

# Projects

on the Rights  
of the Most Vulnerable Groups:  
Homeless, Disabled and Elderly People  
of the Parliamentary Commissioner  
for Civil Rights in Hungary

2008–2010





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The Parliamentary Commissioner for Civil Rights expresses his sincere appreciation for the financial assistance provided by the Open Society Institute (OSI) for the publications of the research projects made on the fundamental rights of vulnerable groups, such as people living with disabilities, elderly and homeless people, between the period of 2008 and 2010.

Editor: dr. Beáta Borza  
English translation: dr. Vera Gáthy

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# Foreword

*The main task of the Parliamentary Commissioner for Civil Rights is to investigate any violations of constitutional rights and to initiate general or particular measures for their redress. The Ombudsman is solely accountable to Parliament. As for the legal status of the Ombudsman, in the course of proceedings he has to be independent and may take measures exclusively on the basis of the Constitution and law. The Ombudsman is accorded immunity identical with that of MPs.*

The Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights, when describing the competency of the Ombudsman, states that anyone can turn to the Parliamentary Commissioner if, in his/her assessment an authority or organ performing public service has violated the fundamental rights of the person presenting his/her submission, provided the available opportunities of legal remedy available in public administration have been utilised with the exception of the judicial revision of a public administration ruling, or if no legal remedy is ensured for the complainant.

As Parliamentary Commissioner I have launched a new working method and a way of thinking after my election in September 2007. *I determine every year what topics are especially important for the society and the enforcement of the rule of law, and have a particular significance from the point of rights and freedoms.*

Within these defined fields, I have initiated special projects which have particular focus and consideration within the Ombudsman's Office (initiating particular investigations, etc.), in the media, and public presentation.

Since there is no independent parliamentary institution for the protection of the rights of children, the Commissioner for Civil Rights operates during the whole mandate as an ombudsperson for children's rights.

The so-called “Human dignity” projects are as follows:

- Human dignity of the homeless (2008)
- Rights of people living with disabilities (2009)
- Dignity of the elderly (2010).

Societies are looked upon as healthy and sane communities of “normal” people in modernity. In traditional societies there was no homelessness, since everybody was either part of a housing community or died. Urbanization and modernization produced forms of social exclusion and the dissolution of communal housing which has led to the modern form of “homelessness”. Disability, or disabilities were looked upon in many different ways, but the survival of the majority of the disabled was rather uncertain. Modern age has excluded and institutionalized them in the healthcare and social system, separating them from “normal” citizens: Old people were at the top of the traditional social hierarchy, but modernization devalued former experience, wisdom and authority. The nuclear family model resulted in the “elderly” being dumped into institutions of social care.

In Hungary there is a special situation because the remnants of the former Communist welfare system and the new beginnings of a society based on market economy and private property coexist, thus determining the field of social and health care where the homeless, the disabled and the elderly have to suffer severe cuts caused by the economic and social problems of transition and of the recent economic and financial crisis. Case studies and investigations have shown, however, that we are very far from the desired service level as far as social and healthcare services are concerned. Our task has been and still is to remind the government and public administration to fulfil their obligations taken on by agreeing to the European policy on the disabled, such as reaching the level of full accessibility for the disabled. In fact, the deadlines set by the EU have not been met by the Government of Hungary to this day.

Exclusion and rejection of people with special needs do not stop only at homelessness, disability and elderly age, but evolve further into gender-based and ethnic exclusion. Our examinations within a series of “human dignity” projects have focused on a specific type of exclusion and danger of reduced rights e. g. within the implementation process of human rights of special groups. The homeless, the disabled



and the elderly were the subject of our examinations in the Hungarian Ombudsman's Office between 2008 and 2010. Of course, issues and claims related to these groups and processes were and are an integral part of our work but in these particular "project years" we established cooperation with social and healthcare as well as other professionals, and institutional and personal decision makers in this area. Our investigations were supported by related scientific research, personal meetings with citizens involved in these problems, by a series of meetings organized, by exhibitions and public hearings. Results and findings have been published in individual volumes.

Let us see the main data of the projects (number of complaints, partners and publications):

### **I "Human Dignity without Barriers" – 2008**

*Number of complaints:*

2008: 11 – 0.19 % of the whole (Total: 5724)

2009: 22 – 0.32 % of the whole (Total: 6810)

2010: 20 – 0.25% of the whole (Total: 8107)

*Supporter* : Ministry of Labour and Social Affairs (SZMM)

*Cooperating partners:*

Vecsei, Miklós, Chairman of the Public Foundation for the Homeless

Gurály, Zoltán, Head of Menhely (Shelter) Foundation

Győri, Péter, of Menhely (Shelter) Foundation

*Publication:*

Dr Borza, Beáta: „Emberi méltóság – korlátok nélkül” – Az állampolgári jogok országgyűlési biztosának hajléktalansággal foglalkozó projektje. ("Human Dignity – Without Limitations" – Project of the Parliamentary Commissioner for Civil Rights dealing with homelessness) *Kapocs*, VII. évf. 4. szám 2008. augusztus 2–3. (*Kapocs*, Vol. VII., No. 4. 2–3 August 2008.)

### **II "With Dignity – with Difference" – 2009**

*Number of complaints:*

2009: 95 – 1.4 % from the whole (Total: 6810)

2010: 107– 1.32 % from the whole (Total: 8107)

Up to 6 July 2011: 23 – 0.79 % from the whole (Total: 2899)

*Supporter : SzMM*

*Cooperating partners:*

Prof. Dr Könczei, György of ELTE Bárczi Gusztáv College of Special Education

Földes, Dalma, Associate of the National Association of the Deaf and of Difficult Hearing,

Gombos, Gábor, Associate of the Mental Disability Advocacy Center (MDAC)

Verdes, Tamás, Associate of the Society for Freedom Rights.

*Publications:*

Dr Fogarassy, Edit – Dr Gurbai, Sándor – Lux, Ágnes: Választójog – egyenlő eséllyel? (Right to Vote – With Equal Opportunities?) *Fogyatékoság és tudomány. (Disability and Science)* 2010. No. II.

Dr Gurbai, Sándor: A fogyatékos személyek jogairól szóló ENSZ Egyezmény végrehajtási és ellenőrzési mechanizmusának útvesztői. (Cobwebs of the Implementation and Control Mechanism of the UN Convention on the Rights of Persons with Disabilities) *Acta Humana*, Vol. 20. 2009. Nos. 1–2. 160–171.

Dr Gurbai, Sándor: Fogyatékosággal élőket érintő Európai Unió szabályozás. In: „Brüsszeltől Budapestig” Mozgássérültek Budapesti Egyesülete. (EU Regulation Concerning People Living with Disabilities. In: “From Brussels to Budapest”) Conference volume, 48–49.

Lux, Ágnes: „Méltóképpen másképp” Az állampolgári jogok országgyűlési biztosának fogyatékosügyi projektje. In: „Brüsszeltől Budapestig” Mozgássérültek Budapesti Egyesülete. (“With Dignity – with Difference”. The Rights of People Living with Disabilities project of the Parliamentary Commissioner for Human Rights.) Conference volume, 46–47.

Dr Borza, Beáta – Prof. Dr. Szabó, Máté: Előszó In.: Emberi jogok – igen. A fogyatékosággal élő személyek jogai (képzési kézikönyv) (Preface. In: Human Rights – Yes. Rights of Persons Living with Disabilities /training manual/).

### **III ”Dignity for Age” – 2010**

*Number of complaints:*

2010: 87 – 1.1% from the whole (Total: 8107)

Up to 6 July 2011: 10 from the whole 0.035 % (Total: 2899)

*Supporter: SzMM*

*Cooperating partners:*

Dr Talyigás, Katalin, leading adviser of Social Innovation Foundation

Jeszenszky, Zita, sociologist

Bakonyi, László, Director, Methodological Centre, Home for the Elderly of the Municipal Government

Prof. Dr. Iván, László, MP

Prof. Dr Boga, Bálint, consultant.

*Lectures:*

- Methodological Centre, Home for the Elderly of the Municipal Government – 9 June (*Az országgyűlési biztos idősügyi projektjének jelentősége az intézményi ellátásban – The significance of the elderly project of the Parliamentary Commissioner in institutional care*)
- World Alzheimer's Day – Hungarian Academy of Sciences – 21 September (*Az időskor méltósága – The Dignity of Old Age*)
- Regional Social Policy Conference of the Northern Plains. Conference at Nyíregyháza-Sóstófürdő on 23 November. (*Társadalmi hátrányok – módszertani válaszok az országgyűlési biztos idősügyi projektje – Social Disadvantages – Methodological Answers and the elderly project of the Parliamentary Commissioner*)
- Social Methodological Centre of Southern Transdanubia at Bonyhád on 9 December. (*Az idősek helyzete a megyei ellátórendszerben – A tartós bentlakásos intézmények alapjogi vizsgálata – The Situation of the Elderly in the Care System of the County – Investigation into the Fundamental Rights in Institutions of Permanent Residential Care*) (Borza, Beáta)

\*

In the current year of 2011 we are turning to the rights of the patients in healthcare system with special focus on the right to health of children.

The basic thoughts of the project of right to health have already strong roots in the practice of the Hungarian ombudsmen, there have been several investigations initiated into the problems of healthcare, the operation of health institutions, and questions of the enforcement of patient's rights.

In addition to the control of law enforcement by the authorities the

**Ombudsman's practice** considers health institutions as being within the sphere of organs offering public service for the investigation of the operation of which the Ombudsman is empowered. At the same time it is also true that the competency of a meaningful investigation into issues related to healthcare is rather limited: there is no possibility of investigating every grievance, particularly the medical-professional and ethical questions from the angle of constitutional rights. The Parliamentary Commissioner cannot take up a position in relation to claims for compensation either, as any decision in these issues is within the competency of civil courts.

The annual reports of the general Commissioner show that complaints that are related to healthcare, patients' rights and the activities of the proceeding authorities (such as the National Public Health and Medical Officer Service or the National Health Fund) as well as to public healthcare providers (hospitals, polyclinics, GPs), or submissions objecting to legal regulation and as a consequence of reports published about investigations during the almost one and a half decades of the Ombudsman's practice have occurred in a not negligible number.

I believe the child is an inevitable actor of the health project for whom the first step is the moment of birth. It is the highest and last indicator of the quality of the pregnancy of mothers. Wherever the assessment of the healthcare and patients' rights of mothers giving birth where they go for delivery begins it is there where the first quality component of the new born baby's life starts.

The issues related to the "**basic rights friendly**" (**mother and baby friendly**) **delivery**, the topic of the so-called rights of expectant mothers constitute a special and separate area within the Healthcare Project of 2011.

As an antecedent to the Ombudsman's practice is a standpoint issued in relation to *planned home delivery* issued in October 2007. In his standpoint the Commissioner called attention to the fact that he considered an early assessment of the given situation necessary from the angle of human rights and basic constitutional rights in the interest of an early elaboration of a properly founded legal background and information of the public about it all. Three years later, due to the failure of the development of regulation, the Commissioner again called the attention of the legislator and of the broader public to an

early legal regulation of the professional minimum requirements, legal and ethical conditions of the safe circumstances of planned home delivery.

In his statement of 2010 the Commissioner stressed that there was no rule either among the domestic or the international legal norms on the basis of which planned home delivery was prohibited or at least limited. At the same time it was also beyond doubt that the intention of a pregnant woman to decide whether she wanted to deliver her baby in a healthcare institution or at home (or in a house of birth), that is outside an institution is such an issue of fundamental rights as expounded above the safeguarding of which can be interpreted as an objective task of the state in institutional protection. In other words: it is indispensable that the state should arrange for the protection of the life of mothers in labour and their babies by legislation and other organisational measures such as by establishing the set of professional requirements.

The legal position of the Parliamentary Commissioner was supported by the ruling of the European Court of Human Rights on the *Ternovszky vs. Hungary*<sup>1</sup> case passed on 14 December 2010, that the total lack of regulation of home delivery violated the right to private life as stipulated by Article 8 of the European Convention on Human Rights. The position of the Court was clear in so far as that the right to private life included the right to choose the circumstances of delivery.

The argument of the Court states that the passage of a governmental order on petty offences threatening midwives with a fine if they assisted home delivery represents interference into the exercise of the rights of the applicant and of pregnant women similar to her. The Court was of the view that threats with sanctions of petty offence and the lack of special and comprehensive regulation limited the decision of the applicant concerning home delivery which violates and leads to the limitation of the right to private life and the *principle of predictability* in a narrower sense.

“*Basic right-friendly*” delivery is a much broader concept than planned home delivery, and its starting point is that it considers the freedom of mothers to self-determination and to private life as well as the rights

<sup>1</sup> Case of *Ternovszky v. Hungary*, application No. 67545/09.

of the embryo and the delivered baby, and their highest-level interests by paying attention to the fact that the interests of the mother and the embryo/baby characteristically coincide.<sup>2</sup> The basis is that **natural and undisturbed delivery** is the norm, in harmony with the international, WHO and Union standards, within the framework of the constitutional and legal safeguards, and decisions based on the medical profession related to delivery (such as risk assessment) can be made on that basis. It is essential to develop safeguarding rules and mechanisms against the maintenance of the quasi sick status of the mother, of the pregnant woman and against the unjustified paternalist interferences, such as a lengthy and unjustified separation of mother from the child after delivery.

The Parliamentary Commissioner wishes to pay attention to the following in the field of the “basic right-friendly”, of mother and child-friendly delivery, setting out from the right to human dignity, to the freedom of the private sphere and self-determination and from the principle of informed agreement based on the complaints received:

1. Are the fundamental constitutional rights realised (self-determination, information) and the safeguards included in the positive legal norms of the Act on Healthcare, do the health care institutions properly observe the valid legal norms and do the control organs see to their observance?
2. Is it necessary to elaborate a law for pregnancy that would go beyond the classical patients’ rights outlook, the possible reform of the Act on Healthcare, the creation of a specific sui generis positive law in relation to pregnancy, delivery, confinement, breastfeeding, etc?
3. In harmony with the major objectives of the project in what way could information, legal consciousness related to the issue be enhanced and dialogue promoted?

In 1997 the Child Protection Act emphatically and expressly made it a task of the Ombudsman dealing with citizens’ rights to protect children’s rights as there is no autonomous ombudsman for children’s rights. Based on the Act, I try to promote the protection of children’s

<sup>2</sup>Naturally there can be exceptions, such as the issues of the termination of pregnancy, of abortion in particular.

constitutional rights by special means. It is the Ombudsman's traditional task to investigate into violations of children's constitutional rights coming to his attention, and to initiate general or specific measures for their rectification. As a proactive work, in 2008 we started a special six-year project on defending the right of the child.

In 2011 we have focused on children's right to health. The self-destructive attitude (drug, alcohol abuse, smoking, Internet dependency, other risk seeking attitudes) of youth and children, their increasing aggressiveness and decreasing level of knowledge and capacity, physical-sexual and emotional abuse of children within the family and in school, their vulnerability initiate huge challenges for the society.

I started investigations ex officio as follows: drug and alcohol abuse; corporal punishment and other forms of abuses, sexual exploitation, child prostitution, school alimentation, sport and leisure activities, missing children, child psychiatric care, healthcare and accessibility of disabled children, system of school doctors, nurses and dentists.

All the so-called **dignity projects (for the homeless, for the disabled, for the elderly)** have been linked in some way or just opened the door towards children and the young. **The most important indicator of any thinking on human dignity is the relation of children to dignity.**

I am convinced that the healthy future of a society depends on how children think about homelessness, disability or of old age.

Budapest, July 2011.

Prof. Dr Máté Szabó





# 1

## About the “Human Dignity without Barriers” project (2008)

### 1.1

#### Framework of the project

The Ombudsman initiated a special, complex project to defend the human dignity of our homeless fellow-beings and those who are at the risk of losing shelter. The aim of this extensive initiative and warning, and the related investigations is to tell us not to avert our eyes, but to find a long-term sustainable solution for homeless people.

*”Dignity on the margin”* shall not mean that a person without home is out of law. The right to human dignity is the basis (a “mother law”) of fundamental rights. It means there is a legal right of everyone which is inalienable and inviolable.

During our investigations and by the concrete cases seen a sharp social crisis has clearly emerged, which has been present for decades in our society. This crisis has led the society from the fact of poverty, through exclusion, loneliness at the periphery, and resignation to disregard human dignity and marginalisation. The homeless person living on the street lost his dignity, so did the society itself, with its indifferent attitude.

The aim of the project was to prevent the spread of this phenomenon, to reconstruct the quality of human dignity and equality. We raised questions where the answers could be abstract from the aspect of fundamental rights, and also everyday questions with the help of social workers, local governments, officers, and citizens (during our workshops and expert meetings).

We had to make this sociological process clear also for the wider

public which transformed defencelessness due to weak interest articulation into a real limitation of rights.

We tried to call the attention of legislators and also the operators of law that the primary constitutional obligation of the state is to handle the problems of backsliding.

It was necessary to confront the institutional strategy of the state with the survivor strategy of the homeless people. We had to explain that the “contravention of moral barriers” is nothing else but a necessary reaction, what the civil society could handle effectively only with the creation of equal opportunities based on the respect of human dignity.

As the official opening event of our project we organized an *exhibition in spring 2008* from the works of homeless artists of the “*We Are*” Association in the Main Hall of the Office of the Parliamentary Commissioner for Civil Rights.

