing their demand for minority education also.



## 3.3. Difficulties of minority educational institutions in connection with funding applications

The funds needed to run the public education system are largely provided by the state budget and the maintainer. Recently, however, it has become possible to obtain increasingly significant funds through applications.

The National Development Agency (NFÜ), within the New Hungary Development Plan with the support of the European Union and the partner financing of the European Regional Development Fund, announced several applications for targeted support of infrastructure developments in 2007 and 2008 with the aim of providing the necessary conditions for creating high-quality education. One of the fundamental goals of these applications was to create social cohesion within the region, equal opportunities and modern schools.

The presidents of the National Self-Government of Germans in Hungary and the National Alliance of Village Self-Governments addressed to us with a complaint in connection with the *"Development of integrated small and micro regional educational networks and their centres"* application in the framework of the Regional Operative Programmes.

In their view the application was not in line with the legal provisions concerning national and ethnic minority education. In order to submit a valid application institutions had to show that *80% of the maximum capacity was utilised* based on statistical datasheets for the 2007/2008 academic year. Due to this numerous institutions offering minority education, particularly in small settlements, were excluded from entering successful applications.

We shall outline below the conclusions of our investigation:

Despite observations made during social consultation, the National Development Agency when writing the application ignored the unique and differing features of institutions offering minority education – which are based on legal authorisation.

Minority education has to be organised even if requested by the persons of just eight children. The maximum number of pupils per class in appendix no. 3 to the Public Education Act are as follows:

| | |
|---|---|
| *a)* In years 1–4 | 26 |
| *b)* In years 5–8 and years 9–10 of technical school | 30 |

In the foundation deed the maintainer establishes the maximum number of pupils per class, but naturally this must take into account the content of the law.

It is clear on this basis that if in a school for example from years 1–8 minority teaching takes place with 8-10 children per class, then taking into account the maximum number of pupils per class, the 80% capacity utilisation requirement of the school will not be met. At the same time the school does not have any choice: minority education classes must be organised even with such low pupil numbers. The rules for the content requirements of minority education, language environment and providing an environment of minority pupils do not make it possible to run minority education merely as a group within a class.

*Section 9 of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal opportunities defines indirect discrimination as follows: "Provisions that are not considered direct negative discrimination and apparently comply with the principle of equal treatment but put any persons or groups having characteristics defined in Section 8 at a considerably larger disadvantage compared with other persons or groups in a similar situation are considered indirect discrimination."*

The criterion in question disadvantages (i.e. excludes from applying successfully) a significantly larger proportion of schools providing ethnic minority teaching since the law prescribes that they are obliged to run classes even if demand does not reach the minimum number of pupils per class. It is well known that in South Transdanubia the national minority population traditionally lives in small villages where the majority of schools have no chance of reaching the maximum number of pupils per class.

Based on the above we established that the *"Development of integrated small and micro regional educational networks and their centres"* DDOP-3.1.2. application – and applications containing the same criterion of 80% capacity utilisation indirectly discriminate against schools offering minority teaching.

The application announcement and the resulting exclusion of schools offer-

ing minority education violated the principle of equal opportunities, as a result not "only" will the infrastructural development of these institutions not take place, but ultimately children participating in minority education will be disadvantaged. Schools able to show that they met the capacity requirement had the chance to apply successfully, allowing their pupils to obtain the material conditions of high-quality education. By contrast schools unable to satisfy the capacity requirement due to minority education cannot improve the material conditions of the teaching of their pupils.

The National Development Agency through its delay in replying and incomplete data supply hindered the progress of our procedure. It is unacceptable that an institution responsible for the use of EU funding and preparing national development plans evidently does not support the fundamental principle of "appropriate administration" which is so highly regarded in the European Union and the principle of service culture.

In order to avoid indirect discrimination such as established above in the future, we made the following recommendation to the Minister for National Development and Economy:

- Looking to the future ensure that applications aimed at improving public education institutions do not include entry requirements which discriminate against schools providing minority teaching;
- ensure that in future the National Development Agency consults properly with the national-level minority self-governments.

We turned to the Minister of Education and Culture with the recommendation that the ministry where possible co-operate with the writer of National Development Agency applications on education topics and promote equal opportunities in education, and the enforcement of the right to equal treatment of institutions providing minority education.

The Minister for National Development and Economy accepted our proposals, and the Ministry of Education and Culture also accepted out initiative.

## 3.4.
## Our professional debates on educational questions requiring legislation and clarification

In the past years local governments have increasingly solved local government public tasks in the framework of clusters. That is particularly true of the organisation of public education services. Exercise of minority self-government rights, in particular the right to agreement and opinion must not be violated during

the establishment and running of such clusters. Nevertheless, the regulations in force frequently do not give a clear answer as to how the right to agreement can be enforced in the case of decisions arising in the framework of clusters.

In our view there is a need to entirely re-examine the legislation on clusters so that the right of minority self-government to opinion and agreement regarding institutions participating in minority education maintained by clusters is not violated.

It would be important for the Section of Act LXV on Local Governments which deals with clusters to contain clear references to minority rights, including the fact that minority self-governments can also be members of clusters and that clusters must not violate the right to agreement and opinion of the minority self-governments. It is also necessary – by making more precise the Minorities Act and the Local Governments Act – for the means of exercising the minority self-government's right to opinion and agreement to become a mandatory element of cluster agreements between schools.

Section 85 (4) of the Public Education Act grants minority self-governments the right to agreement on questions of the action plans of the local government affecting the given minority. The final sentence of the section states that the local government does not have to prepare an action plan if it is a member of a small region multipurpose cluster, providing that the action plan of the small region multipurpose cluster – by settlement – contains everything that the local government action plan should contain. The question arises of how the minority self-government can exercise its right to agreement if there is only a regional action plan. In our view the legislation needs to make it clear that by preparing small region action plans the right to agreement of the minority self-governments concerned extending to education of members of the minority must not be sidestepped.

The rules for decision-making within the cluster are also contradictory. The Public Education Act grants minority self-governments the right to agreement in respect of partner institutions with the status of minority institution: i.e. the agreement of the minority self-government is required for a valid decision on creating, closing or reorganising an institution participating in minority education. However, according to the general rule minority self-governments have the right to agreement not only concerning minority institutions, but also regarding institutions participating in minority education. Despite this the Public Education Act does not settle satisfactorily the right to agreement of the minority self-governments in the case of partner schools without minority institution status, but participating in minority education.

Section 88 (12) of the Public Education Act only grants the right to agreement in a narrow sphere: in the case of closure or restructuring of the institution, and transfer of the maintenance right. The legislation, however, only prescribes the agreement of the minority self-government which is "competent according to the main site of the institution", i.e. it only represents a partial solution because in the case of cluster schools participating in minority education the main site is that of the head cluster school. If for example the given minority does not have a self-government in the settlement according to the main site of the head cluster school: the right to agreement is lost. Although there may be a minority self-government in the settlement where the member institution is located, the Public Education Act only grants the right to agreement to the minority self-government which is competent according to the main site of the school. The following question still needs to be clarified: the minority self-governments of which settlements participating in the partnership have the right to agreement. It could arise that the agreement of all the minority self-governments representing the given national or ethnic minority of the settlements participating in the partnership needs to be obtained.

We gave an opinion on several draft laws connected with equal treatment from the Ministry of Education and Culture. As a result of the consultations the opinion of the ministry on questions concerning educational desegregation and integration came significantly closer to our views.

The legislator with the help of defined ratio figures wished to avoid disadvantaged children being put together into one class/group on the pretext of catch up classes, i.e. to prevent the implementation of the programmes leading to segregation. The planned change freed cluster schools from this rule: *"In the case of cluster schools, the difference between classes only has to be investigated within the individual cluster schools".*

We regarded the new provision as fundamentally mistaken. If it is not necessary to examine the difference in the ratio of disadvantaged children at the partner school and the main site, in the future institutions can refer to this rule to simply regroup the children so that exclusively or mainly children of parents from a good social background attend the main site; and disadvantaged children attend the partner school.

Naturally, in the case of cluster schools located too far apart, a very rigid rule could become unfeasible. We therefore recommended the solution that as a general rule it not be possible to deviate from the prescribed ratio differences concerning multiply disadvantaged children, but the Education Office – by examining distance, disproportionate burden etc. – be able to give exemption from

this rule. In the case of cluster schools located far apart, with the help of equal opportunities experts it would be possible to assess whether the ban on disproportionate burden and freedom from segregation are upheld. Drawing up an individual solution – taking into account the travelling burdens on children and the right to equal treatment – would represent an adequate solution.

The Education Ministry sent to us the draft of the "Education and Culture Ministry Decree on the rules for claiming, granting and accounting concerning funding assisting equal opportunities and development" for our opinion.

According to the decree maintainers are not entitled to support if within the past three years there has been a final ruling by the judiciary or other authority establishing violation of the Equal Treatment Act in connection with education at an institution supported by the given maintainer.

We stressed that using a repressive set of sanctions in the case of violation of the principle of equal treatment is not an adequate way of handling the problem. Not granting support in fact affects the pupils and the material conditions for their development and integration are sacrificed. The victim of the segregation was the pupil, and refusing to grant support ultimately also affects the pupil. Therefore, we do not recommend remedying the violation with such penalties. Moreover, automatically excluding applicants does not provide an incentive for law-abiding conduct.

The ideal set of sanctions places emphasis on reparation and beyond this on proactive legal consequences seeking to change attitudes and educate. Withdrawing support in itself and refusing to grant it will not lead to a change of attitude at an institution which earlier discriminated and segregated, and nor can it help the situation of children whose rights have been violated. We therefore recommended that instead of simply not granting support, targeted use of the support be prescribed: the amount may only be spent on desegregation measures, with the aim of making amends for the violation of the rights of the children.

In the course of professional talks with the Education Ministry in 2008 we repeatedly had to emphasise the importance of an earlier legislative proposal. Encouraging the creation of school maintainer clusters and the schools of small settlements becoming cluster schools is a general tendency. In such situations it is of particular importance that the reorganisation complies with the principle of equal treatment.

Our investigations show that closing the schools of small settlements and enrolling pupils in the schools of larger settlements in most cases raises the problem of

segregation-free placement. Nevertheless currently it is not mandatory for the enforcement of equal treatment to be examined in such cases. In order to prevent unlawful segregation, it would therefore be necessary to modify the Education Act so that – in the case of reorganisation – it would be mandatory for an independent expert to examine whether the principle of equal treatment is upheld.

Chapter II

# Taking action against negative discrimination

## 1.
## From our educational discrimination cases

From year to year the Minorities Ombudsman receives a large number of complaints concerning unlawful direct and indirect discrimination and segregation in educational institutions. These complaints exclusively concern the Gypsy minority. In selecting the cases presented we have endeavoured to offer as complete a picture as possible of the real situation concerning the forms and methods of discrimination against Gypsy children in education, the difficulties of our procedures and investigations, and how our initiatives are received.

One form of unlawful segregation is placing pupils in separate classes within a school. The following case involves this type of segregation.

At the start of 2008 we received an anonymous letter in connection with the elementary school of a small settlement. According to the complaint, Gypsy pupils, separated from the other pupils by a grate, study in a separate part of the building. The pupils are placed in classes based on an admissions procedure, and the Roma pupils, the majority of whom are disadvantaged, have no chance of doing well in this and they study in separate classes.

Although the Parliamentary Commissioner may reject anonymous petitions, such serious claims were made in the complaint that in order to clarify the case we launched an ex officio investigation.

The village primary school is attended by 427 pupils. Of these 223 are disadvantaged and 96 are multiply disadvantaged. According to estimates 80% of disadvantaged pupils, and 90% of the multiply disadvantaged pupils are of Gypsy origin. In the school since 2003 there has been bilingual English-Hungarian teaching with the assistance of a native teacher. A total of 43 disadvantaged pupils study in the bilingual classes according to the figures provided by the school. In one year in general there are two parallel classes, the bilingual class is, with full-day care; and the general class. In addition in years 2, 5 and 6 there are also classes with a small or smaller number of pupils, where almost all the

pupils are of Gypsy origin. In two classes which combine different year groups there are a total of 17 pupils with special learning needs, all of whom are of Roma origin.

Based on our on-site investigation the claim that the Gypsy children study in a separate part of the building or building could clearly be refuted. The separate building, a "country house" roughly 150 metres away from the main building, was not used for teaching. It was not possible to keep the door to the corridor permanently closed – contrary to the claims of the complainant.[1] The Gypsy children therefore do not study in a separate building or separate part of the building.

Having checked the documents of expert investigations, we established that all of the special learning needs pupils were taught in separate classes based on the opinion of an expert committee.

In a legal sense there was one small class: 2. C, attended by 9 pupils. According to the information provided, this class was formed as followed: the Leaning Advisor recommended that three pupils study in a small class. The other pupils were only enrolled by their parents in September after receiving a warning from the local government clerk, when the other two classes had already been formed. In this class all pupils are of Roma origin. When visiting the lessons we observed that the teaching took place in a small classroom in a worse state than the other classrooms and with old furniture. (The bilingual classes had brand new spine protective benches.) During our visit to the lesson it also emerged that the children were not allowed to take home the textbooks, so in the afternoon at home they presumably could not prepare for the following day. We received the explanation that if the pupils take home the books then they disappear or are damaged.

Classes 5 and 6 also have fewer pupils: in class 5 all 18 pupils are of Gypsy origin; according to the school's explanation a lot of parent took their children out of class 6, leaving a class of 19 almost exclusively Gypsy pupils.

According to the information provided by the school and the maintainer, as well as the school's pedagogical programme, pupils enter the bilingual classes in the following way: the parents have to fill out an application form, and a playful abilities test is used to select the children who apply. The DIFER testing method is used and the parents can be present. The pupils have to achieve a minimum of 55 points to enter the class.

The bilingual classes also have full day care, which ensures that the children have afternoon help.

Examining the composition of the individual classes – based on the infor-

[1] The door serves fire-protection purposes. If closed a loud fire alarm automatically sounds.

mation received from the maintainer and the school – we came to the following conclusion: in the bilingual classes – with the exception of years seven and eight, where there was one multiply disadvantaged pupil in each – there were no multiply disadvantaged pupils. Based on the information received about the estimated proportion of Gypsy children (although there are very few children of Gypsy origin in the bilingual classes) the parallel, non-bilingual classes – at least in the lower school – consisted 90-100% only of Gypsy pupils. According to the school the multiply disadvantaged and/or Gypsy children do not attend the bilingual classes because their parents do not request this.

We established that admittance to the bilingual classes gave cause for concern in several respects. Firstly the method described of allocating pupils to classes equates to admissions testing according to the Public Education Act, which is not allowed in primary schools. Secondly from a pedagogical perspective it is at odds with the effectiveness of teaching.

As a result of the way in which pupils were allotted to classes a greater proportion of multiply disadvantaged pupils and/or Roma pupils were placed in a more detrimental situation than their peers: they did not study in bilingual classes, where both the material conditions (for example spine protective benches), and the teaching quality (native teacher, bilingual lessons) were better.



However, according to the claims of the school, the fact that the parents did not request such teaching for their children played the main role in the formation of the classes and not the admissions test. According to the school in 2007 there were 30 applications and the bilingual class was started with 27 pupils, i.e. "only" three pupils were rejected, so the class compositions did not form as a result of the unlawful admissions test. Both the school and the local government claimed that the reason for organising the bilingual classes was to prevent parents from taking their children away from the school, to raise standards, not segregation.

However, even accepting the above, we have to stress that the occurrence of segregation does not depend on the intention of the "perpetrator". Nor is it a condition that the active conduct of the local government or the school cause the segregation: it is sufficient if they "turn a blind eye" to a practice that has developed, the consequence of which is that a large majority Gypsy and/or multiply disadvantaged pupils attend separate classes.[2]

[2] According to the permanent practice of the Minorities Ombudsman and the standpoint of the Equal Treatment Advisory 2/2007. (III. 23.) TT segregation is a sui generis form of discrimination for which there is no excuse. Segregation is only lawful if it is specifically allowed by the law, for example in the case of forms of minority education.

In given cases failing to take action against segregation can also qualify as a violation of the law. (That means, for example, that it is the obligation of the local government to eliminate spontaneously arisen segregation, even if the segregation is not the result of a local government policy.)

Since the local government and the school could not refer to any express legal authorisation for the segregation, we established that the class compositions – in terms of the bilingual and the parallel classes – resulted in segregation both in terms of multiply disadvantaged situation and Gypsy origin. The combined special learning needs classes were an exception to this, since the children were placed in these based on independent expert opinions according to professional criteria.

In order to put a stop to the violation of minority rights, in particular to unlawful segregation and prevent the development of indirect discrimination we recommended the following to the director of the school:

- with the professional help of the National Educational Integration Network organise the classes in such a way that the ratio between multiply disadvantaged and non-multiply disadvantaged pupils be balanced, for example, within a class: one part of the class follows the bilingual programme, while the other does not, i.e. establish heterogeneous classes;
- before forming the new first classes, in co-operation with the National Educational Integration Network, inform Gypsy parents widely about the advantages of the bilingual class, the fact that it is free of charge and the benefit of full day care,
- with the professional support of the National Educational Integration Network assess the reasons why disadvantaged and/or Gypsy parents do not choose the bilingual form of teaching, and develop a strategy – if necessary with the co-operation of the local family welfare bodies – to eliminate these reasons;
- with the help of the National Educational Integration Network find an appropriate solution so that the children of parents not choosing full day care can prepare in the afternoon for the following day's lessons, so that the aim of protecting the textbooks does not make it impossible to develop a habit of studying.

We asked the leader of the National Educational Integration Network to offer assistance to the school in carrying out these initiatives through the regional co-ordinator:

Those concerned accepted our initiatives: in a resolution the local government as maintainer instructed the head teacher that the admissions testing should be removed from the teaching programme, and the representative body undertook to check how the classes are established before the start of each academic year. The head teacher undertook to pay attention to the balanced distribution of pupils when forming the first class, but did not see any possibility of splitting the higher classes which have already formed. For those children who cannot study at home he undertook to provide the help of a special needs teaching assistant,

or full day care at the request of parents. They collected used textbooks which the children can take home, and introduced homework books which the pupils can work from at home, and photocopies were made from the workbooks which pupils can also use at home.

We also kept in regular contact with the expert in charge of preparing an equal opportunities situation analysis in the settlement who assured us that real measures had been taken based on the ombudsman report, and the settlement had taken the steps required by the principle of equal treatment. Multiply disadvantaged children entered the bilingual class 1 in September 2008; the settlement created a learning club, where multiply disadvantaged children were helped in the framework of afternoon sessions. Language preparation was launched in the nursery from the age of three, and a parents' club was established in order to reach Gypsy parents.

*Examination concerning the primary school of a small town*

The outlined presentation of the following complex case provides an example that without a fundamental change in teaching attitudes the stability of a school teaching large numbers of Gypsy pupils despite violations of the law being disguised cannot be maintained in the longer term.



Several Roma parents expressed complaints both verbally and in writing about the discriminative behaviour of four teachers at the primary school of a small town, and in connection with segregation at the school. In eight petitions a total of eleven complaints were made.

According to one of the petitions the deputy head made the following remark: *"We keep you. You eat from our money. You're scroungers…"* According to another verbal complaint a female pupil was regularly insulted by the deputy head and publicly shamed. In January 2008 for example, because *"the child's lunch money was paid one day late, the deputy head loudly threw her out of the dining room"*. According to another parent, the deputy head *"speaks with the children like with animals"*. In December 2007, for example, he said to a pair of siblings in class 5.C that: *"members of the Guard should be called to deal with them"*. Two pupils heard this remark.

The same parent also made a complaint concerning their grandchild, who suffers from muscle wasting, and goes to school in a wheelchair, but is not allowed to enter through the gate and has to wheel round the whole building. Nevertheless, the deputy head sent the child home in January 2008 because the wheels were muddy.

According to another complaint in the first half of January 2008 a pupil fell on the stairs in the school. One of the teachers *"hit the child and sent them home as they were, covered in blood"*. The child was not taken to a doctor. Following the incident the parent went to the school, but the deputy head sent them home saying that *"he wasn't responsible for anyone's child"*.

The deputy head *"on several occasions slapped and threw out of the school"* a year 5 child, who since the 2007/2008 academic year has been a home pupil, in 2006. The parent who complained said that they had raised the issue of the behaviour of the deputy head several times, but the head teacher at the time had not dealt with the issue.

We established that the employer investigation into the complaints against the deputy head, conducted on our initiative, was not lawful, and its findings could be doubted. As a result, in view of the special ("divided") rules of proof governed by the Equal Treatment Act,[3] it cannot be claimed that the behaviour of the deputy head in question was lawful.

In the case of reasonable suspicion of a serious disciplinary offence having been committed, it is obligatory to conduct disciplinary proceedings within the term of limitation. Due to the large number and similar nature of the complaints, and in view of the term of limitation, whether the complaints were well-founded and the question of the deputy head's responsibility should have been investigated within disciplinary proceedings. The director, however, did not fulfil his legal obligation even on our initiative. Since the head teacher did not have any written document about the other investigations conducted and did not have any written documents, official report or records, the objectivity and credibility of his conclusions could be doubted. It is typical of his behaviour that he did not make official records in any of the cases because "he knows the situation".

In the same case complaints were made about the conduct of three other teachers. According to these complaints the teachers humiliated and discriminated against Gypsy pupils, for example not allowing them to take part in class trips, making offensive remarks about their clothing and cleanliness, and physical abuse.

The investigations conducted by the head teacher on our initiative also took place in the manner described above. We find it particularly important to men-

[3] Section 19 (2) of the Equal Treatment Act: if the case described in paragraph (1) has been proven, the other party shall prove that a) it has observed or b) in respect of the relevant relationship was not obliged to observe the principle of equal treatment.

tion that due to the investigatory failings of the head teacher it could not even emerge whether there was reasonable suspicion of abuse – as a disciplinary offence which clearly qualifies as serious.

Summarising the above, the large number of complaints about the school's teachers in itself indicates that communication between the school and the parents is inadequate. The unsatisfactory way in which the complaints were dealt with is indicated by the fact that some individuals turned to us with grievances about incidents that had happened a long time ago. (Complaints which are not dealt with naturally create a lack of trust, and ultimately make communication impossible between the school and the parents.)

The director is responsible for the legal running of the school. It is his obligation to enforce the rights of the pupils and the parents. Solidarity with his teaching colleagues is not allowed to prevent the enforcement of legality, particularly because protecting the dignity and other rights of the teaching colleagues is not at odds with the obligation to investigate and deal properly with the complaints of pupils and parents. The director only acts correctly and can protect his colleagues legally (and not in an unprincipled manner) if he also pays regard to the special rules of proof set down in the Equal Treatment Act. The director is obliged to keep a record of and investigate every complaint without presumptions and bias. If necessary he is obliged to conduct disciplinary proceedings and inform those concerned of the findings of the investigation in writing. The information provided needs to extend to the possibility of legal remedy.[4]

Another complaint about the same school was connected to disciplinary punishment and status as a home pupil.

Three years ago – on the recommendation of the teachers, "due to the incompatibility of the child" – the parent agreed for one year that the child would not attend the school in question, and instead would go to another primary school in the town. The complainant could not understand why the child could not return to the school. The director refused to grant this request, saying that: *"he does not take responsibility for him"* and *"will only take him back as a home pupil"*.

[4] It is the representative of the maintainer who acts and makes second-degree decisions in respect of:

a) petitions on legal grounds and

b) admission to and expulsion from kindergarten, the establishment of a student's legal relationship, membership, or their cessation as well as petitions for revision in connection with disciplinary action concerning a student.

In addition to other irregularities[5] we established that since the scope of the disciplinary punishment may not be longer than twelve months,[6] the director may not tie conditions to the child's legal status as pupil at the primary school concerned being reinstated.

Several complaints were made that in the same school in the "general classes" of years 1, 2 and 5 there were only Gypsy pupils, while only non-Gypsy pupils studied in the parallel "sport classes".

We examined the question of unlawful segregation on the basis of the ratio of disadvantaged and multiply disadvantaged pupils per class, comparing information provided by the president of the local Gypsy minority self-government about the streets where Gypsies typically live and the address of the pupils, a table of those requesting "ethnic education", information provided by the head teacher, the deputy head and other teachers about the procedure for placing pupils in classes, and the on-site observations of our three staff who visited lessons.

We established that in the primary school there was a significant difference between the ratio of Gypsy pupils in the parallel "normal" classes and the "sport classes (classes having extra sport lessons). An apparently objective method of selection was used in an attempt to disguise deliberate and illegal segregation. According to the information provided by the deputy head the aim of the illegal segregation was to stop the non-Gypsy parents from taking away their children to another school in the neighbourhood.[7]

The selection procedure deserves particular attention. Our staff learnt from the teacher taking one of the presentation lessons and the head teacher and the deputy head in the course of our on-site investigation that the conditions for entering the "sport classes" were appropriate nursery socialisation[8], undertaking to pay costs potentially arising in connection with sport competitions, and an informal movement assessment closing with a recommendation.

It is clear that time spent at nursery is not directly related to physical build and aptitude. At the same time it is well-known that a significant proportion of

[5] It could not be established from the documents whether the local government clerk had actually examined the parental request for review. Rejection of the request must be regarded as a violation of the right to legal remedy despite the fact that the error cannot be remedied (in view of the time that had passed and implementation of the resolution), even if it emerges from the complaint itself that the parent finally accepted the punishment.

