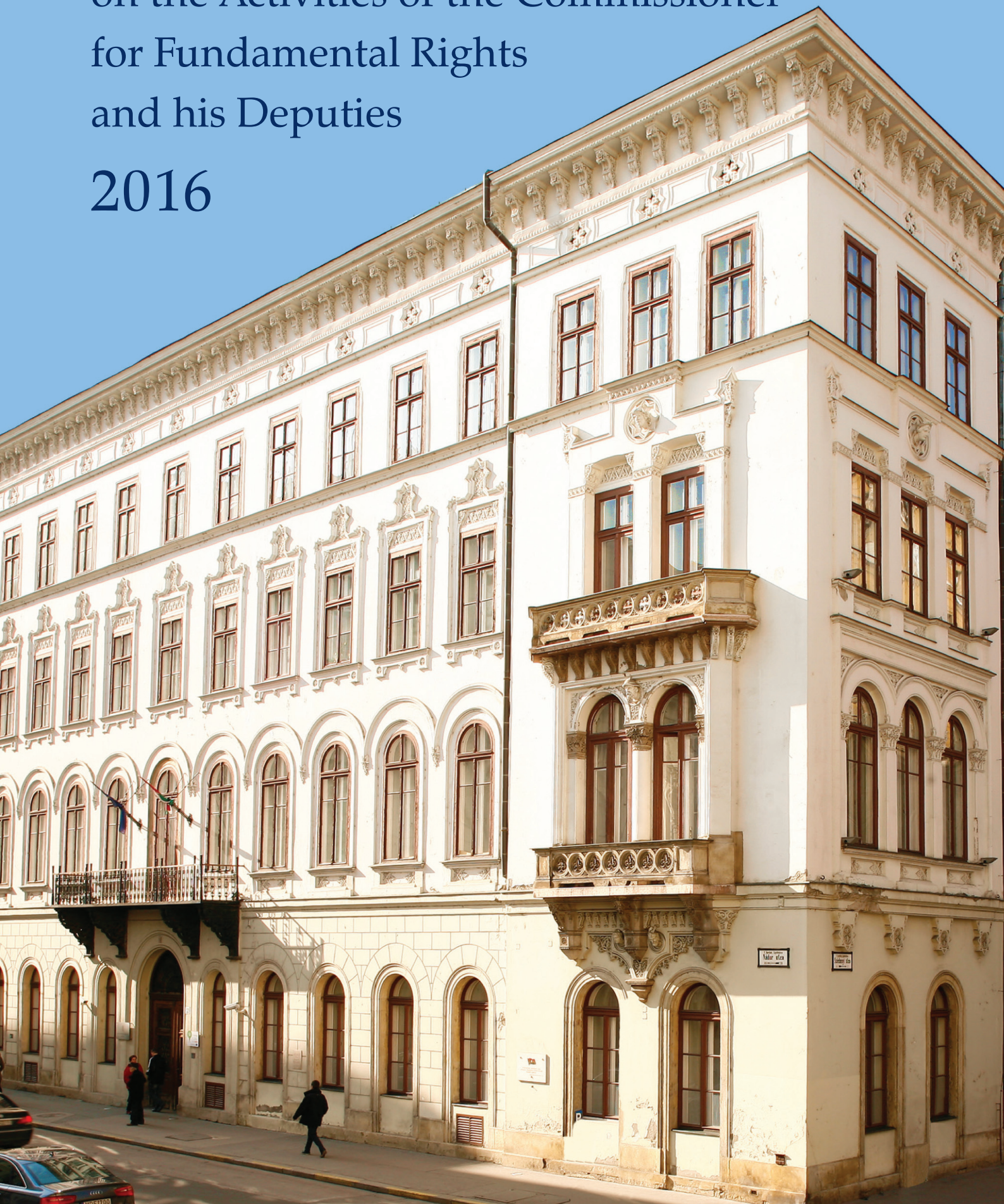
REPORT

on the Activities of the Commissioner for Fundamental Rights and his Deputies

2016



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Contents

Lectori salutem…

Another year has passed by and the Ombudsman is dutifully writing his introduction to the annual report to be submitted to the National Assembly of Hungary. It started as usual, like in the past few years, but then something happened. Something that has made this introduction very different from the ones that we have grown accustomed to, my dear Readers. What happened was that Kristóf Deák's short film entitled 'Mindenki' ('Sing') became an Oscar winner, which means gaining the highest-ranking filmmaking award in its category. The film had been broadcast by one of the Hungarian television channels before the award ceremony, so I had the chance to watch it then.

I do not mean to tell you the story and discourage you from watching it if you have not yet done so but I must confess that the movie has several different meanings, and its multi-layer social and philosophical messages have made a deep impact on me both as a simple viewer and also, as the commissioner for fundamental rights. The film is not perfect, as nothing man-made is, but its being highly inspirational and thought-provoking is shown by the fact that, in the past few days, I have discussed many possible interpretations of the film with many people who are close to me, sometimes talking about it for a much longer time than the actual feature length. I would hereby like to share with you one of my interpretations of the message conveyed by the film and, as you will see, this may just as well be correlated to how an ombudsman looks upon his own role.

As a start, there is an undoubtedly unfair situation, i.e., that human abilities are unevenly distributed among the members of society. There are some people who can sing beautifully and some others who cannot, to stick with the example of the film. The question is whether the state and the law are able to eliminate this social inequality with their own devices. Furthermore, it should also be asked whether the state and the law are meant to do that at all. The school principal thinks that the answer to this question is yes. In his view, each pupil of the school is entitled to become a member of the choir (fundamental right?) if they feel like doing so, irrespective of whether or not they have a good singing voice. The music teacher, who is the head of the choir, falls into a trap: her superior expects her to admit all the applicants, however, she is also expected to make the choir successful and acknowledged. This contradiction can only be resolved in one way: the teacher instructs children with unsuitable vocal capabilities to only pretend singing at the shows and contests, in fact, to lip-sync quietly. This solution is seemingly and temporarily perfect, the treatment is equal and the remaining voices sound perfect. However, the situation as a whole is untrue and fake, and the children's natural and still uncorrupted sense of justice rebels against it, they uncover the fraud and very aptly retaliate (although this does not necessarily affect those who deserve it).

Let us now return to the basic setup. Does the expectation of the school principal to admit everyone who would like to join the choir ("the right to sing") result in anyone's eventually developing a singing voice that is better suited to the stage? Common sense suggests that the answer to this question is no, although I admit that a certain level of voice

correction is possible in some cases as well, albeit with a lot of effort. This means that "the equal right to singing" will not at all reduce the actual inequality that some have a competitive singing voice and some others do not. However, the doctrine of the equal right to singing promoted by the school principal has become an unquestionable part of the canon in the setting in question, so there is no other way to hide the failure but to pretend – that is, we lip-sync, pretend that we are singing.

Let us suppose that the school principal sticks to his obsession through thick and thin and, in order to safeguard the right to singing, he deploys a singing right ombusdman at the school. The latter's responsibility will include the supervision of the equal distribution of the right to singing and taking action when this right is violated in some way, for example if some pupils are admitted to the choir, while some others are not. If the commissioner fulfills his responsibilities properly and an ever increasing number of children who yearn to sing are admitted to the choir, then two things may happen: either there will be more and more pupils who will just lip-sync, or the vocal production will be more and more awful. Neither is a very rosy prospect.