The Ombudsman’s Office organised several *workshops* with various actors ranging from social workers to representatives of the Ministry of Social Affairs, where “best practices” employed in other EU Member States were considered. It also sought avenues of possible cooperation at international level. The topics debated appeared in Hungarian scholarly journals.

We invited several experts to our *first workshop on homelessness*, such as social workers working on a daily basis with homeless persons, representatives of the emergency service, the police, etc.

“*Dialogue Instead of Barrier*” – Workshop I. in April 2008.

It is a hard, long and complex task to defend the rights and dignity of people living without any shelter, in deep poverty and to reintegrate them into the society, which needs close cooperation and common efforts of the public sphere and the civil society.

This was the first time when these different actors dealing with homelessness were sitting together and discussing about the existing core problems and possible solutions. However, though the approaches of the representatives of the social care institutions, civil organizations, the Churches, the emergency service, the police, the local authorities, and the Ombudsman are different, they have a common field: the respect of human dignity as a fundamental right. During the discussion it came up clearly that visible homelessness

is “only the tip of the iceberg”, the danger of becoming homeless is threatening hundred thousands of people. The threatening dangers are particularly the begler’s mafia, the credit policies of banks and other financial institutions, the even more expensive prices of public services, the unsolved future of the youth leaving care institutions.

The problem of homelessness cannot be treated by a single action only, or short-term solutions. Simultaneously the demands and necessity of prevention, care provision, and reintegration also emerge. Handling these questions does not depend only on money. A Hungarian town of county rank, Nyíregyháza has organized employment and day care together with civil organizations and the Churches; it tries to prevent people from becoming homeless with subsidies for rent. Moreover, the homeless provision which is based on individual autonomy, freedom and cooperation is cheaper than institutional care with its many well known side-effects.

The problem of homelessness could not be solved with exclusion. We cannot put the sign of equality between criminality and homelessness. Data of police shows that 3–4000 crimes per year are related to homelessness, but in many cases the homeless persons are the victims of crimes.

The concordant conclusion of the workshop was that the experts have to take into consideration the viewpoints of local authorities and the dominant society, too. At the same time it is not acceptable to refer to “the interest of the society” when building barriers either symbolically, or in practice.

A second workshop was organised, under the title “*Becoming Homeless*”.

With the motto “*Let the first step be prevention*” the conference about becoming homeless continued in the Office of the Ombudsman in May 2008.

On the initiative of the Ombudsman a dialogue was held about the reasons of becoming homeless with the relevant NGOs, experts of institutions, the Ministry of Labour and Social Affairs, the Bank Union, representatives of local authorities and the police. The participants agreed that the state should take more serious efforts in terms of prevention.

This freedom–friendly solution is more efficient and costs less money than the treatment of the already existing homelessness. Determination should be shown against stigmatization and prejudices; instead of sanctions the forms of cooperation should be found, where the state can attend – side by side with civil society – as confederates of the citizens who got into grievance.

Among the numerous reasons of becoming homeless there are such typical situations in life from where a straight way can lead towards extreme poverty and the lack of perspective: loans received with unfavourable conditions, quick loan or a divorce. Elderly people, young people who got out from state care, or those suffering of mental disease and due to the closure of the hospital (e.g.: OPNI) and had to return home, but actually landed in the streets.

The conference organised in the Office of the Commissioner paid great attention to the development of the credit and the debt spiral, and connected to these problems the more efficient tools of bank clients for the protection of their rights and also the importance of debt management.

The participants also discussed the opportunities of people getting out of prison, and the contradiction between the national situation of residence and the anomalies of judicial enforcement. Among people living out of necessity in the streets there are more and more youngsters, uneducated ones, not having any chance of getting employment, all being in a very hopeless situation.

The solutions are complex and are for the long run. Among others there is the construction of social rented dwellings and assistance for the acquisition of homes or sublets or assistance to obtaining a vocational qualification.

The more efficient prevention of becoming homeless is not only betrayed by the lack of financial assistance, but by social prejudice suggesting that people can become homeless as a result of the fault of their own.

There is need for social and professional conversation, where there is an agreement in the field of fundamental rights and the protection of human dignity, and the Parliamentary Commissioner for Civil Rights coordinates this conversation. The Commissioner indicated the guidelines of the project in his concluding words.

The next conference – analysing the possibilities of the ways out – about the protection of the rights of the homeless is going to take place in early autumn.

In September, the Commissioner and the participants signed a document called *Social Charter* within the inaugural framework, which stated the most relevant problems and the solutions, as according to the Commissioner.

The final conference, themed “*The alternatives and solutions of homelessness*”, was very successful as many participants were committed to our project. Our special guest was *Johan Gortworst*, from the *Federatie Opvang* (Shelter Foundation) of the Netherlands, who gave an excellent presentation about the Social Support Strategy project and the well-working examples of The Hague, Rotterdam and Amsterdam. There are many methods and fields to find the best solution, including the building of social rented dwellings, subsidizing sublets or supporting to acquire skills. There are existing systems: in some cases the adequate legal conditions could help, in other cases legal awareness-raising and client-friendly procedures are needed.

Finally, the *Commissioner issued reports* that have resulted from his investigations conducted in the framework of this project and were as follows:

- *Parapeted benches*
- *Attitude of the security guards/Budapest Public Transport Ltd.*
- *Dept spiral*
- *Procedures of court bailiffs*
- *Begler’s mafia*
- *Accessibility of ID/cards*
- *Personal bankruptcy*
- *Eviction.*

Though the special project about the human dignity of homeless people has been completed in 2008, there are still consequences of this focused work which also demand a form of continuity in the actions of the Commissioner.



*FEANTSA*. The European Federation of National Organisations Working with the Homeless requested Prof. Dr Máté Szabó to represent Hungary at the Consensus Conference organized by the end of 2010. FEANTSA is an umbrella of non-profit organisations which partici-

participate in or contribute to fighting against homelessness in Europe. It is the only major European network that focuses exclusively on homelessness at European level.

PROF. DR MÁTÉ SZABÓ, Parliamentary Commissioner for Civil Rights had the honour of being awarded the *Prize for Homeless People* in the year 2009, by the Hungarian Public Foundation for Homeless People, which he received on 14 January 2010. The Prize was given by the President of the Board of the Foundation on the coldest day of the year – according to statistics – which causes very painful suffering to homeless people. The prize is given to those supporters who give substantial help to the improvement of the situation and the quality of life of homeless people and to the solution of their problems.

Winner pictures of the Ombudsman’ drawing competition for children about human dignity related to homelessness (first picture made by Fruzsina Nyárai 11 years old, second picture made by Máté Zavaschi 8 years old)



## 1.2

## Homelessness in Budapest: Report of 2011

*Is there a solution and what is it for the problems of homeless people appearing in public spaces?*

At the time of the system change it was the blockade of the Budapest South Railway Station of the capital and elsewhere the development of the set of institutions handling homelessness. The social scientist Mr Péter Győri, one of the authors of the Social Charter signed on 22 September 2008, said in our workshop discussion that homelessness used to be a problem of the right to freedom before 1989, because it meant the limitation of the freedom of residence and the appointment of forced residences in the totalitarian and autocratic system, whereas it had become an exploding social problem after the change of the system, and the limitations of social accommodation and the losers of the free property market appeared as a new social group parallel to the elimination of forced conditions. We should remember the events of the years of almost twenty years ago, when the Budapest South Railway Station was occupied for longer time in January 1990, by groups of the homeless, coordinated by their spokesman András Nagy Bandó. The specificity characterising Hungarian homelessness was also mentioned by Péter Győri, namely that the rented flats of big cities were largely privatised making groups of people owners who soon fell off their newly acquired possessions due to the lack of economic and cultural capital, but had no alternative of obtaining rented accommodation.

At the same time Hungarians without shelter share the system of global neo-liberal capitalism. The report of the European Parliament passed on 9 October 2008, on European poverty promises the elimination of homelessness out in the streets and the problem of children living in the streets in its member countries by 2015. Up to that date it expects more effective “winter emergency plans” from the Member States and wishes to make arrangements for accommodating the homeless. Would financial and other crises allow for the realisation of such aims?



*The starting point for managing homelessness in Europe  
and in Hungary*

How should we consider our fellow citizens not having a shelter from the angle of citizens' rights? If we wish to utilise the nice and simple model of the unfolding and emancipation of human rights as defined by T. H. Marshall then the current process is *de-emancipation*, or “*de-mancipation*”, an opposite process hitting a social group. Marshall's scheme indicates the ever widening process of the content and extent of human rights by the wavy movement of ever broader concentric circles. The condition of the citizenry at first manifests itself in the equalisation of civil and private rights between master and servant, man and woman, etc. After several generations it would be followed by political rights, election and eligibility, by the various strata of assembly, speech, etc. Next ever newer generations of human rights would appear, such as social rights, the right to a healthy environment, the freedom of information, of self-determination, etc. This all-social, global dynamic which by far has not reached every country and group, and not free of contradictions by itself, is becoming a reversible process among those living without shelter, and the global drifters not having a real citizenship. In our case the condition without shelter which entitles people to get social care may lead to disturbing the pattern of the historically stratified citizens' rights.

How do the rights of the homeless assert themselves? And how is the right to a healthy environment and a high level of physical and mental health realised? How are citizens' quality and its political elements realised, together with the right to property and personal self-determination and autonomy? They are just images of desire for our fellow citizens living without basic certificates and rather hiding from the authorities and provisions, who keep on being squeezed out of the basic strata of citizens' rights! *Inclusion* is the citizens' legal trend in the welfare democracies of the world; it is the process of an ever fuller involvement of citizens as subjects of law. The majority of the homeless, however, are in *exclusion*, and existences having lost their shelter in the process of exclusion are dropping out also from the clientele of the state and of legal institutions ensuring human dignity and a sense of identity.



The famous saying of Anatole France is often quoted, which says that the law prohibits the poor as well as the rich to sleep under bridges. The equal standard of citizens' rights is reversed in the case of people living without shelter and leads to a social and cultural exclusion and a self-destructive way of life. Examples taken from the US are quoted how the authorities regularly collect and destroy the last personal items of the homeless as dangerous waste from public spaces in the American democracy promising unlimited private ownership, even though those objects were the last signs of their insistence on possession, and they are squeezed to mere existence. Where are the borderlines of political, social and individual responsibility and the limitations of the protective obligations of institutions against this challenge? How far is it a state and how far a civil and church task? The Churches offer the house of God, the state offers a common homeland, specialised care offers the expected extent of social care, civilians offer their voluntary work and their donations to the homeless.

But what does the group of the homeless offer to society? Has every one of them got to the periphery of society outside one's own fault? Can one differentiate among them, or does the requirement of human dignity which is for everyone set up the need for "*humanitarian aid of domestic policy*" to the social state based on law? One is faced with a series of dilemmas, and one is confronted against them also by the images of homelessness on the day of solidarity, too. Do they endure their destiny properly, or are they accompanied by illegal and aggressive forms of behaviour and the world of crime? The image of the homeless is ambivalent, having several meanings, and manifests a variety of lives squeezed to the margins and ground amidst the forces of exclusion.

This is why their problems are important from the angle of the practice interpreting the state based on law and of citizenship considerations represented by the Ombudsman, indicated by the motto and the emblem attached to it which represents unlimited human dignity by a human form stretched on a bench without an arm support, but even the picture does not show any fixed point for him, though it is also the task of our constitutional values and institutions, because human dignity cannot be limited without its violation.

*European alternatives?*

Twenty-first century Europe does not want to manage but to liquidate this many-sided social problem. Hungary is part of the European processes in this respect also as the number of people living in the street is growing here as well as there. Public opinion reacts to it and decision makers also consider it inevitable to find solutions for preventing people from becoming homeless and for mitigating the troubles of those who are already out in the streets, trying to offer them shelter while respecting and safeguarding the requirement of dignity that is the due of everyone. Therefore the problem is not merely a national problem anymore. The Commission of the EU and the FEANTSA (the European Federation of National Organisations Working with the Homeless) as well as the European Parliament jointly called a Conference on Homelessness for December 2010, which tried to make progress towards the creation of a coordinated European homelessness policy. It was also worded at this Conference that joint and urgent measures are made necessary by two essential circumstances.

In Europe the profile of the homeless has undergone transformation everywhere. Earlier the dominant group consisted of lonely, elderly males hit by problems of alcohol and drugs, leaving total institutions (psychiatry, prison, etc.) and having no shelter and job; today families with several children, perhaps of foreign origin, women, children and young people have also appeared as a consequence of the crisis. On the other hand, a new kind of migration also justifies the development of a comprehensive homelessness strategy of the European Union. If, for instance, good solutions are evolved in a country, region or city for managing homelessness it almost automatically results in the migration of poor people and the homeless living in regions in a worse position to those places. In other words, nothing else happens but that the gravity of the problem is shifted from one place to another (one should only recall the novel “homeless tourism” causing difficulties to the Viennese city government).

This is why a European coordinated action and the Brussels event preparing it have placed the prevention of homelessness and effective and immediate measures against the various types of homelessness into the frontline. The immediate aim is to offer alternatives against sleeping in the streets and in public places, and to keep the needy

in community shelters only until they are not assisted to find alternatives of personalised accommodation and conduct of life. An even more comprehensive prevention and reintegration require European, national, regional and community as well as settlement coordination among such professional organisations and areas of public administration which have had no or hardly any such experiences (such as settlement development, social and labour affairs, healthcare, child protection and drug prevention-psychiatry). Great attention should be devoted to promoting the individual adjustment of people who had been forced to carry on collective lifestyle such as in the situations of released inmates and children becoming adults who had been brought up in institutions and reformatories and would start life anew.

There are functioning national patterns. In countries like Finland, or in regions like Scotland efforts have been made to allocate accommodation to everyone in keeping with the person's condition and to liquidate transitory shelters and warming rooms as well as sleeping in the street. To all this proper social housing, financial and personal resources as well as group- and person-specific therapies and therapists were needed. At the same time part of the contributors to the Brussels Conference considered the total elimination of homelessness as Utopia or in the distant future as it can be traced back to such structural problems and their unfortunate meeting with individual destinies that would make total prevention and elimination impossible.

### *Hungarian realities*

Duality can be seen in Hungary as well, namely that the exploration of causes leading to homelessness and mitigation of the already difficult fate of the homeless are more unambiguous on the level of words and intentions than in daily practice. There is no change in that one of the central topics of the press is the situation of people freezing in the streets in winter. It is new that the economic and financial crisis (including the tragedy of tens of thousands of people in terror of the prospect of eviction who had taken loans in Swiss Francs rapidly becoming more expensive for their housing and hence unable to pay the instalments) squeezes a changing composition of groups to the streets and under the bridges, or at least it is a serious threat as a possibility. The present conditions of some institutions meant to help those who

are already homeless would preserve the hopeless situation of those cared for, they cannot offer long-term or at least real help in the form of a home to those in need who contact them.

For instance one of the most recent Ombudsman’s investigations conducted in a transitory institution in a pre-fabricated building which was a former Soviet barracks in the countryside used for placing homeless persons and families found neglected surroundings and technical conditions requiring renewal. Summer rains percolated through the four-story building and water reached even the electrical wires and the rooms where people stayed became mouldy. However, the institution of a foundation operational at the outskirts of the town could not apply for development resources and for the cost of preserving the condition of the building just because of its status (namely that it was at the outskirts). After steps taken by the authorities finally it did renew things out of the innumerable items requiring repair and proper living conditions have been created for the residents as well as employees. The hygienic situation criticised earlier and the condition of the pieces of furniture also required changes to allow for a cultured way of life. But as the solution of many other problems this was also largely dependent on the human factor. The staff have been trying to achieve what is best by undertaking a characteristically great burden and that too, despite all difficulties.

At the same time there are encouraging though by far not generally asserted patterns which are being attempted to be implemented through former tools or ones just under development for managing the problems in cooperation between the government, civil organisations and the Churches. A common element besides offering shelter and next lasting accommodation is complex assistance in the longer run, as well as developing the self-care activities of the homeless. Transitory shelter should not lead to returning to the street but towards a fast and personalised solution of the problems of accommodation and conduct of life. The Brussels Conference tried to set common deadlines for it on European level, but Europe is of “multiple speed” in this respect as well.

The protection of human dignity and human rights makes it inevitable also in the Ombudsman’s work to investigate the condition of the human rights of particularly exposed groups including the homeless

and their relationship with the authorities. Right at the beginning of my appointment as Ombudsman I had to raise my voice in my report that has become noted under the name ‘parapeted’ against fixing inner arm rests to public place benches in a district of Budapest in the alleged interest of the comfort of those sitting down, but in reality to prevent the homeless to lie down. The sentence as a guiding line of my Ombudsman’s activity valid in every other field was worded in this particular case in 2007: “Human dignity without barriers”, and as a result of a drawing competition my unofficial ‘logo’ was also born, a stylized picture of a homeless person lying on a street bench. In 2008, I launched a prioritized one-year project for fundamental rights for the analysis of the causes, circumstances and consequences of homelessness, and the report on one of the opening investigations stressed that the practice of administrative exclusion and of the “street sweeping for the imagery” instead of responsible decisions cannot be implemented in a state based on the rule of law.