[6] Section 32 (6) b) of 11/1994. (VI. 8.) MKM Decree on the Functioning of Educational Institutions.

[7] E.g."If we mix up the pupils, no [non-Gypsy] children will remain."

[8] The teacher spoke about several years of participation in nursery education while the deputy head spoke about one year.

Gypsy children do not even spend the obligatory year in the nursery to prepare them for school. The reference to having to pay costs that arise is not lawful, because the school's teaching programme contains the higher number of PE lessons, so this theoretically should not mean extra costs for the parent. This condition undoubtedly is aimed at directly excluding socially disadvantaged pupils (a significant proportion of whom are Gypsies), while the previous criterion of nursery socialisation aims at their indirect exclusion.

The movement assessment – based on statistical probability and natural logic – would not have the result that was found in this case: typically Gypsy children were not placed in the sport classes or the ratio of Gypsy children in these classes was significantly lower than the ratio of Gypsy children within the pupil body as a whole.

A difference above 25% could be found between the parallel classes in six years in terms of the ratio of multiply disadvantaged children. The most extreme difference was 64.3% in year 3, but the average difference in the six years was 42%. If we add to this information obtained by comparing the streets where Gypsies lived and the addresses of the pupils, as well as the unanimous on-site observations of our three staff members of homogeneous or almost entirely homogenous "Gypsy classes", unlawfulness could have been established even without the remarks of the deputy head finally acknowledging segregation.



According to the interpretation of the European Commission, the protection offered by directive 2000/43/EC extends to everyone who "who suffers negative discrimination because the discriminator thinks or presumes that they belong to a particular race, religion etc. even if that is not the case"[9].

The Equal Treatment Act – in line with the interpretation of the Commission, and the sociological observation that in terms of discrimination it is crucial how others perceive the ethnic origin of the person discriminated against, rather than what of what origin they identify themselves – provides a consistent solution to the above problem: discrimination is banned based on both imagined and real properties.

According to the concept of the Equal Treatment Act, therefore, the relevant question is not the real ethnic affiliation of individuals, based on the constitutional right linked to assuming identity, but whether the discriminator based on external features or other could have thought that those concerned belong to the given minority.[10]

[9] Equal opportunities and freedom from discrimination. 2005 Annual Report. European Commission, Employment, Social Affairs and Equal Opportunities Directorate General, unit D.3., April 2005.

[10] The argument in more detail: Equal Treatment Advisory Body statement 2/2007. (III. 23.) TT on the equal treatment requirement in public education.

The introduction of Gypsy developmental teaching was also unlawful in every possible detail.

> In the course of investigating the question of segregation we discovered that (on the instructions of the maintainer) the school had been conducting Gypsy developmental education since 1 January, 2008. The school's foundation deed, but not the pedagogical programme in force, contains this activity since 1 March, 2008.

We established that the Gypsy developmental education was unlawful because a government decree ended Gypsy developmental education in a phased-in system from 2004, so there is no legal possibility of introducing it anew. Without an appropriately amended teaching programme Gypsy minority education of a form complying with the statutory instruments could not have been introduced in any case, and particularly not during the academic year in all years at once.

We also stressed that although the school could point to sheets which it had prepared as formal declarations containing the initiative of the Gypsy parents, they were lacking any reference to the content of Gypsy developmental education. It can therefore be presumed that the majority of the parents made a declaration at the request of the school without having the appropriate information on which to base their decision.

In order to remedy the above irregularities and avoid future violations of the law, we made eight recommendations to the head teacher of the primary school and two recommendations to the local government as maintainer.

The representative body of the local government waited for the opinion of the teaching body, which we had requested, and then gave a response in line with that: *"it establishes that constitutional violations, segregation and discrimination did not occur in the school"*.

The local government, as can be seen, denies segregation although this was repeatedly confirmed and even recognised by the deputy head, despite the fact that it promised to examine the rules for forming classes and groups according to the content of the equal opportunities action plan.

The action plan clearly shows the significant difference between the ratio of disadvantaged and multiply disadvantaged children in the standard curriculum classes and classes with extra PE lessons – 39% and 50% respectively. In the course of analysing the figures it was defined as a task in the equal opportunities plan, that in both primary schools maintained by the local government *"it is necessary to review the current practice of organising learning groups in basic level art education, higher level education, and in forming the parallel "C" classes, so that the demonstrable inequalities are mitigated."*

The failure of the school to integrate disadvantaged children is indicated by the fact that according to the equal opportunities plan in the national skills assessment the school achieved 81–88% of the national average, while the average of disadvantaged pupils was 65–72% of the national average. Since the results of the disadvantaged pupils were included in the school average, it can be established that there is a very big difference between the achievements of the disadvantaged pupils and the "others". (The spread is indirect proof of segregation.)

It is typical of the contradictory behaviour of the local government (the maintainer of the school) that not only does it not recognise segregation despite the data of its own equal opportunities plan, but that following the ombudsman investigation it appointed as head teacher the deputy head about whom numerous Gypsy parents had made complaints.

Although it should be acknowledged that the teaching body of the school accepted five of our initiatives in its five-page response, we wish to emphasis three other elements due to their significance on principle:

In connection with the behaviour of the four teachers the teaching body remarked that although an official report was not made of the investigations by the head teacher, the accusations were "clearly unfounded" and the investigation by the head teacher was complete. The teaching body takes the view that there is no place for reversing the burden of proof in the ombudsman procedure.

The teaching body, citing three reasons, "denied" that segregation occurred as a result of the way in which the Gypsy children were allocated to classes. In its view the expectation of appropriate socialisation is acceptable since this is necessary in team sports, the Education Act makes it possible to require equipment listed in the teaching programme; and being in the appropriate physical condition can be described as a natural requirement for sport classes.

The teaching body objected that our report: "does not deal at all with the responsibility of the parents. Are the parents not responsible if the child does not attend school or they put the benefits given for the education of the child to other uses?" On the other hand the teaching body also points out that the "governmental education policy, regulations and practice are primarily responsible" for the current situation, the maximising of pupil rights, the expansion of compulsory education, encouraging the growth in class numbers etc.

That is undoubtedly the case. Nevertheless, we think it important to repeat once more that appropriate communication between the parents and school is particularly important if a significant proportion of the pupils belonging to the school's catchment area are disadvantaged or multiply disadvantaged. Regular dialogue between partners helps to reduce the dissatisfaction of parents frus-

trated because of the lack of success of their child or because they consider the behaviour of the teachers insulting, and to reduce the pressure to segregate placed on the school by parents of higher social status.

Naturally open dialogue between equal partners is not sufficient in itself. Without pedagogical and methodological reform, the use of alternative teaching methods, the transfer of knowledge based on co-operation and skills-based teaching, and a consistent system for evaluating the work of teachers it is inconceivable that the integration of disadvantaged children, and "retaining" pupils living in better financial and social circumstances will take place.

It is worth noting that it emerges clearly from the figures that the school performs poorly.[11] It is also a fact that even with segregation it was not possible to persuade members of the town's middle class to keep their children at the school. The leaders of the school said that those parents who can do so take their children out of the school to another town.

## 1.1. Home pupil status

Becoming a home pupil on the face of it is not a minority rights question. The aim of the legislator with this legal set up was to support those pupils who cannot take on the standard burdens of school education requiring everyday preparation so that they can develop their exceptional talents in science, sport, music and other cultural areas. (Possibly because of an illness they are not capable of attending school regularly, or are abroad for a period of time.)

In the course of our investigations (our findings are also supported by sociological research) we find that the vast majority of home pupils are of Gypsy origin. Those home pupils whose parents cannot help them prepare for the twice-yearly exams, and cannot enjoy the professional support of a private teacher due to the family's income situation, fall behind irrecoverably, become frustrated due to lack of success, and may drop out of the public education system. Those Gypsy parents who request that their child become a home pupil (voluntarily without thinking it through or under pressure from the school) or accept the recommendation of the authorised expert committees without putting up resistance (legal remedy request), expose their children to the risk of unemployment

[11] According to the half-yearly report of the teaching body "31% of the lower school requires developmental teaching. In the upper school 28% received "unsatisfactory" in one or more subjects." The national skills assessment results of the school are also informative. According to the 2007 survey, the school did not reach the city, let alone the village average in maths, and is a significant way away from the national average. In addition the ability spread was much greater than the town, regional, small region and the national average.

and lack of prospects. Those schools and head teachers which take advantage of parents' ignorance, and using the argument that "it will be good for the child" persuade the parent to request that the child be declared a home pupil so that the "proper" running of the school be protected from the "problematic" child, severely violate the best interests of the child above all else. However, the expert and rehabilitation committees and educational advisers are also at fault if they issue a professional opinion recommending that the child be registered as a home pupil "on the instructions" of the school.

Only the parent may request that the child be registered as a home pupil. This is approved by the head teacher, after obtaining the opinion of the competent child welfare service according to place of residence, as to whether this solution is detrimental for the pupil or not.

However, uneducated parents who are only capable to a limited extent of enforcing their rights can easily be persuaded to free their child, who is not capable of meeting the expectations of the school, from frustration and conflicts. In this way the right of the parent becomes the means of discrimination.

If the child becomes a home pupil based on the "voluntary" decision of the parent,[12] then the school frees itself from a pupil with a "behaviour disorder" who is difficult to handle, and is only obliged to examine the child. The parent has to take care of preparing the child for the exams.



> The 15 year-old daughter of an illiterate Gypsy mother was a home pupil at a primary school in Budapest in the previous academic year at the request of the mother. The head teacher called the mother to the school for the end of year exam in order to reach a "compromise". The head teacher and other teachers told her that they would let her daughter through into the next year, but only if she remained a home pupil.

The head teacher confirmed that it was recommended to the mother that the girl remain a home pupil, but only in her own interests. His arguments were as follows: next year the girl will be 16, and she can then obtain a combined school certificate for years 7–8. There would be an age gap of three years between her and the classmates, which would unavoidably be a source of conflict. In addition, during the standard day teaching she would feel unsuccessful because in the previous academic year as a home pupil she did not study English and IT, and did not participate in dance and drama classes. According to the head

[12] Section 7 (1) of the Public Education Act. Depending on the choice of the parent, the compulsory education requirement may be fulfilled either by attending school or as a home pupil. Section 11 (1) n) of the Public Education Act:

Pupils are entitled in particular to study as a home student, and to request exemption from participating in courses.

teacher for these reasons both the mother and the pupil were pleased with the opportunity offered, and the girl did not want to return to school.

We drew the attention of the head teacher to the fact that the parent decides on the form of fulfilling the compulsory education requirement, but it is expressly the responsibility of the head teacher to request the written opinion of the child welfare service. The head teacher referred to an opinion given verbally in response to his verbal request: he said that he informed the child protection official of the local government and the head of the child welfare service, who verbally supported the child continuing to have home pupil status. We stressed that the school cannot set any conditions for accepting and allowing children of compulsory age within the school's catchment area to continue their studies. We discovered that the head teacher had exempted the pupil from the subjects of English, IT, dance and drama.

We drew the attention of the complainant and the mother to the fact that a significant proportion of home pupils "go astray", but that the arguments put forward by the head teacher were correct, (even if he himself had brought about some of these reasons) and if they decided in favour of normal pupil status then they would be choosing the more difficult path: they should pay close attention to the girl, co-operate with the school and the teachers, and request help to reduce the disadvantages.

The parent withdrew their declaration, and the head teacher assured us of his willingness to co-operate and good intentions.

If the pupil becomes a home pupil on the basis of an expert opinion, the school, the institution providing developmental preparation or issuing the expert opinion has to ensure the provision of the professional indicated in the expert opinion according to a separate law.

To assist children who have become home pupils based on an expert opinion due to a behavioural disorder or serious illness confirmed by a doctor's certificate, schools have an average of ten hours a week for individual sessions over and above the available number of hours for providing compulsory and non-compulsory lessons. In such cases therefore schools have a greater obligation than if the parent requests that their child be registered as a home pupil without reference to medical documents.

Theoretically the parent decides on the question of their child becoming a home pupil even if this is expressly recommended by the expert and rehabilitation committee or the professional opinion of the educational advisor. If the parent does not agree with the professional opinion they can appeal. However, parents only capable to a limited extent of enforcing their interests frequently either bow to professional authority, or – if they are not appropriately informed

of their rights – they do not even know that it is not obligatory to accept the professional opinion.

The head teacher of the school is obliged to inform the pupil and the parent about the rights and obligations of home pupils. On request a home pupil can be enrolled in after-school study sessions. Sometimes, however, head teachers do not even give this basic information to the pupil and to the parent.

One complainant, fearing a potential summary offences fine due to school non-attendance, complained about the delaying behaviour of the school in question. The school reached a decision on home pupil status within the deadlines and having requested the opinion of the child welfare service so the complaint proved unfounded. It emerged, however, that the home pupil had not been informed about the textbooks to be used during individual preparation and the detailed curriculum.

On our initiative the school made up for this omission and provided the parents with the appropriate information.

According to the statistics of the Ministry of Education and Culture, in 2002 5916 pupils, and in 2005 5228 primary level pupils were home pupils. In the 2007/2008 academic year there were 5632 home pupils in primary schools. Of these 2030 were home pupils on the basis of the parent's own decision, 1457 due to disability or based on a medical recommendation, 1436 due to their parents working abroad, 1037 based on the recommendation of the expert and rehabilitation committee, 709 due to other extraordinary circumstances of the pupil, and 36 because they were beyond the age of compulsory education.

The proportion of pupils becoming home pupils based on the recommendation of the expert and rehabilitation committees decreased by 5% compared to 2005. Compared to the 2005 figure the number of those gaining this status based on medical recommendations grew threefold, from 146 to 420. 36% of the total number became home pupils based on the parent's own decision, a 5% increase compared to the 2005 figure.

The greatest source of risk in terms of becoming a home pupil is an ill-considered parental decision made without assessing the consequences correctly. However – as the cases presented also reveal – some parents are talked into reaching this decision. It is typical that in depressed regions the ratio of home pupils is several times the national average.

# 2.
# Problems relating to social security

## 2.1.
## Changes affecting the benefits system regulations

Among the problems arising in connection with social security we will deal first with changes to the benefits system regulations.

While analysing this issue, we should look first at a general problem: in Hungary labour market supply and demand are not balanced from a qualitative point of view. Following the change of regime, demand for work requiring low level training decreased significantly, while the proportion of individuals only capable of such work barely changed within the population. As a result the number of people capable of working who are forced to live off benefits increased. We also have to recognise that unemployment in the Roma population is several times the national average. Research results support the fact that the ratio of citizens belonging to the Gypsy minority among the impoverished layers of society is increasing.

In 2008, as in previous years, we received a large number of complaints about social issues, requesting our help due to their livelihood problems. Based on the experiences of these specific cases we found it necessary to give a detailed opinion on the modifications to the benefits system regulations, and new social phenomena related to this issue.

The suspicion of discrimination frequently arises in connection with the granting of social benefits. However due to the discretionary nature of some of the benefits in most cases direct or indirect discrimination cannot be established. The lack of figures for comparison causes a problem, as we indicated in last year's report. However, "institutional discrimination"[13] is also present in the social welfare system, which in itself is liable to disadvantage some Roma residents

[13] The concept of institutional discrimination appeared in English legal literature in 1999 in connection with the inquiry into the murder of a black teenager (the Stephen Lawrence case). The essence of this concept is that racism frequently lies not in individual behaviours, but in the operation of internal structure of organisations. We speak of institutional discrimination of a given organisation collectively does not provide an appropriate and professional service to people of a certain racial origin. Institutional discrimination frequently reveals itself not in one given action or activity, but instead pervades the whole of the activity and running of the organisation. Institutional discrimination occurs as a result of the collective behavioural patterns, prejudices and conscious and unconscious of the members of a given organisation, and can become a permanent feature if the organisation is not capable of properly recognising and managing these mechanisms. Sir William McPherson of Cluny: The Stephen Lawrence Inquiry. Report of an inquiry. (Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty) February 1999. – www.archive.official-documents.co.uk.

turning to the given institution without us being able to establish negative discrimination in the individual cases based on the legislation in force. It is typical of institutional discrimination that the prejudices of the majority society become inseparably mixed up with the historically predetermined social and economic disadvantages of the Roma population, and regional disadvantages and tensions resulting from the economic situation of the local governments which reinforce the former disadvantages. In difficult economic circumstances perhaps it is not even a conscious decision that in a given settlement – within the framework of the statutory instruments – those individuals least favoured and viewed as least "deserving" by the decision-makers miss out on of employment opportunities and various forms of financial support.

Our experiences were reinforced by those local government initiatives which did not regard as sufficient the available legislative framework providing a basis for consideration, and wished to decide for themselves on who is deserving or not of being granted benefits.

Every settlement concerned stressed that the demand for the conditions for obtaining benefits to be tightened it is not a minorities question and is not directed against the Roma. Despite this most comments and reports primarily referred to Roma stereotypes. Gypsy individuals were used almost exclusively to illustrate news items on this topic in the electronic media.



It can frequently also be heard that there is a social need to "bring into line" people living off benefits, which in our opinion in worsening economic situations is part of the usual "scapegoating" process.

To summarise: it is very important to deal openly with these questions because these phenomena indicate that a general social problem lies behind the individual cases, which makes certain social groups particularly vulnerable through the mechanism of scapegoating. The conceptual legislative changes drafted and then approved in 2008 are intended to decrease, but might actually increase vulnerability and discrimination against these social groups – in particular the Roma due to social prejudices – which could contribute to the intensifying of social tensions and conflicts.

### *Summary of report on a local government initiative violating fundamental constitutional rights*[14]

We learned from reports in the written and electronic media in April 2008 that one local government wished to withdraw support from those families whose children do not regularly attend nursery or school. Based on the decision of the representative body the local government may withdraw the regular child protection allowance, additional child protection support and extraordinary

[14] The full report can be read in Hungarian on our website: www.kisebbsegiombudsman.hu.

child protection support if the child is absent from school without certification. The representative body also decided that it wished to tie payment of regular social benefits to performing work recommended by the local government. It would have introduced the concept of local government public interest work to implement this.

Meanwhile several settlements followed this example: by amending their decrees they tightened the conditions for granting regular child protection allowance and/or regular social benefits.

The mayor of a multi-purpose small region partnership of 18 settlements in north Hungary drafted a joint proposal in May 2008, which among other things suggested making the family support system and the social welfare system stricter and penalising those receiving benefits if they do not fulfil certain conditions. The mayors of several settlements also joined the initiative. The president of the Alliance of Cities with County Rights commented several times that they would initiate the amendment of the Social Act, so that *"the local governments can legally decide to tie the payment of benefits to conditions"*.

In connection with this we should note that even before the amendment entering into force in 2009[15] the principle applied that the person receiving benefits is obliged to accept an appropriate communal employment possibility offered by the local government. The arguments of the local governments for amending their social decrees therefore were not valid: it was not true that the framing of the decrees was necessary because the local governments otherwise could not "force" those on benefits to work. According to the statutory instruments in force in 2008, benefits should be withheld if the individual receiving regular social benefits does not accept the appropriate[16] workplace offered.[17]

[15] Act CVII of 2008 on the Amendment of Certain Laws Pertaining to Social Affairs and Employment changed the uniform system for regular social benefits to different forms of benefits for those of active working age.

[16] Section 37/H (6) of Act III of 1993 on Social Administration and Social Services: The unemployed person is obliged to accept the work offered, if

*a)* the work is appropriate to the professional qualification, school qualifications, or lower-level qualifications, or the skills level of the area of work in which the individual worked most recently for a period of at least six months, and complies with section 25 (2) b) and d) of Act IV of 1991 on the promotion of employment and services to unemployed people (hereinafter: Employment Act), and

*b)* the expected monthly wage reaches the value of the mandatory minimum wage at the given time,

*c)* in the case of part-time employment, the travelling time there are back daily between the workplace and place of residence does not exceed half the duration defined in section 25 (2) d) of the Employment Act and the expected monthly wage at least reaches the time-proportional value of the mandatory minimum wage at the given time.

[17] According to section 37 (2) b of the Social Act in the case of serious violation or repeated violation within two years of the co-operation obligation regular social benefits have to be withdrawn. In the course of applying this provision, beyond the content of the decree of the local government, it qualifies as serious violation of the co-operation obligation if the person receiving benefits does not accept the appropriate work opportunity offered, or if the employer terminated the communal employment with exceptional dismissal.

The principle of "work instead of benefits", therefore, has been present for some time in the social welfare system, but the enforcement of this is restricted not by the wrong attitudes of those in need, or the legislator's lack of intention, but by the scarcity of real employment opportunities.

In our report on the case we established that the amendment of the local decrees and proposals to change the practice of granting benefits in such a form imply the violation of several fundamental constitutional rights:

- The local governments cannot set conditions which the Social Act does not contain among the co-operation obligations for recipients of benefits. The local government decrees examined therefore violate Article 44/A of the Constitution's provisions on legislation.
- The local decrees exclude people in need according to the Social Act from receiving benefits, so they do not comply with Article 70/E of the Constitution on the right to social security.
- The local governments deliberately violated the principle of constitutionality stipulated in Article 2 of the Constitution by framing decrees which were clearly unconstitutional.
- The local government provisions withholding entitlement to regular child protection allowance, and supplementary and extraordinary child protection support also violate fundamental constitutional rights concerning children's rights.

The framing of the local government decrees in question therefore caused violations of the rules for local government legislation, the constitutional right to social security, the rights of the child, and the principle of constitutionality.

In the light of the above findings we addressed with numerous initiatives and legislative proposals to the representative bodies of the local governments concerned and the relevant ministries.

We drew the attention of the legislators to the fact that in our view it would be extremely dangerous and worrying from a constitutional point of view if the comprehensive amendment of child welfare and social services were to occur on the basis of the local government initiatives. Naturally that does not mean that the government can avoid dealing with the real problems, which means drafting legislation that is lawful, professionally well-founded and carefully considered in terms of social policy.

*Legislative improvement proposal in the report: the failings of the concept of indirect discrimination*

Article 70/A of the Constitution declares the principle of freedom from discrimination in a general sense. The ban on negative discrimination based on national

or ethnic minority origin is further established by directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin passed on 29 July, 2000 by the Council of Ministers on the basis of the authorisation in Article 13 of the Treaty of Amsterdam.

In Hungary the legislator primarily implemented the legislative obligation resulting from the Constitution and the above directive by means of the Equal Treatment Act.

Under the Equal Treatment Act the principle of equal treatment must be respected. Numerous specific forms of behaviour violate this requirement, including direct discrimination, indirect discrimination, harassment, reprisal and instruction to various forms of discrimination.

Given that the local government decrees which we examined do not specifically and exclusively affect people of Roma origin, the question of direct discrimination did not arise during our investigation. However, the decrees which we looked through and the related documents and statements even on first reading raised reasonable suspicion of indirect discrimination for the following reasons:

- According to sociological research in the region and settlements concerned the proportion of Roma citizens with the population is very high, and among them there is a high ratio of multiply disadvantaged unemployed individuals.
- Among those living in deep poverty the number of Roma citizens far exceeds their estimated proportion of the population as a whole. According to sociological research deep poverty is becoming an increasingly ethnic phenomenon in Hungary.
- One of the mayors concerned in his comments to the media put forward arguments expressly referring to the circumstances of the Roma population. As we indicated, in other media reports on the case pictures of Roma families were used to illustrate the problem. The small region declaration mentioned above – at least in an indirect form – in many places treats stereotypes and prejudices concerning the Roma as fact and an existing phenomenon.

According to the Equal Treatment Act, we can speak of indirect discrimination connected to national or ethnic minority origin if a provision apparently complying with the requirement of equal treatment disadvantages individuals or groups of a certain national or ethnic minority origin in a greater ratio than a person or group in a comparable situation was, is or would be.

It is important that the intention of discrimination is not a condition for establishing indirect discrimination, or even awareness that the given apparently neutral provision could potential disadvantage a given group more severely.

However, circumstances which make such an intention probable reinforce the establishment of discrimination.

It can be predicted, therefore, that if the decrees are actually applied, withdrawal of benefits on the basis of the decrees would affect a significantly larger proportion of Roma residents than non-Roma residents. However, until this hypothesis is confirmed by the amendments actually being applied, there is no possibility of establishing indirect discrimination under the Equal Treatment Act.

This situation draws attention to an important deficiency of the Hungarian regulations compared to the definition found in Directive 2000/43/EC. According to the English text of Article 2 of the Directive: "Indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice *would* put persons (…) at a particular disadvantage compared with other persons (…)" The Hungarian text of the Directive which is in force [18] uses the expression "put", rather than "would put" so potential disadvantage is not included in the ban on indirect discrimination. However, from the original English and French texts, and the historical interpretation of the concept of indirect discrimination it clearly follows that it is sufficient to establish indirect discrimination of the given condition, practice or provision is liable to disadvantage persons with certain characteristics.[19]



In other words the Hungarian legislation in force in this point is not in line with the EU requirements. The concept of indirect discrimination in the Equal Treatment Act offers lower level protection than the English and French texts of Directive 2000/43/EC. We have therefore proposed the appropriate amendment of the Hungarian legislation.