The social setting of the school, including the parents, the choral artists, etc. will of course be increasingly dissatisfied. Many will claim why the commissioner for singing rights fails to act with more determination, that the school principal should take decisive steps to ensure that the vocal capacities of the individual pupils do even out, that each less gifted choir member be assigned a private tutor, a master course, a solfeggio course, etc. – maybe all this would result in reducing the disadvantages of those who cannot sing as compared to the others. There will be some others who will say that lip- syncers are not needed in a choir, they deteriorate performance, they take away the opportunity from those who can sing, they are free riders, parasites, and so on. The right to singing gets into the frontline of the sharpest social conflicts in no time, where the commissioner for singing rights may only take fright, with his modest arsenal of infantry, in the midst of heavy artillery fire.

What exactly was the commissioner for singing authorized to do? He received his mandate for safeguarding everybody's right to become a member of the choir if they want to. So, the commissioner is responsible for the even distribution of this right. The subject matter of the right was defined by the school principal and not the commissioner. Of course, the subject matter of the right to singing could also have been defined in such a way that each member of the choir (if they need this) will not only be entitled to the choir membership as a (fundamental) right on a universal basis but also, to private tutors, participation in a master course, vocal training courses abroad, etc. (If this were the subject matter of the right, then the commissioner would be responsible for watchfully safeguarding these rights.)

It is the independent decision of the school principal what subject matter he assigns to the right to singing; however, he is also accountable to those who have elected him to his position, as his decision involves social costs (lower costs if it is only the membership that is a right, and higher costs if there are also some extra benefits), which will be financed by the community (tax payers). The excessive expectation that the right of equal access to choir membership should be interpreted by the commissioner as one that also includes access to all the services required for the improvement of voice quality is unsupportable because it disregards the above-mentioned aspect of (political) accountability. Thus, the commissioner is merely responsible for (the not too small task of) evenly distributing the right. It is not the competence of the commissioner to determine the subject matter of the right, apart from very extreme cases. This means that the even distribution of rights does

not mean, by far, the elimination or actual reduction of social inequalities. It depends on the subject matter of the rights whether this effect will present itself, which is not determined by the commissioner for singing rights (or any other commissioner) in a system based on the separation of powers and on the rule of law. And it is very right, actually.

So, what lesson can one learn from this? In the school example that we have discussed, the commissioner for singing rights should be fired without delay if even one single child was deprived of the chance to become a member of the choir on account of their sex, race, ethnicity, skin color, or any other criterion. Because he is unsuited for the task, or inert, if he did not voice his concerns. However, to hold him to account for some false and cracked parts of singing, for some dissonant and ear-splitting productions, or the fact that many members only lip-sync, would be utterly unfair. The situation is that it is by far not the commissioner for singing rights that is to be blamed for this.

Dear Reader, I apologize for having robbed your precious time by my movie experiences and the impressions that they have made on me in this lengthy, personal introduction. Let us get to the point. Here is Hungary's human rights map of 2016, as from 22, Nádor utca.

László Székely

1.
Our International Relations

1.1
UN National Human Rights Institution

Since 2015, the institution of the Commissioner for Fundamental Rights is the UN's Status A national human rights institution, so its task is to promote the integration of international human rights standards at a national level, together with the monitoring and support of the procedures related thereto. During its activity, the institution cooperates with Hungarian and international institutions providing human rights protection, and, with its opinions, professional materials and by offering opportunities for consultation, helps the work of international organizations and experts.

In 2016, the second UN Universal Periodic Review (UPR) of Hungary was an important event, in which process our Office was also involved. The UPR is a unique process in the course of which the UN Human Rights Council reviews the human rights situation of each member state of the UN periodically, checks what actions have been taken by the state in question in the human rights area and what challenges it is facing. The UPR is a well-established global human rights exercise, at the moment there is no similar control mechanism in place. The UPR evaluates the extent to which a state, in the period in question, has complied with its human rights obligations defined in the United Nations Charter, in the Universal Declaration of Human Rights, in any other human rights document ratified by the state, as well as in international humanitarian law.

In September 2015, the Commissioner for Fundamental Rights sent his comments to the UN UPR Task Force, which were taken into account in the preparation of the international recommendations. The UPR Task Force of the UN Human Rights Council put the second Universal Periodic Review of Hungary on its agenda at its spring 2016 session. It was here that those recommendations which would be later adopted by the UN Human Rights Council in its 33rd session, in the form of a UPR report on Hungary, were discussed and adopted in May 2016. In September 2016, the UN Human Rights Council formulated as many as 221 recommendations for Hungary.

Prior to the meeting of the UPR Task Force, a preliminary session was held in Geneva, Switzerland, where the diplomatic missions of all state parties, civil organizations and National Human Rights Institutions were represented. On behalf of the Commissioner for Fundamental Rights, it was Deputy Commissioner Marcel Szabó who took part in the preparatory meeting held in Geneva, Switzerland on March 30, 2016, and it was also him who represented the Commissioner for Fundamental Rights with his comment at the 33rd session of the UN Human Rights Council on September 21, 2016, when the UPR report on Hungary was discussed.

The 29th session of the annual meeting of UN's International Coordinating Committee of NHRI's (NHRI ICC) and the network now called the Global Alliance of National Human

Rights Institutions (GANHRI comprising regional networks, was held in Geneva, Switzerland, on March 20-24, 2016. At the meeting, the Office was represented by Deputy Commissioner Elisabeth Sándor-Szalay. At the meeting, among others, the new communication strategy of GANHRI, the 2015 annual report of the regional human rights networks, the current human rights protection issues of the national institutions, as well as the possible ways to prevent human rights abuses were discussed by the participants.

The Office was also involved in the regional-level activities of the European Network of National Human Rights Institutions (ENNHRI) in 2016. The Office undertook professional consultation roles in several professional work groups of ENNHRI – among them, it took part in the work of the Work Group dealing with the Convention on the Rights of Persons with Disabilities (CRPD), as well as the work committee established by the UN for the coordination of the activities performed in order to achieve the Sustainable Development Goals and the enforcement of human rights.

In the project brought to life by the European Network of National Human Rights Institutions (ENNHRI), financed by the European Commission, dealing with the "Enforcement of the Human Rights of Individuals Receiving Elderly Care" (briefly: the "Elderly Affairs Project"), Hungary is represented by the Office of the Commissioner for Fundamental Rights as an active member, which can participate in the large-scale European project work through its earlier elderly affairs investigations. The goal of the project is to monitor the care provided to the elderly at the European level, to identify the experience, the problems and the best practices, as well as to escalate these to the European level. As a summary of the project work, the participants will also formulate a joint recommendation to be submitted to the European Commission. The Commissioner for Fundamental Rights also supported the activities of the UN's work group of the Committee on the Elimination of Discrimination against Women (CEDAW) in Hungary.

The delegation conducted negotiations with several government officials, the female MP's of the governing and opposition parties, as well as the representatives of civil organizations, and also visited several places in the country. The members of the CEDAW work group will summarize their findings and recommendations in a report, which they will present in June 2017.

Visit by the UN-CEDAW Work Group and Rapporteur Ms. Frances Raday (May 23, 2016)

1.2
Visits of delegations, events

In the international activities of the Office of the Commissioner for Fundamental Rights, meetings with diplomatic missions, leaders and staff members of international organizations continued to play an important role in 2016 as well.