Recently the same problem has cropped up also in relation to a legislative action. As Parliamentary Commissioner for Citizens’ Rights I was forced to turn to the Home Minister of the Hungarian Republic in the issue of the modification and legal justification of the *Act on the shaping and protection of built environment* as passed in November 2010. Though the modification spoke about the proper use of public spaces and the competencies of local governments, it raised the suspicion that in reality the alteration would also serve squeezing out and driving away the homeless beyond the truly justified cases through threatening with fines and law and order measures. The suspicion was supported by the fact that an example for the possibility of prohibiting the presence of the homeless and of sanctions was included in the original draft of the Home Ministry, and though the text of the Act remained unchanged this example was not included in the detailed justification of the bill.

This modification of the Act is problematic because it lists what kinds of behaviour can be exercised properly in a public space but it is done only with general concepts of activities, such as “recreation” and “spending leisure”. Essentially such a use of general concepts (rubber rule) leaves it to local governments to freely assess in each case whether to sanction among others staying there as a form of life or sleeping on benches. I reminded the Home Minister to the theoretic-

cal statements of my ‘parapeted’ report issued in late 2007, according to which “all such administrative solutions or proposals trying to describe the necessary measures as responses to the issue of the urban image affected by the presence of the homeless in public spaces are not permissible and would carry in themselves the danger of abuse of the right to human dignity”.

The unpredictable authorisation of the restriction of rights of a nature of ‘blank’, lacking real legal moorings of the *Act on the shaping and protection of built environment* may not bring about serious consequences in constitutional theory but on the level of the daily implementation of law in the realisation of the fundamental rights of citizens and it is the constitutional duty of the Ombudsman to signalize it in advance.

Late last year an action plan was drawn up to put the subways of the capital in order, including the removal of the homeless permanently living there. In early 2011, just after the New Year celebrations but before the municipal budget was drawn up I had a rapid study made with my associates in the streets and subways of the capital. Actually there were no homeless or only some in ‘transit’ present in the major subways or traffic hubs. People questioned, including the homeless themselves or street social workers as well as local government experts said that the alternative (shelters, homes, warming rooms, other temporary solutions) offered to them was acceptable and the subways and squares were ‘clean’. It affected a few dozens of people. There are several thousand people without a home and several hundred people are without shelter in the capital. The lasting solution of the situation is possible by a well-considered complex program and the rigour of the law is unsuited for it.

#### *Quick report on the situation of Budapest in January 2011*

One could learn from reports by the press that once again several people died of cooling due to the cold weather in late 2010. The media also reported that the Mayor of the capital city of Budapest declared several subways as public spaces ‘protected’ against the homeless and he gave a period of grace to accomplish this aim up to the middle of December 2010. In view of the fact that the principle of legal security in respect of the problem as well as a suspicion of abuse or the direct danger to the rights to human dignity and social security emerged we

ex officio investigated the case in the interest of preventing further tragedies.

This time we made a rapid survey of the momentary position of the homeless living in the capital. We mapped the “homeless policy” of some districts greatly affected by homelessness in order to explore, as already in several other cases, the current conditions in the street related to the homeless and care for the homeless as it could be experienced in January 2011, as well as plans concerning the institutional background. My associates visited the subways and railway stations where they checked the practical realisation of the measures of ‘clearing’ by the Mayor promised by the end of 2010, with special regard to the winter conditions. In addition we contacted four local governments and the Hungarian Maltese Charity Service; we asked for information from the Budapest Police Headquarters and from several civil organisations. (In this procedure we did not investigate in detail those changes of legal rules which would allow local governments to take measure(s) against homeless people.)

### *Subways, points of tolerance*

We started to gather information on the area of Lehel Square, Nyugati Square, Ferenciek Square, Nagyváradi Square and the Budapest South Railway Station, Batthyány Square, Blaha Lujza Square and the Budapest West Railway Station, and also walking through the subways in those places. Our general experience was that no homeless persons living in the subways were found. Policemen and public space inspectors were posted at several subways but measures taken by the authorities were not experienced in the morning hours and in the forenoon. Our experiences were different at the so-called *survival* points or *tolerance* points formed on the territory of Budapest West Railway Station and at Budapest South Railway Station. These “establishments”, as we understood, were developed upon the initiative of the Maltese Charity Service<sup>3</sup>.

<sup>3</sup> Each night 15 to 25 people sleep at the survival points, several of them stay there during the day as well. They solve the protection of one another’s belongings so they can leave this base for a short time, and the most demanding ones can take a shower in a premise just a couple of tens of metres away against HUF 300. As they say they are afraid of their alcoholic and violent fellow sufferers who try to stay in some part of the heated building of the railway station during the day.

A room within the building of the Budapest West Railway Station was appointed for warming and as a survival point. It is a room ensuring crossover at the side of the building which is, however, closed down between 22.00 pm and 6.00 am. Two heaters are there in the building capable only of partially heating the room of big internal height. Two mobile toilets were placed next to the room. After 6.00 am the homeless are requested to leave and the room is disinfected. At that time the homeless go to the daily warming rooms found in the nearby streets, and presumably also appear in the subways. An aid organisation was given a place free of charge from the Hungarian State Railways a few metres from the survival point where they distribute warm soup and tea each day, and pay attention to waking people up who slept in unheated places and are accompanied to a warming room.

*District local governments visited (Districts V., VII., XI. and XIII.)*

District V (Inner City and Lipót City) is well off in relation to the institutional care for the homeless. Based on a contract of provision signed with the local government, the Protection Charity Association of the Lutheran Brotherhood of Hungary performs the tasks of the local government related to providing for the homeless. They ensure care for and the day and night provision for homeless persons staying in District V or having a place to stay and an address. The Association runs a soup kitchen, daytime warming rooms and night shelters, and the Protection Healthcare Centre is one of the most important backgrounds of street social work together with their institution for the homeless called *Heated Street* and located in Dankó Street in District VIII., and the convalescence home operating there. It is revealed from the 2009 professional report of the Association that it performs its work by a car of its own, by six street social workers and by persons on

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Sometimes six policemen come together but at points in time when the activity of violent persons is not typical. A security guard stays in the location from 10 pm to 6 am, but according to the homeless questioned they would rather guard the low-capacity heating unit and not the homeless endangered by their peers. People concerned reported that they would not use shelters known by them because of fear from thieves and the violent alcoholic fellow sufferers, and they have not received any information about the newly developed shelters and social subtleties though possibly they would use them.



duty of Heated Street. During 2009 they were in regular touch with 300 people. Their services include checks of cleanliness and disinfecting treatment, they have continuously carried neglected people of deteriorated health condition to the healthcare centre of the institution for medical check and for disinfecting bath. They are in continuous contact with the family assistance service of District V and draw up a monthly report about the emerging cases and problems, and they also consult associates of the service.

The Notary has also mentioned that they *did not plan the approval of an order* in the District *which would allow for sanctioning the homeless found in public spaces*. They do not carry on any practice that would drive out the homeless from the District. Places known and most frequented by homeless people are the neighbourhood of Kossuth Square and the area extending up to the Boulevard, and Ferenciek Square as well as Calvin Square. In his view they are able to manage the problem in the District and the institutional background is also adequate; the District even undertakes an additional task by the running of a night shelter.

Provision for the homeless is also operated on the basis of contracts with civil organisations in District VII. Thus the *Maltese Charity Service* runs: day care, facilities of washing and bathing, of heating food, distributing tea, organising programs (film club); *Golgotha Christian Congregation*: day care with a holding capacity of 120 in a renewed cellar, shower for persons of limited mobility, toilet, film club, distribution of clothing, warm lunch, breakfast, tea, facility for washing; *Christian Church of Saint Nicholas of Myra*: temporary care; *Hungarian Red Cross*: street care, subway at Budapest East Railway Station; *Shelter Foundation*: street care, other parts of District VII., Blaha Lujza Square belonging to two districts.

The head of office did not notice any intention of the elected body to availing themselves of the penal opportunity offered by the legal norm in relation to the presence of the homeless in public space. The presence of the homeless is not characteristic of the District and they attribute it to a well functioning and successful cooperation with the service providing organisations they have for years. According to his wording homeless persons who used to live in the subways for years have been able to be 'cared out' as a result of their consistent work such as from the area of the subway at Budapest East Railway Station.

In District XI the dimensions of the green areas are also manifest in the number of homeless people and in the size of the related problems and tasks, but there is intensive cooperation among those who provide for the homeless. Perhaps the local government keeps the interests of the residents and voters more emphatically in view yet they plan for long term on the basis of professional considerations and look for alternatives of solution with special regard to the rights of all the stakeholders of the complex issue (the homeless, social workers and residents).

*It was a primary, fire-fighting solution of the issue of the homeless to ‘squeeze’ the homeless to the outer regions from the inner ones of the District which obviously did not solve the problem; it only made it a problem of the outskirts. According to their view the provision for the homeless cannot and should not be channelled towards an institutional direction, but while a quest of solution requiring wide joint professional effort is in progress it should be emphasized that even the homeless people have obligations.*

In relation to the authorisation to create orders of their own the Notary explained that the local government of Újbuda had no such draft order. Such an *individual representative’s motion* would be soon presented to the body of representatives which requests financial support to the opening of a new day warming room. The local government meets its legal obligation for care within the framework of contracts and the task is performed without fail by the *Maltese Charity Service* and the *Self-help Association of the Young*; moreover it goes beyond as there are shelters for the homeless maintained by the Municipal Government in the District. It was mentioned as a special situation that sometimes the development of the infrastructure of care would only enhance the problem because it would ‘lure’ homeless people staying in other Districts to come over here. *They do not agree* with a modification of the legal norms that would allow for classifying homeless presence as a petty offence.

In District XIII the homeless, as they say, do not go to the shelters because they are mugged there, they cannot go with their spouses, and cannot take along their dogs. Consequently better and more equipped as well as safer shelters than the present ones would be needed which would, in their turn require more resources, whereas the new municipal budget targets a significant cut of resources. The Notary also informed us that they carried on a far more complex and broad activity

than prescribed as the obligatory minimum by law. They cooperate with several organisations on the basis of contracts for provision, such as with the *Hungarian Red Cross* (day warming room, soup kitchen, night shelters), with the *Habilitas Kft* (employment) and with the *Nutcracker Foundation* (health screening among the homeless), and also with other *civil organisations* without contract but with high effectiveness. They run a separate working group the members of which are participating civil organisations, social workers and one police chief and a public space inspector each; a separate legal desk officer is in charge of homelessness-related cases at the social department of the local government as well as of the operation of a signalling system. The largest number of signals is received from the *citizens* but they also do continuous observations and social ‘patrolling’ when they try to supply the homeless with useful advice and information, at the same time it is difficult to persuade those used to life in subways to move in to shelters.

Currently they know about 50 homeless people in the District, this figure is about 100 in the summer period, but even then there *would be sufficient place* for them in the shelters run by the District, but they would rather stay outside due to the conditions (he also mentioned that there is a day warming room of a capacity of 150 people of the local government which awaits them with extended working hours in the crisis periods but practically it is never full). According to the Notary’s information the extended radius of the “clearing of subways” declared by the Mayor in December 2010, also included the subways of Lehel Square and Dózsa György Square of District XIII, and checking the *principle of zero tolerance* has been in progress in theory since early January, but the stakeholders were informed about it in advance by associates of the local government and by social workers (originally the Mayor’s guidelines would have included only the subway at Budapest West Railway Station of the district).

The Notary particularly stressed that they did not see the solution in sanctions, neither the body of elected representatives of the local government of District XIII was *planning to make an order* based on the authorisation to sanction the proper use of public spaces by law. The establishment of cooperation with the Municipal Government is considered as a precondition to any legislative step, as the issue of homelessness is not basically a district problem but a municipal one,

yet responsibility is being increasingly shifted to the districts. The Notary is of the view that the current legal locus is rather fluid and ambiguous, and currently there is no one to be responsible for the issue of homelessness centrally. It is not an acute problem in the District because they succeed in smoothly operating the system of care for the homeless in efficient cooperation. Attention was called to the fact that the mistakes of the relevant legal background and the system should be eliminated the sooner the better: *in its present form the state and the local governments spend significant resources for the care providing system in vain if the efficiency of the system of disadvantageous background burdened with contradictions is not improved.*

The assessment of the situation by the Budapest Police Headquarters considers the procedure of the police in relation to the homeless in public spaces as a positive one; no commander’s order contains any special rule concerning the homeless living in subways. According to information received from the Budapest Police Headquarters they work in cooperation with the Hungarian Maltese Charity Service this winter too, in keeping with the earlier practice. Consequently if they meet homeless persons in a crisis situation anywhere they inform the despatch centre of the HMCS and would wait for the arrival of the social worker on the spot. They were not given any task in relation to ‘clearing the subways’, the Budapest Police Headquarters does not perform any such activity.

#### *Findings of the investigation*

The Constitutional Court had expounded already when laying down the constitutional foundations of the framework of the state based on law, that “*dignity is a quality that is a corollary of human life by itself, therefore it is equal for every human being. [...] The human dignity and life of all is untouchable, irrespective of physical and mental development or condition and also of how much he/she has realised from his/her human possibilities and why that much.*”<sup>4</sup> All this also means that the dignity of a person living with disability, an incorrigible criminal, a minor, a psychiatry patient or a drug addict is just as untouchable due to this equality, as the dignity of homeless persons.

<sup>4</sup>No 64/1991. (XII. 17.) AB resolution.

As a result of the rapid survey of the situation I have found that despite all difficulties the condition of the homeless is generally acceptable due to the work done within the framework of contracts and to civil organisations working outside such a framework. At the same time, social processes resulting in homelessness have not disappeared; therefore the number of persons in need of care would not reduce in the future either, and would even grow according to some estimates. Based on care provision contracts signed by the Municipality the organisations contribute to the operation of the client service offices of the homeless, to the operation of offices promoting reintegration into the labour market, of public utility programs, healthcare provision, the running of crisis cars, to finding homeless people living in public spaces and to help them to access provisions. Rigour, threats by law and “social harassment” have joined the available resources and system of care. According to plans the Municipality would cancel its care provision-contracts with several organisations by 30 September 2011. Next winter, as put by the draft budget of the Municipality, two such organisations would have to perform the municipal tasks which already participate in the performance of tasks in districts. According to some calculations the cause of the homeless could be served by a significantly smaller capacity (cut as much as by 1000 places) in the winter as a consequence of budgetary “restrictions”.

At the same time the background of becoming homeless which had been already described in the Ombudsman’s report quoted earlier has not changed: “The maintenance of the home required a task increasingly difficult to perform by those having low incomes due to the constant increase of the public utility costs and particularly those of distance heating and water. The Parliamentary Commissioner had called attention already at that time to the fact that if the process cannot be slowed down it could lead to the disintegration of families and to the growth of the number of homeless people.”

The report quoted also recorded that *“I consider it unacceptable and at the same time carrying in itself the danger of abuse of the right to human dignity any such administrative solution or proposal aiming at it which attempts to word the necessary measures as a response to the “urban image issue” of the presence of homeless people in public spaces. Further on, any further measure making the basic needs of people living without*

*shelter more difficult cannot be constitutionally justified either.”* I continue to maintain this Ombudsman’s position. The reproduction of homelessness and the continuous rebirth of the problem is ensured by several known negative phenomena at present as well.

Therefore it is also obvious that the clearing of subways of homeless people under the pretext of the urban image and by “social harassment” does not serve the purpose of the reintegration of homeless persons into the society, neither does it prevent homelessness. These measures carry in themselves the direct danger of constitutional abuse of the fundamental right to human dignity in close relationship to the right to social security without a real development of the system of care provision which is acceptable even by the stakeholders.

When this volume is being edited the local governments have not yet availed themselves of their right to declare the use of public places as petty offence in certain cases, at the same time the modification of the regulation does carry in itself such dilemmas of the constitutional basic rights in relation to which I have ordered a separate investigation. I have requested the Mayor of Budapest in the interest of redressing and future elimination and prevention of abuse related to constitutional rights to revise his measures taken within the framework of the Program of Social Appeasement aiming at the “protection of urban image” which is violating the human dignity of the homeless, further on, I have initiated to him to pay particular attention to the standard of care for the homeless which should not drop when the related budgetary resources are being distributed in the interest of preventing people from becoming homeless and of a complex treatment of the reintegration of the homeless into the society.

#### *Opinion of the civil expert*

During the course of joint work the Deputy Chairman of the Hungarian Maltese Charity service summarised the most oppressing problems and the real ones of homelessness at a discussion when the situation was assessed. The image of a human being lying in a public place cannot be ‘disregarded’, not because of reasons of keeping public order but because of the principle of human dignity and because of commitment to a human being in need. In fact what is worse for the

homeless is an existence without an image of the future. Individual diagnoses should be drawn up in each case about the situation of the given homeless person, and setting out from it there would be need for a precise definition of target, planning an individual way out, next it should be promoted and also checked. While respecting the rules for data protection a register would be needed on the basis of which the despatch officer of a given organisation could be able to follow the healthcare data generated in relation to the homeless person and also the social measures already taken. No sanctions can be ordered against the homeless until they have no real choice in relation to the provision they receive. The concept of 'social harassment' includes the practice when the police repeatedly ask for the documents of the homeless staying in a public space (subway) at night and though he is not taken to custody and not forced to move he would consider it better to spend the night or the rest of the day in a place less frequented. It should also be remembered that seven times more atrocities are suffered by the homeless out in the streets than in the shelters established for them. In such places there are *lockers* therefore he did not agree with those who do not want to go to those shelters for fear of theft. It is rather the case that homeless people are attached to the places and locations they get used to, also to their fellow sufferers, and to their relative sense of freedom, and even with this background 80 people out of one hundred are ready to cooperate and accept the care provided for them.