Due to the above, it was not possible to conduct a procedure based on the Equal Treatment Act. That could only have happened if experiences gathered during application of the decrees had supported the suspicion of indirect discrimination. In our report, however, we drew attention to the risk of violating the ban on negative discrimination and established an irregularity connected to Article 70/A of the Constitution.[20]

In his reply the Minister of Justice and Law Enforcement indicated that he did not agree with the problem raised by us concerning the definition. Accord-

[18] www.europa.eu.int/eur-lex.

[19] The French text supports the fact that it is sufficient if the given provision is liable to cause disadvantage: "(…) est *susceptible* d'entrainer un désavantage particulier"– www.europa.eu.int/eur-lex.

[20] According to Section 29 (4) of Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights an impropriety relating to fundamental rights in applying the Act is the violation of a fundamental right or direct risk of such, regardless of whether it is the result of an action or an omission.

ing to his arguments the expression "was, is or would be" in the definition of indirect discrimination covers cases of potential negative discrimination. The European Commission also accepted this explanation in its compatibility study on adoption of the Directive. The argument of the minister is partly correct, i.e. indirect discrimination can in fact be established if as a consequence of a provision members of the given group are actually put at a disadvantage, even if a similar comparable (reference) group is not affected as a consequence of the provision (for example members of the majority society do not respond to the given job advertisement), but it can be presumed that if they were affected, they would not be put at such a disadvantage.

However, in the cases examined by us, since the decrees had not been put into practice, the disadvantage could not have occurred either to the Roma population or to majority residents. This can be regarded as the other case of potential discrimination, which is not adequately covered by the Hungarian law in force. In other words the Equal Treatment Act does not provide a real solution, when the provision in itself is liable to create the disadvantage (disproportionate burden), as happen in connection with the given social decrees. In our view – and the lesson of the case in question – the Hungarian legislation still does not comply with the authentic English and French texts of Directive 2000/43/EC. That is not changed by the fact that the arguments of the government persuaded the Commission, which in the absence of a specific counter example presumably found the Hungarian interpretation to be credible. It is also important to bear in mind that the national legislation should not merely aim to adopt the acquis communautaire word for word: the EU obliges the national legislator to fully implement and enforce the aim of the legislation – in this case the principle of equal treatment. The question, therefore, still needs to be settled.

*Follow up to the report, governmental, civil and public reactions*

The minister in charge of the Prime Minister's office gave the following reaction – including the responses of the Minister of Justice and Law Enforcement, Minister of Local Government and the Minister of Social Affairs and Labour:

The ministers agreed with our conclusions concerning the unconstitutional nature of the decrees in connection with the provisions referring to social benefits. They agreed with our conclusions concerning entitlement to regular child protection allowance and additional child protection support. They indicated, however that in their view in the case of extraordinary child protection support – since it is expressly a local government form of support – the right of the local governments to frame decrees extends to setting further conditions, among which a school attendance obligation is conceivable. While acknowledging the

observation concerning autonomy of the local governments, we maintain our view that setting such conditions does not promote school or nursery attendance, but leads to further deterioration of the social situation of the families. As a result essentially the children are punished due to circumstances for which the family may or may not be to blame.

In accordance with our initiatives the local government and housing state secretary conducted talks with the relevant regional public administration offices, which immediately reviewed the decrees concerned, and called on the local governments to put a stop to the violations of the law. In the reply we received a promise that if the representative bodies do not satisfy the legality observation, the public administration offices will turn to the Constitutional Court. In addition the state secretary instructed the leaders of the public administration office to draw the attention of the local governments to the need to respect the regulations in force. Some settlements annulled the unconstitutional decrees in response to the notification of the public administration offices, but other settlements were not willing to do so.

Other representative bodies kept their unconstitutional decrees in force despite the legality observations of the public administration offices on the grounds that *"this amendment complies better with the principle of social justice and numerous constitutional fundamental rights stipulated in Act XX of 1949 on the Constitution of the Republic of Hungary than the statutory instruments which it is not in line with".*



We have to stress here that in a democratic constitutional state in particular there is no place for arguments according to which local politicians are aware that they are committing violations of the law, but continue to apply the decree until the decree is annulled by the Constitutional Court, thereby setting an example to the other local governments. This phenomenon can greatly undermine the law-abiding behaviour of citizens and their trust in the institutions of a democratic constitutional state.

We have to mention that we have always received support from legal defence civil bodies with exemplary speed. The Legal Defence Bureau for National and Ethnic Minorities (NEKI), the Roma Civil Rights Foundation, the Chance for Children Foundation, the Hungarian Roma Parliament, and the European Roma Rights Centre a few days after receiving our report, released a joint statement in which they expressed agreement with our conclusions. In their statement they stressed the need for solution-based governmental action based on broad professional and social consensus. The legal defence organisation Hungarian Civil Liberties Union also put its name to the statement later.

The reactions from the public which we received expressed far less solidarity and agreement with our standpoint. Probably partly because of the sensation-

alist press reports on the case we received numerous opinions from outraged members of the public. These letters and telephone calls indicate the population's lack of information concerning basic questions, and in connection with this, the need for realistic, easily understandable governmental communication based on facts. Unfortunately these reactions reflect growing prejudices among the population, the weakening of social cohesion, a decline in understanding and tolerance towards disadvantaged layers of society, and an increasing social tendency to seek a scapegoat.

*Giving an opinion on the "Road to work" programme*

The aim of the final version of the "Road to work" programme sent for our opinion – according to the proposal – is to get the some 100,000 people capable of work out of the roughly 200,000 people currently receiving regular social benefits back onto the labour market.

The main new aspect of the programme conceptually is that, dividing the current group of people receiving benefits into two groups, it distinguishes between those persons of active working age entitled to support (participating in communal employment for a wage or receiving an allowance if such work cannot be provided), and those receiving regular social benefits (the latter due to their health condition, age or family circumstances cannot be expected to work). The level of the benefits remains unchanged, and while the sum of the monthly allowance described above – regardless of the number of family members and the family's income – is equal to the minimum pension. The concept obliges those receiving benefits to be in contact with the local government – primarily with the family help service – while those in communal employment or receiving an allowance have to co-operate with the state employment bodies.

According to the concept organising communal employment is the task of the local self-governments. The local governments have to prepare a one-year communal employment plan in co-operation with the state employment bodies. In view of the fact that the local governments cannot provide all residents of working age with communal employment possibilities, the question of selecting participants is of particular importance. Based on our experiences it is very likely that the local governments will leave the most disadvantaged Roma residents who are least capable of enforcing their interests out of the communal employment programme. We therefore indicated in our opinion that we think it necessary to include guarantees in the draft to ensure that Roma residents do not miss out on the opportunities. A solution could be for example to involve minority self-governments and/or minority organisations in drawing up the communal employment plan and selecting the participants for specific programmes.

We stressed that getting people back onto the labour market – based on professional experiences – can only be successful if the individuals concerned are given appropriate psychological and life management assistance and advice. The draft, however, continued to lack safeguard elements, which – in view of how the psychological state of individuals changes as a result of long-term unemployment – would ensure that people returning to work and attending training courses receive help and support to reintegrate. While those participating in communal employment or receiving an allowance if such employment cannot be provided have to stay in contact with the state employment bodies (which primarily play a supervisory role), for those receiving regular social benefits there is an obligation to co-operate with the family help service. In our view there is a risk that many people who for a long time have been unemployed and without hope will not be able to deal alone with the burden of returning to work, and so ultimately will drop out of the system. We therefore recommended adding complex psycho-social assistance and services based on the set of tools of the social profession to the concept.

A related problem is that the level of the allowance if communal employment cannot be provided (regardless of the family's property and income circumstances) is lower than the possible amount of regular social benefits.[21] If a family has no other source of income, then their daily subsistence could be at risk. As we indicated in our opinion on the previous version of the concept, penalising "black market employment" in such a way that excludes those concerned from the support system, despite being legal carries numerous risks. The question arises as to what the fate will be of those individuals and their families excluded from receiving benefits? It is likely that increasing numbers will be forced to turn to illegal routes, or find themselves in a debt trap, and potentially lose their homes. In our view, therefore, reducing support for individuals and/or families, at the same time as measures designed to clamp down on black market employment, is an unrealistic endeavour that will not achieve a positive result. We recommended rethinking the concept in a practical way from this point of view.

In connection with implementation of the communal employment plans we also indicated that it is important to examine and analyse comparatively each year in what ratio real communal employment is organised in the most disadvantaged small regions compared to the more developed regions of the country. In this context it is necessary to observe whether the modifications introduced are suitable to even out regional inequalities, or on the contrary reinforce these.

Parliament passed the amendments to the law containing elements of the

[21] From 1 January 2009 the highest level of the regular social benefits is HUF 57, 815, and the level of the allowance replacing communal employment (availability support) is HUF 28,500.

programme on 15 December 2008.[22] The local governments prepare their communal employment plans in January 2009, which the State Employment Service will approve within 15 days. It is planned that the programme will get fully underway from March or April 2009.

At the time of passing the amendments, the calculations were based on 230–240,000 recipients of regular social benefits, of whom roughly 100,000 are expected to remain in this category. In our view Parliament did not take into account the fact that as a consequence of the world economic crisis and its impact on Hungary in 2009 numerous workplaces will be lost and the number of individuals and families claiming social benefits will rise, although there were already signs of this at the time when the amendments were passed.

*The current situation and future prospects*

The events of the past year outlined above and events mentioned elsewhere in the report clearly show the two sides of the crisis: firstly, the unbalanced nature of the labour market situation and the inadequate functioning of the social services system, and secondly growing tensions in society, particularly among the most disadvantaged layers, and intolerant attitudes and tendency to seek a scapegoat.

The concept of the *"Road to work"* programme promises to reduce social tensions. In our view that is only partly realistic: probably there will be those who will be happy with the restructuring of the social system, but fresh tensions can arise among permanently marginalised social groups. These, however, will probably be less perceptible to the majority society, since the most marginalised people are barely or not capable at all of articulating and enforcing their interests.

We would like to make clear that we accept and support all initiatives whose aim is to get citizens on benefits back into the world of meaningful and productive work provided that they are lawful, professionally and academically supported, and appropriately backed up by impact studies and thought through in terms of social policy. It is very important for the "devil's circle" connected to benefits to break, in which families from generation to generation are excluded from employment. Generally citizens living off benefits for an extended period are not capable of re-entering the primary labour market of their own accord alone, so the state and the local governments have to offer them increased help.

We have to note, however, that the various forms of communal employment

[22] Act CVII of 2008 on Amendment of Certain Laws Pertaining to Social Affairs and Employment.

do not represent a real alternative to benefits, because they offer only temporary and low-paid employment opportunities and not a long-term solution. Providing a regular work opportunity on principle is a better solution than benefits, but only if we are speaking of work performed for a real wage. It is necessary to acknowledge that without large-scale expenditure it is not possible to achieve an appropriate macro-level change, i.e. get disadvantaged groups to return to the labour market.

We therefore support a strategy, which – supporting mobilisation between the individual regions – provides the possibility of retraining citizens in professions where there is a labour shortage. However, there is likely to be little realistic chance of this as a consequence of the world economic crisis in the coming years. In addition we wish to stress again – based on professional experiences – that getting people to return to the labour market only works if the individuals concerned receive appropriate and complex psychological and life management assistance and advice.

Finally, looking to the future, we wish to draw attention to a new trend. In 2008 we received for the first time complaints that the disadvantaged population of a small settlement did not receive social benefits, because the local government itself was struggling with serious financial problems, and was on the brink of bankruptcy.



As a consequence of the world crisis, the process has begun of more and more people losing their jobs, with the result that the number of unemployed people is growing, while the tax revenues of local governments are decreasing. Despite the fact that at the time of preparing the report reliable sociological research had not yet been released on the effects of the crisis, we are already aware of some figures: according to the flash report published by the Central Statistical Office on 6 February, 2009, in 2008 the volume of industrial production was 1.1% lower than in 2007. Industrial production compared to the same period of the previous year fell by 19.6% in December 2008. According to public opinion research the population as a whole is very pessimistic and anticipating a prolonged crisis.

There is a sociological view which draws attention to the fact that typically only 35–40% of those theoretically entitled receive benefits, while the others do not apply for support or do not receive it. This view also notes that selection based on behaviour is a built-in element of benefits: the closer somebody is to the accepted middle class norms, which the distributors of benefits represent, the greater the likelihood that they will receive good-quality support that really helps in their situation – and this takes up the significant proportion of the support funding. This effect works to the detriment of the Roma.

We need, therefore, to pay increased attention to the development of the em-

ployment and social situation, with particular attention to those receiving benefits. We wish to emphasise that all public figures and experts giving opinions in this area and politicians in decision-making positions have particular responsibility here.

## 2.2. Housing problems

As we have already indicated, in 2008, as in the previous year, the number of social complaints was high. (22% of total cases, and within this a third of complaints received were connected to social problems.) We received petitions from every county due to such issues, but the highest number of social complaints came from the most disadvantaged regions, Szabolcs-Szatmár-Bereg and Borsod-Abaúj-Zemplén Counties, as well as from Budapest. The high number of complaints from Budapest can be attributed to migration of the Roma population due to employment problems, the fact that housing difficulties are in any case typical of Budapest, and the location of our office in the capital. The majority of complaints (61%) concerning the fundamental right to social security were once again connected to housing problems in 2008.

In the following case the suspicion of negative discrimination arose in connection with the procedures of the bodies concerned. The case can be instructive for other local governments in situations where cohabitation disputes develop between Roma and non-Roma tenants and residents.

The complainants lived in a block of flats in one of Budapest's inner-city districts where only their flat was owned by the local government. They always paid their rent and utility bills on time. The married couple are raising a child who currently attends secondary school. One resident of the block of flats and his wife from the start was hostile towards the family, regularly made rude remarks about their Gypsy origin and provoked them. In order to avoid disputes and abuse, the complainants asked the local government for a change of flat. According to the complainants, they were offered two flats, both of which were in another district. The family did not accept either. The neighbour regularly addressed complaints to the local government. The other residents of the block of flats, however, stood up for the complainants. Nevertheless, Vagyonkezelő Zrt (Holding Company) finally terminated the flat rental contract at the end of 2007. According to the complainats their Gypsy origin played a part in this move. They said they feel that *"A Roma family can never be right if a non-Roma family is involved".*

Our investigation established that there was no justification for terminating the flat rental contract.

Vagyonkezelő Zrt. terminated the flat rental contract of the family based on Act LXXVIII of 1993 on the Lease and Alienation of Dwelling Apartments and Other Premises, indicating that the tenants' behaviour was scandalous, intolerable and not in line with the requirements of cohabitation.

The fact of such behaviour could not be established from the documents available to us. According to information provided by the police the Roma family had not behaved in such a way that the residents of the house had requested police assistance. The claim that the tenants' behaviour was scandalous, intolerable and not in line with the requirements of cohabitation was contradicted by the fact that apart from the neighbour in question nobody else complained to the local government. One of the residents even contacted the local government in order to defend the rights of the family.

The method of terminating the rental contract was clearly in violation of the law. According to the Housing Act: *"If the behaviour of the tenant or persons residing with the tenant is the basis for the termination of the contract, within eight days of having become aware of the behaviour the landlord is obliged to inform the tenant in writing – warning of the consequences – to desist from the behaviour."*



We did not receive information as whether or not a warning had been given as described above. We presumed, however, that this had not occurred since the nature of such "behaviour" was not clarified.

Based on the information at our disposal, we could not establish beyond all doubt that the violations of the law suffered by the family were connected to their Gypsy origin.

We established, however, that the local government based on the request of a non-Roma family terminated the flat rental contract of the Roma family despite the fact that numerous facts supported the case of the Roma family, for example the information provided by the police that in the past three years only the Roma family had requested police assistance due to the behaviour of the non-Roma family.

We therefore drew the attention of the local government to the fact that based on the provisions of the Equal Treatment Act it is the obligation of the local government or Vagyonkezelő Zrt. to prove that negative discrimination did not occur.

We established that Vagyonkezelő Zrt. terminated the flat rental contract of the Roma family without good reason, in violation of the procedural rule set down in the Housing Act. In view of the above we proposed that the local government's representative body examine the resolutions brought concerning the

case and discuss reinstatement of the complainant's flat rental contract, and review whether there was a realistic possibility of the complainants receiving an appropriate exchange flat in the district.

In his response the mayor informed us that the relevant committee had reviewed the earlier resolutions connected to the case and had retracted the flat rental contract of the complainant, and at the same time authorised the complainant to receive an appropriate exchange flat in the district.

In 2008 we dealt with the problem of obtaining social local government housing. It would be of great help in solving housing problems if the local governments had the appropriate number of social flats for rental in the given settlement. Unfortunately we did not experience any change in this area in 2008. There are few social flats, and in fact in certain smaller settlements there are no vacant local government flats for rental at all. From the complaints it emerged that families in need have little chance of obtaining a social flat for rental within a reasonable time period.

It is also a significant problem that local governments struggling with financial difficulties are unable to regularly maintain and refurbish even the small number of local government flats. As a result a trend has developed for local governments to try to sell under market conditions those flats whose location is good, but which are in very bad state and require refurbishment. In other cases due to lack of funds refurbishment simply does not take place and disadvantaged families are forced to live in flats of increasingly poor quality.

Some 20% of the complaints received by our office were connected to the accumulation of utility debts and the demands of banks and credit institutes. Based on our experiences the majority of cases arose due to social circumstances (primarily lack of income), but the weak ability of the clients contracting with the companies to enforce their rights and their social marginalisation played at least as great a role. It is frequently the case that the service-providers do not provide appropriate information, and handle cases inflexibly, ignoring individual circumstances resulting from extraordinary living situations.

Based on the provisions of the law which defines our powers, we cannot investigate directly the loan practices of financial institutes. In the case of complaints we could at most play the role of mediator. To help complainants we generally contacted the financial institute (or its debt collection partner) or the public service provider, and in some cases we managed to achieve results: the signing of a new agreement to pay by instalments, or suspension of the enforcement (debt collection) procedure. It is important that the client should not be abandoned after the successful agreement has been reached: usually in order

for the client to remain able to fulfil the agreement, the co-operation of the local government and the family help service is required.

The number of cases concerning utility debts and loan debts is expected to rise in the coming period. Firstly, increasing numbers will be unable to pay the instalments of their existing loans. Secondly, despite the fact that due to the economic constraints the conditions for obtaining loans will be tightened, in the absence of other options the demand for loans on the part of disadvantaged, vulnerable families is unlikely to decrease.

Financial institutes can react by choosing between too approaches. One is to tighten the conditions for taking out loans and penalise breaches of contract, thereby deliberately deterring other borrowers from breaches of contract in future. This, however, can favour the continued existence of illegal or semi-legal loans with extraordinarily high interest rates. Although from March 2009 it is possible to take action against lenders with unrealistically high interest rates, that does not solve the difficulties of the badly off population in obtaining loans.

The other possibility is allowing families in need to obtain small loans at low interest rates, thereby better guaranteeing the repayment of the loans.

It would be useful for several programmes to be developed to solve these problems and to introduce them in Hungary at least as an experiment. However, for these to be successful in practice it is essential to develop an appropriate service to assist the development of debt management strategies for recipients of beneficial loans and the punctual payment of loan instalments. Without the introduction of alternative loan constructions a significant number of families in need may lose their homes in the coming period.

Finally we wish to draw attention to a new and worrying phenomenon. Last year we increasingly found that citizens who do not identify themselves as being of minority origin turned to our office seeking solutions to their housing and livelihood problems. As a consequence of the recession, in 2009 it is likely that increasing numbers will encounter such problems and – since this does not come under our sphere of authority – we feel obliged to draw the attention of the legislator to the fact that the state and local government welfare system will have to take care of individuals permanently losing their homes. The state and local governments have particular responsibility in cases where families with children lose their homes.

## 2.3.
## Violation of children's rights

Given the importance of the topic, we shall deal with the violation of children's rights in a separate section. In 2008, as in previous years, the violation of children's rights largely arose in connection with livelihood and housing problems, so we will present such a case in the report.

In Hungary according to research child poverty is higher than the EU average: 14% of children live in households without an employed member, which is the fourth worse figure in the EU.[23]

One research project indicates that in the past decade the proportion of the Roma population within the poor population has risen from 24% to 32%. The rise in the proportion of the Gypsy population among the poor – according to researchers – is connected primarily with their employment and educational disadvantages, and their age and family structure, rather than the decrease in their incomes or the quick rise in the number of children. In general it can be stated that unemployment carries the greatest poverty risk.

If the parents become unemployed, the children in the family become vulnerable and at risk financially. In the absence of an appropriate work opportunity and the resulting income, frequently only benefits can ensure the family's livelihood and housing conditions. However this is not sufficient to eliminate poverty, and to stop the child from being at financial risk. Moreover, growing poverty – due to the accumulation of loan debts and utility debts – in many cases leads to the loss of housing conditions.

One of the key concepts of child protection is being at risk. Child protection is about the exercise of children's rights and taking into account the rights of the child above all else, so its task is also to prevent children from being at risk. The service providers and services, however, primarily concentrate on children who are already at risk. According to experts the definition of being at risk is not clear-cut, and currently there are no objective set of conditions, definition and indicators to assess this in a uniform way, so settlements can understand something different by the concept.

Differing use of the concept, in particular the lack of a definition of being at financial risk, can have serious consequences in the lives of the children concerned. This problem is clearly illustrated by the following case.

[23] Remark made by Zsuzsa Ferge, head of the Child programme Office of the Economic Institute of the Hungarian Academy of Sciences at the opening event of the Chance for Children Project (Gyerekesély Projekt). Source: MTI.

In 2008 a mother belonging to the Roma minority and living in a settlement in north Hungary turned to our office with a complaint concerning a housing problem and the removal of her children from the family. She requested assistance and support to be able to bring up her six children with her husband in their own home again.

The complainant wrote in their later that as a result of their "gullibility" and ignorance, they had lost their home because they took out a loan from a "loan shark". Although the staff of the Child Welfare and Family Help Service tried to place the complainant with their six children in a hostel for mothers, due to the lack of free places or another housing possibility the children were removed from the family. The oldest child and the youngest child finally were placed with the mother-in-law of the complainant, who also allowed the complainant and her husband to stay in her one and a half room flat. The other four children from the family went to foster parents in another settlement. They are currently being brought up in two foster families in the same street.



The documents sent clearly confirmed that the children were removed from the family due to the family's housing problems, i.e. purely because they were at risk for financial reasons.

In the Hungarian child protection system the child has a fundamental right to be brought up in their own family. According to the Child Protection Act the child has a right to be brought up in the environment of their own family ensuring physical, mental, emotional and moral development, healthy upbringing and welfare. It is a fundamental principle that a child may not be separated from the family purely because they are at risk for financial reasons.[24]

The bodies concerned should have treated the financial vulnerability of the children within the framework of primary care. Removing the children from the family and placing them in temporary care violated the rights of the children.

To conclude the case we turned to the representative body of the settlement and requested that measures be taken to settle the housing conditions of the family, and for the six children to be able to be brought up by their natural parents again.

We also made a recommendation to the director of the Regional Public Administration Office's Social and Guardianship Office, to review the child protec-

[24] According to Section 7 (1) of the Child Protection Act: A child may only be separated from its parents or other relatives in its own interests, in cases and in a way defined by law. A child must not be separated from its family because it is at risk exclusively for financial reasons.

tion decisions on the case and examine how the children – bearing in mind the supremacy of their interests – be taken out of temporary care and placed back with their natural family. We also requested that the office examine whether cases had occurred in the region of children being placed in care because they were at risk purely for financial reasons, and to take appropriate measures to remedy the violation of the law.

The director of the Regional Public Administration Office's Social and Guardianship Office did not agree with our report. The director of the office established, based on the data services of the city guardianship offices in the regional and regional child protection professional services, that children had not entered care because they were at risk purely for financial reasons. The representative body of the settlement rejected our findings and initiatives in full.

Judging by the responses it can be established that the differing professional viewpoints result from differing interpretations of the concepts of a child being at risk for financial reasons and serious risk justifying the child being placed in temporary care according to the Child Protection Act. In our view if it can be established that the parents are suited to bringing up the children (in this case none of the bodies or individuals concerned question that), then the housing problem, however it developed, cannot be interpreted as anything other than being at risk for financial reasons.

*Recommendations concerning children at risk for financial reasons*

Point III/2 of the Government Resolution 1105/2007. (XII. 27.) on the Governmental Action plan for the Years 2008-2009 linked to the Strategic Plan of the Decade of Roma Integration Programme also deals with the separation of children from their families due to financial reasons, with particular attention to the enforcement procedures used in the case of squatters.

The content of the task is as follows:

*"It is necessary to review the regulations and practice concerning enforcement procedures used in the case of squatters, and the services provided by the social welfare system and child protection in order that the principle set down in the Child Protection Act – according to which children may not be removed from their families purely for financial reasons – be enforced.*

*Responsible: Minister of Social Affairs and Labour*
*Minister of Local Government and Regional Development*
*Minister of Justice and Law Enforcement"*

The point indicated was included in the government's resolution on our initiative. In connection with implementation of the task the Roma Integration Department of the Ministry of Social Affairs and Labour held inter-ministerial

negotiations on two occasions in the last months of 2008, to which we were also invited.