The series of visits at the Office in 2016 were started off by the Special Rapporteur of the UN's Human Rights Council Michel Forst, who paid an official visit to Hungary at the invitation of the Hungarian Government, in order to get first-hand information on the situation of human rights defenders. During his nine-day visit, the expert met with government officials, members of parliament, some representatives of the judicial system, non-governmental organizations, as well as the Commissioner for Fundamental Rights and his colleagues. The Special Rapporteur will present his final report and proposals at the 34th session of the Human Rights Council in March 2017.

The reception of UN Special Rapporteur Mr. Michel Forst (February 11, 2016)

In April, it was the Rapporteur of the Committee on Equality and Non-discrimination of the Parliamentary Assembly of the Council of Europe Tobias Zech who visited Hungary. During the meeting held at the Office, ideas were exchanged on the right to education and the progress of the social integration of the Roma.

In October, the Commissioner for Fundamental Rights met with the Geneva delegation of UNICEF, as well as the representatives of the Hungarian Committee of UNICEF. At the meeting, the situation of migrant children was discussed, and the 2017 plans in the area of children's rights were also touched upon.

There are several independent organizations which support the work of the Organization for Security and Co-operation in Europe (OSCE). From among these, the OSCE's High Commissioner on National Minorities was hosted by the Office in May, and the delegation of the Office for Democratic Institutions and Human Rights, i.e., ODIHR, which is involved in the human rights aspect of security, also paid us a visit in November. The delegation of ODIHR visited Hungary in June 2015 and they evaluated the situation of the Roma in Miskolc, which evolved as a result of the measures taken by the municipality, in the form of an on-site visit. The related report was published by ODIHR in September 2016. One of the goals of the November visit to the Office was to obtain further information on the situation of the Roma in Hungary, more precisely, in Miskolc, related to the contents of their report.

László Székely received several ambassadors at the Office of the Commissioner for Fundamental Rights during the year, including, among others, the heads of the diplomatic missions of Canada, Romania, Portugal and Sweden. Several groups of foreign students were also the guests of the Office.

The 5th International Degrowth Conference was also held in Budapest (August 30 – September 2, 2016). Before the international conference counting several hundred participants, the SCORAI (Sustainable Consumption Research and Action Initiative) Europe network, as well as the Degrowth researchers' network had organized an intensive professional-scientific workshop at the Office. The symposium was hosted by Deputy Commissioner Marcel Szabó. On November 9 and 10, 2016, the Office of the Commissioner for Fundamental Rights hosted the professional events of Equinet (European Network of Equality Bodies). Equinet is a non-profit organization functioning as the European network of equality bodies, actively involved in promoting equal opportunities and fighting against discrimination. Among the 46 members that operate in 34 countries, Hungary is represented by the Equal Treatment Authority and the Office of the Commissioner for Fundamental Rights. The two-day international seminar focused on fighting discrimination on grounds of race and ethnic origin.

The international Equinet workshop (November 9-10, 2016)

In late November, an international conference on the possible solutions of one of Hungary's gravest environmental health problems was held by the Office of the Commissioner for Fundamental Rights and the Levegő Munkacsoport (the Clean Air Action Group) with the participation of the German Deutsche Umwelthilfe and the Danish Ecological Council. The conference was entitled "Clean Heating, or the Possibility of the Reduction of Fine Particle Emission from Residential Wood Combustion".

In November 2016, a conference on children's rights entitled "Children's Rights from Up Close, or the Dimensions of and the Ways Out of Vulnerability" was held by the Office. The special guest of the event was the General Director of the Icelandic Government Agency for Child Protection Mr. Bragi Gudbrandsson, who held a comprehensive presentation on the results and experience of the model called Barnahus (Children's House) established in Iceland in 1998 for interviewing children who have fallen victim to sexual harassment and abuse.

The cooperation between the ombudsman offices of the V4 (Visegrád Group) countries offers excellent opportunities for human rights defenders working in a similar legal, economic and social environment to keep continuous contact with each other with a view to exploring common issues and deficiencies, as well as sharing best practices. Following the successful meeting in Hungary in the previous year, the ombudsmen of the V4 countries met in the High Tatras in 2016 at the invitation of the Slovakian ombudswoman Jana Dubovcová. The Commissioner for Fundamental Rights was represented by Elisabeth Sándor-Szalay.

1.3 Cooperation with international organizations

Continuing the practice of the previous years, the Office of the Commissioner for Fundamental Rights was regularly represented at various events organized by international human rights institutions both at the executive and expert levels.

The Office of the Commissioner for Fundamental Rights is a member of the European Network of Ombudsmen – ENO, the European Ombudsman Institute – EOI, the International Ombudsman Institute – IOI, the European Network of Ombudspersons for Children – ENOC, the organization Eurochild involved in children's rights, the European Network of National Human Rights Institutions – ENNHRI, the Network of Institutions for Future Generations, the South-East Europe NPM Network (SEE); furthermore, it participates in the activities of the European Roma Rights Center – ERRC, and the European Network of Equality Bodies as well.

In the fall of 2016, it was Deputy Commissioner Elisabeth Sándor-Szalay who represented the Office at the annual general meeting of EQUINET, in which event the director of FRA (EU Agency for Fundamental Rights) also took part as a guest this time.

The experts of the Office were involved in the work of four task forces, i.e., the one focusing on the practices of equal treatment; the one analyzing the relevant legal practices; the one dealing with equality between the sexes; as well as the communication task force.

The European Union Agency for Fundamental Rights (FRA), established by the European Union in 2007, regularly organizes training programs, seminars, conferences, and also supports rights protection activities by conducting comparative law or social science

research projects. In 2016, the experts of the Office participated, among others, in the Fundamental Rights Forum held in Vienna, the goal of which was to provide a joint platform for policymakers, businesspersons, experts and representatives of the scientific and civil sectors from all the member states of the European Union, who are involved in the various fields of the protection of fundamental rights in the Union,. The main topics of the Forum included the innovative approach to fundamental rights, good governance, raising awareness of rights, as well as sustainable development in harmony with fundamental rights.

The Office was also represented at the FRA-ENNHRI event, also held in Vienna, Austria, which was aimed at promoting the application of the Charter of Fundamental Rights of the EU, which has been binding since December 1, 2009.

The platform for cooperation established in 2013 by EQUINET, the Council of Europe, the EU Agency for Fundamental Rights, as well as the European Network of National Human Rights Institutions ensures a regular forum for consultation for the national human rights institutions on the equal opportunities of the Roma, hate speech, social rights, migration and refugees. The Office of the Commissioner for Fundamental Rights regularly participated in the activities of the platform.

In January 2016, at the meeting of the Platform of Economic, Social and Cultural Rights in Strasbourg, France, it was primarily the draft document on social, economic and cultural rights compiled by the special task force of EQIUNET that was presented and discussed. At the meeting, a meaningful dialog was held on the issues of the European Social Charter (and the so-called Turin process) related to the activities of the platform.

In February 2016, at the Vienna meeting of the Platform on Rights of Migrants and Asylum-Seekers, the participants conducted a dialog on the opportunities and challenges of the national human rights institutions in connection with the migration pressure in 2015, the magnitude of which had been unprecedented since the Second World War. There was a special focus on the rights of migrant children.

In April 2016, at the meeting of the task force on hate crimes in Amsterdam, the Netherlands, the cooperation between the organizations in 2015, the goals set for 2016, as well as the program and the coordination of the operation of the task force were discussed.