During the past years cooperation between the majority of homeless people and the care-providing institutions has significantly improved. But if the sums so far available start to decrease and are being replaced by rigour, threats by law and 'social harassment' in some places, all this would violate the human dignity of the homeless and would make the work of those in the caring system more difficult and would not mean any solution in the long run. Such measures do not serve the social reintegration of homeless people nor the prevention of homelessness, and much less its elimination set as a target by the European Union.

*It is clear that life in the street and in public spaces cannot be a career for life, and this solution is only a forced survival reaction of those living without shelter. It is also a principle that homeless existence does not put one outside the rule of law. In view of the fact however, that care for its citizens is not*



*optional for the state, and particularly not one in the case of those who are in extreme need, hence the provision of care, responsible action and the considered operation of proper systems of care (see reintegrating) and of mechanisms guiding them out from that state, in another word, the solution of the situation by the state based on law is obligatory. This is that confronts Europe with huge challenges as well.*

*...and the numbers (15 April 2011)*

Hospital experts say that the number of homeless patients has been growing annually, and the number of fatalities has also been continuously growing among the homeless. The financing structure of care for the homeless has been altered, at the same time the extent of resources has decreased. Twenty-six contracts were cancelled with civil organisations in the capital, the Foundation for Joining Forces was wound up which used to organise winter care in Budapest during the past years. As the Shelter Foundation and the Maltese Charity Service are the appointed umbrella organisations in this field they would try to solve the series of question marks under their coordination but working together with other civil organisations. *According to the quick report of the February Three Working Group* social helpers reported that 1150 people lived in public spaces on 3 February 2011. As to the other homeless people: 2044 of them slept in night shelters, 2774 in temporary hostels, 500 in temporary accommodation and 1287 in temporary homes for families. In other words, one of these places of shelter together offered accommodation at least to 7755 people on that day.

During the winter an average of 64 calls were received by the despatch centre of the Shelter Foundation. The crisis car went out to people on 1639 occasions that stayed in public spaces and in premises not meant for accommodating humans. It carried 204 people to some kind of institution, to doctors, to the convalescence centre or to a shelter. The Shelter Foundation would make its proposal to Mayor István Tarlós up to mid-May what civilians (NGOs) can undertake of the innumerable tasks. What they would definitely insist on is the despatch centre and at least three crisis cars and that there should be a street service which can be called.

Despite all it was acknowledged that prohibiting the homeless to



stay in subways had positive consequences as for instance, such people could also be housed in institutions that could not be relocated for several years. The Program of Social Appeasement took up 116 homeless of whom 86 could be helped to accommodation. Post-care of those has been in progress and according to most recent information sixty of them are still in accommodation ensured by the program and cooperate with the social workers.

# 2

## “With Dignity – with Difference” – The special focused project about the rights of people with disabilities (2009)

“Nobody shall be injured just because he/she is living  
with any kind of corporal or mental disability.”  
*Basic thesis of the project of the  
Parliamentary Commissioner for Civil Rights.*

### 2.1

#### Theoretical framework

The Parliamentary Commissioner for Civil Rights has started a special project about the rights of people with disabilities in 2009. He has taken into consideration the special situation of people living with any kind of disabilities not only in Hungary, but in our wider world.

The UN has published a report about the data of people with disabilities of the world, where it states that:

- 20 % of the poorest people are living with disabilities, as estimated by the World Bank;
- 30 % of youth living in the street have disabilities;
- People with disabilities would have a greater chance to become victims of corporal, or sexual violence;
- 90 % of children with disabilities living in developing countries do not attend school;
- 97 % of adults with disabilities are illiterate.

All these facts considered, the UN declared that people with disabilities are the largest minority group. According to estimates 10% of the world population lives with some kind of disability.

The aim of the project of the Parliamentary Commissioner for Civil

Rights is to direct public attention to persons who live with any kind of disability specified by some legal means, trying to define the problems and stimulating the elaboration of possible solutions. The Commissioner's role is to defend the rights of the citizens. The Commissioner defends the rights of the citizens in general and pays great attention and responsibility based on cases of the Constitutional Court almost of the last two decades. He uses clear argumentation based on fundamental rights. The Commissioner realizes his responsibility in his office with some organizational changes; this year he appointed a leader of the project and invited warm-hearted and committed colleagues to participate. During the project – on the basis mainly of the right to human dignity – the Commissioner would focus on different questions of the rights of persons with disabilities.

#### *Legal framework of the project*

- **Art 54. of the Hungarian Constitution** (Act XX of 1949) defines at the first place of the catalogue of rights *human dignity as an indispensable, essential right of every human being.*
- **Decision of the Hungarian Constitutional Court 64/1991** (XII. 17.) determines the definition of human dignity, as a dignity which is a quality implied in human life, that is why it is indivisible and cannot be restricted. Human life and dignity is untouchable independently of physical and psychological levels.
- **Act XXVI of 1998 on the rights of persons with disabilities.**
- **Art 21. of The European Charter of Fundamental Rights** restricted all forms of discrimination.
- **Various UN Declarations.**
- **UN Convention on the Rights of Persons with Disabilities**, implemented in Hungary (after ratifying it as the first among the signatory states) by Act XCII of 2007.

The Ombudsman is a defender of rights. He acts with particular attention and responsibility, with proper attitude to the special characteristics of the rights of people with disabilities, using the cases of the Constitutional Court of the last two decades. The Commissioner realizes his responsibility in his organizational and administrative work. During the year he determines a problem or a concrete issue and tries

to make all efforts to handle the individual complaints, and direct the attention of the wider public to these issues.

The related fundamental rights of the investigations are the following:

- **Right to live:** Every person has the right to live, and it goes together with human dignity as a quality, which is indivisible and could not be restricted.
- **Human dignity:** It is untouchable, and independent from psychical and mental capacity, or development.
- **Non-discrimination:** It is not a possibility, but an obligation of the state to guarantee everyone living without any form of discrimination.
- **Social participation and inclusion:** We need a change of paradigm – based on the Madrid Declaration of 2002 – namely that people with disabilities do not need charity, but fair and equal opportunities and equal access to all social sources (e.g. to inclusive education, new technologies, health and social services, consumer goods, and services).

One of the Ombudsman’s aims is to draw public attention to people living with disabilities. He tries to raise a problem and outline the possible solutions, and with all these efforts promotes the enforcement and aggregation of the interest of people with disabilities.

The Commissioner cooperates with civil organizations, local authorities, ministries (especially with the Ministry of Social Affairs, Ministry of Education and Culture, Ministry of Economy), different committees of Parliament, who deal with the rights and interests of people living with disabilities. He initiates dialogue among the various parties aiming at an active network. He tries to streamline public discussions about the rights of persons with disabilities, and promotes the necessary change of paradigm.

### **Fields of investigations during the project:**

- *Non-discrimination*
- *Women, children living with disabilities*
- *Accessibility*
- *Equality before and under the law – circumstances of guardianship*
- *Freedom and security of person*
- *Own choices and inclusion in the community*

- *Freedom of opinion, access to information*
- *Right to privacy, respect for family and home*
- *Education*
- *Health*
- *Rehabilitation and employment*
- *Social protection*
- *Participation in political and public life*
- *People with disabilities in law-enforcement institutions.*

As a conclusion, the Commissioner uses his traditional legal means (handling complaints, ex officio investigations, etc.) to promote the enforcement of the rights of people living with disabilities, and tries to direct attention of the wider public to these very important questions and the existing problems in order to improve the possibility of inclusion and to make the quality of living with dignity better.

*Summary of all complaints and of the people with disabilities in the Office of the Parliamentary Commissioner for Civil Rights (1999–2008)*

Year	No. of complaints	No. of cases of people with disabilities	%
1999	5 617	6	0.11%
2000	6 002	34	0.57%
2001	5 264	40	0.76%
2002	3 860	36	0.93%
2003	4 540	37	0.81%
2004	4 992	55	1.10%
2005	4 769	45	0.94%
2006	4 038	26	0.64%
2007	3 981	60	1.51%
2008	3 800	37	0.97%
<b>Total</b>	<b>46 863</b>	<b>376</b>	<b>0.80%</b>

Taking up the “case of the disabled” as one of the possible fields of action of the Ombudsman’s institution is in harmony with Article 33 of the Convention which states that the signatories should “maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention.” Thus the Ombudsman can be a strategic partner of the movement for the disabled.

Naturally, cooperation can be imagined in an interactive manner but only if the fundamental structure of constitutional rights is considered and priority is accorded to it within a framework that can be accepted by the Ombudsman.

It is not easy to incorporate methods of investigation along the types of disabilities into the planned set of arguments for basic rights, and the backbone of the set of items to be investigated is to be determined on the basis of the particularly important Articles of the UN Convention as well as of issues discovered and found problematic by earlier Ombudsman’s practice. Naturally, some problems of major gravity should also be mapped (such as the special situation of people living with mental disabilities or of multiple disabilities), but it is the catalogue of the fundamental rights included in the Convention that is our starting point.

Consequently the most important aim of the intensive Ombudsman’s work in the interest of asserting the rights of people living with disabilities is to strengthen the spirit of the Convention and to promote the possibilities of the change of paradigm. According to the signalisations of organisations of the disabled a growing number of disabled students is admitted to universities and they still consider “joint struggle” important, thus an “intellectual stratum of the disabled is emerging” who are able to respond to the challenges of the 21st century with new vigour, and in the hope of a changing attitude would happily cooperate in the project of the Parliamentary Commissioner wishing to explore the rights of people living with disabilities planned for the year 2009.

## 2.2

### Our activities

*Workshop discussion: “Public Life – Differently”*

In the work lasting for one year we organised a workshop discussion entitled “**Public Life – Differently**” as part of the first professional program in April 2009. It was related to the right to vote of people living with disabilities, partly surveying the removal of obstacles and accessibility, and partly issues of those who have the right to vote, and

all this in relation to the sometimes limiting nature of the guardianship institution.

The topic of the event called attention to the fact that while in Europe almost 50 million people live with some health impairment in Hungary little attention is paid to the daily acknowledgement of their equal opportunities and rights, and to increasing legal consciousness which happens to be a precondition to social acceptance. The Hungarian legal system is still to properly adapt the document entitled *UN Convention on the Rights of Persons with Disabilities*, which, laying down the rights of people with disabilities, would guarantee their assertion. This in itself raises constitutional worries; hence the related modification of legal norms is an urgent task. The Commissioner for Civil Rights is of the view that the realisation of fundamental rights is not a financial issue but it would produce active citizens if one “invests into people”. The situation of multiple disadvantageous children with disabilities is particularly alarming.

According to the member of the Presidium of the European Disability Forum and chairman of the Budapest Association of People of Impaired Movement an environment made free of obstacles would be not only in the interest of the disabled but of the entire society. The society has made those living with disabilities believe that they are unable to represent their own interests, in other words their self-confidence was broken down. The decision makers of the political environment do not even intend to give them such an opportunity and have not turned to people living with disabilities requesting them to express their opinion in the forthcoming elections.

Preparing for the elections of the European Parliament representatives of the organisations of the disabled listed what made the autonomous decision making of their fellow sufferers difficult. The Chairman of SINOSZ (National Association of the Deaf and of Difficult Hearing), who was a candidate at the time of this program, but became an elected Member of the European Parliament as the only Hungarian living with impairment said that the basic problem was that people with impaired hearing could not get election arguments expressed orally. Those with impaired sight and the blind can cast their vote on paper only with assistance. Several election meetings and even many of the ballot stations cannot be accessed by wheelchair. The

Chairman hopes that the National Election Commission would realise these lessons through reforms.

Exercising the right to vote is one of the most important means of taking up public roles which is, however, barred by the Hungarian Constitution (Art. 70, para (5) for those living under guardianship of limited or excluded disposing capacity. That change of paradigm is necessary to the realisation of the basic rights of people living with disabilities, and it is the only good answer in the 21st century, one of its most important indicators of which would be to reconsider the factual and legal dogmatic assessment of legal and disposing capacity and the creation of an up-to-date legal environment.

Stressing all this, the participants of the event signed the *Memorandum* issued by the Parliamentary Commissioner for Civil Rights. We have worded the principles of asserting the opportunities and rights of the disabled and the tasks of the state and of civil organisations which should not only safeguard the life of the disabled free of discrimination but should also participate in making and implementing decisions and measures related to them.

*“With Dignity – with Difference” – Declaration of Principles*

Keeping in view the significance of the announcement of elections for the European Parliament in 2009, further on

noting that the exclusion of people with disabilities has become unacceptable,

acknowledging the obligation of acceptance and inclusion as well as of proper support deriving from the principle of “*nothing about us without us*”,

knowing that it depends on the attention of civil society but also on the political sphere how far principles laying down the equal opportunities of the disabled and practice can be harmonised, including the exercise of basic rights,

emphasizing that the Parliamentary Commissioner for Civil Rights is such a basic forum of legal protection which is able to influence public thinking in accordance with the expectations of the democratic state based on law, but acknowledging the limitations of this activity

it has become necessary to accept a *Declaration of Principles* based on the primacy of human rights in the interest of people with disabilities.



The Signatories of this Declaration of Principles state that

- The right to make one's own decisions shall be ensured to every person with disability;
- The practice which excludes certain people living with disabilities "in their own interest and protecting them" from making their own decisions and from the direct exercise of their rights;
- The state should act in the interest of creating solutions and laying down the legal foundations which would support and assert the self-determination and decision-making of the disabled;
- Representatives of the state have to recognise that measures should be taken for the possible fullest access to information and communication in the interest of the daily assertion of the equality of opportunity;
- State action is needed so that programs of public and higher education should, in all respects reflect the principle of full participation and of equality, and that the news media should positively represent people with disabilities, their right to equal opportunities, and the related responsibility of the state and society;
- The Signatories initiate and support campaigns of enlightenment about people living with disabilities and about the related policy with the message that the disabled are full citizens of our society who have the same rights and duties as anybody else has.

For this purpose it is also indispensable that all-round participation in public life should be ensured for all people living with disabilities on the same basis as for others. It is the primary task of the state to make it possible that people with disabilities should exercise their constitutional rights to the same extent and in the same manner as it is done by the other citizens, that they should participate in the elections, and after having had a real dialogue they should take part in the taking of measures and passing of decisions concerning them through channels of their organisations of interest representation. It derives from the Constitution of the Hungarian Republic and also from the UN Convention on the Rights of Persons with Disabilities, ratified by our country among the first ones, and hence it has become also an international legal obligation.

Solving these problems and building a society which is truly inclusive, of solidarity and offers homes to everyone is a complex process

the results of which should be sustainable in the long run. There are good examples, functioning systems: in some cases legal regulation can help, whereas elsewhere it is rather the promotion of legal consciousness, a client-friendly procedure, creative models of solution and active dialogues that are needed.

The Signatories of this Declaration undertake on this basis to contribute to the creation of the equality of opportunities for people with disabilities and their families by their activities and by calling others' attention in their own field. Budapest, 27 April 2009.

*Workshop discussion – “Private Life – Differently”*

As a continuation of the program the working group consisting of representatives of civil organisations, law courts, the academic sphere and of the related ministries, invited by the Commissioner, discussed those issues, problems and situations under the title “*Private Life – Differently*” which *made difficult or facilitated the daily life and family life of people with disabilities under guardianship*. An outstanding guest of the event was the human rights expert *MARIANNE SCHULZE* who is Chairperson of the Austrian Executive Committee of the UN Convention.

We have presented examples and cases to our guests that allowed for having a glimpse into the problems of the private sphere indicating that the institution of guardianship may, at times become a life-long stigma.

Supporting the self-determination and decision making of people with disabilities belongs to this field among many others, such as making the exercise of the right to vote possible, and information and communication made free of obstacles, all belonging to the tasks of the state and of civil society.

According to available data the Ministry of Justice estimated the number of persons placed under guardianship to be 35 thousand in 2001. The National Interest Representation Organisation of the Mentally Handicapped and their Helpers had almost 60 thousand persons on its record in 2003, and more than 67 thousand in 2009. In 2003 almost 36 thousand people lived under guardianship with excluded disposing capacity, and this figure was 43,734 in 2009.

On 13 December 2006, the General Assembly of the UN passed the *Convention on the Rights of Persons with Disabilities* (Convention), which

was ratified by the Parliament of the Hungarian Republic on 25 June 2007, with a 337 'Yes' votes, without against or abstention when the *Act XCII. of 2007* was passed. This UN Convention entered into force on 3 May 2008; hence the ratifying Member States have to comply with their obligations included in it without delay. Its most important requirement is the following: "States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life." (Item 2 of Article 12.)

The Government of the Hungarian Republic presented a *bill* No. T/5949 *on the Civil Code* to Parliament, which would abandon the rules of the valid Civil Code concerning guardianship and disposing capacity. The bill does not only consider as its basis the Recommendation No. R(99)4 of the Committee of Ministers to Member States on Principles Concerning the Legal Protection of Incapable Adults and Act XV of 2001 (which reworded the respective passages of the Civil Code) but also the UN Convention.