Based on our experiences – which are largely supported by child protection professionals – more Roma children are placed in care for financial or related reasons than non-Roma children.[25] We therefore believe it is important to clarify as soon as possible the problems of interpretation, legislation and practice connected to being at risk for financial reasons in order to enforce the right of the Roma minority to equal treatment.

In the interests of settling the problem, we made specific recommendations to the Minister of Social Affairs and Labour. Our most important proposal was for a definition of "being at risk for financial reasons" to enter the Child Protection Act because the authorities frequently interpret this concept differently, in a restrictive way, and clarifying this is a cornerstone of further legislation.

We had not received a government response to our proposals at the time of preparing the report. We continue to wait, therefore, to see what solution the Ministry of Social Affairs and Labour recommends, what action it initiates or takes concerning the problems raised in connection with this specific case and concerning implementation of point III/2 of Government Decree 1105/2007. (XII. 27.) on the Government Action Plan for the Years 2008-2009 in connection with the Strategic Plan of the Decade of Roma Integration Programme.



# 3.
# Taking action against hate speech

## 3.1.
## An issue which remained topical in 2008: hate speech

The freedom of expression is a fundamental right of special importance in every democratic society. "Hate speech" offending various groups has emerged in Hungarian society as an unavoidable "side effect" of the exercise of this right. Without wishing to go into the social, sociological and socio-psychological aspects of this phenomenon, it can be established that in the almost 18 years since the change of regime, Hungarian public life has not managed to find the antidote to hate speech. In 2008 we again had to conclude that majority public discourse and a set of norms classifying such extreme, prejudiced, comments inciting hate as unacceptable has not emerged. On national news broadcasts and the broad-

[25] Dis-Interest of the Child: Romani Children in the Hungarian Child Protection System, European Roma Rights Centre, December 2007, http://www.errc.org/db/02/90/m00000290.pdf.

sheet newspapers we have regularly encountered statements, opinion and "news items" which violate the dignity of and outrage the minority groups concerned as well as those members of majority society committed to human rights. During the committee discussions on our 2007 annual report the question was raised as why we do not take sufficiently effective against such programmes. Unfortunately we cannot report positive developments in this respect, because we would need wider powers to do so.

In 2008 we received numerous complaints concerning television programmes, internet sites and newspaper articles. There was also a complaint concerning a cartoon being prejudiced and in violation of dignity. In the majority of cases we received complaints connected to comments offending the Roma minority. However, complaints were also made concerning an internet site reporting on "Swabian crime", and anti-Semitic comments.

In connection with these cases – although we generally indicated to the individuals/bodies responsible for the given content that it violates constitutional values and we drew their attention to the need to respect the laws in force – due to lack of legal tools we could not take substantial action.

In view of the fact that we received complaints regarding programmes on certain television channels, and we ourselves detected signs of prejudice and discrimination, we were pleased to accept the invitation of the president of the National Radio and Television Commission (ORTT) to get involved as a consultation partner in the authority's investigation of the media image of the minorities. The study on the investigation was not yet available at the time of preparing this report, and is likely to be released in spring 2009.

We also received many letters speaking angrily, and frequently in an offensive tone about the Gypsy minority, our work and our opinions. Those cases form a separate category in which representatives of a given profession voice discriminatory opinions on closed forums. Such comments are particularly dangerous, because in this case not only does the opinion voice violate dignity or incite hatred, but frequently it also indicates what principles those concerned follow when practising their profession. Below we present such a case:

A complainant drew our attention to the fact on several occasions that the doctor in charge of an ambulance station had expressed rude discriminatory, anti-Roma opinions. The complainant claimed that according to the head of the ambulance station *"the majority of Gypsies are parasites, and during his work he is frequently in life-threatening situations, so when the ambulance goes out he carries a telescopic baton"* and a switchblade knife on him so that he feels safe and

uses these when necessary." The complainant also indicated that the doctor frequently voiced his opinions on the forum of a closed information portal for doctors.

Among the comments of the attached forum discussion we found rude, discriminatory, anti-Roma remarks and opinions made by the head of the ambulance station and other doctors which were unallowable, particularly coming from doctors who have sworn an oath to care for patients. Just to give one example from the many: *"(…) as a paediatrician the Roma baby boom from before the beginning of time worries me (…) Unconsciously they are practising the form of parasitism, which recognises that it can suck the blood of the host animal just to the point of it not dying."* There was also a doctor who expressly declared that they would not treat certain groups of patients. *("I don't take on patients in a drunken state either day or night".)*

In line with Article 70/A of the Constitution, which declares the ban on negative discrimination, Section 7 of Act CLIC of 1997 on Health Care sets out the right to equal care of patients in compliance with the principle of equal treatment. The Ethical Codex of the Hungarian Chamber of Physicians also contains the duty of care of doctors, and the text of the oath taken by doctors obliges them to respect human life in a way free from discrimination. The comments found on the given site indirectly endanger the right to care. The attitudes and conduct of doctors expressing discriminatory views towards potential patients belonging to the Gypsy minority can be fundamentally questioned. In view of the circumstances we launched our investigation, within which we contacted the chief director of the National Ambulance Service, the Minister of Health and the president of the Hungarian Chamber of Physicians. We asked all three to investigate the case and take the necessary measures to remedy the potential violations of the law.

In his reply the president of the Hungarian Chamber of Physicians indicated that since the head of the ambulance station concerned is not a member of the chamber, it cannot take action in this case. The chief director of the National Ambulance Service informed us that a disciplinary procedure had been launched against the head of the ambulance station. From a later letter it emerged that since the head of the ambulance station was no longer employed as a public official by the ambulance service, the disciplinary procedure had been stopped.

The Minister of Health instructed the Health Insurance Supervisory Body to examine the conduct of the leader of the head of the ambulance station, and the content of the webdoki.hu site. We are not yet aware of the result of the procedure of the Supervisory Body. The minister also indicated that he had instructed

the editor of the homepage in question *"to moderate the forum more regularly and strictly in order that the principle of equal treatment and respects for human dignity be upheld more effectively"*.

It is important to recognise the wider significance of the case. The case is a clear illustration that verbal comments can strengthen and legitimise underlying prejudices, and even – although there was not evidence of this in the given case – turn this into concrete discriminative conduct. This case was also significant because it became clear how many underlying prejudices there may be in the state, social, welfare and service systems.

In the future we need to address the attitudes of healthcare workers, and examine to what extent these influence their work.

## 3.2.
## Legislation against hate speech

Hungarian hate speech legislation reflects the seemingly irreconcilable struggle between two especially protected constitutional fundamental rights. The rivalry between freedom of speech and human dignity is illustrated well by the "duel" between governmental efforts to penalise violation of public dignity, and the Constitutional Court resolutions on these, and by public discourse on the topic. Until 2007 Parliament tried to take action against hate speech with criminal law legislation, only for the laws to be annulled by the Constitutional Court. In 2007 – based on the earlier guidance of the Constitutional Court – Parliament wished to use a civil law solution to the problem, but this was also judged unconstitutional.

The next law passed on action against hate speech also uses a civil law solution by granting members of groups offended by hate speech the possibility to seek satisfaction from the court. The lawsuit has to be filed within 30 days of the offensive remark to the Budapest Court, which has to consolidate all lawsuits referring to the same remark.

Parliament passed the bill on 10 November, and on 26 November the President of the Republic sent it to the Constitutional Court for review. The President referred to the problem that the law does not provide the possibility of real consideration of the question whether the person who feels their rights have been violated is actually a member or not of the offended community or whether their relationship with the community concerned is sufficiently close, and it does not clarify the necessary obligations of proof for this. The law therefore violates freedom of speech, according to the President. The President also objected that the court cannot considerably separate the occurrence of a violation of the law in

the case of those individuals actually offended, because the case has to be judged generally in terms of all members of the group. This in turn violates the right to individual self-determination.

We also gave an opinion on the draft which aims to take action against hate speech in a civil law framework, and discussed it with representatives of the Ministry of Justice and Law Enforcement on several occasions. We criticised the law from numerous points of view.

## 3.3.
## Our proposal for action against hate speech: a "third type" of solution

From the above it could also be seen that the repeatedly failed legal initiatives aimed at taking action against hate speech almost seem to fuel hate speech. With a certain degree of cynicism we can say that by now the boundary between legally allowed and unallowable comments has become clear to almost every potential violator of the law. The phenomenon is gaining ground and the need for legal action is increasingly clear. As we indicated, currently a draft serving this aim, which wishes to solve the problem using the tools of civil law is before the Constitutional Court. A decision on the concerns expressed by the president of the republic had not been reached at the time of completing this report. Based on the experience of the past years it is doubtful whether the law will pass the constitutionality test.

The ongoing "tug of war" between the legislator and the bodies which guard constitutionality prompted us to seek a new "third type" of solution. In March 2008 we set out our proposal, according to which it would be most expedient to find a solution to taking action against hate speech not within the framework of new legislation created specifically for that aim, but by extending the scope of an already functioning legal institution which does not raise constitutional concerns.

Comments which can be classified as "hate speech" in a broad sense violate the human dignity of the given group and its members. In addition to the Constitution, international obligations, and the Minorities Act, one of the most important laws concerning enforcement of the right to human dignity without discrimination is the Equal Treatment Act. In our view, the provisions of this law– admittedly in a limited sphere – provide the possibility of taking action against hate speech. Widening these possibilities – i.e. amending appropriately

the provisions of the Equal Treatment Act – could be a suitable and constitutional solution to taking action against comments violating human dignity.

According to Section 7 of the Equal Treatment Act, the principle of equal treatment is violated by *"direct negative discrimination, indirect negative discrimination, harassment, unlawful segregation, retribution, and instruction to the above".*

In terms of taking action against hate speech, the concepts of harassment and – to a lesser extent – instruction to forms of conduct violating the principle of equal treatment are of key importance.

According to Section 10 (1) of the Equal Treatment Act, *"Harassment is a conduct violating human dignity related to the relevant person's characteristic defined in Section 8 with the purpose or effect of creating an intimidating, hostile, degrading, humiliating or offensive environment around a particular person."*

Harassment, therefore, includes all verbal or non-verbal forms of behaviour which violate human dignity and are liable to turn the social environment against a group of persons with certain characteristics. "Hate speech"– type comments requiring a legal reaction are characterised by precisely the above features. Penalisation of remarks not reaching the level set down in the cited provision of the Equal Treatment Act is not necessary, and may not even be constitutional. Instruction to forms of behaviour violating equal treatment – in a narrow sphere and secondarily – can also play a role in action against hate speech.

It is characteristic of "hate speech" that it is generally directed against groups with particular features, i.e. it affects a sphere of persons which cannot be defined precisely. Section 20 of the Equal Treatment Act provides a procedural law solution to such cases of the violation of equal treatment in the form of public interest lawsuit.

According to this legal provision "if the violation of the principle of equal treatment was based on a characteristic that is an essential feature of the individual, and the violation of law affects a larger group of persons that cannot be determined accurately" a lawsuit under personal or labour law because of a violation of the principle of equal treatment before the court can be initiated by the Public Prosecutor, the Equal Treatment Authority, or the social and interest representation organisation.

According to paragraph (2) if the conditions set out in paragraph (1) are met, civil and rights representation organisations are entitled to initiate a procedure before the Equal Treatment Authority.

The text of the law in force provides the possibility of public interest action against all forms of hate speech – in the conceptual sphere of harassment and instruction to discrimination – committed by legal subjects covered by the scope

of the law. However, it is a practical problem that the personal scope of the law only extends to the public sphere in a broad sense and a limited private sphere.[26] The legislation in force even theoretically offers a solution in the case of hate speech made exclusively by political parties, but in practice this is not effective. Hate speech occurs typically through press products and various types of evens and rallies. That means it would be necessary to amend the Equal Treatment Act so that if harassment or instruction to discrimination affects a larger circle of indefinable individuals in connection with a significant feature of personality, the personal scope of the law extends to additional actors of the private sphere, in particular various press products, the printed and electronic media, the internet, and participants in announced and "spontaneous" events and street demonstrations. This solution without introducing a new legal institution and without disrupting the logic of the legal institutions that have long been established in

[26] Under Section 4 of the Equal Treatment Act: The principle of equal treatment shall be observed by
a) the Hungarian State,
b) local and minority governments and all bodies thereof,
c) organisations exercising powers as authorities,
d) armed forces and policing bodies,
e) public foundations, public bodies,
f) organisations performing public services,
g) institutions of elementary and higher education (hereinafter collectively: educational institutions),
h) persons and institutions providing social care and child protection services, and child welfare service,
i) museums, libraries, elementary educational institutions,
j) voluntary mutual insurance funds, private pension funds,
k) entities providing health care,
l) parties, and
m) budgetary organs that do not belong to points a)-l)
in the course of establishing their relationships, in their relationships, in the course of their procedures and
measures (hereinafter collectively: relationship).
Section 5. In addition to the entities listed in Section 4, the following persons shall observe the principle of equal treatment
in respect of the relevant relationship:
a) those who make a proposal to persons not previously selected to enter into contract or invite such persons for
tender,
b) those who provide services or sell goods at their premises open to customers,
c) self-employed persons, legal entities and organisations without a legal entity receiving state aid, in respect of
their relationships established in the course of their utilisation of such a state aid, from the time when the state
aid is utilised until the competent authorities can audit the utilisation of the state aid in accordance with the
applicable regulations; and
d) employers in respect of employment relationships and persons entitled to give instructions in respect of other
relationships aimed at employment and relationships directly related thereto

Hungarian law, would enable coherent law enforcement, and – in our view – would not violate the requirements established by the Constitutional Court.

We have analysed on numerous occasions the practice of the Constitutional Court concerning this topic. Here it is sufficient merely to refer to Constitutional Court Resolution 14/2000. (V. 12.) on the prohibition on autocratic symbols, according to which *"Expressing opinions inconsistent with the constitutional values is not protected by Article 61 of the Constitution."*

In line with the above Constitutional Court conclusion the Media Act also prohibits discriminatory forms of behaviour which offend communities. According to this law behaviour that is suited to inciting hatred against the given social groups and/or which is directed at offending, discriminating against communities is a restriction to editorial freedom (which can be traced back to the right to expression and freedom of the press). Lawful conduct is enforced within a public administration framework, in the course of a procedure initiated by the public administration authority either ex officio or based on the complaint of an individual whose rights have been violated.[27]

The Constitutional Court on several occasions examined and judged constitutional the above restriction.[28] Constitutional Court Resolution 46/2007. (VI. 27.) establishes that *"television broadcasters, like all legal subjects must respect the constitutional rules (...) in such a unique case restricting rights can play an important role in taking action against television broadcasters which do not respect the basic constitutional structure".* The Constitutional Court also stressed that the authority exercising public power does not provide individual legal defence when exercising its powers of control, i.e. its procedure does not affect individuals whose personality rights were offended by the given broadcast in enforcing their rights. The authority forces respect for *"the fundamental human rights values"* and takes action against television broadcasters *"advertising an ideology that disregards equal dignity which is one basis of constitutionality".* In its 1006/B/2001 Resolution the Constitutional Court established that the above restriction found in the Media Act complies with the necessity-proportionality test for the protection of fundamental rights.

Act III of 1989 on the Right to Assembly also contains restrictions: exercise of the right to assembly must not constitute a crime or instruction to commit a crime, and may not involve violation of the rights and freedom of others.[29]

It is interesting to note that the concurrent reasoning connected to Constitu-

[27] Section 3 (2)-(3) of the Media Act.

[28] Constitutional Court Resolution 46/2007. (VI. 27.) and Constitutional Court Resolution 1006/B/2001.

[29] Section 2 (3) of Act III of 1989 on the Right to Assembly.

tional Court Resolution 95/2008. (VII.3) on hate speech also refers to the concept of harassment found in Directive 2000/43/EC.

To summarise: we are not proposing the introduction of new, content-based restrictions. Instead we wish to add new appropriate legal consequences to the issue of hate speech within existing constitutional boundaries. Public interest lawsuits do not take away individual rights, since they protect the interests of the public rather than the individual, i.e. they serve the creation of a public atmosphere and society free from discrimination. (A parallel can be drawn with consumer protection public interest lawsuits, where it is also the case that it is not the interests of individual consumers which are protected by the possibility of bringing a public interest lawsuit.)

As we already indicated, we received numerous petitions and complaints concerning discriminatory press reports which incite hatred. In the course of our extensive press watch we frequently also notice such cases ex officio. We encounter numerous cases in which a public interest lawsuit in the sense referred to above would be justified. It would therefore be necessary, by amending the Equal Treatment Act, to grant the Parliamentary Commissioners the right to bring public interest lawsuits (on topics coming under their scope of competence) in addition to the public prosecutor, the Equal Treatment Authority and civil and interests representation organisations.



The two amendments that we proposed therefore would represent both an effective and a constitutional solution to the problem of hate speech while leaving untouched the classic codices of the branches of the law. We presented our proposal on numerous occasions at civil and professional events, at talks with representatives of the Ministry of Justice and Law Enforcement, the Ministry of Social Affairs and Labour and the Equal Treatment Authority, and sent it to the parliamentary parties. In view of the unsolved nature of the problem we hope that the legislative bodies will debate our proposal properly in 2009.

# 4.
# Worrying phenomena in Hungarian society

## 4.1.
## The “Guard”

In the past year we observed that in the current troubled situation numerous social groups and individuals living in difficult circumstances are receptive to attitudes building on society’s feeling of vulnerability to property crime and

which create (recreate) the myth of "Gypsy crime", arguing that if the state is powerless against this phenomenon then society needs to take its own security into its own hands. That is the essence of the "Guard" phenomenon.

In last year's report we wrote at length about the formation, operation, political and social responses to the Hungarian Guard organisation and risks in terms of minority rights.

On 17 December, 2007 the public prosecutor filed a suit to disband the Hungarian Guard. The procedure was slowed down by the fact that in August 2008 the judge in charge returned the case, after being threatened by telephone. The ruling was given in December 2008. One of the specific events prompting the ruling to disband the Guard was the march staged by the organisation in Tatárszentgyörgy in Pest County in December 2007. The speeches made there focused on "Gypsy crime", thereby violating the dignity of the Gypsy minority. According to the court inciting anger towards the Gypsy minority is unacceptable in a constitutional framework.

In explaining the ruling, the judge noted that the operation of the organisation could have created the impression among the public that *"The guard will come and restore order"*, which is constitutionally unacceptable. Inducing fear can also be liable to violate the rights of others, the judge said. According to the judge, patriotism should not be expressed in opposition to others. The judge responded to the argument that no violence had occurred, with the remark that the mechanism of triggering fear in itself can be liable to violate the rights of others.

According to the verbal explanation of the judge, the Hungarian Guard Movement and the Hungarian Guard Association acted closely together, while the scope of the ruling does not extend directly to the Hungarian Guard Movement. The legal representative of the defendant earlier in the trial argued that the association is not one and the same as the Hungarian Guard Movement, which marches in uniforms, because it operates independently. The public prosecutor disputed that argument on the grounds that the association and the movement are inseparable from each other, and the association is also responsible for the actions of the movement.

We can regard the court procedure to disband the association as a constitutional response to the "guard phenomenon". The expected illegality of marches stirring up hatred and fear is a clear signal to majority society and to other groups wishing to operate in a similar way. An independent branch of power, the representative of the court found the regularly displays of force directed against Gypsies staged by a paramilitary-style organisation anti-minority and a threat to public peace. However, it is cause for concern firstly that illegality never means the real disbanding of the group, and secondly that to layers of society

susceptible to anti-minority feelings these movements may even gain in esteem. The members of the movement connected to the banned association may even take on a "martyr role" in the eyes of certain layers of society.

The question is, therefore, whether from a legislative point of view we are really powerless or not against forms of behaviour not directed at specific victims, but which "only" violate public dignity in a public space?[30] In the law on assembly there is no such prohibition, since who could have imagined at the end of the '80s in what outfits and in what formation demonstrators would march. According to the court ruling on disbanding of the association, however, this is one phenomenon (uniforms, military formation), with which the guard expressly triggers fear.

The 218/1999. (XII. 28.) Government Decree on Certain Summary Offences contains a prohibition concerning uniforms: under "unauthorised use of title" a fine of HUF 20,000 may be issued is somebody wears a uniform in front of others without authorisation. If the perpetrator wears a uniform of the "armed forces" a fine of HUF 50,000 may be issued. However, this prohibition cannot be applied here, because in the case of the Guard's marches it is not a question of misleading behaviour, but of use of uniforms similar to those of an armed organisation which no longer exists.



Following the ruling of the first instance the leaders of the police stated that they would monitor more closely all Hungarian Guard events in the interests of preserving public order and public security.

The Roma community and people supporting constitutional values who show solidarity with them hoped that following the court ruling there would be an end to the organised recruiting of members, and public events. However, the actual situation is that the former members – based on the provisions of Act III of 1989 on the Right to Assembly – can continue to hold demonstrations. The police can only ban these in advance based on the legislation in force if the event being held at the place or time indicated in the announcement would seriously

[30] We find it worthy of mention that our 2001 report pointed out that in Hungary it does not qualify as unlawful, and therefore not as insult to honour, if somebody expounds racist views in public in such a way that firstly it is not directed against specific individuals, and secondly does not incite others to act on these words. In other words: the minorities concerned are currently defenceless against remarks made in public which are anti-Gypsy, anti-Semitic etc. "merely" in a general way.

Since the dignity of communities is a value to be protected similarly to human dignity, the legislator should decide

a) what type of communities are included in the sphere of legal protection concerning public dignity,

b) should "violation of public dignity" extend only to verbal remarks made in public, or can it also occur in other ways (as for example in cases of physical insult to honour or profanity) for example by vandalising the buildings or symbols of the given community or other similar forms of conduct.

c) what type of punishment should be used in which branch of the law.

put at risk the proper operation of the bodies of popular representation or the courts, or if traffic circulation is not possible on another route. The police can only break up the event if

- Exercise of the right to assembly constitutes a crime or call to commit a crime and involves the violation of the rights and freedom of others;
- The participants are carrying arms;
- If an event which must be announced is held despite a resolution banning it.

It is therefore possible to break up the future events of the Hungarian Guard Movement if they trigger fear or are anti-Roma. The conclusions of the court ruling theoretically provide a point of reference for the police to decide on the site of the demonstration whether the speeches made and/or the reactions of the participants meet the conditions for breaking up the event. It is doubtful, however, whether the police will assume the responsibility for this quick decision. Based on law enforcement practices in the past there is a fear that the police will choose to wait and will only begin dispersing the crowd if violent actions actually occur.

Theoretically it is possible for a speaker from the Guard to be guilty of the crime of incitement against a community by calling for violence against Roma people. In reality – bearing in mind the relevant practice of the Constitutional Court – it is extremely rare for anyone to be found guilty this crime, since the court – as we have indicated in numerous earlier reports of ours – would virtually have to show a causal connection between the speech and the occurrence of violence.

Nevertheless, it cannot be claimed that criminal and summary offences law is entirely powerless against remarks made in public which in terms of threatening public peace do not reach the level of "clear and present danger" in the practice of the Constitutional Court and the Supreme Court for incitement against a community to be established, but which are liable to intimidate and undermine the dignity of the given community, and generate and strengthen anti-minority feelings. In our view this is the case because:

- they present the minority concerned as an enemy and a "foreign group" to be hated;
- they question the right of the minority to exist or the right to equal existence in society;
- they closely connect the given minority with the rejection of values accepted in society and/or acceptance of values rejected by the majority.

We realize of course that legal tools are insufficient against the worrying phenomena experienced in public discourse and community behaviour, and that the power of punishment to change behaviour and attitudes is doubtful unless it is

supported by other types of social norms. In the current situation nevertheless we should not forego the use of the public law set of tools available which serve the protection of public peace. Instead, however, we sense that the legislator – giving in to pressure from the public and given interest groups – is creating new forms for a crime or offence to be committed without really providing protection for a new legal issue.

The question can reasonably arise as to why it is not possible to try making use of the statutory definition which for more than 50 years has been part of Hungarian criminal and summary offences substantive law. This is none other than disturbing the peace, for which three elements have to occur together for it to constitute a criminal offence (violence, anti-community conduct, and liability to cause alarm and outrage), whereas the "non-violent" versions constitute a summary offence. The package put forward by the government in autumn 2008 to defend public order expressly contained such an "anti-Guard" effort, because it would have extended the summary offences definition of disturbing the peace: *"A person taking part in a public event in a group whose appearance, in particular its formation, the commands used by the leader of the group and symbols are liable to induce fear in another or others".*

Parliament rejected making the fear-inducing nature of demonstrative protest marches unlawful in this form. In terms of sanctioning the phenomenon, however, Act LXXIX of 2008 on Certain Amendments Necessary to Protect Public Order and the Operation of the Judiciary extended the aggravated instances of disturbing the peace, so that in the future an individual who disturbs the peace in a group and severely disturbing public peace, or at a public event is punishable by imprisonment of up to five years. Here the problem is that the marches generally take place without violence (of course, however, it is impossible to trace what psychological processes these demonstrations of force trigger and in whom – on either side), so the criminal offence of disturbing the peace cannot arise, and successful application of the summary offences version is highly doubtful, in particular given the judicial interpretation of provocative anti-community conduct until now.