In June 2016, at the Athens-based platform meeting on equal opportunities for the Roma, the organizations leading the platform issued a position paper on the evictions affecting the Roma population in different parts of Europe. In the position paper, the attention of the different authorities was meant to be called to the conditions of eviction (its minimum international legal requirements) and the social effects thereof.

The Fédération Internationale pour le Droit Européen – FIDE, i.e., the International Federation for European Law is an organization whose history goes back to almost half a century, the presenters of its congresses include the most renowned experts of European law. The FIDE congress, which is held every two years, was organized in Budapest in 2016, in which deputy commissioners Elisabeth Sándor-Szalay and Marcel Szabó also took part.

The European Network of National Human Rights Institutions has an observer status in CAHROM (Ad-Hoc Committee of Experts on Roma and Traveler Issues), established by the Council of Europe, in the twelfth plenary session of which it was the Deputy Commissioner for the Rights of National Minorities who took part on behalf of the Network (November 15-18, 2016).

2.
Evaluation of the situation of constitutional rights

2.1
Areas of investigation highlighted by the act

In harmony with the prevailing directions and spirit of the Ombudsman Act, the Commissioner for Fundamental Rights paid continuous and heightened attention to the priority areas of investigation in 2016 as well. Below, strictly following the order applied in the Act, we give a brief analytic presentation of the investigations and tendencies affecting three areas that are expected to raise international attention as well, i.e. the protection of the rights of children, the disabled and the most vulnerable groups.

2.1.1
Protection of children's rights

The Fundamental Law records that every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development. It is especially highlighted in the UN Convention on the Rights of the Child that a child needs special protection and care, due to the lack of their physical and intellectual maturity, namely, they need appropriate legal protection both before and after their birth. The Convention obliges each institution and authority that gets in contact with children to conduct proceedings and adopt decisions that are suited to the best interests of the child. Safeguarding the enforcement of children's rights, rights protection through legal and non-legal tools is one of the priority obligations of the Commissioner. Using the public domain traditionally gets more emphasis as proactive means of legal defense in the area of the protection of children's rights.

1. In early 2015, the Commissioner decided, in his annual Children's Rights Strategy, that in order to replace the earlier larger thematic projects, in line with the authorization given to him by the Ombudsman Act, he would launch 4-5 comprehensive ex officio inquiries based on data collection in the area of children's rights each year. It was back in 2015 that an investigation was launched in case No. AJB-497/2016, in which the school practices of media education were reviewed by the Commissioner. The comprehensive inquiry was aimed at mapping how and in what timeframe media knowledge and culture is taught in the practice of institutions of public education, what kind of best practices exist for conveying the competences related to media knowledge and culture. The review also inquired into the major consequences of the deficiencies in the area of media knowledge and culture for the children, and it also found out whether there is

any regulation in place with regard to the use of media at school at the institutions of public education. It was also explored by the inquiry whether any filter programs to wipe out harmful or illegal contents are applied at the public institutions attended by children, whether there are any available data on the competences and qualifications of teachers who convey media knowledge and media culture to the children, and how many teachers are available for this purpose at the institutions of public education. It also had to be found out what options are available for preparing the students for the use of the media and the internet more efficiently, with a view to this education protecting them from harmful and illegal contents at the schools, by avoiding an increase in the number of mandatory classes.

It was explored by the inquiry that in the current system of teacher training, the knowledge on the threats of the internet, the phenomenon of online bullying, or the way to handle the latter problem, is not part of the training or final exam requirements for teachers. Only a mere 20-30 percent of media teachers hold the necessary qualifications. There are no mandatory requirements for the qualifications that media teachers should hold, so this subject is taught by those teachers who are interested in it or who are appointed to teach it. It was found out by the inquiry that due to the low number of classes, integrative presence, as well as the presence of teachers with no qualifications and deficient competences at the schools, education on media awareness is not efficient in many cases. The Commissioner concluded that the intention to teach media knowledge is obvious in the system of public education, however, the results are not so visible. As consequence of this, a high number of children are not aware of the phenomenon of online bullying, they are not familiar with those support organizations and authorities which may help them get over the traumas caused by activities on the internet. Quite often, the parents and teachers are not fully aware of the risks and threats posed by the internet, or the way of handling these. In the management of online intimidation or abuse, the children would need clear guidance and the experts agree on that media education could be the best forum for providing such guidance.

The Ombudsman stressed that analyzing the Hungarian situation of media education cannot be done independently from the issue of access to digital instruments, or digital competence, which means the competences related to using information and communication technologies. The practical implementation of the latter was not the subject of this investigation, however, it should be highlighted that the facilities and the possibilities for buying digital devices are very different in the individual institutes of public education in Hungary today. However, the Commissioner thinks that the existence of a digitally well-equipped system of institutions of public education is one of the most important prerequisites of the complete implementation of media culture education, while the existing inequalities and deficiencies must be remedied and improved continually.

It was concluded by the Commissioner that the lack of teachers with appropriate competence, the contradictory, incomplete and mainly theoretical conveyance of knowledge on media awareness, as well as the lack of comprehensive and representative state research into media culture education, with a view to evaluating the efficiency of such teaching, furthermore, the lack of a situation assessment meant to define the goals result in an impropriety regarding the right of children to protection and care, as well as education. This is why the Commissioner requested the Minister of Human Capacities to initiate the preparation of a comprehensive situation assessment mapping the Hungarian situation regarding media awareness education, the development of the teacher's

specialized knowledge and skills, and to take measures aimed at increasing the number of teachers with specialized qualifications. He asked the Minister to propose that NAT's (the National Curriculum) current set of objectives and the system of teacher training be reviewed, with a view to including knowledge on the nature of cyberbullying in both the training and the examination requirements.

The Minister of State pointed out that there is a system of further training in place, in response to the initiative regarding the preparation of teachers. With regard to this, the Commissioner indicated that the knowledge conveyed solely in the framework of further training programs cannot give an appropriate guarantee, as in these courses, arising from the nature of further training, acquiring the knowledge depends on the interests and choices of the teacher. This is why the Ombudsman thinks that the incorporation of the knowledge on the phenomenon and handling of cyberbullying in the system of teacher training would qualify as a meaningful guarantee for solving this problem. In his answer, the Minister of State explained that one of the responsibilities of the recently established system of school supervision is the control of institutions of education, of which the control of the implementation of the institutional pedagogical and educational goals is also part. Pursuant to the provisions set out in Nkt (Act CCIV of 2011 on National Higher Education), the next review of NAT is already being planned, based on which the modifications can be effected, if necessary.

2. In the context of the 2016 Children's Rights Strategy, several comprehensive inquiries were launched and concluded with a report. In case No. AJB-120/2016, the Commissioner for Fundamental Rights launched a comprehensive ex officio inquiry on the subject of children with double needs in child protection care, i.e. those children who have both specific (those who have a permanent condition and/or live with disabilities) and special needs (those who have serious behavior problems, those who show grave psychiatric symptoms or use psychoactive substances). The goal of this investigation was to reveal how the guarantees defined in the Convention on the Rights of the Child and the special children's rights defined by the Act on Children's Rights are enforced in the practice of the institutions. The Commissioner asked the directors of the Budapest- and county-level child protection agencies, as well as the head of the Hungarian Expert Committee for Child Protection (OGYSZB) to send him the expert opinions on children with double needs prepared by the expert committee for child protection in 2015. He also requested information on how many of the children with double needs could be placed in a caring home (including those which provide psychiatric care as well) that met their needs, that approached the satisfaction of their needs, or that were inappropriate for meeting their needs in this period. The Commissioner designated the five children's homes where the on-site investigations were meant to be performed with regard to the responses that he had received. The Ombudsman already investigated into the country's psychiatry and addiction health care supply back in 2009. In Ombudsman's report No. AJB-3536/2009, it was concluded that there was absolutely no in-patient psychiatric care for children in three regions, i.e. in Central Transdanubia, South Transdanubia and North Hungary. The Commissioner ordered a follow-up inquiry in order to explore the measures taken after the disclosure of the report, as well as the effect of these measures on fundamental rights.