The Commissioner called attention to the fact that Article 12 of the Convention did not mention the institution of guardianship and consciously worded it as the exercise of disposing capacity. It is that change of paradigm which is in its background and is primarily manifest in its attitude to disability, and this change in the way of thinking is also present in Article 12 of the Convention, for it becomes unambiguously clear from the preparatory materials as well as from the commentary on Article 12 that one should primarily understand *supported decision making* under an institution helping the exercise of disposing capacity. The bill drawn up by the Ministry of Justice and Order also reflects this kind of interpretation of Article 12.<sup>5</sup>

*Therefore it is not a secret that we wish to interpret the Hungarian guardianship institution not only within the institutionalised framework of law but also in harmony with the possibilities and abilities of people with disabilities, naturally from the angle of human rights, and expressly considering the international assessment and up-to-date expectations of the international approach to disability.*

Experts in the cause of disability and legal experts who have participated in law making during the past years as well as judges experi-

<sup>5</sup> Report No. Az OBH 2405/2009. – [www.obh.hu](http://www.obh.hu)

enced also in this group of cases were present with whom we had active discussions about the anomalies of the existing juridical practice as well as about the essence of guardianship that may be applied to a limited extent in precisely defined groups of cases after a complex study of status conducted by civilians and experts of disabilities that would reflect the spirit of the Convention. The significance of the institution of supported decision making was emphasized in the bill as contrasted to the stigmatised life of those under guardianship and the practical impossibility of the elimination of guardianship of people burdened by certain disabled persons who were ‘condemned’ for such treatment without sufficient grounds.

Some weeks after the meeting the Chairman of the National Council for Disability Issues announced in an extraordinary meeting that general and other rules would replace paras 2.23 and 2.24 of the new Civil Code to be presented for final vote to Parliament, thus the institution of guardianship excluding disposing capacity may be finally wound up in Hungary.

#### *“The Autumn Closing Conference”*

As a suitable summary of the work of the project a closing conference was held. It was entitled *“From Residential Institutions to the Venues of Detention”* and studied the situation of basic human rights as specified in the theoretical basic rights foundation of the project and protected by the UN Convention, and explored institutional care provided for the disabled in the country, within the services offering different types and circumstances. Naturally, in keeping with the themes of the annual program, we investigated the anomalies of the institutional structure and the “traps of total institutions” when in search of the possibilities of taking up public and private roles in the institutional provision for the disabled. We have also investigated activities in institutions, healthcare provided, and also the legal and professional correctness of measures limiting the rights of people living with psycho-social disabilities (such as binding, locking up and sedatives), its safeguards, the relationship between the guardian and the person under guardianship, and also the background of financial provisions.

## 2.3

### Survey of the investigations

The endpoints of the investigation of the various “big institutions” were, after the closing down of the National Institute of Psychiatry and Neurology (OPNI), the follow-up investigations into the consequences of the changing structure of care for psychiatry patients as well as an investigation from the angle of basic rights of disabled existence in the penal institutions, representing a particular enclosure of provision for people living with disabilities. As it is commonly known the so-called “*OPNI follow-up investigation*” was completed in December 2009, which explored the situation of psychiatry care for adults and children, of addictology, and care for patients in endangered (forensic psychiatry) condition. The almost fifty-page “situation report” contains the structural disturbances of care provision, the half-solutions caused by the shortage of experts and anomalies caused by general social demand in detail<sup>6</sup>. A profound analysis of the situation preceded also the publication of the report on the investigation identifying the violations of the basic rights of disabled people living in the law enforcement institutions and of those ‘treated’ in the Institute of Observation and Mental Health (IMEI)<sup>7</sup>.

In view of the fact that our work was not only conducted within the framework of the project “With Dignity – with Difference” but during the course of the Ombudsman’s activities for almost one and a half decades several investigations were carried out upon complaints, objections and suggestions received from people living with disabilities, from civil organisations and even from heads of institutions, therefore, research into earlier cases as ‘antecedents’ was done. Hence a thematic list of cases of major importance investigated ever since the existence of the Parliamentary Commissioner’s institution has become available. In some cases it is the results and consequences of earlier investigations that serve as a basis for the current investigations. At the same time one can obtain a picture of the decade-long struggle of people with disabilities and their civil organisations in the country, about the justification for an Act on disability and also

<sup>6</sup> Report No. AJB 3536/2009.

<sup>7</sup> Report No. AJB 1161/2009.

about the significance of the obligations undertaken by the ratification of the UN Convention.

Disabilities support, the difficulties of parking, the situation of those living in residential care, the problems of ensuring obstacle-free conditions, disputes related to employment, and in general a child or adult living with disability in a family raise several issues awaiting solution. During the past more than a decade (1998–2008) only about four hundred of the almost fifty thousand complaints lodged with the Commissioner’s Office touched upon some problem related to disability. This is 0.8 per cent of all the cases, of which hardly one hundred was related to some objection in the field of work capacity. Complaints were related to children with disabilities in about thirty cases, and the parking of a person of limited movement was a problem in 18 cases. The number of those complaints objecting to some kind of financial allocation, support, annuity or fee was 113.

In the year 2009, namely during the course of concentrated work, the number of complaints changed as follows:

- The rights of people living with autism (all complaints were related to children with autism!), such as the violation of rights to education, or other cases affecting autism children: 51
- Cases related to residential institutions (operation of the guardianship authority, personal fees): 3
- Cases related to the operation of a (re)habilitation institution: 3
- Cases related to the rights of other persons living with disabilities (disability allowance, parking): 13
- Question related to sign language: 1
- Related to the rights of people with impaired hearing: 1
- Person of limited hearing objecting to the procedure in a language exam (oral, listening test): 1
- Removal of obstacles (home page, transport, accommodation): 3
- Rights of people of limited mobility (parking, moped car, in custody, transport allowance): 9
- Ex officio investigation related to the project: 4

Complaints were received about provisions in residential homes between 1999 and 2002; in 2004 the difficulties of people taking up jobs who were under guardianship limiting their disposing capacity in some measure which provoked significant reverberations, and

the lack of the professional protocol of committees determining the extent of disability (2005); the system of disability allowances (2006), and an investigation was conducted into several complaints against the lack of the removal of obstacles. The difficulties of blind students of higher education accessing the subject-matter of instruction (2007), an issue that was also an important antecedent of the project.

Several reports of major significance and objecting to legal norms have been produced in some important topics expressly during the one-year work of the project. An investigation was conducted into the *realisation of the right to vote*<sup>8</sup> of people living with disabilities and particularly of those who were under guardianship excluding disposing capacity, after all nothing else but the promulgated UN Convention declares the right to participate for people with disabilities.

We have investigated circumstances making access to education and development impossible by those *living with autism*<sup>9</sup> and their families, and of course also the difficult position of experts. We have paid particular attention to ensuring the proper conditions of *language exams of persons of limited hearing*<sup>10</sup> on the basis of a complaint and to the real elimination of inequality of opportunities.

A strange situation opened up before us behind the gates of *law enforcement*, as well as anomalies of other placements in *residential institutional care*<sup>11</sup> when we investigated the problems of psycho-social disabilities.

As it was mentioned above, we have analysed the conditions of care for psychiatry patients already explored in 2008, but continuing to be full of problems. The report summing up the *OPNI follow-up investigation*<sup>12</sup> offers a detailed image of the shortcomings of adult and child psychiatric care, of the financing difficulties of outpatient care and about the unevenness of active and chronic care.

<sup>8</sup> Report No. AJB 2405/2009.

<sup>9</sup> Report No. AJB 1438/2009.

<sup>10</sup> Report No. AJB 1989/2009.

<sup>11</sup> Report No. AJB 1161/2009.

<sup>12</sup> Report No. AJB 3536/2009.

## 2.4

### The OPNI Follow-up Investigation – The situation of psychiatric and addictological care

In 2007 the Parliamentary Commissioner launched an investigation because of the closing down of the respectable institution of psychiatric care and professional direction, of the National Institute for Psychiatry and Neurology (OPNI). The investigation was justified by the need for assessing the situation that had emerged after the closing down of OPNI from the angle of basic rights, considering the fact that the transformation of the structure of healthcare, the closing down of certain institutions, such as the elimination of OPNI could cause unforeseen consequences in the field of patient care. In the report on the investigation the Commissioner has identified abuses related to the right to health, particularly as the falling standard of care due to the closing down of OPNI was not counter-balanced, and the level of care in respect of certain geographic areas or special requirements was dropping to a critical level or totally disappeared and as a result endangered the health and even life of hundreds of psychiatry patients who were becoming totally exposed because of their condition. The Commissioner requested the Minister of Health to initiate a broad discussion with the involvement of the respective institutions and representatives of the profession, and considering the conclusions of the report he should consider the setting up of a professional committee. Further on, he requested the Health Committee of Parliament to put surveying the situation of the institutions offering psychiatry care, addictology as well as inpatient stroke treatment care on its agenda.

The Parliamentary Commissioner ordered an *ex officio* follow-up investigation into the measures taken since the closure of OPNI, the realisation of the transfer of tasks and for mapping the situation of care for patients in the second part of 2009. The investigation was linked to the project “With Dignity – with Difference”, focusing on the realisation of the rights of people with disabilities launched in 2009, since this investigation concentrated on the situation of those living with psycho-social disability which is considered as a special group of the disabled according to the Convention on the Rights of Persons with Disabilities passed by the UN General Assembly. Going beyond the direct consequences of the closing down of the institution



the investigation wished to offer a fuller survey of the general situation, the current position and operation of psychiatry and addictology care with special regard to child psychiatry.

The investigation was conducted with the involvement of a psychiatrist expert and several institutions affected by taking over tasks (National Psychiatry Centre, National Addictology Centre, Nyíró Gyula Hospital, Merényi Gusztáv Hospital, Heim Pál Paediatric Hospital) were contacted, and data of the National Health Fund were also taken into account, as well as the opinion of interest representation organs were listened to, and the position and information were asked from the Minister of Health about the operation of the set of institutions, about the measures already taken or planned. The Commissioner's associates visited the Psychiatry Hospital and its Departments of Child and Juvenile Psychiatry of Szeged University, and conducted an investigation in the Kiskunlacháza store of the Institute Providing Supplies for Healthcare Institutions (EKI) where the healthcare documents of OPNI produced after 1945 and digitalised were kept and protected.

#### *Taking over the tasks of OPNI and the situation of adult psychiatry*

In the year 2006, OPNI operated in three locations, in 26 organisational units with a capacity of 849 beds. When it was closed down the takeover of its psychiatry profile was shared by seven institutions of the Municipal Government, the Semmelweis University, and of the Local Government of Pest County, and its neurological tasks were taken over by the National Scientific Institute for Neurosurgery. According to information given by the Minister of Health, the takeover of tasks was in progress continuously from 1 April 2007 to the end of the year 2007, the reason being that the conditions necessary in the receiving institutions should be created which could ensure adequate professional and nursing conditions of care and conditions that would be even better than earlier. In the transitory period treatment was continued in OPNI up to the end of December 2007, in the interest of ensuring the continuity of care.

Of the original 849 beds of OPNI 599 were transferred in the interest of continuing the performance of tasks, thus the holding capacity was reduced by 250 beds which was followed by the reduction of hours available for specialist and none-specialist care. This reduction of ca-

capacity does not only characterise the situation in the capital after the closing down of OPNI, because it can be stated in general that there has been a significant decrease in capacity in psychiatry care and even shortages of capacity can be noticed. This is manifest in the reduced number of beds for inpatient care, for the number of active beds has been reduced by 25% during the past years as well as the hours available for specialist doctors in outpatient care, the development of which has not been done parallel to the reduction of the number of beds.

The number of active beds and their distribution by branches of medicine is stipulated by Act CXXXII of 2006 on the development of the system of supply in healthcare. The number of active beds before reduction corresponded to the European Union average, but now it has dropped much below it (by -20%).

The territorial disproportions of inpatient care could also be solved only partially. According to data from December 2008, the situation is the worst in the South Transdanubian and North Hungarian regions in respect of the number of beds per ten thousand inhabitants, where the number of beds per ten thousand inhabitants is 1.7 and 1.8 respectively. During the course of the investigation the Minister of Health also acknowledged that the reduction of the number of active beds could cause difficulties, as in addition the chronic and rehabilitation capacities were set on the level of specialisations, in other words, the psychiatry area was not mentioned among them, thus the psychiatry beds for rehabilitation have disappeared and were absorbed by the rehabilitation capacities of the rest.

It is an insoluble difficulty within psychiatry care that acute and rehabilitation (chronic) care were separated with the result that there is nowhere to send patients for rehabilitation who have emerged from the phase of acute treatment if the given ward does not have a sufficient number of active beds, and the only remaining possibility is to transfer patients to other institutions. Due to the phenomenon of the “revolving door psychiatry”, the term suggesting that fewer days of care per patient are available due to the reduction of the general duration of treatment, with the result that when the patient is discharged his/her condition is less satisfactory and relapses are expected without follow-up treatment, and if the patient discharged too early everything starts anew.

In his answer the Minister of Health has also acknowledged the

fact that the care providing system was burdened by several factors: detoxification is still often done in psychiatry wards on the reduced number of active beds, despite the fact that this practice is unacceptable even professionally, because detoxification is not a psychiatric but an ED professional task. In addition, due to the fact that there is a small number of social institutions suited for nursing chronic patients or others requiring only some care there is still great pressure on psychiatry wards to admit such patients.

It should be stressed on the basis of the experiences of the investigation that despite the fact that health and social care cannot be separated in practice in the field of psychiatry, currently the relations between the two systems of care provision are unsatisfactory which reduces also the effectiveness of treatment. As a result of the reduced number of active beds an ever smaller number of patients can be treated under close control, and one has to wait for years to be admitted to institutions capable of providing rehabilitation, and the placement of old-age demented patients is practically not solved at all.

Modern and active psychiatry care is based on care provision in the proximity of the inhabitants and on the principles of a community-based psychiatry. According to the principles of community psychiatry care and rehabilitation should be ensured for the patient within the existing framework of the community as an integral member of the community. All possible forms of care should be provided in the home or near the home of the patient. However, currently the standard of community psychiatry care is rather uneven, it is practically unorganised, and synchronisation between the community care providers operated by the social sphere and psychiatry carers is deficient in many places, and the legal background of cooperation is not elaborated.

OPNI used to have special wards, and in addition to care for the patients it also performed educational, research, scientific, methodological and professional management functions. According to information received from the Minister of Health the tasks of research were taken over by Semmelweis University, as well as by the Clinical Psychology Department and specialist outpatient service, the Vascular Neurology Group, the Molecular Genetics Laboratory, the Biochemistry Laboratory, the library and the Prion Laboratory.

The National Psychiatry Centre was set up to ensure the methodological activities of the field of psychiatry and the Centre started its

operation in November 2008. The Centre works within the organisational framework of the National Medical Officer Service as an autonomous organisational unit of the National Professional Control and Methodological Centre and its headquarters are housed in the Psychiatry and Psychotherapy Hospital of Semmelweis University. The Minister appointed the Director of the Hospital to professionally supervise and manage the institution. The institution, however, does perform only certain methodological and data collecting tasks with the cooperation of a few experts, hence it does not fully substitute the activities once conducted by OPNI.

The Department of Psycho-somatic and Psychotherapy of Tünderhegy is an organisational unit of the National Medical Rehabilitation Institute, and offers special care on 60 rehabilitation and 30 day hospital places at its division in Szanatórium Street. According to the Minister of Health the department, developed on 3000 square metres, offers better and more dignified circumstances to patients than the Tünderhegy division of OPNI did.

Reference should be made to the Department of Internal and Infectious Psychiatry doing special tasks which used to be a determining organisational unit of OPNI. There is a particular need for at least one such department in the country since there are psychiatry patients who also struggle against illnesses of internal medicine and of infectious diseases who cannot be treated on a proper level either in internal medicine or infectious disease wards, or in psychiatry ones.

In OPNI the ward of internal medicine for mental patients, where illnesses requiring hospital treatment of internal problems of psychiatry patients as well as the infectious diseases (such as TB) ward for mental patients had 20 beds each.

During the course of the investigation the Minister of Health informed the Commissioner that an infectious diseases ward for mental patients was opened with 13 beds at the Nyíró Gyula Hospital on June 2009, which is supposed to supplement for the infectious diseases ward of OPNI treating mental patients. In view of the fact that in this particular case there were two different professional tasks involved, the report has pointed out that the substitution for a ward of internal medicine for mental patients has not yet been solved, as the new one admits and treats only psychiatry patients suffering from certain contagious diseases.

The situation of psychiatry patients struggling against other diseases is similar to that of the capital in Szeged as well. Their treatment is possible only in general departments as there is no other form of care. They are treated in the respective wards of internal medicine, neurology, dermatology, etc., where they are treated for the shortest possible time, and as soon as the acute problem is solved they are immediately transferred/sent back to the psychiatry ward, and it may also happen that they are sent to psychiatry wards right from the outset with the argument that the condition of the given patient is dangerous.

In the OPNI there used to be a forensic psychiatry ward as well, and according to plans it was to be developed into a psychiatry ward of enhanced security system. The investigation, however, has found that a forensic psychiatry care system is currently missing from psychiatry care, and there would be need for the establishment of high security psychiatry wards.

The National Psychiatry Centre has elaborated its proposal on the development of forensic psychiatry care and summarised also the personnel and objective needs. According to the document “currently only the Institute of Observation and Mental Health (IMEI) can be considered as a forensic psychiatry institution in Hungary”.

At present, therefore, no wards of different security degree are available in psychiatry institutions, in other words, currently the psychiatry wards are totally unsuited for receiving and treating patients of directly endangering behaviour. In wards that are not properly equipped, and have an insufficient number of and adequately trained staff such patients mean an enhanced danger to their fellow patients, to the staff and in many cases even to themselves.