## 4.2.
## Attacks on Roma people

In 2008 more than ten cases – or according to certain press reports as many as twice this number – became known of people of Roma origin or their homes being victim of violent acts severely disturbing the public peace. The origin of the victims and the methods of committing the crimes may imply that this is a

series of attacks on the most vulnerable, marginalised layer of Hungarian society, the Gypsies, rather than being a question of coincidence. Until the motives have been clarified, the ethnic, racist motive can certainly not be excluded.

On the night of 18 November, 2008 a hand grenade was thrown through the window of a family house in Pécs. As a result of the explosion the parents lost their lives and their two children suffered minor injuries. The spokesman for the Baranya County Police Headquarters the same day told news agency MTI that the victims were Roma, but that according to the information from the investigation so far it was not an ethnic-based attack.

On the day following the attack in a letter sent to the Chief of the National Police Headquarters requesting information on the case, we expressed our view that it is unacceptable and also in conflict with the principles of investigation, that in connection with such a flagrant crime severely disturbing public peace, the racist motive was excluded almost immediately. The national police commander acknowledged that the police spokesman had been overhasty in their remark.

It is unacceptable for an ethnic group of several thousand people to spend its days in fear. This prompted the release of a statement concerning the attacks on Roma families following consultation with several Roma public figures.[31] We recommended that a separate taskforce be set up with national powers which could take action in co-operation with the county bodies in the interests of investigating as quickly as possible the attacks which raised the suspicion of a racist motive and track down the perpetrators. The national police commander agreed with our proposal.

The above does not mean that the criminal investigation authorities can choose what category of perpetrators or crimes to pursue and to which they will devote less or no attention. That would in fact be unallowable unlawful discrimination, at odds with the legality principle which the authorities are bound by in criminal cases. However, nowhere in the world is there a responsible crime policy which does not establish priorities – depending on place and time, bearing in mind the frequency of certain categories of crimes, their severity, social expectations etc. – , i.e. which does not require that the criminal investigation authorities satisfy higher effectiveness requirements in these cases. The Minorities Commissioner with the effort described above did and does none other than draw the attention of the police leadership to the need to apply such priorities.

Below we will describe a particularly complex case.

[31] The statement can be read in Hungarian on our website (www.kisebbsegiombudsman.hu).

On the night of 3 June, 2007 in Patka in Fejér County a Molotov cocktail was thrown into three houses where Roma people were living. Nobody was injured, but a fire started in one room where children were sleeping. Three local civil guards were placed in preliminary detention on reasonable suspicion of attempted murder of several persons. One of them made a detailed confession also revealing the roles of the other two suspects. In January 2009 the Fejér County Public Prosecutor, brought charges against the suspects in preliminary detention on the grounds of attempted murder of several persons with particular cruelty.

The events shocked not only local residents, but also the country as a whole, and in many strengthened the suspicion it was not a case of the brutal revenge of a few civil guards against certain families, but of an ethnic conflict affecting a much wider sphere. Immediately following the events we requested information from the mayor of Pátka, the county public prosecutor and the county police chief.

In his response the Pátka mayor, referring to the presumption of innocence, did not agree with the suspicion of ethnic conflict, which he attributed primarily to written and electronic media hysteria. The mayor also informed us that the representative body had adopted a manifesto at a closed session on the second day following the crime. The mayor handed over the manifesto and the signatures of 506 Pátka residents in support of the document in person to the county police commander on June, 2008.

The manifesto which expressly defended the civil guards established that "the act was not based on the Roma issue". It also noted that "The most important thing is that you, Pátka civil guards free yourselves from the accusations, so that you can walk with your heads raised up high again. There is not and there cannot be slur on your honour". The mayor's letter stressed that the main victim of the situation is the settlement itself, where for decades the Roma and non-Roma communities have been living peacefully side by side. The mayor condemned the crime and distanced himself from it, and noted that he would accept the final court verdict, whatever it may be.

According to the information provided by the county public prosecutor, following the attack the police arrived at the scene within minutes, established order in large numbers, and began collecting evidence and other investigative actions that could not be delayed. The public prosecutor since the day of the crime has been paying particular attention to the investigation, and also proposed the preliminary detention of the suspects. The public prosecutor assured

us that all investigative bodies regard uncovering the motive of the crime as a task of particular importance.

The county police chief by letter informed our office that following the village assembly held on 6 June some 50 people set out towards the street where the Roma people live. The group walked peacefully, anti-Roma remarks were not made and there was no need for police intervention. The peaceful demonstration was repeated the next day, with police presence.

On 10 June 2008 the representative body held another extraordinary session, at which there was only one point on the agenda: assessment of the situation. Prior to the session the representatives received a "cohabitation code"[32] (hereinafter: code) written by the mayor and two other local government representatives, with the aim that there be a tangible set of ethical norms for everyday cohabitation, which every Pátka citizen has to adhere to. The representative body – without bringing a separate resolution – unanimously approved the code without debate.

The leader of the Central-Transdanubian Regional Public Administration Office conducted a legality investigation into the circumstances of the code being passed and its content. The following violations of the law were established:

- the representative body did not comply with the Act on Local Governments in passing the code, because firstly these questions (protection of property, traffic rules) are governed in detail by the Constitution and the central and local rules of law, and secondly the body is not authorised to frame ethical rules;
- by defining "undesirable person" the representative body wished to use a penalty, which is in violation of the provisions of Articles 8 (1) and (2) of the Constitution, and also conflicts with the fundamental right of free movement and free choice of domicile.

At a public session held on 13 August, 2008 the representative body rejected the legality observation without reasoning, as a result of which the Public Administration Office filed a suit to the Fejér County Court, requesting that the decision of the representative body to adopt the code be withdrawn.

In our letter written to the leader of the Public Administration Office in October 2008 we agreed with the legality observation. In our view the 700-800 person demonstration of the Hungarian Guard held in Pátka on 13 June, 2008 also demonstrated that intimidation, prejudices and unlawful rules are present in the settlement rather than dialogue.

[32] The code, inter alia, states that the residents of the village should respect each other, greet each other according to the time of day, respect public institutions, public areas, not drop litter, protect property, keep the traffic rules etc. The last sentence of the code warns that anyone breaking these rules may be declared an "undesirable" person.

We have no powers to get involved in uncovering crimes. We cannot assume and we do not wish to assume the tasks of the criminal investigation authorities. However we regard it as a fundamental requirement of constitutionality that actions seriously violating the right to personal safety and public peace should not remain unsolved, whoever they are committed by. We therefore expect the police to work more effectively.

## 5.
## Comprehensive police investigation

Between 15 April and 15 September we carried out a comprehensive investigation of the police bodies. We widely publicised the report on the investigation as well as the recommendations found therein.[33]

The investigation primarily focused on how this huge divided organisation which is of particular importance for adherence to fundamental rights can become tolerant and capable of accepting minorities and otherness and of protecting minority rights effectively, and how it is possible to consistently improve the administrative culture and communications both with the public and within the organisation. The reason for the ex officio investigation was the high latency of unlawful police procedures and conduct, and the known circumstance that the police force is almost homogenous, differing significantly from the socio-demographic composition of society. When determining the focuses of the investigation, we placed great emphasis on dealing with structural and operational questions, because in police cases it is difficult to reconstruct individually the large number of immediate measures, and assess these in terms of proportionality, necessity, professionalism, and respect for minority rights. This was merely supplemented by the investigation of certain complaint cases. Our aim could not be to fully investigate the operation of the individual police bodies concerning taking into custody, summary offences and detention, but merely to summarise our experiences at the given sites we visited. The authority tasks of the police and the nature of the police profession require that policy-makers, the police leadership, government and civil monitoring bodies and those judging complaints take into account prejudices established at different times and with different methods. The investigation of the Minorities Commissioner therefore was directed at confronting critical-level prejudices, reducing these, and the presence of institutional safeguards to prevent these.

The investigation focused on respect for human dignity, equal treatment, and

[33] The complete report can be read in Hungarian on our website (www.kisebbsegiombudsman.hu).

language use rights of the national and ethnic minorities, primarily in connection with police practices regarding summary offences, identity checks, taking into custody, opening hours, dealing with complaints and detention. We also looked at whether the joint declaration promulgating the Ethical Codex of the Police of the Hungarian Republic plays a role in procedures against police officers and performance assessments.

Although the investigation focused on general safeguards concerning minorities, we largely looked at fundamental rights violations affecting Roma citizens. The reason for this is that the complaints and the cases we become aware of from the media, and conflict situations exposed in the course of the investigation are connected to the stereotypes afflicting Gypsies. Our findings therefore largely – but not exclusively – focus on the potential and actual victims of non-equal treatment.

In the framework of the investigation we carried out on-site investigations in the central cells of the Budapest Police Headquarters, the cells of the National Investigation Office, the Budapest District VII and VIII police stations, city police stations (in Mohács, Mátészalka, Dunaújváros, Békéscsaba and Heves) and county police headquarters (in Békéscsaba and Székesfehérvár). We met with the leaders of the county police in Budapest and Nyíregyháza, the county and national representatives of the police trade unions, and the leaders of Gypsy minority self-governments and civil organisations. In Salgótarján, Eger and Győr we spoke with the county and city police spokespeople, leaders in charge of social relations and staff. During the investigation we requested the human resources and communications plans of the police bodies, Roma scholarship announcements, co-operation agreements signed with Gypsy minority self-governments, and equal opportunities plans. We made use of the relevant statistical figures (for example case numbers for summary offences, taking into custody and identity checks), the recommendations following investigations in Hungary made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the police research results of the Hungarian Helsinki Committee, and the complaints we received. The report on the police investigation contains our findings at the individual locations without making these anonymous, since we are convinced that the police leadership does not wish to cover these up or retaliate, but to make the prevention and elimination of irregularities connected to fundamental rights part of its constitutional operation.

The main findings of the investigation were the following:

In the past ten years relations between the police and the Gypsy organisations entered the organisational and operational code, and the internal work

structure of the police. At the same time the main field of co-operation became implementation of the national crime prevention strategy. This resulted in serious one-sidedness, and agreements with the Gypsy minority self-governments led largely to formal and fairly superficial dialogue with the crime prevention departments. In the future it is necessary to develop non-hierarchical complex forms of agreement between the Gypsy minority self-governments and civil organisations and all service branches of the police, specifying who is responsible for the tasks and measures found in the agreements signed, and joint yearly assessment of these, including critical, thorough and joint investigation of racist, discriminative practices and conflicts. All this should be built into the instructions and provisions of the Hungarian National Police (ORFK).

There are no unified rules for police opening hours so it is necessary for there to be a member of staff available to receive complaints, and the decision-making work of the officer on duty needs to be improved because this would allow waiting time for members of the public to be reduced significantly; the entrance guards should receive a standard description and brief training on this topic, and the officer on duty should be obliged to check they adhere to this; in addition standard minimum requirements should be determined for providing members of the public with information, including the content of this, the need for it to be easily understandable and where it should be placed.



There is no detailed legislative provision for the circumstances of taking into custody, so at the police stations the Ministry of Internal Affairs Decree on Police Cells is generally used. Those who have been arrested are frequently given information which refers to only two legal defence organisations (Hungarian Helsinki Committee, and the Parliamentary Commissioner for Civil Rights), the addresses given are not up to date, and there are significant differences in the rules for medical care and meals. The police cells, which have been refurbished from significant EU funding, have lost their function due to the amendment to criminal procedure rules, while money has not been spent on improving the conditions for working, dealing with members of the public and custody, so we recommend their use for these purposes. We also recommend that uniform rules for custody be issued.

The physical circumstances of detention and the staffing situation – with the exception of Budapest – has improved significantly. However the state of cells examined in Budapest and the situation of staff travelling from outside the capital and working in poor circumstances give cause for serious concern in terms of fundamental rights. It is typical that despite the recommendations of the CPT and the Helsinki Committee there is still not a possibility everywhere of being seen by an external doctor, and there is no external healthcare supervision with

general powers above these institutions so access to medial care and the possibility of fair investigation of certain legal disputes may be violated. There are problems concerning the preparedness of the prison staff: there is no regular training for handling conflicts and developing communications skills. It would improve the social prestige of those working in the prison and reduce staff turnover if at least once a year practical assistance, skills development and mental hygiene, self-awareness courses and training were organised for these staff. Dealing with complaints concerning detention is not adequate, so we urge the police and legal protection organisations to develop together training materials or professional recommendations to ensure the appropriate handling and thorough investigation of complaint cases. To prevent such cases of maladministration, it is necessary to draw the attention of those held in detention to the bodies dealing with legal protection found in 19/1995. (XII. 13.) Ministry of Internal Affairs decree 4/A–C, and to provide up-to-date addresses for the forwarding of complaints. It is also an important requirement for clients to be informed of their rights in detail in relation to the given situation (Section 36). The main elements of this need to be appropriately documented. The CPT also recommended that all clients should receive written information, where necessary in a foreign language too. We also recommend that the 36/2008. (OT 19.) ORFK instruction on dealing with complaints be made more precise in line with the above.

On occasion taking into custody can provide an occasion for ethnic-based profiling and measures because the definition of the legal basis is loose, and reports on such measures are not necessarily examined regularly by police commanders. It is therefore particularly important for the legal basis and documentation of identity checks and taking into custody to be checked regularly by police commanders.

The number of summary offence cases depends primarily on the numbers of the force in charge of public order and their level of activity. In each case the necessary procedures need to be performed for offences to be thoroughly investigated and individualisation of punishments, so summary offences administration must not be reduced to issuing fines. The overburden on summary offences officials needs to be reduced, and regular professional further training should be provided, including the possibility by restructuring the staff table for such work to be performed not only by commissioned officers. The updating of the summary offences statistics cannot be delayed further.

Ethnic profiling continues to be used by police officers on patrol. A significantly higher proportion of Roma citizens – in particular men, on foot, aged between 14 and 39 – have their identity checked than would be expected based on the proportion of Roma citizens within the population. This practice of iden-

tity checks and profiling poses the risk of negative discrimination, Secondly, it can also be criticised in terms of effectiveness, because there is no clear evidence that beyond traditional reasons for suspicion, profiling achieves better results and cost-effectiveness. The obligation to act set out in Section 1 (13) of the Police Act needs to be brought in line with the precise definition of the grounds for identity checking in Section 29 (1) and the Service Regulations, and an obligatory annual analysis of the degree of effectiveness of identity checks needs to be introduced, also taking into account the experiences of civil and legal protection organisations.

The number of those detained who wish to make use of the possibility provided by the Minorities Act to use a minority language is very low; police employees' knowledge of these regulations is far from complete. We did not receive information as to whether translators of the Hungarian minority languages feature on the list of translators used by the police, and whether, if such a need arises, there is an equal chance that they could provide an interpreter to those wishing to use a Hungarian minority language. None of this, however, is justification for the details of interpreters for the Hungarian minority language not to feature on the generally centrally compiled list of interpreters. Minority rights maladministration occurs, if in an authority procedure the authority – referring to the lack of demand – does not obtain the details of the interpreters and translators, because if such a demand arises – however exceptional it may be – it is not permissible to dissuade the minorities (through dissuasion and delays) from their language use right.

The police as an institution needs to take part in the fight against discrimination, through developing and implementing a substantial HR, career and training plan against gender and racial stereotypes in terms of admissions to the police force and promotion. More women and Roma staff should be recruited by the police, particularly as public servants, and their ratio should be progressively increased by drawing up plans on HR, promotion and career plans for five to ten years ahead. Secondly, internal regulations strengthening tolerance, reports on the practical experiences of implementing these and results of their evaluation should be made public. It is also necessary to extend and make more detailed the suitability test for admission to the police, particularly for those staff coming into contact with the public directly and commanders to include assessment and regular monitoring of communications, conflict management, tolerance and empathy, social intelligence, and intolerance level. Individuals incapable of unbiased measures and leadership should be filtered out at the time of admission and promotion.

Internal criticisms and police self-reflection concerning prejudices cannot be

elicited by strictly limiting internal police debate. The (self) censorship introduced in the wake of the Holdudvar scandal should not exclude debate on the prejudices of the police staff and discussion of the use of the appropriate communications, human rights, and professional trainings. It is necessary, therefore, to review the aforementioned ORFK instruction to widen internal debate, to report on, present and debate a non-prejudiced police culture. Those employees in contact with media are less aware of the monitoring role of publicity because communications are largely one-sided and they themselves are employees recruited from within the organisation, which from the outset determines how they view their role. High level communications skills need to be required as part of the skills of police leaders, and regular relations with the press at a certain leadership level needs to be ensured. The structured improvement of recruitment (partly from outside), selection and training of those responsible for the police's external communications (spokespeople) is even more important than standard police communications. In order for communications between the police and the Gypsy population to improve, it would be useful for the police to employ Roma spokespeople and press officers, as well as non-police staff, where possible with an open entry process. The personnel conditions for this are in place, since there are now trained Roma journalists and media professionals. The system of selecting spokespeople, regular communications and foreign language training, communications ethics and maintaining relations with the Roma press need to become a part of a communications strategy extending to questions of minority relations.

On the part of the police trade union there is no separate programme to improve equal opportunities, in the field of positive discrimination, or in terms of employee complaint cases and protection of interests due to potential ethnic and racial discrimination. The existing employer-employee co-operation takes place within the framework of the Interests Negotiation Council, and the consolidation of police relations with the Roma population and reducing stereotypes does not feature among the topics of its sessions in any context.

We sent our recommendations relating to the report on necessary measures and legal amendments to the national police commander, the Minister of Justice and Law Enforcement, and to the Prime Minister. By the time of writing the report only the national police commander had responded, and the members of the government concerned – despite the legal deadline having expired – had not informed us of their opinion.

The national police commander was extremely accepting of the recommendations, since he agreed with almost every recommendation and indicated in his response that implementation of most of these has already got underway,

or is planned in the near future. He admitted candidly, however, that some of the proposals require serious financial outlay, while he is not aware of financial resources being expanded significantly. He is therefore expecting all possible financial, moral and intellectual support – including that of the ombudsman. In the response praising the investigation – while disputing certain details – he focused on the following:

He indicated that it makes sense to develop the police HR strategy in knowledge of the Government's law enforcement strategy. The equal opportunities plan will also fit in with this, by amending the 1/2005. (I. 4.) ORFK provision. The recommendation on mediation between parties involved in conflict will also be fulfilled in connection with the HR strategy.

Concerning training within the police and law enforcement training, further training and leadership training, the educational concept prepared in 2005 by the ministry in charge in 2005 requires rethinking. Not only its principles, but also structural questions and coordination between the chief law and order authorities need to be adapted to today's needs, so the national police commander intends to establish an expert committee to decide, among other things, on the method of carrying out the recommendations featuring in the report among other issues. We are willing to provide all assistance in this respect, and co-operate as requested by the police chief.



There was also agreement that the composition of the police force should come closer to the population average, without this meaning a lowering of standards, necessary qualifications and professional requirements. The reactivation of experienced commissioned officers and the operation of a competitive entry process and scholarship system is the most feasible path.

In terms of internal communications within the police in the future the ORFK Bulletin will play a key role, which provides a framework for familiarisation with legal and internal norms, and expression of opinions within the organisation. While maintaining the moderated system of the internal forum, the police chief judged existing intranet communication, and gradually expanding internet access as a sufficient guarantee of internal communications. A strategy for external communications has already been developed, although it does not contain separate principles and concepts concerning the minorities. At the same time all this needs to be brought in line with the data protection code of the police [54/2007. (OT 31.) ORFK instruction], while maintaining openness towards the minority press and media. The total reworking of the 3/2006. (II. 23.) ORFK instruction governing internet use of police staff is already underway with the aim of widening access.

The reform of co-operation between the police and the Roma organisations

has got underway. The results of joint thinking with the National Gypsy Minority Self-Government will be debated in 2009 at a meeting with the police commander, and where necessary the regulations will be adapted to that. There was also agreement concerning widening the form of co-operation between the local self-governments and the police.

The police will supplement its existing lists with the names of minority interpreter and translators.

The recommended regulations do not necessarily have to be built into the already lengthy 4/2008. (OT 4.) ORFK instruction (Organisational and Operational Code). It is sufficient if they receive a place in codes and norms that have been passed since or which are now being drafted. This technical solution and possibly less detailed regulations, however, do not affect the essence of our proposals.

However, our views differed on three questions.

The police service does not agree with positive discrimination towards Roma and women in terms of entry, recruitment, promotion, and selection. Presumably we did not explain clearly that without lowering requirements for qualifications and skills it is possible to develop workplace, leadership, further training and work assessment mechanisms, which result firstly in members of the minority being able to assume their affiliation freely and, make use of this in conflict management, communications, mediation, language knowledge and other areas, which would benefit the operation of the whole of the organisation. Secondly, deliberate, strategic support and mechanisms are lacking which would allow those starting off at a disadvantage to achieve the required qualifications, career background and stamina. Finally selecting members of the target group from among individuals with the same qualifications, career background and stamina – to the level of the underrepresentation of the whole group approaching the social average – is a constitutional solution across the world. In view of the above we recommended reforming accordingly the admission, promotion and performance assessment for commissioned officers and public servants in the different branches of the police service.

The police chief essentially for the reasons above rejected our proposal concerning the selection and training of staff and spokespeople, who play an exceedingly important role in communications. He explained that the police staff include Roma and women, but that this is primarily due to their personal qualifications, and prior police career and not their ethnic background or gender. We believe it is indisputable that only one source of stereotypes about the police are those people with personal experience of police measures, which reach far fewer people than the message of leaders and spokespeople speaking in the name of

the police. If, therefore, the latter is not prepared to present itself as conscientious, moral, law-abiding, and representing legal equality and the minorities, then it is very likely that majority prejudices, and the idea that only the human rights and dignity of the "deserving" are respected will be the communications message.

The police chief commander did not reject our recommendation for the methodological development and introduction of attitude checks to filter out (potential) staff with extremist, racist views in terms of recruiting police staff and appointing leaders, and he does not dispute the aims of this. However, he did not react substantially to the introduction, steady introduction and development of such attitude checks, although only part of such regulations falls beyond the powers of the police. He cannot therefore be indifferent to the introduction of this requirement to filter out and discipline officers and commanders incapable of conscientious, tolerant and unbiased measures and statements in the everyday operation of the police force.

In view of the above, we continue to support the recommendations, noting that we are willing to make all possible efforts and use our influence to support for their implementation. Recognising the problems uncovered by the investigation, in the future we wish to investigate irregularities concerning the statistics of ethnic-based crimes and administration, and the operational rules for police vocational and higher education law enforcement training in terms of the content of the training and socialisation patterns.

Chapter III

# Relations of the Minorities Commissioner

In reporting on the first entire year of work of the Parliamentary Commissioner for National and Ethnic Minorities, we feel it important to stress that in 2008 the development of a more open, more dynamic ombudsman institution embarking on new initiatives continued in line with the approach set out in the previous year's report.

In this context, in order to improve the effectiveness of our tasks connected to legal protection of minorities, we developed closer co-operation with minority self-governments, civil organisations, academic institutes and government bodies.

The informal forum, the 2nd Minorities Round Table created to make co-operation with the national-level minority self-governments more effective, provided the opportunity of regularly discussing current minority policy questions with the presidents and representatives of the national-level minority self-governments.

In our view in a democratic constitutional state civil organisations play an important role and can enhance the effectiveness of the work of the Minorities Ombudsman. In 2008 we therefore signed co-operation agreements with numerous civil organisations, conducted professional talks, and organised a joint conference.

In addition to civil organisations we also opened towards the academic world, and we agreed to mutually co-operate with Hungary's central academic institute, the Hungarian Academy of Sciences (MTA) and to carry out research on minority languages and cultures.

We established an award in memory of the pioneering sociologist, István Kemény, who died in April 2008. In the future we intend to award this prize to young researchers who have achieved exceptional results in research relating to the minorities in Hungary. By doing so we wish to support the preservation of minority culture, and the academic activity of young researchers from minority communities.

Based on an agreement signed with the Ministry of Social Affairs and Labour we became involved in the work of the national network of the House of Opportunities as an opportunity to be able to offer more effective assistance to members of minority communities close to where they live.

In order to increase the openness and profile of our institution, in 2008 we

continued to take part in numerous events, conferences and forums, and we also endeavoured to develop a new form of co-operation with the media. We consider it important to deal with cases faster, and in a less bureaucratic and formal way, and to make our office as easily accessible as possible. On our new website we therefore made it possible for complainants to send their complaints electronically to the Parliamentary Commissioner. In addition we endeavoured to create the possibility of personally meeting with the members of minority communities living primarily in the countryside. We organised a tour of the country, during which we visited four counties and numerous settlements in 2008.

The Office of the Parliamentary Commissioner took part in the Sziget Festival again in 2008, where together with the other Parliamentary Commissioners and their staff we organised programmes allowing those interested to find out about how the ombudsman institution works. Through forums with artists of minority origin, informal conversations with our staff, and playful tasks we familiarised festivalgoers with human and minority rights, tolerance, the importance of prejudice-free thinking and our everyday work.

We believe that it is important for as many higher education students as possible who are interested in minority rights to become acquainted with our work. In 2008, therefore, we received university students as interns on two occasions.