It was concluded by the inquiry that the institutions providing child protection care are not prepared for supplying care services to children with double needs, either with regard to physical or human resources. The deficiencies of adolescent and child mental

health and addiction care continue to affect both the children who live in families and those who are in child protection care It was also established that there are no professional foster parents who are prepared for providing care to children with special, double needs. It was proven that the children live at care homes which are not in line with their needs due to the lack of beds, which involves the continuous deterioration of their mental state.

The amendment of the Child Protection Act, in effect since July 1, 2014, has defined double needs, and at the same time, it also declared that for them, both specific and special needs services should be provided. However, the legislator did not take care of the development of the required supply system. Pursuant to a statutory provision, the children with double needs can be placed in the existing supply system, the number of beds in these institutions has not been increased, neither have the objective and personal conditions been adjusted to the new tasks. Thus, the expert committees have also been put in a situation of constraint, the proposals for placement are adjusted to the available number of beds rather than to the needs of the children. The respondents and several of the heads of the institutions affected by the on-site review stressed the necessity of the development of the supply system. On the regional level, it was proposed that institutions that are suitable for supporting the satisfaction of both needs of children with double needs be established for children who have a mental disease or use psychoactive substances. The issue of the education of children with double needs also requires a solution, i.e. the availability of services satisfying both needs should be ensured, and the objective and personal conditions should be improved. The training of foster parents capable of raising and taking care of children with double needs is not to be delayed any more.

The Commissioner thinks that providing services to children with double needs, especially those who struggle with serious mental problems and use psychoactive substances, or those who are already addicted and require addiction treatment, cannot remain the responsibility of the child protection experts alone. Their problem can only be solved by the cooperation of the fields of child protection, health care and education. Consequently, in the case of children with double needs, the principle of the best interests of the child can only be enforced in the form of interdisciplinary cooperation. All in all, the inquiry revealed improprieties related to the fundamental rights of children to protection and care, education, as well as to physical and mental health. The Ombudsman turned to the Minister of Human Capacities, the Minister of National Economy, to the General Director of the Directorate-General for Social Affairs and Child Protection (SZGYF), as well as to the Chairman of KLIK (the Klebelsberg Institution Maintenance Center) in order to prevent the improper situation regarding fundamental rights revealed in the report. The Commissioner sent seven recommendations to the Minister of Human Capacities, four to both the directors of SZGYF and KLIK, as well as one to the general director of KLIK.

The Commissioner asked the Minister of Human Capacities to consider the option of stipulating the content and formal elements of the expert opinions of the expert committees on child protection in a law. He requested that the provisions of the Child Protection Act be extended to the follow-up care of children with specific, special and double needs. He asked the Minister of Human Capacities and the Minister of National Economy to consider the option of the establishment or development of institutions which are capable of providing care and education to children who live with mental diseases and those who use psychoactive substances. He also proposed to the Minister of Human Capacities to do his best to eliminate the lack of care and to ensure access to health care services in the geographical areas and with regard to the special groups of conditions referred to in the re-

port. He requested the Minister of Human Capacities to investigate into the hiring of what kind of experts would be justified in the institution also taking care of children with double needs besides the professionals defined by the law. He proposed that after establishing the institutions suitable for providing care for the affected children, he consider the amendment of the act, to achieve that no children under the age of 18 be placed in psychiatric care institutes or rehabilitation centers. He proposed that regular supervision be ensured for the staff members of the institutes involved in providing care for children with double needs, as well as complex their further training, in line with the needs of the patients.

The Commissioner accepted the response given and the measures taken by the responsible ministry by adding the following comments. In the Minister's opinion, the amendment of the law is not justified, as the follow-up care of those young adults who earlier qualified as children with specific, special or double needs, is not excluded by the law. In the respondent's opinion, if the Ombudsman's recommendation was meant to introduce specific and special follow-up care as new forms of health care supply, this can only be realized if it is professionally well-substantiated and if the necessary budgetary resources are also available. The Ombudsman did not doubt that the follow-up care adjusted to the needs of young adults can be ensured in the current statutory environment as well, with the appropriate professional background and financial expenses. This is why he shared the opinion voiced by the responsible ministry, i.e. that the problem that was brought up was not one whose solution primarily and exclusively requires an amendment of law but that it is a budgetary issue. According to the information provided by the responsible ministry, a proposal had already been made for increasing the number of staff members in the groups of children's homes and group homes which provide care to those children who have specific, special or double needs by 1 head, however, this proposal was not accepted due to the lack of resources. This is why the Commissioner asked the Minister of State responsible for this field to support, to the best of his abilities, during the preparation of the bills on sectoral management and the state budget, raising the amount of the normative state support for the follow-up care of young adults with specific and special care needs, or double needs, as well as increasing the staff number of the professionals working in the groups providing care to these children. The general directors of both SZGYF and KLIK adopted the recommendations.

3. In the Ombudsman's practice concerning children's rights, mostly ex officio inquiries into the operational anomalies, deficiencies and malpractices of the child protection signaling system is a recurring element. In 2016, inquiry No. AJB-4239/2016 received special attention. The Commissioner launched an ex officio investigation in order to review the procedure conducted by the members of the child protection signaling system in the case of an eighteen-month-old girl who starved to death in Gyöngyös. According to the facts revealed, the parents of the deceased child refused the health visitor's services already during the mother's pregnancy and then also after childbirth. They did the same to the services offered by the child welfare agency and they never appeared before the public guardianship authority when they were summoned. The Commissioner concluded, in harmony with the findings of the national public health services, that the health visitor fully met her signaling and cooperation obligations defined by law, so no malpractices occurred on her side. It was also mentioned in the report that the law obliges a child's parent or legal representative to cooperate with the health visitor. If a child's legal representative refuses to use the services of the regional health

visitor or to allow a home visit, i.e. refuses to cooperate, the health visitor is obliged to (and currently this is her only choice, too) to notify the child welfare agency and the family doctor of such rejection without delay.

Earlier, the Ombudsman asked the responsible ministry, in his report concluding the investigation into the eighteen-month-old child starved to death by his parents in Agárd, to consider the stipulation of the mandatory use of health visitor's services and the consequences of the rejection thereof in a law. The Minister adopted the proposal, however, no action was taken. In the Commissioner's opinion, this tragic event highlighted again that the lack of consequences of refusing to use the services offered by health visitors does not provide any guarantees, and in serious cases, this may even prevent the state from meeting its obligation to protect life. The Commissioner requested the Minister of Human Capacities again to consider the stipulation of the mandatory use of health visitor's services in a law, or in lack of the latter, the regulation of the consequences of refusing health visitor's services in such a way that provides an appropriate guarantee for protecting the vulnerable young children's fundamental rights and best interests. The Minister adopted and acted upon the recommendation. Pursuant to the provision set out in the Child Protection Act, which is effective from January 1, 2017, it is a grave threat, even in lack of any other signal, if the parent refuses to cooperate with the provider supplying basic health care services.