In addition to analysing inpatient care the report also dwells upon the situation of outpatient care. The reduction of beds in inpatient care has resulted in the growing demand for outpatient care. Their development, however, was not done parallel to the reduction of beds.

The operating conditions of nursing units representing the focus of outpatient care, the network of which had been developed for care provision near people’s residence and performing additional tasks at the borderline of health and social care provision were significantly affected by the fact that the fixed payment allocated for such nursing institutions was reduced by half of the previous year from 1 April 2007.

In addition to changes in financing it was also a problem that territorially significant differences could be noticed in the operation of psychiatry outpatient care. According to the December 2008 data of the NHF the North Hungarian region has the smallest capacity, which is also short of capacity for inpatient care (the number of specialist doctors' hours per ten thousand inhabitants was 7.7, as contrasted to the Central Hungarian region where the same indicator was 19.5). Territorial inequalities are also indicated by the number of care units, for instance in Nógrád County there were only two psychiatry care units in operation according to August 2009 data.

### *The situation of child psychiatry*

The provision of child psychiatry care is one of the most problematic areas of psychiatry treatment and care.

The report has found on the basis of the NHF data that inpatient psychiatry care for children was done in 13 places in 2006, 9 in 2007, and 11 in 2009. Though this number may seem to be adequate but studying the data more carefully it becomes obvious that the territorial distribution of the places of care is uneven. In 2009 care was offered in four places in Budapest, but some regions of the country were left totally without care provision in respect of children's psychiatry wards. In three regions (Central Transdanubia, Southern Transdanubia and Northern Hungary) there is no inpatient care of child psychiatry. There is only a single place providing care in the West Hungarian region and that too only with ten chronic beds, and it can be stated on the basis of these data that child inpatient care provision was practically totally missing from Transdanubia.

Based on data recorded by the NHF, the report has found that though the number of acute beds has grown but that of the chronic ones was reduced. Summing up: in 2006 159 beds (of which 111 were active and 48 were chronic ones), in 2007 there were 160 (of which 124 were active and 36 chronic) beds, and in 2009 there were 185 (of which 139 were active and 46 were chronic) beds were available for child psychiatry. Thus the number of beds shows a tendency of growth, nevertheless, the number of child psychiatry beds per ten thousand inhabitants is currently only 0.18, and the number of chronic beds is only 0.04.

According to data available at the time of the investigation there was no bed registered as chronic in the institutions providing care for child and juvenile psychiatry operating in Budapest. At that time the Minister of Health informed the Commissioner that he intended to ensure active psychiatry care formerly provided to children and adolescents by OPNI in the Heim Pál Paediatric Hospital. The development of the final place of the ward having 15 active beds and an additional 15 rehabilitation beds was completed at the Delej Street unit of the Heim Pál Hospital out of resources won by application from the Ministry. The ward was opened in December 2009, after the publication of the report.

Experts questioned during the on-the-spot investigation also stressed that the shortage of rehabilitation beds hindered continuous and longer-term care often emerging in psychiatry as well as rehabilitation. They often chose as solution to place children requiring longer treatment outside the healthcare system. In this case, however, the often unprofessional care enhances the danger of relapse. A solution of the problem could be professional outpatient care for child mental health but it can also be stated that there are several such care providers under the name mental health centre where children are not given the necessary treatment because of the lack of properly trained experts and adequate objective conditions.

The number of care-providing places in the field of child and juvenile psychiatry outpatient provision has decreased somewhat during the past two years. There is a positive change, however, in that outpatient units have been operational in every County by 2009. Nevertheless, the number of care-providing units continues to be extremely low in some regions. In Vas and Zala Counties there is only one in each, and in Békés, Szabolcs-Szatmár and Jász-Nagykun-Szolnok Counties outpatient specialist consulting is available only in two places each.

Further on, the separation of age groups emerged as a problem during the on-the-spot investigation, in view of the fact that the demands and needs for care are clearly different in the case of younger or of more grown children. It is justified to separate groups under the age of 14 from those between 14 and 18 years of age (particularly in respect of older children in an endangering condition), but even that is not an adequate solution if the age group between 14 and 18 years is treated in adult psychiatry units. In addictology cases it is particularly

true that the older youth of drug addiction cannot be treated together with young children, and the location of adolescents among adults is also not proper. There is, however, no separate addictology ward for children, therefore at present placement after detoxification is a problematic one.

*The situation of addictological care*

Earlier the Commissioner, parallel to the investigation in relation to the closing down of OPNI and in close relation to it as the National Institute for Addictology was closed, called attention to the fact that the outpatient addictology care in Budapest has reached the brink of inoperability. Referring to the fact that as a result of the closing down of the Institute there would be no efficient background institution for the coordination of alcohol policy the situation of alcohol and drug addiction would greatly deteriorate.<sup>13</sup> He called attention to the fact that the case of the OPNI and the National Institute for Addictology should be jointly treated, as these were inseparable parts of psychiatric care. During the course of the follow-up investigation we paid particular attention to study the situation of addictological care.

The methodological, research, data-collecting and monitoring tasks of the National Institute for Addictology, closed down by 1 May 2008, was taken over by the National Addictology Centre set up within the framework of the National Professional Inspectorate and Methodological Centre, or at least it tried to take over the tasks. Service provision in addictology and care for addicts was taken over by the National Medical Rehabilitation Institute in the framework of a contract transferring the tasks.

According to the explanation of the Minister of Health the utilisation of the capacity of TÁMASZ (Support) care providers belonging to the Institute was lagging behind the national average, therefore a decision was made to ensure care providing activities in the form of single-carer model, and the weekly capacity of 1494 hours was reduced to 360 hours.

Currently the situation of the National Addictology Centre is somewhat unclear, as it operates as an autonomous organisational unit, but

<sup>13</sup> OBH 2371/2008



it has no autonomous budget. At present the inpatient care of addicts is mostly done in psychiatry wards, in the addictology sections of psychiatry wards and in drug therapy institutes.

According to the contracts of the NHF there were 989 addictology beds as of December 2008 in the country (including providers of a psychiatry professional code but specified in the text as addictology). Their distribution is: 194 active and 793 chronic (rehabilitation) beds. The number of beds from the total of active ones was 280 in drug therapy homes the utilisation of which was 84% in 2008.

One may speak about territorial inequalities of the addictological inpatient capacity mostly in active care. In the Central Transdanubian region there was no specified addictological bed. Here active care is provided on psychiatry beds.

The operation of care units providing for outpatient addicts was also affected by the reduction of fixed financing already mentioned in the case of psychiatry care. The effects of reduction caused problems typically in care centres supplying for areas in the countryside where turnover was lower.

The report has also pointed out that the capacities earmarked for addictological outpatient care were reduced by more than 20% in two years by December 2008. Capacity is the lowest due to the territorial inequalities of outpatient capacity where there would be the greatest need of it, such as care for alcohol addicts is in great need in the North Hungarian region. The Minister of Health has acknowledged that territorial inequality was one of the major problems of addictological care. The morbidity indicator of counties in the most disadvantageous position (Bács-Kiskun, Heves, Somogy, Borsod-Abaúj-Zemplén) were above the national average, at the same time outpatient provision per ten thousand inhabitants was lagging behind the national average, and a further problem was caused by the fact that there was still no drug ambulance in every county despite the developments of the past years.

Dwelling upon the situation of juvenile addictology, the Commissioner expounded in the report that the number of problematic drug users under the age of 18 and of drug addict youth has been gradually growing, yet at present care for them is mostly provided in adult addictology consultations and care units and to a lesser extent in child psychiatry ones. Professionally neither of these provisions can be con-

sidered as proper, as professional knowledge related to the special age group is missing in adult addictological care, whereas child psychiatry experts are not familiar with addictology which may cause professional and caring problems and difficulties. The situation is not satisfying from a practical angle either, as it was seen at the analysis of child psychiatry care, as the separation of minor addicts from the other patients is not solved, and there is insufficient staff to keep them under close surveillance. At present neither special professional protocols, not methodological letters are available in relation to care for juvenile addicts or problematic drug users.

### *Conclusions of the investigation*

It was found in every area of care investigated that the lack of specialist doctors (consultants) and specialist employees was significant, and there was particularly great shortage of child psychiatrists, whereas the appreciation of the profession was low financially as well as socially. Young doctors have no vision of their future, and the sense of uncertainty is further enhanced by constant changes in the system of healthcare. As a result of significantly grown burden of patient care the standard of the training of specialist doctors has also been markedly decreasing in the university hospitals as well as in accredited wards, as it was unambiguously confirmed by the residents at the on-the-spot investigations at the National Psychiatry Centre. The proportion of tutors and students/residents has become worse. The young would-be specialist doctors are burdened to the extreme (often they have to admit 10 to 15 patients in one duty period, together with detoxification, in total contradiction to the rules of the profession but still present in practice), at the same time supervision is weak because of the shortage of specialist doctors. Hopelessness, humiliating wages, falling professional standards and the lack of career prospects make residents burned out at an early stage, and many of them wish to continue their work abroad or would abandon their career.

According to the Minister's information the Health portfolio has also sensed the lack of specialists which, in the case of specialist psychiatry nurses is not actually the result of the current shortages but of the lack of upcoming generations. The training of psychiatry

specialist nurses is one area where the number of those applying for training has drastically dropped. The Minister stressed that he particularly supported this field by all means at his disposal, and also underlined in relation to training experts that Government order No. 122/2009. (VI.12.) on the system of training high level health-care experts ensured additional finances to experts taking up jobs in areas of shortage.

Despite all this the reduction of shortages in psychiatry care is often limited by the fact that the structure of the human capacity of the area is deficient, and the number of doctors and nurses is particularly insufficient.

All in all, the report has stated that at present there was no sufficient number of experts in Hungary to ensure adequate provision that would correspond to the needs and demands of the inhabitants in Hungary.

On the basis of what was said above the Ombudsman's report, summing up the experiences of the investigation has identified abuses in relation to the right to health and access to care in several respects.

The Constitutional Court has interpreted in several of its decisions the content of the *right to the highest standard of physical and mental health* of Article 70/D of the Constitution.<sup>14</sup>

At the same time the Constitutional Court has also mentioned that "it can determine the critical size of state obligation in the sphere of the network of healthcare institutions and medical care, namely the necessary minimum the lack of which would lead to unconstitutionality. Such would be, for instance, if in some areas of the country the system of healthcare institutions and medical care would be totally missing."

Chapter II of the Act CLIV of 1997 on healthcare determines several subjective rights for patients, including the right to healthcare provision. It states that every patient has the right within the framework stipulated by legal norm to receive healthcare provision that is justified by the person's health status that is adequate, continuously accessible and corresponds to equal treatment. And provision can be qualified as adequate if it is done respecting the relevant professional

<sup>14</sup> Practice related to the right to health is summarised by the No. 109/2008. (IX. 26.) resolution of the Constitutional Court.

an ethical rules and guidelines.<sup>15</sup> Chapter X of the Act sets specific rules for the treatment and care for psychiatry patients in keeping with the obligations for positive discrimination pertaining to psychiatry patients.<sup>16</sup>

The Act on healthcare also lies it down that the personality rights of psychiatry patients should be particularly protected during health care provision, with special regard to their situation.<sup>17</sup>

Two endpoints can be defined in the different and higher standard of the Ombudsman’s protection of rights. Obviously no abuse related to the right to health can be identified merely because of the closing down of an institution, its transformation, amalgamation, or the transfer of its tasks to another institution, or because of the reduction of the available beds: such an outlook would make legal protection ensured by the Parliamentary Commissioner unbounded and haphazard. The situation is different if certain specialist provisions are wound up within the system of healthcare institutions, such as in the field of psychiatric or addictology care in certain places, in counties or regions, or become essentially inaccessible, and this situation is ‘stabilised’ for an intolerably long period of time.

Therefore a situation may cause an abuse of the right to health when, as a result of the transformation of the system of institutions or lack of proper developments, merely with reference to the enduring capacity or financial and expedient considerations potentially or effectively a significant number of patients may be endangered. The state is charged with a kind of responsibility for the result when it implements the re-organisation of the system of institutions: the minister in charge of the area has to supervise the transfer of tasks and competencies in order that a smooth and continuous performance of tasks should not be endangered. This requirement, also laid down in the Ombudsman’s prac-

<sup>15</sup> Para (1) and (2) of Article 7 of the Act on health.

<sup>16</sup> In addition it is worth calling attention to the recommendation No. R (83) 2. of the Ministerial Commission of the European Council which gives guidelines to the Member States about patients subjected to compulsory psychiatric treatment in the field of the procedures to be followed in relation to the hospital treatment of the mentally ill and of the effective protection of the patients’ rights. The protection of the rights of mental patients is also dealt with by UN documents though not of compulsory nature, of which Resolution 119 of the UN General Assembly is particularly outstanding on the principles of the protection of mental patients and on the development of healthcare for them.

<sup>17</sup> Para (1) of Art.. 189. of the Act on healthcare.

tice, has a special significance, hence it has to be particularly asserted by decisions made about the transformation of the care providing system of healthcare in the interest of the realisation of the basic rights of patients including their life, health and dignity.

Therefore only such a situation can be considered as unambiguously anti-constitutional if the system of healthcare institutions and medical care are totally missing in certain regions of the country. According to the Commissioner's position the fact that in significant parts of the country there was no child psychiatry and addictology care for receiving patients, consequently medical care was also totally missing does exhaust the category of the extreme case as defined by the Constitutional Court. In view of this the report has stated that the complete lack of inpatient care in child and juvenile psychiatry in the Central Transdanubian, South Transdanubian and North Hungarian regions, as well as the total lack of active, expressly specified inpatient care for addictology patients in the Central Transdanubian region, further on the lack of any placement of minor addicts as well as of the definition of its professional points create abuse in relation to the right to health and to healthcare.

Further on, the report has pointed out that the lack of the provision of some special tasks of care, particularly the lack of the development of high security psychiatry wards and of the system of forensic psychiatry care lead to abuses of the right to health and to access to healthcare.

The Commissioner has also stated in his report that the uneven territorial distribution of outpatient addictology and psychiatry care, further on the haphazard arrangement of community psychiatric care caused the abuse of the right to health and access to healthcare.

The investigation has disclosed that the relationship between health and social care provision, two inseparable areas, was inadequate, and all this hindered access to healthcare provision and reduced the effectiveness of treatment. If the low capacity of inpatient psychiatry care is used by persons primarily burdened with social problems, characteristically requiring nursing and care, the lonely, old persons and others who have got into a difficult and even hopeless existential situation or have even become homeless they make the provision of treatment of real patients of serious psychiatric pathography difficult. The root of the problem is the small number of social care institutions offering

nursing and care, of being overburdened, the lack of temporary and lasting residential care, where, in addition there are even more serious differences among the various regions of the country.

In the interest of redressing and future prevention of the abuse related to constitutional right as disclosed by the report, the Commissioner has requested the Minister of Health to take the necessary measures in the interest of eliminating the present lack of care and of the lack of access to healthcare found in certain geographic regions and in respect of certain special groups of patients. Further on, he should take exact measures in the interest of the continuous realisation of the proposals worded in the healthcare concept worded for the period 2007 to 2013 and in the National Mental Health Program (LEGOP), aiming at the development of complex health and social care of people with psycho-social disabilities, and by surveying the necessary personnel, objective and financial resources he should elaborate a detailed and phased plan of implementation, setting deadlines and responsible persons, and should arrange for checking its realisation. He should realise these tasks by the active involvement of the respective social organisations in keeping with Item 3 of Article 4 of the Convention on the Rights of Persons with Disabilities.<sup>18</sup>

Further on, he requested the Government to take urgent steps for the immediate solution of the problems of psychiatric and addictological care as well as of child and juvenile psychiatry after having considered the topical statements of the report, the circumstances of the medical profession, social policy and budgetary conditions.

The Minister of Health has informed the Commissioner, that his portfolio assisted the development of the psychiatry/addictology area with the help of European Union applications, and at several points he repeated what he had stated in his answer given to the Commissioner during the course of the investigation concerning what measures had been taken so far in the interest of developing care provision, and stated in relation to outpatient care that in the long run the carers' point system was planned to be transformed on the basis of cost cal-

<sup>18</sup> “In the development and implementation of legislation and policies to implement the present Convention, and in other decision-making processes concerning issues relating to persons with disabilities, States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations.”

culations. The Minister underlined in relation to inpatient care that the regulation of the implementation of the capacity structure would become more flexible. The sphere of regrouping capacity between the various forms of provision within an institution would be extended, thus daytime hospital care can be developed by regrouping chronic and rehabilitation capacities which form of care would play an important role in the system of care for psychiatry patients.

The Minister heading the Prime Minister's Office informed the Commissioner in his supplement to the Health Minister's answer that after several months of professional discussions the order No. 48/2009. (XII. 29.) of the Ministry of Health was created which modified the order No. 60/2003. (X. 20.) of the Ministry of Social and Family Affairs, describing the minimum professional conditions necessary to giving healthcare services, which has introduced a set of requirements renewed in many respects as a result of the comprehensive revision of the necessary professional minimum conditions from 1 July 2010 on. The changes affect the psychiatry/addictology field to a significant extent in so far as the modification of personal and objective conditions was elaborated after considering the opinion and proposals of the experts representing the area. Further on, he informed the Commissioner that in addition to ensuring the European Union support mentioned in the Health Minister's letter the elaboration of a construct of applications supporting the initiatives for the development of mental health on small area, regional and national levels, in harmony also with LEGOP has been in progress.