# 1.
# New initiatives of the Commissioner

## 1.1.
## House of Opportunities Network

Since the beginning of the operation of our office, a very strong unevenness in terms of the regional distribution of cases has been apparent. Firstly – based on the addresses of the complaints – there was strong city-centricity, and secondly Budapest-centricity, since more than half of cases consisted of complaints from Budapest.

In 2008, however, the vast majority of the complainants were from outside Budapest. This change is probably connected to the fact that we have endeavoured to create as direct a connection as possible with complainants living in the countryside.

Our office only operates a complaints office in Budapest, so for many of our clients this was an obstacle to getting in contact with us personally, partly because of the difficulties and costs of travelling, and partly because of lack of familiarity with our office (our scope of authority, contact details).

There was, therefore, a justifiable need to provide as many citizens of minority origin as possible with the opportunity of exercising their right to make complaints towards our office in the proximity of where they live or work. We are speaking about a group of complainants who do not have internet access, and due to lack of information are not able to exercise their rights appropriately. Moreover, frequently due to their social situations and health conditions they are hindered in settling their grievances by legal means or with legal assistance.

On 24 January we signed a co-operation agreement with the Minister of Social Affairs and Labour, the aim of which is to offer the possibility to clients living in the countryside requiring our help to make complaints through the National Equal Opportunities Network.

The development of the National Equal Opportunities Network began in 2004 and was completed in 2008. The network has a House of Equal Opportunities in all 19 counties. For the running of these the Minister signed support contracts or agreements with 16 local governments and four regional employment centres. In most places the direct tasks are performed by civil organisations, thereby strengthening co-operation between the local governments and the civil sphere.

The Network was set up with the aim of providing an opportunity to improve the chances of disadvantaged groups who for various reasons are not capable of changing their lives of their own accord. There is no question that the bulk of our clients come from those social groups most affected by the lack of equal opportunities. It can therefore reasonably be assumed that thanks to its physical proximity to clients and greater familiarity with its incredibly diverse profile many more people will have the possibility to put forward their complaints and grievances in person than in the past.

One of the main tasks of the House of Opportunities Network is to increase social sensitivity towards disadvantaged groups. Key aspects of its work include providing information, free legal advice, other advice related to local needs, and offering assistance to members of disadvantaged groups.

Based on the agreement it will be possible to register complaints in the offices of the House of Opportunities on issues which come under the Minorities Commissioner's scope of authority.

The co-operation essentially achieved the expected result: in the past year we received almost 50 complaints through these channels. We were pleased to find that the House of Opportunities Network employs Roma staff in more and more of its offices. It is important because they are familiar with the problems and difficulties of those living in the county – particularly people of Roma origin – and local Gypsy clients turn to them with greater confidence.

## 1.2.
## Co-operation with civil organisations

Civil organisations play a key role in the deepening and development of democracy and in creating a system based on dialogue, where the interests of social groups struggling with diverse and unique problems are also represented.

There are numerous social organisations, associations, foundations and legal protection organisations in Hungary today, which through their work can add to and strengthen the work of the ombudsman, contributing to the creation of a strong civil society.

We therefore place great emphasis on co-operation with these civil organisations.

In 2008 during talks with the civil organisations we discussed the possible forms of co-operation and how to maintain relations.

The first joint event took place in May titled *"The possibilities available to civil organisations and the Minorities Commissioner – from lawmaking to enforcement of the law"*.

Also in May we organised another professional discussion affecting a narrower group of civil organisations, justified by the unique problems of the Roma minority, between the Minorities Commissioner and the Roma civil organisations titled *"The situation of the Roma minority – the possibilities and means of legal protection and law enforcement"*.

We examined the areas which can form the basis of professional co-operation: the tasks and powers of the set of institutions defending fundamental rights, in particular the ombudsman institution, their role in legal defence and the protection of human rights, in particular enforcement of the right to human dignity, the right to identity, private life and private sphere, the protection of information rights and the principle of equal treatment.

As a result of the talks in August 2008 we signed a co-operation agreement with the Hungarian Helsinki Committee, Shelter – Hungarian Association for Migrants, the Otherness Foundation and the Kurt Lewin Foundation.

In August 2008 we signed a co-operation agreement with the Crisis Management and Legal Defence Office of the Roma Civil Rights Foundation, the Chance for Children Foundation, the Minority Rights and Human Rights Foundation, the Roma Women in Public Life Foundation, the Minorities Legal Defence Association and the European Roma Rights Center.

In the agreements we recorded that we will mutually co-operate in the organisation of professional conferences, joint research and the publication of research results, joint participation in Hungarian and international applications, inviting

each other to professional events, and professional consultation as required. We undertook to discuss our views in connection with the preparation of government reports on international conventions, and to take a joint stance if we share the same opinion. We agreed to co-operate in organising anti-discrimination human rights trainings, the mutual transfer of cases belonging to the other's scope of authority, and that the staff of the Minorities Commissioner will provide legal interpretation (amicus curiae letter) or other professional assistance in minority law suits. We regard it as an important achievement that we negotiated our proposal on action against hate speech, which the majority of the legal protection organisations supported.

Our agreement with the Roma legal defence organisations extends to co-operating on anti-discrimination cases affecting the Gypsy minority in Hungary. The topic of the discussion was extending the possibilities of forwarding complaints from civil organisations to the ombudsman office. We discussed the situation of the Roma civil organisations, the possibilities of joint applications, and the direction which proposals for amendments to legislation affecting the Roma minority should take.

Based on the co-operation agreements we developed a joint stance with the relevant civil organisations on several significant cases, thereby increasing the effectiveness of our action against negative discrimination.

## 1.3.
## Relations with the academic world

As a result of our work we have a considerable knowledge base concerning Hungarian minorities law and the prohibition on negative discrimination. We believe it is important to promote the dissemination of this legal knowledge, by giving talks, issuing occasional publications and through our involvement in higher education.

We endeavour to develop a purposeful communications strategy. Our aim is for the ombudsman and the minorities issue to become familiar and we hope recognised subjects of public discourse in society. As part of this we consider it necessary for the ombudsman institute to occupy a more serious, more significant place than at present in academic life, in the fields of education and training and in the media.

It is extremely important for the central institution of Hungarian academic life, the Hungarian Academy of Sciences (MTA) and its institutes to support all efforts to preserve and extend the protection of the rights of the minorities living in Hungary and their native languages and cultures.

We do everything to ensure that MTA's partner institutes and research institutes and workshops maintained by the minorities can get involved in research projects concerning the Hungarian minority communities.

We support the initiative of the MTA Institute for Ethnic and National Minority Studies and the MTA Centre for Regional Studies to present the Hungarian national and ethnic minorities according to the large regions of the country in various publications. We further support those efforts aimed at developing a national Roma research network of the Hungarian Academy of Sciences – on the initiative of Romology researchers from the Budapest, Miskolc and Pécs universities.

The president of the Hungarian Academy of Sciences and the Parliamentary Commissioner for the Rights of National and Ethnic Minorities in the interests of improving the situation of the Hungarian national and ethic minorities at the conference titled *"The Minorities Act is 15 years old"* declared their intention of working together on academic research concerning minority affairs and making known and using the results. According to the agreement, the Hungarian Academy of Sciences will regularly provide information on academic research findings conducted by its research institutions concerning minorities, topics concerning the situation of the national and ethnic minorities, and as far as possible support joint academic research projects concerning the national and ethnic minorities and development of networks between research institutes.

The joint conference referred to above was the first element of the concrete implementation of the co-operation.

Our intention is for this to be the first of a Hungarian series of events, providing a professional forum to debate a topic relating to national and ethnic minorities on each occasion.

Each year we will award the István Kemény prize. The Minorities Commissioner established the prize in respect for the pioneering researcher of the Hungarian Gypsies, and each year it will be given to young researchers with exceptional achievements in research. In our current society, in the developing Hungarian democracy it is important to encourage and support all those researchers who through their work greatly contribute to recognition of the role in society of the Hungarian minorities, the fight against racism and the social integration of the Roma. Involving young researchers from minority communities in academic life was also one element of the co-operation agreement between the MTA and the Minorities Commissioner.

In 2008 we also endeavoured to create close co-operation with other academic institutes and organisations: the Law Institute of the Hungarian Academy of Sciences, the MTA Institute for Ethnic and National Minority Studies, the Eötvös

Károly Institute, and the Human Rights Information and Documentation Centre Foundation (INDOK).

The co-operation involves discussion of the possibilities of joint applications, organising conferences and releasing joint publications.

In October we held a joint conference with the Human Rights Information and Documentation Centre (INDOK) on hate speech. The first part of the conference was based chiefly on papers on the topic of hate speech from issue 2008/2 of *Fundamentum.* The state secretary of the Ministry of Justice and Law Enforcement, the joint president of the Hungarian Helsinki Committee, the president of the National Radio and Television Commission and the director of the Eötvös Károly Institute took part in the round table discussion. During the second part of the event, led by the Minorities Commissioner, representatives and experts from the parliamentary parties discussed potential legal solutions to combat the worsening problem of hate speech in public discourse.

In December in close co-operation with the MTA Ethnic and National Minority Research Institute we organised the conference mentioned above, whose speakers included several staff members of the institute.

## 1.4.
## Tour of the country

The essence of the much emphasised ombudsman philosophy is that it is necessary to reach beyond the isolation of the Office of the Parliamentary Commissioners at Nádor utca 22. The institution of the Minorities Ombudsman needs to be brought closer to the people.

Accordingly our county visits three to four times a year are of particular importance.

The Parliamentary Commissioner aims to develop lively, active and direct relations with all minority communities in Hungary.

One of the main ways of doing so is the regular county visits and tour of the countryside by the parliamentary commissioner and his staff. In 2008 we paid visits over several days to Tolna, Békés, Vas and Csongrád counties. In addition we also accepted the invitations of several minority organisations to participate in local cultural and social events, trainings and discussion forums.

During the county visits we gained information about the situation of the ethnic and national minorities living there, the majority-minority relationship, the relationship between the local government and the minority self-governments and the functioning of minority cultural and educational institutions.

In view of the fact that the centre of several national-level minority self-gov-

ernments are outside Budapest (The National Self-Government of Hungarian Romanians is in Battonya, and the National Slovenian Self-Government is in Felsőszölnök) during our visits we also visited the presidents of the national-level minority self-governments who work with us regularly as members of the II. Minorities Round Table, and showed us their centres and the related institutions.

## 2.
## International co-operation

We regard it as a particularly important task of ours to strengthen the protection of the rights of national and ethnic minorities through international co-operation, in particular making use of experiences and publicity of international independent and governmental organisations. In 2008 therefore we further widened our professional contacts on the international stage. The main ways of doing so were as follows:

The Minorities Commissioner held talks at professional forums, which contributed to Hungarian minority protection becoming known beyond the borders of Hungary and assessment of its results.

New forms of co-operation developed with the South Slavic ombudsmen. In the South Slavic region questions of minority and human rights play a central role. The Minorities Commissioner was therefore pleased to accept the invitation of the Serbian ombudsman to attend a conference titled *"Protection of individual and collective rights of national minorities and monitoring of their implementation"*. The ombudsman gave a talk titled *"Role of the Ombudsman in the system for promoting and protecting national minority rights"* and discussed developing co-operation on human rights questions with the ombudsmen of the region. The Minorities Commissioner also gave a talk at the *"Learning for life"* international conference organised by Caritas Austria. At the meeting experiences from training programmes taking place in several Eastern European countries were presented, whose target groups are those most in need, mainly Roma citizens.

In 2008 the Commissioner received numerous foreign delegations and professional visitors, in particular

- At the Minorities Commissioner's meeting with the Budapest Ambassador to the United States, the situation of minorities living in Hungary and possible steps for integration of the Roma were discussed.
- The Canadian Ambassador also paid a visit to the Commissioner, to discuss minorities living in the two countries and minority protection models.

- The European Commission against Racism and Intolerance (ECRI) in 2008 wrote its fourth country report about Hungary. For the purpose of preparing the report, the delegation while in Hungary visited the office of the Minorities Commissioner for a professional discussion. This primarily touched on fulfilment of recommendations made in its earlier country report and the legal situation of the Hungarian minorities.
- We received the Montenegrin human rights and minority protection minister and deputy, who wished to gain experiences concerning the rights and interests protection system for Hungarian minorities.
- Jack Greenberg, American human rights attorney and legal scholar, a representative of the famous Brown v. Board of Education (1954) case visited our office. Professor Greenberg and the Minorities Commissioner discussed questions of educational desegregation. Jack Greenberg spoke about American experiences, and the Ombudsman informed him of the current problems of minority education in Hungary, and the phenomena of school discrimination and segregation.
- The staff of the Commissioner at the request of the Hungarian Helsinki Committee met with the leader of the Open Society Institute (OSI) responsible for European ethnic affairs. This provided an opportunity to discuss the powers of the ombudsman, the aims and method of our comprehensive police investigation, and information exchange concerning Hungarian practices. We agreed for example that the Hungarian practice of identity checks should be assessed in the light of international investigations into police identity checks.
- Staff of the Ombudsman on numerous occasions provided information to foreign PhD students and researchers in Hungary, including interns from the Bundestag, and professionals representing the Azerbaijani, Georgian and Armenian offices at the European Court of Human Rights – on the work of the Minorities Commissioner and the Hungarian minority protection system.

We also gave an opinion on pledges concerning international obligations. Of these we wish to highlight two.

We were pleased to receive the Government's proposal on the extension of its obligations under Article 2.2 of the Council of Europe's European Charter of Regional or Minority Languages, containing a draft law referring to the Gypsy (Romany and Beas) languages. The Commissioner, however, voiced a number of concerns. The feasibility of the pledges would be guaranteed if a schedule were prepared to ensure use of the Gypsy (Romany and Beas) languages, which greatly differ from the other minority languages, indicating the organisations, those responsible, deadlines and allocated budget in connection with the individual articles of the Charter. In comparison to the Croatian, German, Romanian,

Serbian, Slovakian, and Slovenian literary languages based on language use in the native country, undertaking an obligation concerning use of two less standardised in itself does not mean this is feasible in education, public administration, judicial procedures and the public media. For this it would be necessary to set out realistically achievable tasks from teacher training, interpreter and translator training, linguistic training of public administration workers, journalists, editors, librarians, nurses, social carers etc. It is also an expectation for the funds that can be spent on developing learning materials and demand to be taken into account. In the absence of the above we could not form an opinion as to how and when the content of the obligations undertaken can be fulfilled if it all, and who is obliged to do what at the time of enforcement. In itself it constitutes an impropriety if the language use rights granted by the Minorities Act cannot be enforced in the case of the languages featuring in the pledge, and the necessary conditions are not in place for the extended international obligation. We stressed that extending the pledges featuring in the Charter must not be to the detriment of the other minorities, and must not involve lowering the level of minority legal protection achieved so far. We also indicated that extending the obligations undertaken in the Charter to the whole country would be difficult to apply as a first step, and a staggered introduction would be justified in the interests of feasibility. Article 3.3 of the Charter provides such a possibility, and this is particularly worth considering in the case of the Beas language.

To summarise therefore, while supporting the extension of obligations in principle, precisely because of the fundamental rights nature of the minority rights, and in order that Article 7 of the Constitution, domestic law and obligations undertaken be in line with each other, a realistic schedule for implementation and an assessment of material and personnel conditions is necessary.

The Government is obliged under Article 40 of the International Covenant on Civil and Political Rights (promulgated by Act 8 of 1976) to make periodic reports about its implementation in Hungary. In the framework of the preparatory work coordinated by the Ministry of Foreign Affairs, the Parliamentary Commissioners were requested to set out their views for the report to go before the Commission on Human Rights (CHR), which monitors implementation of the Covenant, although without any guarantee that in the final country report the observations of the non-governmental bodies would be separated, or that the final text would be sent to the bodies which contributed. Nevertheless we regarded the request as important. As a result of co-operation with the other ombudsman offices an almost 100-page English-language section was prepared in connection with periodic report no. 5 on implementation of the United Nations International Covenant on Civil and Political Rights, based on the commentaries of the CHR. The Minorities Commissioner devoted particular attention

to Article 2 (prohibition of discrimination, taking into account discrimination against Roma in the areas of housing, social services, eliminating slums, and school attendance), Article 26 (the right to equal legal protection) and Article 27 (minority special rights, including the minority self-government system, election law, cultural autonomy and the main elements of multicultural training). We endeavoured to present Hungarian practices based on complaints and reports. The report covers the period from 2002 to 2007, so the substantial length was justified. Thanks to the above, the government perhaps for the first time can submit a report presenting both the results and problems of implementation of the Covenant in a way that goes beyond mere legislative descriptions, and budgetary and other statistical details.

Co-operation continued with the European equal treatment organisations in the framework of Equinet and the European Ombudsman.

Information exchange continued within Equinet, the network of the European equal treatment bodies, in order that the EU anti-discrimination regulations are enforced as effectively as possible. On the Equinet intranet forum regular dialogue developed between the equal treatment bodies, helping to solve specific discrimination cases. The general assembly approved a work plan aimed at strengthening communication for the future. A communications professional will assist dialogue between the members and the institutions of the EU.

One fundamental condition of the effective functioning of the equal treatment bodies is independence. A survey of the members of the network was carried out, and the closing study, beyond theoretical analysis, summarised practical means of guaranteeing independent functioning.

The Equinet gave an opinion on and supported the European Commission's new draft directive, which aims to extend Directive 2000/78/EC on employment discrimination based on age, disability, sexual orientation, religion or other conviction to social security, healthcare, education, housing and services. The network supports equal-level protection for discrimination based on different motives, but it also believes that the unique features of the various discrimination types are important. Within the organisation separate initiatives were launched on several topics, for example to strengthen communication between equal treatment bodies dealing with the Roma question, and in the interests of increased co-operation with the European Commission.

The Minorities Ombudsman met with the European Ombudsman Nikiforos Diamandouros. At the meeting they exchanged thoughts on ombudsman powers, and the Hungarian human rights and minority rights situation, and emphasised the importance of close professional co-operation. Nikiforos Diamandouros assured the Minorities Ombudsman of his support and expressed that he would be happy to speak at a conference on minorities in the future. Our

office regularly sends information concerning our most important cases to the *European Ombudsmen Newsletter.*

The Commissioner also set forward an opinion on cases concerning other forms of international co-operation.

The preparation of professional background information by the Council of Europe and the Minorities Commissioner of OSCE got underway on the migration of the European Roma. The staff of our office were involved in the Budapest expert discussion. This provided an opportunity for a complex review of the migration, treatment and integration within the EU member states and returning home of Hungarian Roma.

We provided information to the Delegation of the European Commission in Hungary at a public consultation to prepare the post-Hague Programme (2009-2010) to develop the Area of Freedom, Security and Justice. In the framework of this we particularly urged the social integration of Roma citizens and the broadest possible enforcement of equal treatment. We called for unified, European-level co-operation on the following questions: strengthening respect for fundamental rights by all means viable is an indispensable element of the effectiveness of legal protection against racially-based discrimination. This ranges from eliminating school segregation (integrated education of Roma and migrant children) to effective criminal proceedings against racially-motivated violence. An effectiveness assessment, and not merely a legislative assessment of the adoption of *Council Directive 2000/43/EC* implementing the principle of equal treatment between persons irrespective of racial or ethnic origin would be justified in all member states, as well as the regular publication in the given year of the regular reports of the European Union Agency for Fundamental Rights (FRA).

Those working in the field of immigration policy make serious efforts to allow comparison and assessment of the integration of migrants by developing appropriate indicators. The same scale should be used in connection with the non-integrated groups in the Hungarian population, in particular the Roma. It is possible to set out and evaluate the implementation of programmes (from cohesion and regional funds) assisting integration not only in terms of the level of social cohesion, but also with the help of integration indicators. In our view it is not socially effective if groups without work, housing and skills are supported according to isolated programmes based merely on their legal status or the name of the source, although the target groups are in the same economic, social, cultural situation. In this way moreover the desired synergic effect cannot come about.

Finally we wish to stress that the statistical system in every member state (and in the framework of EUROSTAT) should be capable of revealing who the beneficiaries of the various integration, cohesion, employment and regional pro-

grammes are. Today due to the prohibition on handling ethnic data, it cannot in fact be checked in several member states how the target group of the programme was selected, and consequently the implementation of the programme cannot be measured and monitored objectively. The bulk of Roma programmes today face this difficulty, whether it be a question of civil, public education, local government, governmental or EU (jointly financed) programmes. The consequence of this is not only there is no realistic feedback on the use and effectiveness of EU funds, but that the myth of the Roma being over-supported lives on, so inadvertently the EU is serving to strengthen prejudices. Our common aim is to prevent this, while retaining the appropriate data protection safeguards.

Following the establishment of the European Union Agency for Fundamental Rights, as successor to the European Monitoring Centre on Racism and Xenophobia (EUMC), it was decided to review the operational experiences of the latter from 2000–2007 with the involvement of an independent analysis company. The staff of the Commissioner were also consulted in the framework of this investigation by the Commission. The study focused on what relations we had developed with the network and what our views were on the effectiveness of the EUMC, because information was regularly collected through national contacts on cases of racial discrimination, anti-discrimination legislation and judicial and authority practices. We recommended that

- Country reports and special reports prepared by the Agency be released regularly, and at the end of the year in question through national contacts;
- Comprehensive methodology be developed to monitor the anti-discrimination and fundamental rights practices of the member states;
- The Agency institutionally and regularly co-operate with the appropriate bodies of the Council of Europe and the United Nations in the interests of the coherency of the legislative and law enforcement statistics of the individual member states and reports submitted;
- Joint principles be developed concerning the victims of discrimination and ethnic data management so that it be possible to monitor whether assistance and development programmes are well-founded and how effective they are.

On 21 March, International Day for the Elimination of Racial Discrimination the Commissioner issued a statement that the joint declaration issued by OSCE's Office for Democratic Institutions and Human Rights (ODIHR), the Council of Europe's European Commission Against Racism and Intolerance (ECRI) and the European Union Agency for Fundamental Rights should be particularly taken to heart in the case of Hungary. According to this declaration the political parties have particular responsibility concerning action against racism. Each of these organisations condemned the escalating issue of racial prejudices based on skin colour, language, religion, nationality and ethnic affiliation in public discourse.

Racial discrimination is an attack on the fundaments of the equality before the law of humans, and creates a hostile political climate for the social acceptance of minorities. If politicians condemn racial violence and such events, they can greatly influence the development of mutual respect in society and reduction in tensions between groups. The attitudes of politicians can go a long way towards counteracting stereotypes and hatred by condemning extremist parties. The vocabulary used by politicians is cause for serious concern, because verbally-expressed prejudices and violence make racism language normal and accepted in a wide sphere. The Commissioner therefore called for all political leaders to

- take a joint stance in defence of human rights and democratic values, rejecting racial violence and all forms of hate speech, harassment and racial discrimination;
- assume responsibility, for speaking about racial, ethnic, minority and religious cases with appropriate sensitivity and subtlety;
- press the parties to define specific aims and efforts in the fight against racism in their programmes;
- urge the parties to be represented in their ranks by racial, ethnic and religious minorities and to represent these minorities fairly;
- co-operate with civil organisations against xenophobia, racism and all manifestations of these.

On 8 April, International Roma Day, and simultaneously the date of the formation of the International Roma Union (IRU), the Commissioner in a statement recalled that the UN subcommittee recognised the Roma as a unique ethnic group in 1977 with the aim of making prevention of discrimination against minorities more effective, and it was only much later at the IRU World Conference in 1990 that International Roma day was officially declared as a celebration of Roma identity and culture. Meanwhile other associations assisting international co-operation emerged – for example the Roma National Congress (RNC), and in September 2005 the European Roma and Travellers Forum – which helped to make the international day more widely known. Since 8 April was declared a day celebrating Gypsy culture and warning against the risks of racial discrimination in 1990, each year on International Roma Day we can examine our consciences as whether we are progressing in the right direction, whether the living conditions of the Roma have improved, and whether we have reason to celebrate. The Ombudsman asked representatives of state power and the parties whether they have taken the necessary steps to improve the living conditions of the Roma. There is great pressure on the Roma: social prejudices, growing social and economic differences and falling behind are burdens which can overshadow the preservation of traditions and their joyful celebration. It is a glaring contra-

diction that while the majority society values the cultural heritage and cultural achievements of the Roma, the daily burdens of minority affiliation, collective discrimination and lack of integration of a significant social group, school segregation, difficulties of obtaining housing and work, and the lack of professional training cause far fewer people moral and political concerns.

In summary it can be established that widening international relations is by no means an incidental element of our work limited to protocol. Over the course of the years it has become clear that the significance of participation in formal receptions and traditional foreign meetings has declined. Instead greater attention is paid to presenting international assessment and criticism of minority rights obligations undertaken and enforcement of the prohibition on discrimination during our work. Giving opinions on legislation, professional meetings and trainings, and co-operation with international organisations have irreversibly become daily routine, and as a result violations of minority rights increasingly provoke an international response. As a member of the European Union the room for manoeuvre of the Commissioner and expectations in terms of foreign relations have both grown, primarily in assisting the enforcement of anti-discrimination and promoting a multi-culture society and integration.