Based on the documents and information that were available to the Commissioner, the family pediatrician did not see the child, who could by then be considered malnourished, for a long time, and she only recorded her weight gain on the basis of the parents' self-statements. Also, the doctor told the public guardianship authority in the then ongoing process of taking the child into care that the child's care and upbringing were ensured by the parents. She made the first signal on the endangerment of the young child only months after this, which was too late. As regards the procedures conducted by the public guardianship authority and the child welfare agency, the investigations carried out by the second-instance authority, the Ministry of Human Capacities (EMMI) and the Ombudsman disclosed several deficiencies.

In summary, the Commissioner concluded that the unjustifiably protracted procedure conducted by the public guardianship authority, the lack of ordering a hearing, related summons, arrest after several unsuccessful summons, then the lack of ordering an on-site visit, furthermore, that the authority did not get authentic evidence on the endangerment or lack of endangerment of the child, caused a very serious impropriety related to the child's right to protection and care. Furthermore, he concluded that the above serial malpractices committed by the family pediatrician, the child welfare agency and the public guardianship authority made it possible, or did not prevent the parents from depriving their child from the food that is meant to ensure a child's healthy development for a longer period of time, which indirectly led to the child's death. Since the supervisory bodies took the necessary measures with regard to the procedures conducted by the public guardianship authority and the child welfare agency for eliminating the disclosed improper practices and deficiencies, the Commissioner launched no further actions in this case. He asked the head of the national public health authority to consider the possibility of calling the child's family doctor to disciplinary account. According to the response, based on an order by the Minister of State, the national public health authority launched an administrative procedure against the health care provider employing the family doctor. The Commissioner accepted this answer.

2.1.2
Protection of the fundamental rights of the disabled

Disability affairs in the arguments of the profession and fundamental rights are the parallel history of the theoretical and sociological interpretation of human rights. The obligations of state administration continue to exist after the ratification of the UN Convention, i.e. CRPD as well. Related to a specific complaint, almost each group of persons with disabilities came to the focus of the Commissioner's attention but this year, special attention was paid to the transportation conditions, the conditions in care homes and the difficulties of the early development of children. The situation of assistance dogs continues to be disputed, which caused problems to the masters because of the lack of knowledge of the public on this subject. Within the circle of individuals living with disabilities, children living with disabilities and psychiatric patients classified as individuals living with psycho-social disabilities constitute a special area. The Commissioner has also reviewed the everyday problems of wards and guardians.

1. In case No.AJB-767/2016, the complaint of a person with disabilities was related to air transport. A person with reduced mobility complained of the procedure applied by Wizz Air Hungary Kft, more precisely, the Company's procedure in place regarding travel with assistance dogs. The complainant who uses a wheelchair indicated his need for special assistance when he booked the flight, he reported his intention to travel with the assistance dog in writing in advance. The staff member of the Company approved the trip and, according to the feedback that he had sent to the complainant, he indicated to the staff of the airport that the complainant with disability would travel in the company of an assistance dog. However, the appearance of the complainant and his assistance dog caused trouble at the departure from the Budapest airport, as the staff responsible for passenger registration were not familiar with the rules of the Company's General Contractual Terms and Conditions on the transportation of live animals but after a brief coordination, the permission to take the assistance dog on the airplane was confirmed. On the way back, during the scrutiny of the complainant's wheelchair at the Malmö Airport, the staff members of the airport picked the complainant out of the line, then they told him that the assistance dog was not supposed to travel, as they were only willing to transport guide dogs for the blind. After a lengthy but unfruitful conversation with the customer service representatives of the Company, the complainant was able to reach one of his acquaintances at the Company, who was familiar with the rules set out in the General Contractual Terms and Conditions, and as a result of his mediation, the petitioner was allowed to fly home with his dog on the board.

During their investigation, the Company concluded that the passenger contacted the Company via e-mail rather than on the phone, however, the request was handled by the Company's employee but he registered the approval of the transportation of the assistance dog in the "comments" column of the system rather than in the code section, which specifically serves this purpose. The landside services teams of both the Budapest and the Malmö airports were looking for the relevant code in the booking data and as this was missing, they did not think that the approval of the transportation of the assistance dog was certified. The inconvenience to the complainant was caused by the length of the period of clarifying this circumstance between Malmö and Budapest. It was revealed by the inquiry that this procedure raised the suspicion of improprieties related to

the requirement of equal treatment, as well as the state obligation of the priority protection of persons with disability. Since, however, in this case the Company took action in its own competence for the prevention of a wrongful situation, the Commission did not initiate any action. It became clear that a mistaken concept was used by the Company's General Contractual Terms and Conditions, which may lead to a mistaken enforcement of the law and generates an impropriety related to the principle of legal certainty. This is why the Ombudsman asked the Company's Chairman-CEO to modify the Company's General Contractual Terms and Conditions in line with the relevant laws. These recommendations were accepted by the Company, they promised to take the necessary measures, including the conceptual definition of assistance dogs and the amendment of the section on the conditions of transporting these animals in the Company's General Contractual Terms and Conditions.

2. In case No. AJB-2709/2016, the starting point of the investigation was that the past few years had seen the arrival of a high number of complaints from people living under guardianship to the Ombudsman, in which all the complainants objected to the procedures followed by the professional guardians. In the petitions, the wards complained of problems which typically arose from the fact that, as the case may be, a professional guardian has as many as more than one hundred dependents. As consequence of the extraordinarily high number of wards per one professional guardian, the guardians are strongly overburdened, and there is a very high turnover in the profession due to the overload and burnout. All this does not only make it difficult to fulfill the fundamental guardians' responsibilities but in some cases, it makes it absolutely impossible to do so, which is in breach of the fundamental rights of the wards. The inquiry extended to studying the experience gained by the public guardianship authorities and some civil organizations in supported decision-making, since a supporting person may now be appointed for any person of legal age who needs help with managing some of their affairs or making some of their decisions because of their slightly reduced cognitive abilities, without affecting these persons' capacity, as a result of the introduction of the legal institution of supported decision-making and the coming of the Civil Code into effect. According to the amendment of the relevant decree, the county public guardianship authority took care of the retraining of the persons who were working as professional guardians as of March 15, 2014 into professional supporters by September 30, 2014.

Thus, the conclusions of the report are not meant to support or question the adequacy of the system of guardians (the institution of guardianship fully restricting legal capacity) but they are intended to take a summary representative picture which may contribute to taking the actions planned for fulfilling the obligations arising from Article 12 of CRPD as well as possible in the future. The situation is that it is stipulated by CRPD that the state parties acknowledge that persons with disabilities are entitled to the same rights and capacities as others in all fields of life. It also declares that the state parties ensure that all actions related to exercising legal capacity, in line with international human rights standards, contain appropriate and efficient guarantees for preventing abuse. These guarantees ensure that the actions aimed at exercising legal capacity respect the affected person's rights, will and choices, they are free from conflicts of interests or undue influence, are proportionate and adjusted to the affected person's circumstances, they concern the shortest possible period of time, and they are regularly supervised by the competent, independent and unbiased authority or judicial body.