Further on, the Ministers have assured the Commissioner that they would, in the future treat the development of psychiatric care provision as a priority aim on the basis of what has been described in the report.

### *The current situation*

The governmental healthcare concept entitled "Simmelweis Plan for Saving Healthcare" wishes to restore the operativity of the system of care provision by placing it on new foundations. It contains the joint solution of the inpatient, rehabilitation and community outpatient care for psychiatry. In 2011 the Commissioner has again surveyed the conditions of child psychiatry and addictological care in greater detail.

## 2.5

### Active network development – cooperation with civil organisations

The Parliamentary Commissioner for Civil Rights and his working group have been in a rather fruitful cooperation with several civil organisations, hence we could undertake a role of enhancing legal consciousness by utilising the professional and practical knowledge and experiences indispensable to the abstract interpretation of basic rights which specifies the working plan, also consistent with the Commissioner’s *children’s rights project* theses valid in the long run and at any time. Such an area is, for instance, the investigations into developmental education of *people living with autism* started on the basis of diagnosis drawn up correctly and in childhood which would soon be completed. We also hope for the solution of lots of problems and expect a real change of attitude from the society of educationists in the interest of the successful realisation of integrated education. According to experience there is an urgent need for an innovative change of structure in the field of *teacher and specialist teacher training* because at present hardly any adequate answers are given to the up-to-date challenges of the 21st century as suggested by the related literature.

A publication entitled *Human Rights Yes!* was made available on 25 September 2009, which was brought out in cooperation with associates of the *National Organisation of the Deaf (SINOSZ)* within the framework of an international conference which makes “human rights” education possible for people living with disabilities. Our working relationship with the *Mental Disability Advocacy Center–MDAC* allows for such cooperation which investigates the situation of the child residents of certain psychiatry nursing homes from a human rights aspect. The *Hungarian Federation of the Blind and Partially Sighted (MVGYOSZ)* requested the Ombudsman’s help for the multiplication of Braille-format printing and the *Central Hungarian Federation of the Blind and Partially Sighted* requested his assistance to the creation of Braille texts on the boxes of medicines.

The National Federation of Disabled Persons’ Associations and the Budapest Association of Disabled Persons invited our colleagues



to the international seminar entitled “*From Brussels to Budapest*”, dealing with the adaptation of the European Union legal rules related to people with disabilities into national and local level regulations where lectures were held on the current projects of the Parliamentary Commissioner and the starting points set in its theses stating the obligation to harmonise the UN Convention and the domestic regulations. Among others the most important aim is the achievement of freedom from obstacles in communications and in the physical world to which our current investigations may offer significant assistance.

At the “*House of Opportunities*”, a movement that has grown into a national one, we also popularised those constitutional principles that may make social acceptance and inclusion possible for people with disabilities whether they live in the family or in institutional care, and call attention of able-bodied communities to the respect of human dignity of all in the hall of the Pécs University of Sciences.

Our cooperation with the organisation of the Hungarian Civil CAUCUS and the Council of the Organisations of Disabled Persons (FESZT) prolongs a partnership role of the Ombudsman in the field of the cause of disability. This honourable situation has induced the Parliamentary Commissioner, keeping in view the requirements of the UN Convention, to act as an autonomous control mechanism in respect to the implementation of the Convention. In this respect we have had talks with the Secretary of State of the Ministry of Labour and Social Affairs and also with the Secretary of the National Council for the Disabled about the significance of the task, and also about the lack of monitoring. In view of the fact that the issue has not been settled to this day we have proposed it to be urgently put on the agenda.

Our focus on the cause of disability during the past years has made the work of Hungarian civil organisations tangibly more intensive at several events and discussions or other meetings where our associates participated and which were all related to some currently grave areas of the issue of disability. Thus there was our discussion with the chairman of SINOSZ, or there was the meeting of the National Healthcare Council trying to find a place of care for people living with autism, but also there was a similar event when the manufactur-

ers of therapeutical equipment at MOM centre where the Ombudsman’s mediating activity was necessary because of the changes of the legal background.

During the past period we have confirmed all these principles, aims and plans by *art programmes* organised, convinced that we may create tradition besides being official (see the drawing and photo competitions last year, or our exhibitions). This time one channel of the “With Dignity – with Difference” project also addressing the public has been the presentation of art works and their creators.

In April we organised an exhibition entitled “*Signs–Pictures*” presenting a selection from the works of the artists of the *Foundation for the Culture of those of Impaired Hearing* and also from the Origami works of the pupils of the *Special Vocational School of Újbuda*. And the *first deaf actress of our country*, TÍMEA MÁZLÓ recited a poem with the help of a sign interpreter at the opening ceremony of the exhibition.

The organisation of a *charity fair* was also a tool beyond law under the title “*I Slim and Grow*” which had almost one hundred thousand forints of income handed over to the Head Mistress of the Special School presenting itself at the exhibition.

On 3 December 2009 we arranged an exhibition from the work of



LÁSZLÓ VINCZE, a *geologist nature photographer* of tetraplegia. This exhibition was opened by Minister of Labour and Social Affairs Dr László Herczog. The photographs for the exhibition were selected by photo artist Tamás Féner, a holder of Balázs Béla Prize and the prizes Eminent and Excellent Artist.

All the major plans and outlook-shaping programmes run by the working group of the project could not have been realised without specific financial assistance. This is why the grant of HUF two million for the realisation of the programs of the project and also for ensuring the Project Bulletin on it given by the *Ministry of Labour and Social Affairs* has been so significant.

# 3

## ”Ageing with Dignity!”: Human Rights of Elderly People (2010)

The measure of youth is not age but the condition of the mind and spirit: the victory of will power and imagination, the intensity of emotions, cheerful mood and adventure over laziness.

*(After Albert Schweitzer)*

### 3.1

#### Framework of the project

The series of projects started three years ago and offering comprehensive analysis and planned work this time held a mirror to the profession, the public and the political decision makers reflecting the domestic situation of the elderly by a one-year program studying the suitability of the social and legal environment.

In 2010 the Parliamentary Commissioner for Civil Rights launched a prioritized project in the interest of the realisation of the dignity and constitutional rights of elderly people. Though the clumsiness of healthcare provided for elderly people is commonly known together with the difficulties of the set of conditions they can avail themselves of social services, as well as the contradictory economic policy of employment after retirement, and the modern-age problematic of training, if no change in the attitude of the society is achieved no solution guaranteeing satisfaction can be expected. It is a priority task of the Parliamentary Commissioner to clearly word and mediate human rights dilemmas; and cooperation between civil organisations, participants of institutional structure and the government may go progress with his help.

According to our intentions methods, also useful to the older generation, can be included in our investigations and we may not only project specific solutions, but also ones that stress long-term processes

and trends considering basic rights. We have initiated intensive cooperation with several professional and civil organisations, organised professional consultations and conferences, and have processed the results of legal and social researches in the respective fields. In addition, we have assembled research programs of our own in certain given areas such as the possibilities of institutional care and the eternal problems of public security.

It has also become clear during the one-year program that challenges of social coexistence cannot be solved in the field of the cause of the elderly either. It has become evident that occasionally it is an incredibly big task for the elderly to participate in active social life or even in the simplest daily activities.

Thus the real reason why the project was launched is the change of European paradigm that started years ago, at first as an economic and next as a moral challenge to the ageing welfare societies, and the strenuous work launched parallel to it in the cause of the elderly; further on, the international consensus that makes all civil societies anxious for its elderly accept a new global philosophy after the long-term economic prognoses have been produced. The question is whether can all this be seen in Hungary?

We have investigated the situation of the elderly; the social, legal and sociological aspects of old age from the angle of basic constitutional rights while the limitations of the Ombudsman were also kept in view. We have analysed and explored the given basic rights problems, and if it was necessary, we initiated redress of the given situation objected to if it was necessary, or only worded the dilemmas that burden daily life this time as well. All this was done so that the elderly people or relatives and experts living with or caring for them should possess the fullest possible legal consciousness and knowledge of law.

During the course of our program we have considered individual objections expressed in the complaints received, and utilising the practical experiences of previous years, we have also conducted focused investigations, which meant *ex officio* ones touching upon significant individual topics. At the same time, some special issues warned us to proceed with caution, for actually there was no and is no data collection about the age of the complainants in the Ombudsmen's practice,

therefore we specified basic problems related to the elderly by the type of complaints.

Most complaints received during the past years were related particularly to the *social, legal and public security* of elderly people living in residential institutions or in their own homes, and further on to areas of *healthcare, disability, employment and victimisation*. Naturally, the issue of pension could not be avoided either, though we could investigate only conditions of allocation, the legal conditions of entitlement and other points of the conditions of need. We could not analyse the sum of old-age pension or the economic considerations of pension policy in respect of individual cases. We could survey all this with the help of basic constitutional rights arguments and with all the tools available to the Ombudsman. The outline of our theses was the following this time as well:

- *Basic right to human dignity* was put into the front which was supplemented by the *prohibition of discrimination*, and
- The obligation to *promote the equality of opportunity*, further on
- The right to *social security*, and
- Institutional background ensuring and protecting the *right to physical and mental health*.

#### *Workshop activity*

As it was proved by the practice of earlier years the success of a prioritised program does not only depend on the traditional analytical and investigative work (vide legal) of the Ombudsman, but also on addressing the public sometimes in an unusual way, and often by the organisation of cultural programs. The first event of the old-age project "Ageing with Dignity" was held on 5 May 2010, under the title "*Age-Image*". It was a professional day coloured by the opening of an exhibition.

The aim of the meeting was to map the life and difficulties of elderly people, to present a sketch of the Hungarian snapshot, with special regard to the provision of care of various types and ensuring different conditions. On the other hand, we offered a brief survey of the activities of Ombudsmen so far carried out in the area of the cause of the elderly as well as the basic rights aspects of European thinking about it.

The heads of institutions, social experts and representatives of civil organisations as well as the Director of the Equal Treatment Authority unambiguously welcomed the Commissioner's old-age project, and called attention to the fact that the cause of the elderly has been pushed into the background compared to also important social issues and problems, and that focusing public attention to our elderly people could not be postponed any longer. There was a presentation on the key issues of elderly strategy, on the processes of the training of experts, and on the not any more apparent but obvious deepening of the generational gaps.

The exhibition of the *Open Gate Mobile Art Gallery Public Benefit Foundation*, under the title "*Wounded Bird – with Art for the Equality of Opportunity*" was linked not only to our elderly program but it was also a suitable event on the occasion of the Day of Equality of Opportunity.

As a continuation of the yearly program the second event, summarising work done up to that date was held on 14 October 2010, entitled "*Ageless Dignity – Basic Rights, Institutions and Perspectives*" within the framework of a professional day in the Ceremonial Hall of the Office of the Parliamentary Commissioner. This time the aim of the meeting was to present the material of the investigations so far completed and also the Hungarian snapshot of the situation, with special regard to the constantly changing economic and legal environment, and to the differences of social demand. On the other hand, an opportunity was offered to experts of the cause of the elderly to expose their decades-long activities and experiences. This time the emphasis was laid on specialist social care, from nursing to homes for the elderly, in relation to which a practicing head of such an institution and the secretary of state in charge of the area described their professional position and the plans of the related policy.

Finally, summing up the work done during the year, the publication of a Project bulletin, containing all the reports completed, papers and other source material offers a framework to the mirror we have set up to reflect the cause of the elderly in Hungary. The Ministry of Labour and Social Affairs (cf. NEFMI) granted HUF one million by way of support.

### *Other events*

During the course of the year we visited some residential homes<sup>19</sup> and were invited to several conferences and professional events exploring the problems of the cause of the elderly.<sup>20</sup> Civil organisations or heads of residential homes invited the Ombudsman's associates to give presentations or, in several cases to participate in discussions, and sometimes even expressly for offering legal interpretation of critical situations. And the Society of Respect requested the Ombudsman's mediation in the interest of protecting the interests of elderly people towards the Society of Respect, and more towards the open society.

Complying with all the requests, we could offer a comprehensive picture of the real situation of care for the elderly in Hungary, and also symptoms that seem to be unsolvable on the countryside-capital city axis, and about the most banal difficulties of the life of the elderly. We have extended the spectrum of basic rights investigations conducted in several other topics on the basis of specifications of old age, thus attention was paid to contradictions in healthcare provision, non-financial provisions (nursing in the home, care, signalling system) and to the territorial imbalances of the chances of access to services.

In view of the fact that the year 2010 was the international year of struggle against poverty, several events dwelt upon the situation of the elderly within the framework of this topic.

## 3.2

### Priority investigations

The most significant and one of the recurrent topics recording the largest number of objections in the Ombudsman's work so far carried out is an investigation assessing the operation of residential institutions. This time we have done the follow-up investigation of the com-

<sup>19</sup> See Report No. AJB 4541/2010. on the on-the-spot investigations in Budapest, Acsád and Ózd.

<sup>20</sup> Home for the Elderly of the Municipal Government in Budapest, Hungarian Academy of Sciences – Alzheimer Day, North Plains Regional Conference on Social Politics at Nyíregyháza-Sóstófürdő, Methodological Social Centre of Southern Transdanubia at Bonyhád.



prehensive one conducted in 1998. The significance of the contents of the report went much beyond the survey of the operation of the given institutions from the angle of basic rights, as once again an opportunity was offered to those working in the network of social institutions and to experts of Hungarian methodological institutions to describe the specificities of the situation, to interpret the shortcomings of the institutional system of care, and the indifference of the Hungarian society in this respect.

Thus the antecedent of the investigation was the comprehensive survey analysing the realisation of the human and citizens' rights of people living in homes nursing and caring for the elderly conducted in 1998<sup>21</sup>. At that time investigations were conducted in seven institutions wielding the professional considerations of law, sociology and medicine from a fundamentally human rights approach.

Naturally, the considerations of the follow-up investigation were the same, but this time we were monitoring again only three institutions. The qualification of choice was geographic location, selecting one in the capital city and others in the country operating in regions of different economic development, homes in a village, a town and in the capital, and institutions maintained by the state and not by the state. A further important point of consideration was the establishment and termination of institutional legal relationship, the objective conditions of provision, provision and care granted by the home (food, garments, textiles, healthcare), cultural community programs, the exercise of religion, external relations, the safe keeping of valuables and property, procedure followed in the case of death, the protection of interests.

Experiences of the investigation conducted in 2010, though we could not ask for the assistance of a psychiatrist or a gerontologist could make a snapshot of practically all the problems of people living and working in the so-called big Hungarian institutions. In general: care for the elderly has been significantly pushed into the background at local governments with the obligatory task of providing it. The reason is decreasing budgetary framework and the narrowing of possibilities for applications. The work of social care experts was further aggravated by an obligation to meet the rule prescribing need for care of more than 4 hours which sets additional requirements to those per-

<sup>21</sup> Report No. OBH 2454/1998.

forming the task and neither the objective nor the personal (specialist in healthcare) preconditions are available to it. The length of queuing is again an old-and-new problem which differs between the state-run and non-state run institutions (three months in the average in the case of the former ones), but in certain institutions it can be even one or one and a half years. We have also worded warnings about some further problems in our report but as the issue of the elderly in general, so institutional care can acquire proper attention only if every expert works for it with determination and if the society is also receptive.

The Hungarian reflection to the European achievement of "lifelong learning" was a peculiar area so far left out of the focus of investigations, namely the possibility of training and learning for the elderly, and the analysis of the special vocational trainings for dealing with elderly people. As we could only collect the current professional positions about this issue the report calls attention of the legislator of the day to it.<sup>22</sup>

The analysis of the issue of security and public security was also a significant issue in view of its social context<sup>23</sup>, which explored particularly the causes and circumstances of elderly people becoming victims. Research into the living conditions of elderly people in penal institutions, however, was more related to the special situation of people with disabilities or those condemned and kept in custody in IMEI.

During the course of our investigations we have kept in view the theses of European strategic thinking, which places into the focus first of all the coordination of the various kinds of care, the integration of healthcare policy, quality control, as well as coordinating the labour market and the infrastructures of care.

### *Summary of experiences*

As the topic is not only an issue of basic rights but one of social science, our investigations and research occasionally tried to comprise a much broader image than could be expected from the Ombudsman's role. The daily social portrait can be seen more clearly in the axis of interdisciplinary context, therefore, diverting from the so far strictly

<sup>22</sup> Report No. AJB 3124/2010.

<sup>23</sup> Report No. AJB 3829/2010.

professional analyses of the Parliamentary Commissioner, this time we rather called attention to the fact that according to domestic researches every fourth Hungarian would be above sixty in ten years' time<sup>24</sup>, and Europe is not in a better position either. One component of a general human evolutionary process is care for the elderly, and the creation of harmony between policies managing social tensions and human rights in the framework of the state based on the rule of law.

International literature as well as the Hungarian map of problems react equally upon the factors of elderly existence, but the manifestations of social science conclusions are strongly dependent on the economy, hence the demand for a quality of life and the attitudes of social inclusion represent enormous challenges.

### 3.3

#### The public safety position of the elderly

According to the demographic surveys of the European Union three or four times as many people above the age of 80 would live within forty years than today, which would constitute 12% of the total population. According to a Union survey (Eurobarometer 2007) the majority of societies do not treat their elderly members properly already today. Harsh treatment of them, psychological and physical violations are frequent.