## 2.1.
## International co-operation concerning Roma migration

Employment, schooling, housing and daily discrimination in Hungary even in the 1990s prompted several Roma citizens to migrate, some successfully, but even more unsuccessfully. The unsuccessful migrants returned to Hungary following bitter disappointments, without money, work or a place to live. Frequently cashing everything and taking out loans they became homeless, and only a few managed to find new living possibilities abroad. However, success stories spread quickly, and exploiters of their gullibility and ignorance soon emerged, promising to organise travel, accommodation, work, legal representation, and refugee status.

Our office could not stand by and watch when it learned of the latest emigration wave from Baranya and other regions of the country. Due to the large-scale immigration of Roma people the Canadian authority retracted the lifting of the visa requirement (from Hungary and the Czech Republic), which it reviewed at the start of 2008, and the elimination of the American visa requirement also got underway. The publication of an information leaflet was therefore justified to draw the attention of Roma people and others to the need to think through make migration decisions thoroughly, not only to prevent them becoming even poorer

through an unsuccessful migration attempt, but also to stop Roma migrants from being scapegoated by the majority society for putting visa-free travel at risk.

In the leaflet printed in large numbers we noted that every citizen has the right to travel abroad and return home, but we warned against getting into greater trouble seeking prosperity in another country. The conditions of entering a foreign country so are set down in law and checked by the authorities, so particularly beyond the EU denial of entry and expulsion should be anticipated if the traveller does not fulfil these conditions. Travelling without a visa means entering the country without prior permission for short-term visits and trips. Leaving aside the known exceptions in the European Union, taking on work, running a business and long-term stays require an authority permit, which can also be required as certification for school and medical services. We listed in detail what the public order and public health conditions are for entry to Canada. If such conditions are not met money should not be spend on the journey, and in particular should not be handed over to unknown individuals and middlemen in exchange for verbal promises. Economic refugees are not guaranteed protection, and there is a thorough procedure for awarding asylum. The Hungarian Foreign Service provides advice on returning home, but only exceptionally gives loans. The leaflet concluded that we should not let ourselves be taken in.

We presented the leaflet in March to the press to draw the attention of the public to the desperation of the Roma, urging their legal protection. The publication reached the minority communities with the help of the National Gypsy Self-Government and the House of Opportunities Network. This co-operation was based on the joint desire that Gypsy people not become the victims of loan sharks, or fraudsters claiming to organise travel work and administration etc. The aim is not to prevent emigration and finding employment, but to ensure that Gypsy families are aware of the immigration rules before embarking on a series of steps that frequently can determine the life and financial situation of a whole family.

Concerning migration of the Roma another significant event was that preparation got underway of professional background material on migration of the European Roma by the Council of Europe and the OSCE Minorities Commissioner. Our office was also involved in the Budapest expert discussion in September, creating an opportunity for a complex review of the migration, treatment, and integration of Hungarian Roma within and outside the EU and their return home, and to express our concerns. Although according to the Hungarian report of the International Organisation for Migration (IOM) the circumstances of the emigration of the Hungarian Gypsies differs from that of the Kosovan stateless Roma and the Italian mass Roma deportation, the attention of the pan-European organisation extended to Hungary in its collection of material.

The High Commissioner of the Organization for Security and Co-operation in Europe (OSCE) acts as the conflict-prevention institution of an international security policy organisation. Accordingly the High Commissioner deals both with the situation of the minorities in a comprehensive and general approach, and with certain specific situations threatening conflict. The High Commissioner has a relatively large amount of freedom in terms of deciding who he regards as minority, and how he judges the international-level consequences arising from the situation of the given minorities. It is therefore worthy of attention that he approached Roma migration between European countries, and their (non) integration as a potential international and human rights conflict. The mandate of the High Commissioner does not contain regional restrictions, but since his scope of authority only includes low-intensity conflicts, in the past years he had primarily exercised his scope of authority in Central and Eastern Europe. The recommendations addressed to individual member states or on individual topics form the most important element of the work of the High Commissioner. In cases where it can be feared that the conflict risk will grow concerning national minorities the High Commissioner makes recommendations by letter to the government of the member state concerned as to the measures which he regards as desirable to de-escalate the situation.

The Committee of Senior Officials judged that *"the severity of the situation of the Roma in the OSCE region"* requires that the High Commissioner for Minorities be requested to study the social, economic and humanitarian problems of the Roma population living in the individual member states. Since 1993 the High Commissioner dealt with the situation of the Roma in three comprehensive reports. Since the majority of recommendations made in the report at the time were not fulfilled, in 1999 he set out his assessment regarding the situation of the Gypsies in a new report. The only serious progress was represented by the position of officer for Roma issues created in the framework of the ODIHR. In 2000 the High Commissioner, with the involvement of several internationally recognised experts, prepared a fresh, more detailed report on the situation of the Roma, which in its structure and recommendations essentially follows the construction of the 1999 report. In his reports there is emphasis on the work of ODIHR's offer for Roma issues official in maintaining relations and the further strengthening of this role. In this framework he recommended that there is a need for on-site assessment and study of the circumstances of the Roma and extending trainings and data collection concerning the Roma people.

In 2002 the Council of Europe Parliamentary General Assembly based on the report of the Council of Europe Committee on Legal Affairs and Human Rights accepted his recommendation 1557 (2002) on the legal situation of the Roma. The document referred to as an example – in line with the work of OSCE above

– treated independently the question of the Roma and of migrants. In 2008 for the first time therefore an investigation got underway extending to the region of the EU, connecting the issues of the Roma and migration. Earlier travellers, human trafficking, migrant workers or action plans for the integration of Roma were the focus of drawing up individual recommendations. This gradual change in approach was helped for example in 2004 when the European Roma and Travellers Forum, which represents the most significant Gypsy organisations, joined the Council of Europe, to become part of decision-making affecting their communities. Rudko Kawczynki, the interim president of the Forum remarked: *"Well it's the first time in European history that Roma have been even recognised. Until now we have been treated like a fringe group, like a social phenomenon, a social problem. It's the first time in history that the European governments have recognised the Roma as a trans-national minority that lives everywhere in the European countries with a common problem – and that something has to be done to improve the living conditions of this group."* We agreed with the activist from the Office for Democratic Institutions and Human Rights of OSCE, Nicolae Gheorghe that it is necessary to change the attitudes of governments, because they are also responsible for the improvement of circumstances and developing the appropriate institutional capacities.

The expert discussion reviewed the contribution of the two international organisations concerning the schooling of Roma migrants, access to healthcare, housing and authority treatment. The issue was raised that records concerning the national, ethnic and linguistic affiliation of migrants differ by country and even by province, so it is difficult to call to account adherence to minority rights. In the EU the expulsion and return home of stateless Roma (for example from Germany to Kosovo) constituted a practice in violation of human rights, the rounding up of Roma people in Italy, fingerprinting, elimination of camps, and deportation of some 60,000 Roma represents a violation of community law. The main conclusion of the discussion was that European Roma migration should not be treated using public order methods.



## 3.
## Statistics

Examining the statistics of the past years it can be established that the number of cases fell in 2005 and 2006, which may be presumed to be connected to the Equal Treatment Authority, beginning operation. In 2007, however, that trend ceased, and there was growth of 35%, which was particularly marked in the second half of the year. That tendency continued in 2008: our total caseload grew by 40%

compared to the previous year and was almost twice that of the 2006 caseload. It is worth mentioning separately that within this the number of complaints rose the most dramatically, by 86% compared to the 2007 statistics.

In 2008 the number of our ex officio procedures also doubled. Among these procedures launched on the basis of news reports gained just as significant attention as the comprehensive police investigation, or the investigation concerning the practice of making nursery or school attendance of children a condition of benefits being granted.

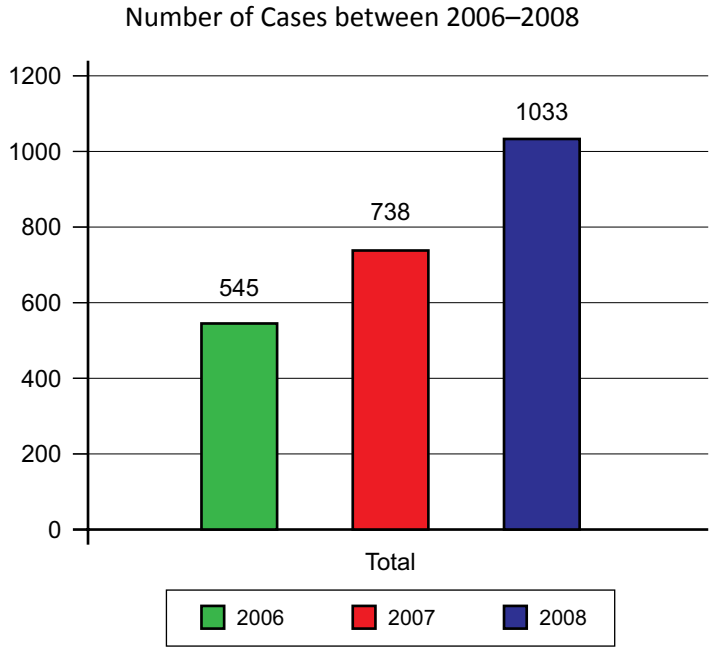
In 2008 we played an active part in the process of drafting legislation. In this field, however, we plan to develop even close co-operation, particularly with the Ministry of Justice and Law Enforcement, since during 2008 only approximately 10% of draft legislation sent for our opinion came from that ministry. Most drafts sent for our opinion concerned education, but we also received a large number of drafts from the Ministry of Health.

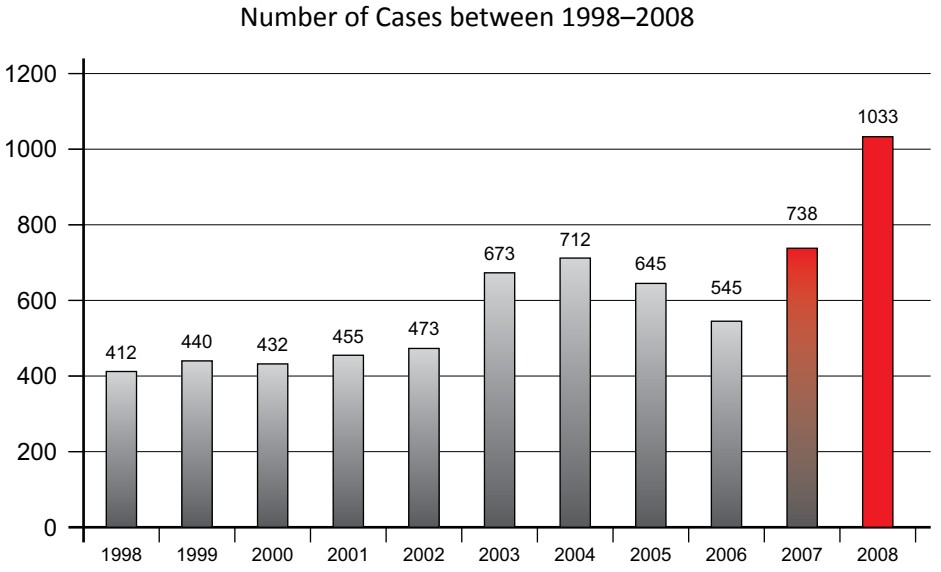
In the year of the report the greatest number of petitions came in the form of individual complaints, making up more than half of the total number of cases (1033). Compared to the number of complaints in 2007 the number of social cases doubled, and these formed the largest group of individual complaints. Almost half (approximately 42%) of individual complaints came from Budapest, Borsod-Abaúj-Zemplén County and Szabolcs-Szatmár-Bereg County, and were primarily connected to social care, housing and education.

The highest number of complaints concerning police procedures came from Szabolcs-Szatmár-Bereg County, and the majority of complaints concerning the social welfare system in particular benefits and housing problems arrived from the poorest parts of the country, Borsod-Abaúj-Zemplén County, Szabolcs-Szatmár-Bereg County, as well as from settlements in Pest County and Budapest. The number of complaints connected to utility services and various financial institutes also rose.

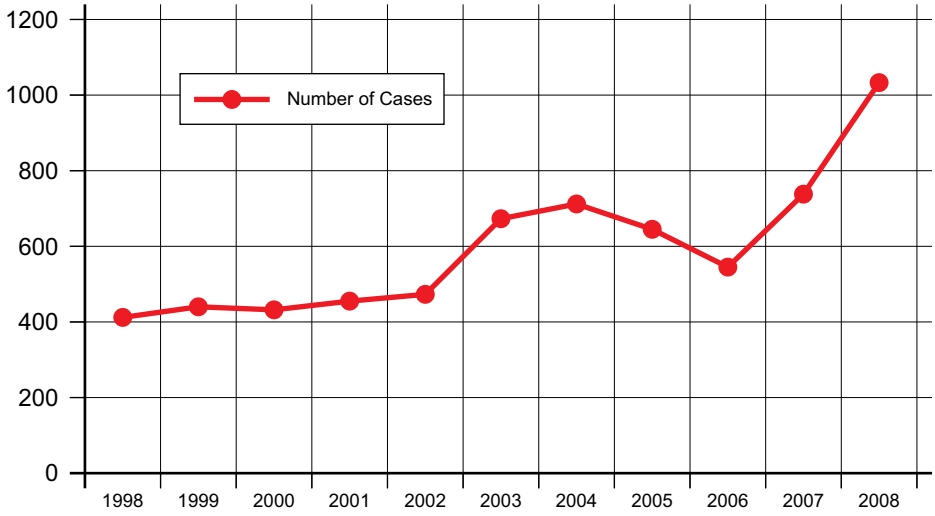
In addition to individual complaints we also received large numbers of petitions from minority self-governments, primarily requesting our assistance and stance on interpreting minority legislation.

In terms of division by type of case, compared to the previous year, the number of complaints concerning education and training rose significantly to almost double, and we received more petitions concerning discriminative content in the press, the media and various internet sites. The number of complaints concerning employment, communal employment and police procedures also rose.

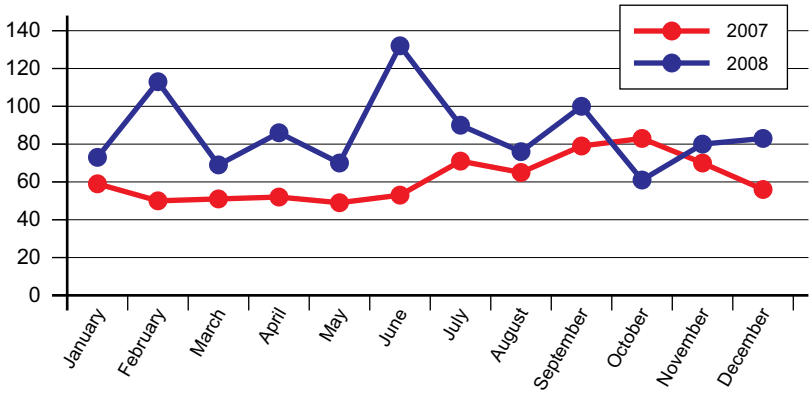



* Dr. Ernő Kállai entered office on July, 1st 2007



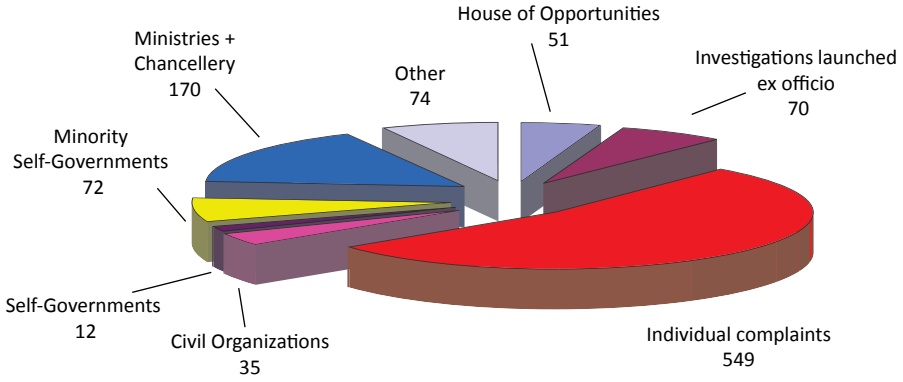

Number of Cases between 2007–2008 per Month



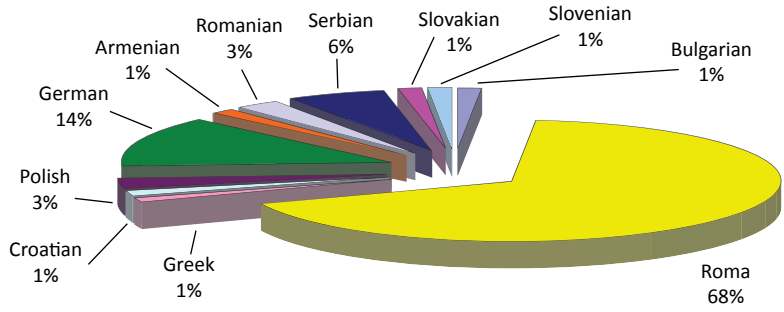

III

Distribution of Cases according to Complainants in 2008

| Complainant | Number of Cases | % |
|---|---|---|
| House of Opportunities | 51 | 5% |
| Investigations launched ex officio | 70 | 7% |
| Individual complaints | 549 | 53% |
| Civil Organizations | 35 | 3% |
| Self-Governments | 12 | 1% |
| Minority Self-Governments | 72 | 7% |
| Ministries + Chancellery | 170 | 16% |
| Other | 74 | 7% |
| **Total** | **1033** | **100%** |



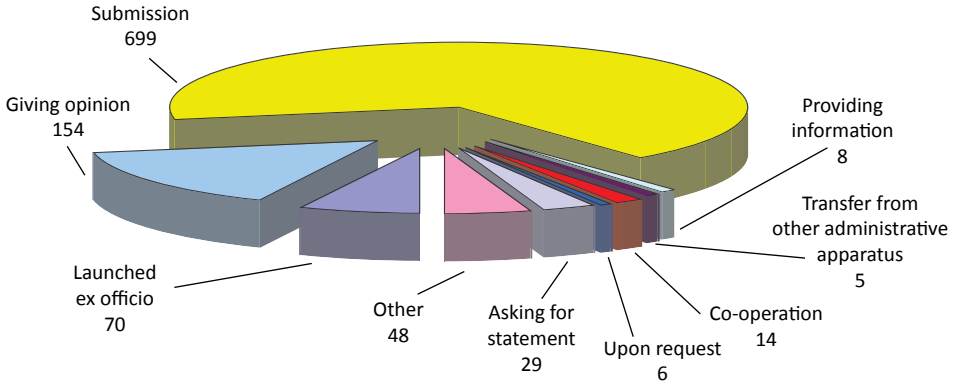

Distribution of Cases according to Minority Self-Governments in 2008



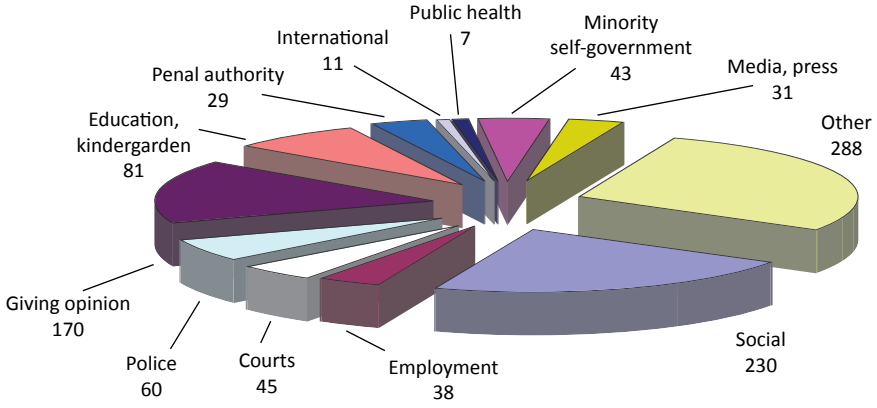

III

Distribution of Cases according to their Type

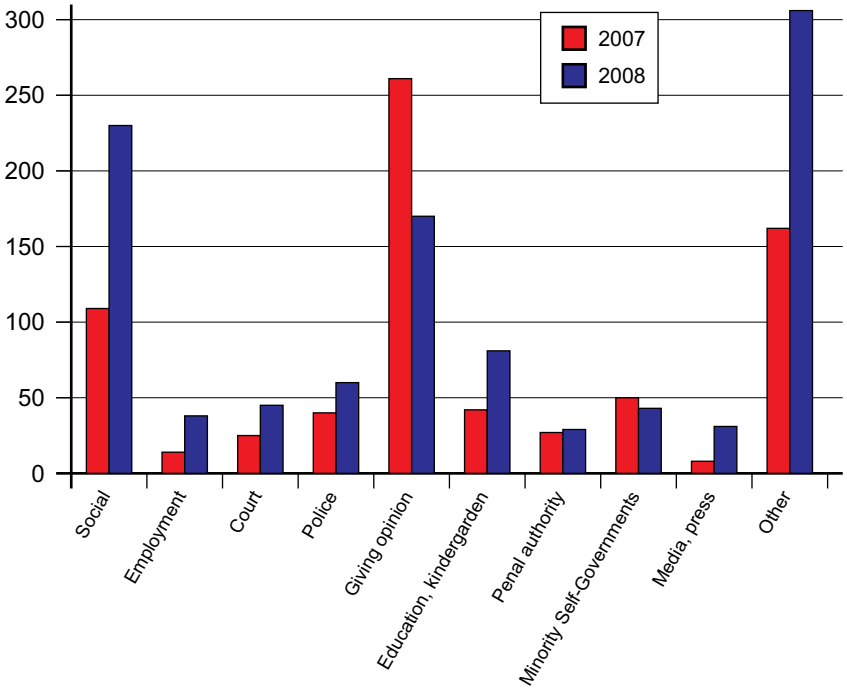
| **Type of Submission 2008** | | **%** |
|---|---|---|
| Launched ex officio | 70 | 6,8% |
| Giving opinion | 154 | 14,9% |
| Submission | 699 | 67,7% |
| Providing information | 8 | 0,8% |
| Transfer from other administrative apparatus | 5 | 0,5% |
| Co-operation | 14 | 1,4% |
| Upon request | 6 | 0,6% |
| Asking for statement | 29 | 2,8% |
| Other | 48 | 4,6% |
| **Total** | **1033** | **100,0%** |



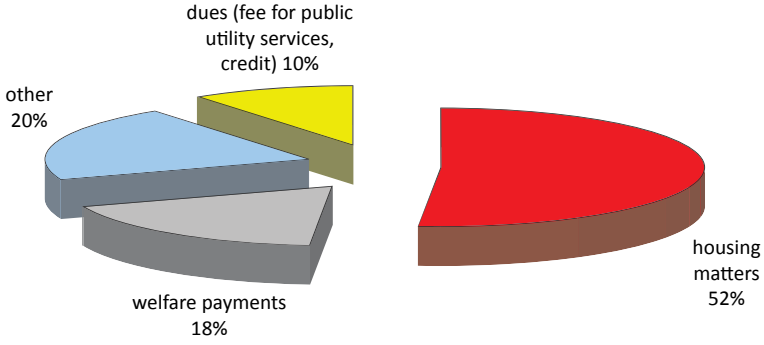

Distribution of Cases according to their Type and Bodies concerned



Distribution of Cases according to Type

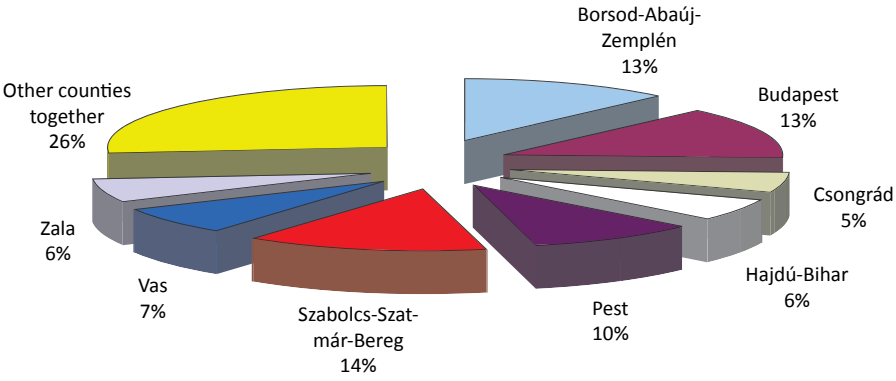



Distribution of Social Affairs



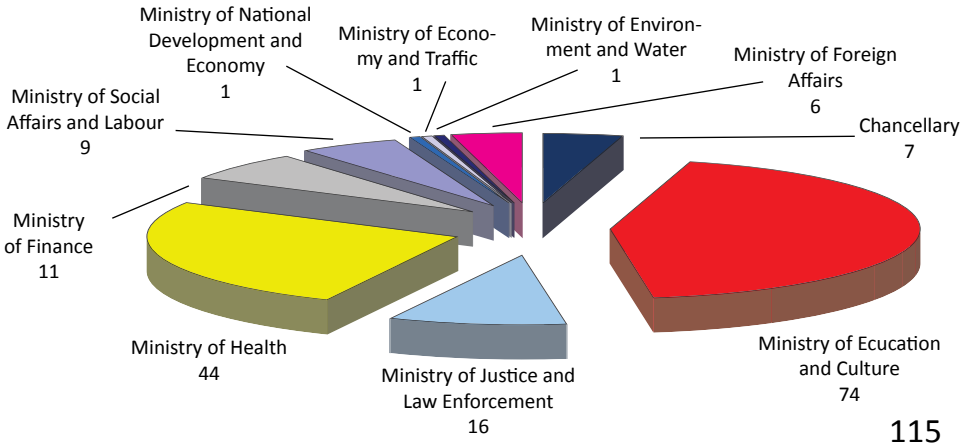

III

## Social Affairs according to Counties




## Giving opinion according to Cases from Ministries

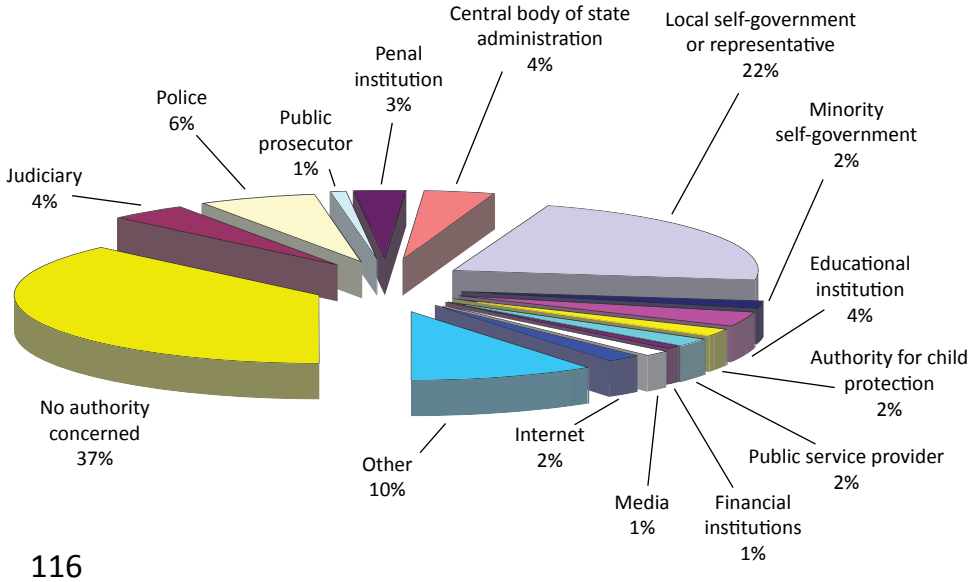
| **Ministry** | **Number of cases** |
|---|---|
| Chancellary | 7 |
| Ministry of Ecucation and Culture | 74 |
| Ministry of Justice and Law Enforcement | 16 |
| Ministry of Health | 44 |
| Ministry of Finance | 11 |
| Ministry of Social Affairs and Labour | 9 |
| Ministry of National Development and Economy | 1 |
| Ministry of Economy and Traffic | 1 |
| Ministry of Environment and Water | 1 |
| Ministry of Foreign Affairs | 6 |
| **Total** | **170** |