As regards the personal criteria, it is recorded by the report that according to the National Register of Persons under Guardianship as of March 31, 2015, there are 34,020 persons under the effect of fully restrictive guardianship, while there are 26,572 persons under partially restrictive guardianship. The excessively high workload of professional guardians, their low, sometimes uneven remuneration, as consequence of these, the low number of professional guardians, the high turnover rate in the profession, as well as the extraordinarily high number of dependents per one professional guardian do not guarantee that the fundamental rights of the wards are fully represented. All of this causes improprieties related to the right to human dignity that everybody who is under guardianship is equally entitled to, the principle of legal certainty and the requirement of equal treatment, as well as the priority obligation of the state to protect persons with disabilities, furthermore, it is not in line with the international obligations arising from Article 4 of CRPD undertaken by Hungary.

As regards the training and further training of professional guardians, the Commissioner highlighted that the fees of such training programs show considerable differences between the individual counties, and the current practice and structure, as well as the outdated syllabus of the training of professional guardians, furthermore, the lack of further training materials involve such detrimental consequences for the wards which means that the system of guardians in its current state does not guarantee that the fundamental rights of the dependents are fully enforced and supported. The Commissioner thinks that all this is clearly incompatible with both the Hungarian and the international fundamental rights standards.

As regards the experience gained in supported decision-making, it is mentioned in the report that the implementation of the institution of supported decision-making into the Hungarian legal system is highly welcome and very progressive. With this report, the Commissioner raised attention to that the legal technical solution as part of which professional guardians were retrained to become professional supporters in a mere six months and the legal institution of supported decision-making was incorporated into the system of public guardianship offices, carries the risk of the occurrence of fundamental rights improprieties related to the right to human dignity that everybody is equally entitled to, the principle of legal certainty and the requirement of equal treatment, as well as the priority obligation of the state to protect persons with disabilities The Commissioner requested the Minister of Human Capacities to review the current personal conditions of the institution of guardianship, its training and retraining system, in order to ensure that the fundamental rights of persons with disabilities are fully enforced. Furthermore, he also asked the Minister to pay extra attention to the feedback and experience related to the current system of guardianship.

The Minister of National Economy explained that the issues revealed by the report do not affect their Ministry's responsibilities and competence, they are the responsibility of the Ministry of Human Capacities. The Minister who heads the Prime Minister's Office thinks that it is the Minister of Human Capacities who is entitled to make proposals for the development of the system of guardians and supported decision-making, as well as for any possible amendments of the law, in his capacity as the professional head of this area. The Prime Minister's Office takes part in the elaboration of the regulations for the affected institutions. The Minister of Justice indicated that the complaints that emerged in relation to the professional guardians do not primarily concern the competence of the Ministry of Justice, as the report mostly draws attention to practical improprieties rather than legal deficiencies.

2.1.3 Protection of the rights of most vulnerable social groups

The Ombudsman Act expects the Commissioner in office to pay special attention to every vulnerable social group in need and in danger. The quality, complexity and depth of neediness is clear from the investigations conducted in 2016 as well, with dire material existence and its consequences appearing in the case of almost all social groups. The social groups falling in this circle, already emphasized by the Commissioner in previous years, can be classified to be at risk for different reasons (e.g. their existential situation, age, medical and mental status), however, due to this situation, they are also defenseless against all state and public authority interventions. At the same time, in their case, it may have severe and direct consequences if the state – through one of its institutions – does not satisfy some of its constitutional tasks, does not satisfy its obligations related to the establishment and maintenance of the special regulation and practice helping people in need or does not satisfy them appropriately Be it some, even unjustified, public authority intervention or the failure to perform some state task or obligation, the ability of those affected to enforce their rights or interest is slim.

1. The Office of the Commissioner for Fundamental Rights represents Hungary in the professional task force of the project on "The Enforcement of the Human Rights of People in Old Age Care", which is also funded by the Council of Europe ("the Old Age Project"), which was launched at the initiative of the European Network of National Human Rights Institutions (ENNHRI), and the Office is also a pilot member in the project work lasting for two and a half years. In 2016, our Office participated and represented our country, as a pilot member in the working group of the project "Enforcement of the human rights of persons in elderly care", launched on the initiative of the European Network of National Human Rights Institutions and co-financed by the European Commission. In the framework of this project, the colleagues of the Ombudsman visited three old age homes of key importance in 2016.

From among the inquiries related to old age, case No. AJB-897/2016 should be specifically highlighted. In this, some complainants from Fegyvernek, who requested to remain anonymous, filed a petition to the Commissioner. The petitioners complained of several problems, including the operation of the old age home called Aranykor. They objected to the hygienic conditions of the old age home, the treatment of the residents and the staff, as well as the inhuman conditions of care. The Commissioner requested the government office to investigate into the complaints, who met this request by involving expert bodies, conducting several on-site reviews, making interviews, as well as studying the documents of the institution. As it turns out from the report, when the investigation was conducted, the objective and personal conditions of the old age home were not in harmony with the legal requirements: the building was not accessible for those with physical disabilities, and in lack of an elevator, it was very difficult to mobilize and move outside those residents with reduced mobility who live on the upper floor. The building was in a very poor state of repair. Due to the lack of sufficient headcount, the carers also carried out cleaning and kitchen tasks, to the detriment of caring for the elderly. The institution did not organize any leisure time activities for the residents at all. On the ground floor, two residents diagnosed with dementia lived in a locked room. Their room was untidy, dirty, they were placed in circumstances violating human dignity, there was no signaling system installed in the build-

ing. This method brings up serious professional and patient rights concerns and it cannot be applied against the residents in any circumstances. The institution had no professional protocols, or internal instructions for the professional staff, their professional program was also incomplete and sloppy, the restrictive measures were not documented at all.

The conditions experienced on the site at the time of the inquiry do not meet the requirements of caring for persons diagnosed with dementia, the operation of the institution is not based on appropriate professional competences, consistent and transparent principles and rules were missing. If such were existent, the service provider would be able to ensure continuous and high quality care to the patients at an appropriate professional standard, by realizing the written and practically manifested concept. It was established by the Ombudsman that the incomplete objective and personal conditions of the old age home, the placement of residents with reduced mobility, the lack of accessibility, the operation of the institution based on inappropriate professional competences, the missing documentation of the necessary regulators and restrictive measures, as well as the placement of the residents diagnosed with dementia in locked rooms have caused an impropriety related to the right of the patients to human dignity and personal freedom. As a result of the measures taken by the authority, the management of the old age home immediately began to eliminate the errors in order to put an end to the deficiencies and law breaching circumstances revealed by the comprehensive professional investigation, and the information was received at the time of closing the investigation that the procedure against the institution had been terminated by the authority.

The Commissioner requested the maintainer and the head of the institution to make sure, without delay, that the institution meet the objective criteria required by law and make up for the deficiencies revealed by the inqiury and not remedied as yet. The Ombudsman proposed that such mental hygiene activities which assist the old persons in maintaining and improving their existing capabilities should be organized. He also requested that actions be taken for fully harmonizing the institutional regulations with the laws and the professional rules, that it be ensured that the patient rights are fully enforced in the institution, especially when restrictive measures are taken. He asked the government commissioner of the government office to pay special attention to whether the operation of the old age home Aranykor is compliant with the laws, in order to ensure that the residents are cared for at the required professional standards, by fully respecting their fundamental rights. The maintainer informed the Commissioner on their having made up for the revealed deficiencies, their having placed the residents with dementia in separate rooms, their having tidied up the living quarters of these patients, their having installed a nurse call system, and an elevator is being designed at the moment. The government office informed the Ombudsman that they would pay increased attention to the compliance of the old age home with the relevant laws in the framework of recurring official reviews.