It should not be forgotten that growing old is a natural part of human life but the process itself varies by the individual. Active life and mental and physical fitness is not for all. Old-age illnesses, dementia, problematic personality traits and conditions requiring constant and continuous care all enhance the possibility of abuse.

Ensuring a dignified old age is a social task just as the prevention of violence and protection are. In view of this experts of the European Commission called attention in an international conference held in 2008, that it would be necessary to launch programs serving the protection of the elderly in every member country. Such programs have

<sup>24</sup> Hablicsek, László–Tóth, Pál Péter: Népesedési helyzetünk (Our Demographic Situation)

been initiated in Holland, in Germany, in Great Britain and in the Czech Republic.<sup>25</sup>

We have surveyed the public security position of the elderly within the framework of the project focused on the basic rights of the elderly, and we also studied the causes and frequency of their becoming victims, further on what kind of assistance they can expect in that case.

The starting point of the investigation was the Parliamentary Resolution No. 81/2009 (X. “.) on the National Strategy for the Elderly, which sets as an aim the development of an economic and social environment supporting the preservation of the safety and human dignity of ageing and elderly people. It assesses the realisation of human rights as of basic importance as well as the strengthening of an environment supporting the preservation of human dignity and public security.

According to experience of researches into crime in the country the loosening and breaking off of human relations and becoming lonely as their necessary corollary play a significant role in that the elderly become victims of criminal acts. Isolation is enhanced by the elderly getting into a socially impossible situation, by their physical weakening and occasionally mental dementia.<sup>26</sup>

According to information received from the *National Police Headquarters* the police pay particular attention to the enhanced protection of elderly persons. The uniform and efficient implementation of the related police tasks was the aim of the measure No. 49/2005. (XI. 3.) of the National Police Headquarters which was passed in the interest of preventing and discovering criminal deeds committed against elderly people and which was in force up to 2007. Next the National Police Headquarters issued a more modern national plan of action on 23 December 2009, which sets specific tasks for the police organs in the interest of avoiding the victimisation of elderly people. Among others the action plan contained surveying the endangered target group, the prioritised areas, the risk analysis of the small regions and settlements, and monitoring more prominently the known criminal groups, further on an extension of the presence of the police in space and time, a targeted involvement of civilian guards into the protection of

<sup>25</sup> Lóránth, Ida: Kiszolgáltatott, elhanyagolt idősek (Exposed and neglected elderly) In: Magyar orvos, May 2008.

<sup>26</sup> Cf.. Dr Sárkány, István: Az időskor viktimológiája (Victimology of Old Age) Budapest 1999. p. 33.

the elderly, a specialisation of preventive measures and a continuous work of assessment and analysis.

As the statistical data show, the elderly represent a less endangered personal sphere compared to the average population. The proportion of the elderly among the victims does not reach their proportion in the population, thus they can be considered as nationally underrepresented. An exception is Borsod-Abaúj-Zemplén County as well as Nógrád and Heves Counties. Therefore Northern Hungary is considered statistically the most endangered region in respect of the elderly.

According to experience the elderly become targets of criminals because less resistance can be expected from them, and it is assumed that the elderly have accumulated relatively significant valuables during their life and keep those possessions with them. Lack of prudence was listed among the subjective factors of becoming aggrieved, together with the senses becoming dull with age, and the low level of the protection of property. These factors are complemented by objective ones as well, such as the indifference of the environment towards the elderly victim as well as the abandoned environment.

The most frequent crimes committed against the elderly are crimes against possessions, mostly theft, tricky theft, burglary, robbery and fraud. Several forms of criminal behaviour could be observed in public spaces. It happened that the criminal approached the aggrieved walking alone in the street by bicycle and tore away the bag of the elderly person. The classic type of way-laying robbery is quite frequent, when the aggrieved is addressed under some pretext, next he/she is insulted and the valuables are taken away. Pickpockets are characteristic of bigger towns primarily during the day on public transport at peak hours or in markets.

During the course of the successful implementation of the tasks meant to help victims the police attempt to act within the framework set by legal norms, in full respect of human rights, of the principles of humanism, equality of opportunity, proportionality and fairness. The police officers in charge of the protection of victims act in keeping with the practice of cooperation evolved with the regional offices of justice.

Simultaneously with the information of the victim-assisting service of the regional office of justice passed on to the police the policeman first contacting the victim may also orally call attention to the possi-

bility of helping victims, and that the police would issue a certificate if requested by the victim by which the person involved may apply for victim-assisting support. Elderly victims characteristically ask for the help of police victim-protecting officers in issues of mitigating losses, and in mental assistance, or ask information about mechanical and electronic equipment by which they can enhance their security.

In view of the above: prevention based on information is important. The appearance and presentations of local and regional police organs of preventive purpose are regular in events attracting the elderly, in forums and in the local pensioners' clubs. The police pay particular attention to settlements of dispersed farmsteads. The most extensive world of such farmsteads is in Bács-Kiskun County, along the so-called Homokhátság (Sandy Land), where typically lonely elderly people live. As the security of their living conditions has been deteriorating the police leadership of the County has launched a so-called "Farmstead security" program as an experimental one already in 2002. The program was directed towards the development of a 24-hour farmstead defence service on the basis of the broadest social cooperation, and as a result the personal safety as well as that of possessions and also of healthcare and social security has improved. A prioritised aim of the joining of forces was to evolve the flow of information related to people living in farmsteads, as well as a unit capable of effectively reacting upon information received. Experience has proved the success of the program; today more than two thirds of the discovered criminal acts are committed in the towns of the County. The number of discovered criminal cases has been reduced in the seven villages included in the program, including serious crimes against life and bodily soundness, and there was no robbery at all. The sense of security of the inhabitants of these settlements has grown in general. Next six further small-area networks have been established for the protection of farmsteads, but these associations have become informal because of the impossible financial conditions emerging during the past years.

For the first time a Police Chief's measure was issued in 1998, in the interest of improving the security of people living in the farmsteads of Békés County in Southeast Hungary and for the prevention of crimes. In 2006 the County Police Chief issued a new order. The number of endangered farmsteads is 170 in the County, and the police keep regular contact with the elderly and sometimes lonely inhabitants.

In Csongrád County the Police Chief considers it an outstanding crime prevention task to further develop the program of farmsteads and in this framework the theme of patrolling the outskirts has been elaborated. The patrol was introduced in April 2010; the participants go around the world of farmsteads along a preset itinerary, in order to share the most important information on public security, and crime prevention personally with the population. Patrolling is done regularly each week.

The legal predecessor of the *Justice Service of the Ministry of Public Administration and Justice*, the Central Office of Justice also has tasks in the protection of victims. The service helping victims has to give all-round information to a client turning to the Office if the client does not disclose his/her personal data, hence their register does not always reveal the age of the victim, but about 30% of victims turning to the Office are above the age of 60. All this means that elderly persons ask and get help from the victim-assisting service in greater proportion than the proportion of becoming aggrieved. In the past years elderly people living in Budapest have asked for help in the greatest proportion.

According to the Office the state does not arrange adequately for the representation of the aggrieved before the law court phase of the criminal proceedings. Though the authority carries on acts of taking evidence during the course of investigation, where the aggrieved may be present, further on he/she can make proposals and remarks, at the same time extra-lawsuit legal assistance is restricted only to individual procedural actions and not to the entire phase of investigation.

The experience of the *White Ring Public Benefit Organisation*, an NGO is that annually ten to thirty aggrieved people above 60 ask for help from them, who are typically victims of crime against possessions. All the aggrieved ask for and receive financial and rapid assistance.

The Organisation considers it a problem that an immediate financial assistance can be applied for only within three working days after the criminal act took place. It is also a problem that currently law offers help only to the aggrieved of crimes and not to victims of petty offences, whereas a large number of the aggrieved by petty offences against possessions are old persons with low pension.

*Local governments of settlements* have several tasks in relation to public security. Such is, for instance, arranging for the local tasks of public

security or for lighting of public spaces. Inspection of public spaces operated in the given settlement may also significantly contribute to the improvement of a sense of security. According to Act LXIII of 1999 control of the legal use of public spaces is among the tasks of the inspectorate of public spaces and the prevention, stopping and termination of activities prohibited by the law on the order and cleanliness of public areas, the sanctioning of such activities, and participation in the realisation of the social tasks preventing crime and in the protection of public safety and order.

The police cooperate with organs of local governance during the course of performing its tasks; they support the voluntary activities of local governments and of citizens' communities aiming at the improvement of public security. Part of data and information important to public security may reach the organs of criminal investigation indirectly through local governments. The maintenance and development of cooperation between the police and the local governments is extremely important.

The general sense of security of the elderly is in close relationship with their general sense of wellbeing. The purpose of the establishment of the Elderly-friendly Local Governments' Prize was meant to acknowledge the work of local governments for its improvement and of such activities of local governments.

The *Ministry of Home Affairs* is responsible for the measures included in item 5.6 of the New Hungary Development Plan's Operational Program for Social Renewal (TÁMOP). The portfolio may phase the utilisation of HUF nine thousand million up to 2013 within its framework for purposes of crime prevention. Measures taken for crime prevention are taken in two constructs, in the form of prioritised projects and open application. One pillar of the measures is to prevent victimisation and assistance to victims.

The Ministry of Home Affairs realises in consortium with his partners (University of Miskolc, Office of Justice, National Command of Prison Service, North Plains and South Transdanubian Regional Labour Centres) the prioritised project entitled "*Methodological Foundation of Crime Prevention and Reintegration Programs Strengthening Social Cohesion*" within the framework of TÁMOP. The project is being realised in the North Hungarian, Northern Plains and South Transdanubian regions between 16 April 2010 and 15 April 2012. The quality



development of victim-assisting services, an improvement of their accessibility and an enlargement of the forms of assistance have been achieved within the project in close cooperation with the Office of Justice.

The following major elements of the program are being realised within its framework:

- Development and operation of 24-hour despatch service by phone.

Through the despatch service the victim-assisting service would not only be accessed during office hours but continuously. Victims of crime can receive information and advice any time through a green number free of charge.

- Development of a network of volunteers.

With the development of the network of voluntary helpers of victims the aggrieved by criminal deeds can receive help at any moment of time at several settlements of the three regions of the prioritised project.

- Development of the system of psychological assistance in the North Hungarian region.

In the future a psychologist of the victim-assisting service would offer the possibility of professional mental assistance of victims. In addition the training of voluntaries assisting victims and participation in case discussion groups would also be the task of the psychologist.

The services, such as two voluntary helpers of victims per small region would be accessible on the spot.

The services of the prioritised project would not only help those who have become victims of crime, but would enhance the sense of security of residents by their very appearance and availability. Thus the elderly may get particular assistance to decreasing their fear from crime and can sense that there is someone to turn to in case of need.

The training of experts of crime prevention would also be realised in the three regions within the framework of the prioritised project. Training would cover the characteristics of the ways of elderly people becoming victims.

It is important to stress that the Parliamentary Commissioner had to examine in respect of the aggrieved and victims of crime whether

the various organs and authorities of the state met their obligations stipulated by legal norms, or, whether during their proceedings they violated some human rights ensured by the Constitution even if formally they respected legal norms.<sup>27</sup>

Keeping in view of the above, the Ombudsman in his report summarising the experiences of the investigation indicated that according to the position of the Constitutional Court it was the public law obligation of the state, deriving from state penal authority, to protect the constitutional order and the personality and rights of the citizens against crime.<sup>28</sup>

During the course of the investigation the Commissioner also paid attention to the Framework Decision on the standing of victims in criminal proceedings passed by the Council of the European Union on 15 March 2001, according to which the protection of victims was primarily a state task in the countries of the Union the practical implementation of which is assisted by NGOs.<sup>29</sup>

As a result of incorporating the contents of the framework resolution into Hungarian law the state organisation for assisting victims was set up. From 1 January 2006 on this function is jointly performed by the Victim-Assisting Service and the Legal Aid Service operating within the framework of the Office of Justice and by institutions of reparation. (In 2007 it was supplemented by the institution of mediation.) Currently the Office functions as part of the Service of Justice of the Ministry of Public Administration and Justice.

In relation to assisting the aggrieved in the phase of investigation the Ombudsman's starting point was that the requirement of the state based on law and the assertion and the possibility of the assertion of basic rights meant among others that the state has to create the legal and institutional framework which would allow for the individual to

<sup>27</sup> Dr Polt, Péter: Az élethez és az emberi méltósághoz való jog a bűncselekmények áldozatait is megilleti in: *Áldozatvédelem Szakkönyv a bűncselekmények áldozataival foglalkozók számára* (The Right to Life and Human Dignity Is also Due to Victims of Crime. Manual for those dealing with victims of crime.) Budapest 1999. p. 97.

<sup>28</sup> Resolution No. 26/1999. (IX. 8.) AB.

<sup>29</sup> Council Framework Decision on the standing of victims in criminal proceedings. (2001/220/IB)

realise his/her claims deriving from the violation of his/her rights. According to the practice of the Constitutional Court the legislator is entitled to have a broad right to consideration in respect of the development of the system of support which constitutes one of the decisive conditions of the realisation of rights.

Receiving support does not qualify as a constitutional right, it is a favour based on legal rule and the assessment of the authorities. Hence, in view of the above the right to consideration of the legislator also extends over the determination of the sphere of persons to be supported, as well as of the manner and extent of support, however, there is the requirement against consideration that it should not violate the prohibition of discrimination.

The aim of legal aid is that the state should grant assistance in an institutional form to the realisation and protection of the rights of those in need. Assistance in the form of legal counselling and the drawing up of documents can be given to the aggrieved outside the lawsuit on the basis of legal regulation in the investigative phase of penal proceedings.

According to the Commissioner the fact that the legislator's decision, based on consideration, on granting assistance to the aggrieved within the framework of extra-lawsuit form during the investigative phase by the given cases individually, does not case abuses of the basic constitutional rights of victims.

The Commissioner has stated in his report in relation to the deadline prescribed for claiming immediate financial assistance that this form of aid was determined by the momentary need of the victim. According to the law the victim-assisting service may grant immediate financial assistance after having assessed the status of victimisation, upon request, based on an equity decision, considering the situation of the victim that has emerged due to the crime, and having studied and considered all the circumstances. Application for immediate financial assistance can be presented within 3 working days after the crime was committed.

Standing in need of assistance is created by the given situation in life into which the victim gets as a direct consequence of crime. As the proper financial sources are temporarily missing financial support has to be given so that the victim may meet basic needs, such as to make phone calls and to purchase food. The emphasis is on quick and

immediate assistance in the case of immediate financial aid. It is only justified to cover the victim's costs related to accommodation, clothing and alimentation if the person is unable to cover them just because of the criminal act. In view of this the law rules for a shorter deadline of asserting one's claims compared to other services.

The Ombudsman has investigated that sphere of those victims as well who cannot at all obtain the services of state victim-assisting because the damages caused remained within the limitations of the value of petty offences. Victims of such cases can only expect the help of civil victim-assisting organisations.

Petty offences are illegal acts and those who commit them are threatened by legal disadvantage stipulated by law. These acts violate or endanger the generally accepted norms of social coexistence to a milder degree compared to criminal acts. The Constitutional Court<sup>30</sup> has expounded that petty offence is a "Janus-faced" legal institution: part of petty offences are the so-called acts against public administration (such as doing activities without authorisation that have to be authorised), and another part is a behaviour violating the general rules of human coexistence, they are so-called criminal acts (such as forms of crime against possessions but separated from criminal acts by a value limit). The petty offences penalty sanctions repressively violations of the law committed in the past. Thus the law on petty offences exclusively asserts taking one to task, but not a single legal norm currently in force contains the mitigation of the damages suffered by victims of petty offences.

In relation to an earlier investigation the Commissioner stated that "the obligation of the state for the mitigation of damages cannot be concluded from the rules of the Constitution, therefore the lack of such means cannot qualify as a cause of constitutional abuse." At the same time he also stated that "the legal ruling of the obligation of the state for mitigating damages and ensuring the suitable means (even in the case of a very limited mitigation of the damage caused by crime) is in harmony with the obligation which is prescribed for the state in the Constitution in relation to public safety and the protection of basic constitutional rights."<sup>31</sup>

<sup>30</sup> Resolution No. 63/1997. (XII. 11.) of the Constitutional Court.

<sup>31</sup> Report No. OBH 6714/1996.

Petty offences just as much violate values declared to be protected as criminal acts do, therefore the obligation of the state for protecting public safety may extend over the persecution of petty offences as well. The aggrieved of petty offences, particularly the elderly may just as much need assistance as a consequence of the illegal act committed against them, such as a petty offence against possessions committed against the elderly victims of little income or small pension, as the aggrieved of criminal acts of a more serious assessment. Therefore the state would proceed correctly if it extended victim-assisting services to the victims of petty offences as well.

Thus the Parliamentary Commissioner has found that the lack of state support granted to the aggrieved by petty offences, in view of the fact that victims of criminal acts may expect state assistance, violates the prohibition of discrimination; further on the fact that no assistance whatsoever is extended to victims of petty offences, the state does not meet its obligation for an objective protection of basic rights, hence it violates the principle of the state based on law.

We have requested the Minister of Public Administration and Justice for redressing the situation in order to eliminate the unjustified distinction between victims of criminal deeds and petty offences he should initiate the creation of a legal norm stipulating for the mitigation of damages suffered by victims of petty offences.