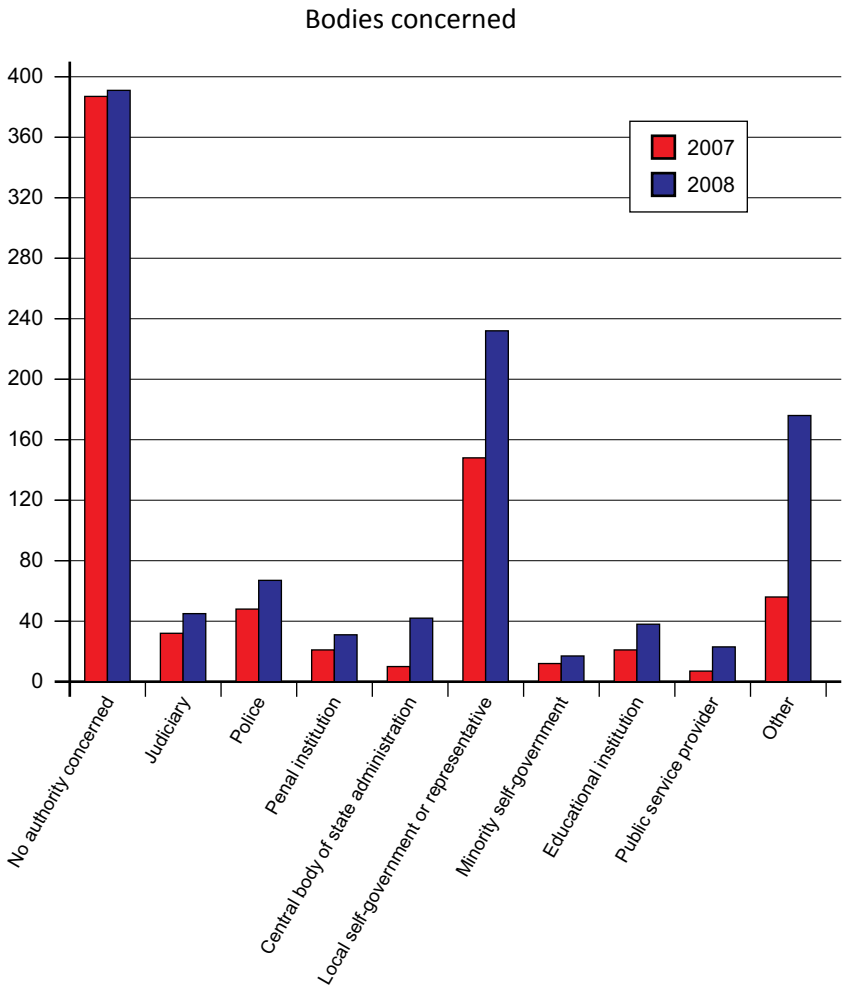


Bodies concerned*

| Year | 2007 | 2008 |
|---|---|---|
| No authority concerned | 387 | 391 |
| Judiciary | 32 | 45 |
| Police | 48 | 67 |
| Public prosecutor | 5 | 9 |
| Penal institution | 21 | 31 |
| Central body of state administration | 10 | 42 |
| Public administration office | 2 | 3 |
| Local self-government or representative | 148 | 232 |
| Minority self-government | 12 | 17 |
| Educational institution | 21 | 38 |
| Authority for child protection | 6 | 16 |
| Public service provider | 7 | 23 |
| Financial institutions | 5 | 10 |
| Media | 2 | 10 |
| Public foundation | 4 | 5 |
| Internet | 1 | 19 |
| Other | 31 | 104 |
| **Total** | **742** | **1062** |

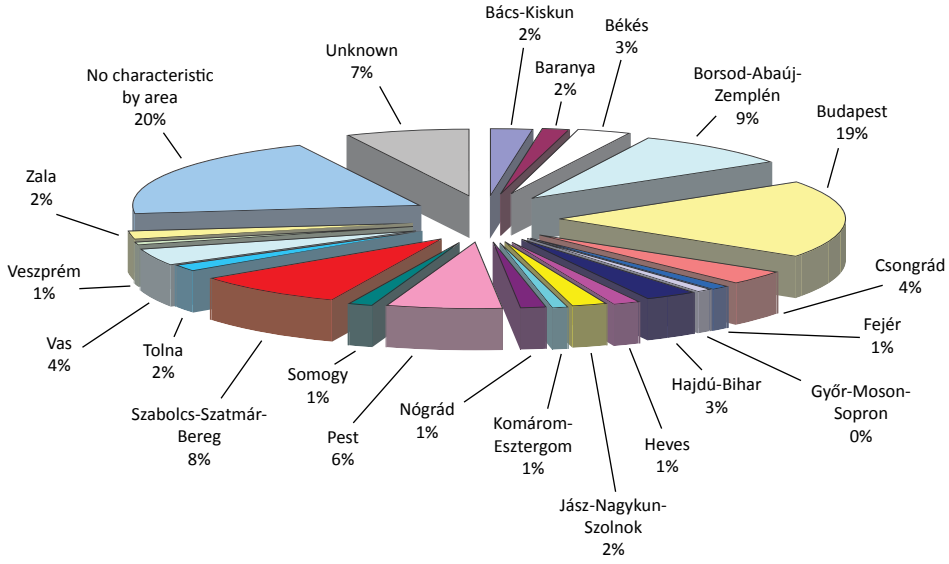
* A given case may concern more than one body




Bodies concerned
400
360
320
280
240
200
160
120
80
40
0
2007
2008
No authority concerned
Judiciary
Police
Penal institution
Central body of state administration
Local self-government or representative
Minority self-government
Educational institution
Public service provider
Other

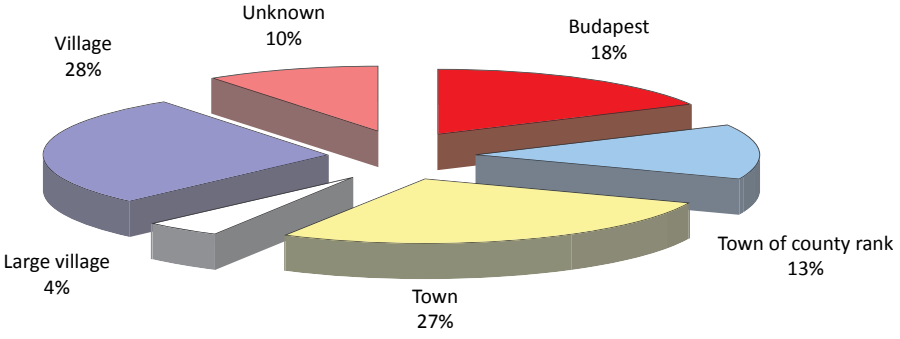
Distribution of Cases Based on Address of Complainants – County

| **County** | **2007** | **2008** |
|---|---|---|
| Bács-Kiskun | 18 | 24 |
| Baranya | 17 | 16 |
| Békés | 13 | 30 |
| Borsod-Abaúj-Zemplén | 32 | 90 |
| Budapest | 375 | 198 |
| Csongrád | 25 | 37 |
| Fejér | 18 | 13 |
| Győr-Moson-Sopron | 11 | 5 |
| Hajdú-Bihar | 50 | 31 |
| Heves | 15 | 14 |
| Jász-Nagykun-Szolnok | 12 | 22 |
| Komárom-Esztergom | 8 | 7 |
| Nógrád | 15 | 15 |
| Pest | 27 | 66 |
| Somogy | 11 | 13 |
| Szabolcs-Szatmár-Bereg | 38 | 87 |
| Tolna | 11 | 19 |
| Vas | 8 | 37 |
| Veszprém | 2 | 8 |
| Zala | 11 | 21 |
| No characteristic by area | 21 | 207 |
| Unknown | - | 73 |
| **Total** | **738** | **1033** |



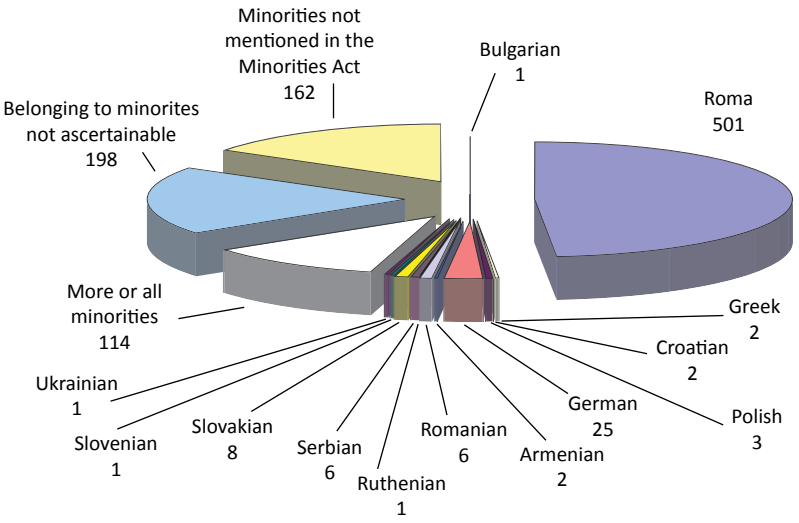

Distributon of Individual Submissions according to Type of Settlement

| **Settlement** | **Number of Cases** |
|---|---|
| Budapest | 124 |
| Town of county rank | 93 |
| Town | 189 |
| Large village | 29 |
| Village | 196 |
| Unknown | 68 |
| **Total** | **699** |



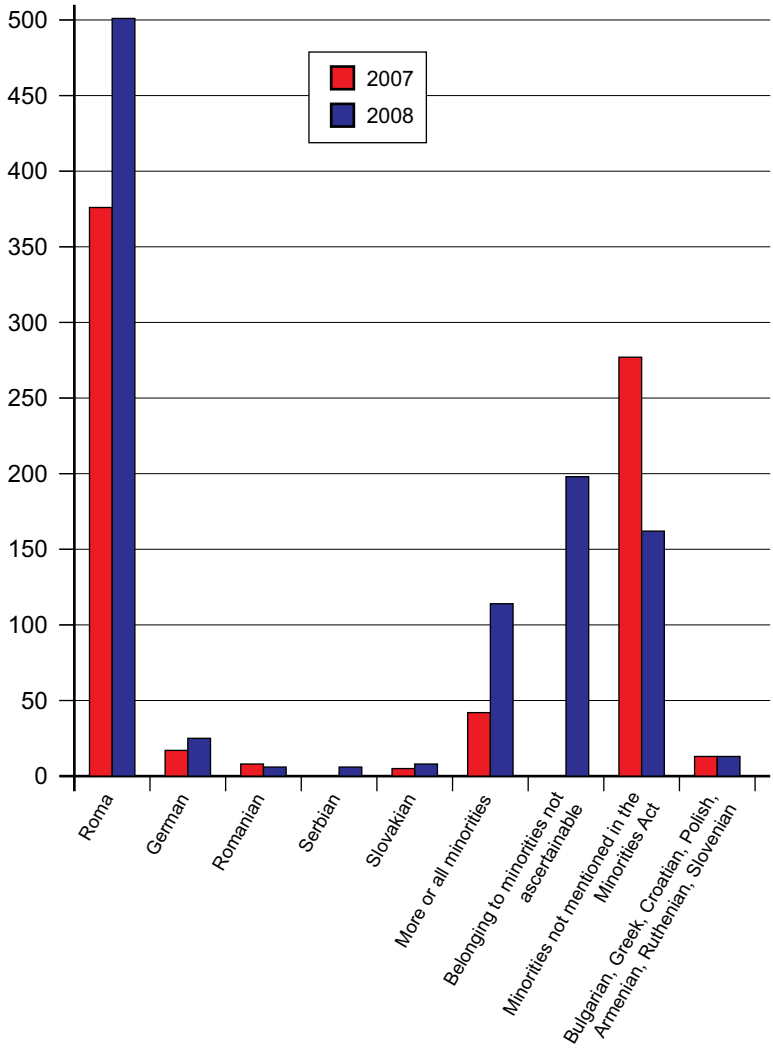
Distribution of Cases According to Minorites 2007–2008

| **Minorities concerned** | **2007** | **2008** |
|---|---|---|
| Bulgarian | 3 | 1 |
| Roma | 376 | 501 |
| Greek | 2 | 2 |
| Croatian | 2 | 2 |
| Polish | 1 | 3 |
| German | 17 | 25 |
| Armenian | 3 | 2 |
| Romanian | 8 | 6 |
| Ruthenian | 2 | 1 |
| Serbian | 0 | 6 |
| Slovakian | 5 | 8 |
| Slovenian | 0 | 1 |
| Ukrainian | 0 | 1 |
| More or all minorities | 42 | 114 |
| Belonging to minorites not ascertainable | 0 | 198 |
| Minorities not mentioned in the Minorities Act | 277 | 162 |
| **Total** | **738** | **1033** |




III

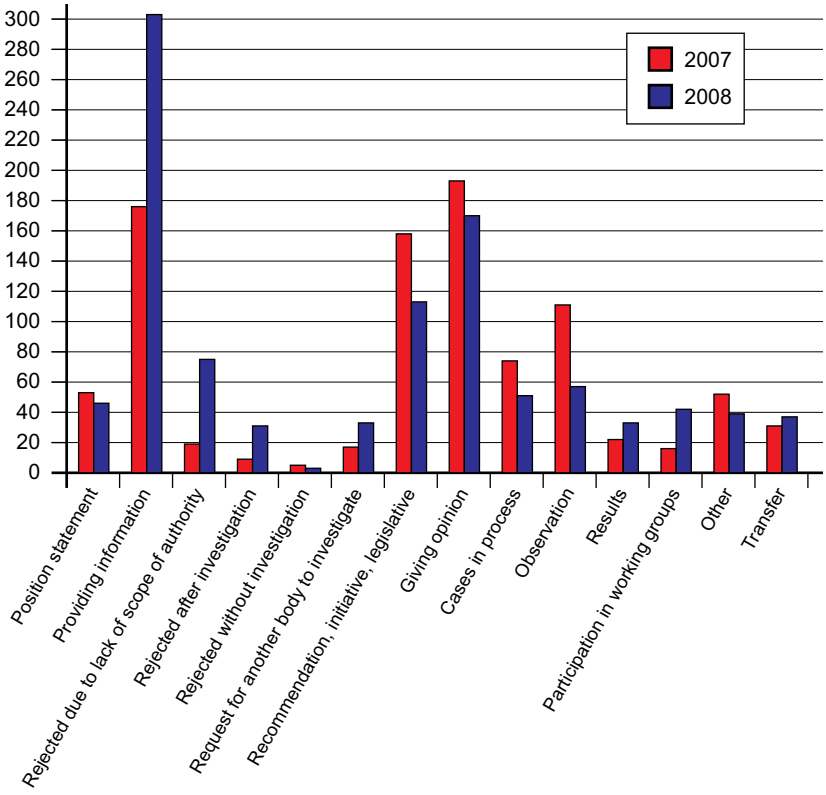
Distribution of Cases According to Minorites 2007–2008



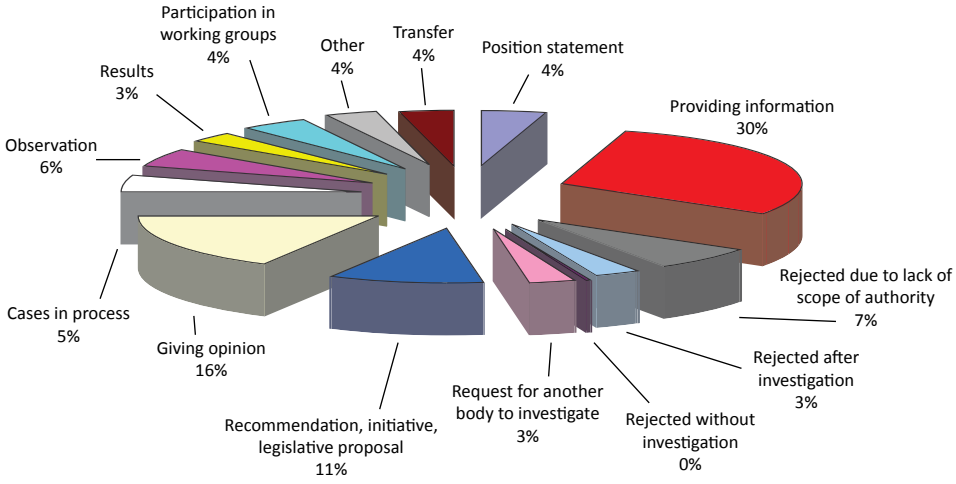
Measures taken on the Basis of our Investigations*

| **Measures** | **2007** | **2008** |
|---|---|---|
| Position statement | 53 | 46 |
| Providing information | 176 | 303 |
| Rejected due to lack of scope of authority | 19 | 75 |
| Rejected after investigation | 9 | 31 |
| Rejected without investigation | 5 | 3 |
| Request for another body to investigate | 17 | 33 |
| Recommendation, initiative, legislative proposal | 158 | 113 |
| Giving opinion | 193 | 170 |
| Cases in process | 74 | 51 |
| Observation | 111 | 57 |
| Results | 22 | 33 |
| Participation in working groups | 16 | 42 |
| Other | 52 | 39 |
| Transfer | 31 | 37 |
| **Total** | **936** | **1033** |

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

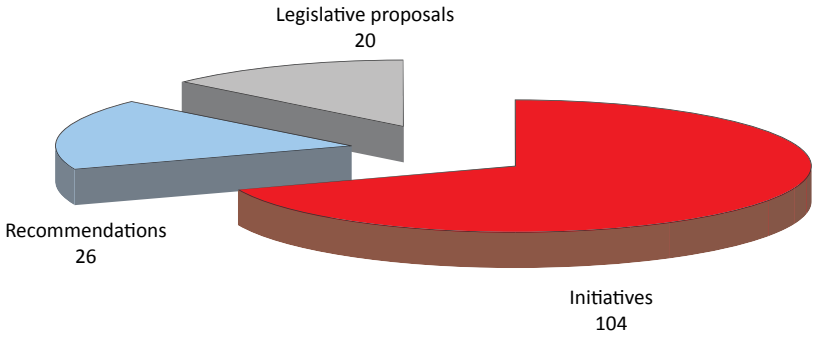



Measures taken on the Basis of our Investigations 2008



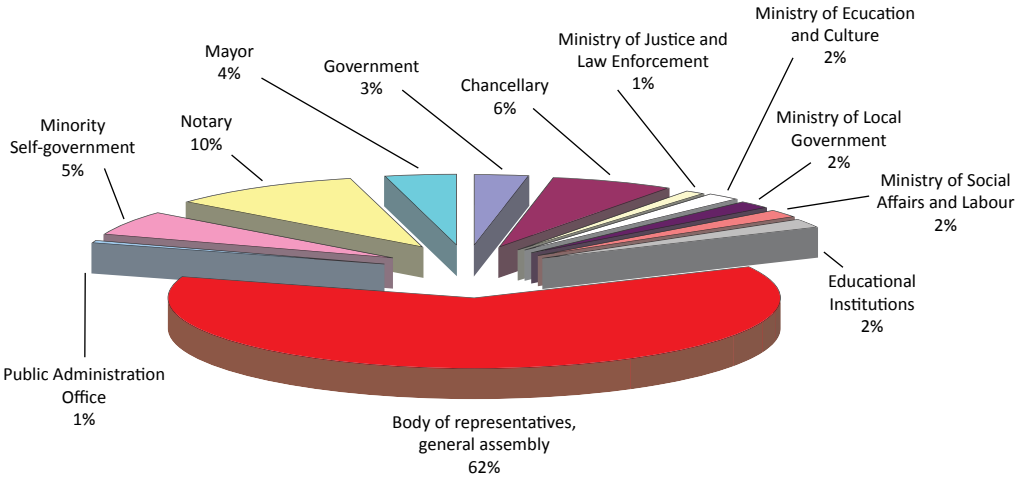
Total Number of Initiatives, Recommendations and Legislative Proposals*

| | |
|---|---|
| Initiatives | 104 |
| Recommendations | 26 |
| Legislative proposals | 20 |
| **Total** | **150** |
| Accepted intiatives | 37 |
| Accepted recommendations | 3 |
| Accepted legistlative proposals | 7 |
| **Total** | **47** |



List of Bodies to whom Initiatives, Recommendations and Legislative Proposals were offered

| **Bodies concerned** | **2007** | **2008** |
|---|---|---|
| Government | 1 | 3 |
| Chancellary | 4 | 7 |
| Ministry of Justice and Law Enforcement | 5 | 1 |
| Ministry of Education and Culture | 6 | 2 |
| Ministry of Local Government | 7 | 2 |
| Ministry of Social Affairs and Labour | 0 | 2 |
| Public Prosecutor | 2 | 0 |
| Education Office | 1 | 0 |
| Educational Institutions | 4 | 2 |
| Body of representatives, general assembly | 81 | 69 |
| Public Administration Office | 16 | 1 |
| Minority Self-government | 6 | 6 |
| Notary | 8 | 11 |
| Mayor | 4 | 4 |
| **Total** | **145** | **110** |




III

# List of legislation

## Legislation referenced in the report

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

Act III of 1952 on Code of Civil Procedure

Act IV of 1959 on Civil Code

Act IV of 1978 on Criminal Code

Act XXXII of 1989 on the Constitutional Court

Act LXV of 1990 on Local Governments

Act XXXVIII of 1992 on the State Budget

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 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 (Public Education Act)

Act LII of 1994 on Judicial Enforcement

Act LXIV of 1994 on Certain Rules relating to Conducting the Mayor's Position and on the Fee of the self-governments' representatives

Act XXXI of 1997 on Children's Protection and on Guardianship Affairs

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

Act LXXX of 1997 on Authorized Recipients to Benefits of the Social Insurance and to Private Pension as well as on Reserves of these Provisions

Act C of 1997 on Electoral Procedure

Act CLVI of 1997 on Public Benefit Organizations

Act XIX of 1998 on Criminal Procedure

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

Act CXL of 2004 on the General Rules of Administrative Proceedings and Services

Act CXL of 2004 on Common Rules of Procedure and Delivery of Administrative Authority

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

Act CIX of 2006 on Modifications of Law in Connection with Change in Government's Organization

Act CLII of 2007 on Certain Duties about Declaration of Property

Act XCIX of 2008 on Sponsoring and on Specific Employment Rules of Organizations of Performing Art

Law Decree No. 11 of 1979 on Execution of Punishments and Measures (Prison Codex)

Executive Decree No. 217/1998 of December, 31st on Mode of Operation of the Budget

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