2. In case No. AJB-368/2016, the Commissioner conducted an investigation into making reproductive procedures using donor sperm impossible and the consequences thereof. The story behind the case was that on February 26, 2015, an alarm signal came from the Danish Health Authority and Medicines Agency, via the quick alarm system of Human Tissues and Cells, to the Hungarian state health care body, in which Nordic Cryobank NBC (European Sperm Bank) announced that a baby boy conceived by using the sperm of donor No. 7861 was diagnosed with alpha-1-antitrypsin deficiency. According to this information, NBC first blocked the donor temporarily, then with a final effect and the af-

fected institutions were notified, which was the KRIO Institute in Hungary. The National Medical Officer Service (OTH) got in contact with the KRIO Institute in order to obtain information on this case, as a result of which they found out that the sample in question had already been quarantined, after preliminary information had been received, on December 9, 2014, after which they did not distribute it or ship it for use. In March 2015, OTH launched an ex officio procedure regarding unlawful activities (sperm imports), and in the first-instance decision of June 2015, they prohibited the KRIO Institute from importing sperm, or accepting any sperm whatsoever.

The situation that evolved in the wake of this step caused a great uproar, related to which several petitions were sent to the Ombudsman, both from the side of the service provider and the potential clients thereof. In their petitions, the complainants, who were mostly single women and couples with infertile men, various problems were defined, depending on the stage of the treatment that they were in. Those who had not yet began the treatment resented that they had not received satisfactory information on the reasons for the suspension of purchasing sperm from abroad, furthermore, on the currently available alternative options, and as it later turned out, there were no such options available in Hungary at all. On the other hand, those patients who had wanted a baby for several years, or maybe even their treatment had commenced, were now faced with a situation that in lack of sperm, they had no chance for a baby, that they had undertaken the treatments in vain, which had been demanding both from a health and a financial point of view, The health care providers did not understand the decision: both the sperm bank and the in vitro fertilization (IVF) centers had been pursuing their activities for several years, along with the required data supply and the controls performed and the permissions given by the state health care body.

It was concluded by the inquiry that until May 2015, the KRIO Institute, in possession of its initial sperm bank permit, then of its cell bank professional operating license, had been found suitable by the unceasing 16-year practice of the health care licensing and control authority not only for providing sperm deposit services but also, for organizing donor programs, based on its regular controls. In the opinion of OTH and the Minister of State, since the establishment of the KRIO Institute in 1998, with the unchanged legal environment, could only have provided sperm deposit services on the basis of their operating license. The Ombudsman was not in the position to decide whether the measures taken by the health care authority between 1998 and May 2015 were professionally appropriate. However, it can be concluded that it was not disclosed by the procedure and measures of the health care authority that the KRIO Institute had been pursuing their activities differently from the way it is required by the operating license. All this involved that during these 16 years, the KRIO Institute became a key player in the reproductive procedures using donor sperm, it was this company that supplied donor sperm to almost the entire IVF service sector in Hungary. And this was something that the health care authority was also aware of as a result of the data supplied by the KRIO Institute.

In summary, the report concluded that the activities and procedures of the health care authority generated an improper situation related to the principle of legal certainty, irrespective of which legal interpretation will be found right by the court on the basis of the quoted regulation. If the current legal interpretation is right, then the principle of legal certainty was breached by that the KRIO Institute was permitted, by the health care authority, to operate in a way that was contrary to the law for as many as 16 years, and that the authority took no measures at all in order to achieve that the Institute suspend

its activity different from its operating license and to prohibit the Institute from such in the future. Furthermore, the Commissioner also said that as long as it is the earlier legal interpretation that can be considered right, then the principle of legal certainty was also breached, as the unjustified procedure conducted by the health care authority, disregarding the change in the governing legal background, was unlawful, what is more, it did not provide any transitional solution for the reproductive procedures done with donor sperm that had already commenced.

It was concluded by the Commissioner that the situation that evolved in Hungary in the wake of the reproductive procedures conducted using donor sperm having become impossible, has generated an impropriety related to the right of the affected persons to physical and mental well-being. The Commissioner thinks that it is imperative that the situation and the prospects be analyzed by the health care authority involving experts. During the investigation, neither body was able to give account of the number of persons affected by the suspension or lack of reproductive procedures due to the lack of donor sperm.

It was stressed by the report that for mobilizing the potential donors, an education, awareness raising and recruitment campaign similar to those applied in the case of blood donation and the donation of organs and tissues would be necessary. Until the time when domestic offers satisfy the need for donor sperm in Hungary, the use of further, even foreign options should be considered, by observing the appropriate safety requirements. Related to the issues under review, the Ombudsman repeatedly raised attention to that the question is not only the treatment of a condition (infertility) and the supply of health care services but in the background of state intervention, there lie the enforcement of the fundamental rights of the persons concerned, as well as the interest of society as a whole: the birth of desired babies. In the opinion of the Commissioner, this situation caused an impropriety related to the right of the affected persons to self-determination, the freedom of starting a family, and it also incurred a permanent and direct threat of the occurrence of an infringement.

The Commissioner requested the Minister of Human Capacities, with a view to enforcing the governing legal requirements, to investigate into the factors contributing to, and the circumstances of the development of the erroneous practice described in the report, and based on his conclusions, to take the necessary measures to ensure that the health care authority pursue a practice in line with the principle of legal certainty in carrying out its tasks. He asked him to examine whether the data supply required by the relevant laws is appropriate, in order to ensure the effectiveness and efficiency of the control activities performed by the health care authority, as well as to create the conditions for conducting the reproductive procedures using donor sperm by involving the experts of the area, including providing the appropriate donor sperm supply. He also requested the Minister to prepare and publish the implementing regulation in which the specific rules are detailed by December 31, 2016, based on the authorization described in the Act on the Rules of the Protection of Data on Human Genetics, Examinations and Research into Human Genetics, as well as on the Operation of Biobanks.

In his response dated in August 2016, the Minister of State indicated that he encouraged the preparation of a situation analysis with a view to ensuring that in the future no such practice causing legal uncertainty could occur. The Ombudsman has not been informed of the findings of the situation analysis to date, despite his request, The information provided by the Minister of State contained that the coordination effort related to the IVF procedure had commenced with the involvement of experts, so the Commissioner requested information on the outcome of such coordination efforts, which had not been received by his Office

until the date of the preparation of this report. The Minister of State thinks that the tasks required for an efficient state involvement in providing domestic donor sperm supply have been identified, as part of which he thinks that it would be important to examine the feasibility of a domestic sperm donor program as well, including the clarification of the mode and extent of state involvement. He informed the Commissioner that the simplification of he donor suitability criteria in line with the requirements of the World Health Organization (WHO) is in progress, which may increase the number of suitable donors. The Commissioner has received no further information on the above. The response contained no reference whatsoever to the current situation of the donor sperm supply, neither did it touch upon whether an appropriate amount of usable donor sperm will be available after the suspension of the imports of donor sperm, whether the conditions for conducting reproductive procedures exist, furthermore, what the average waiting time is for the provision of such service with social security support. It has turned out from one of the court judgments that was adopted in the meantime and sent in by one of the complainants that the Budapest Court of Public Administration and Labor thought that the prohibition of the imports of sperm from foreign countries was based on the narrowing and unlawful interpretation applied by the health care authority, so the public administration resolutions were overruled.

3. In the Commissioners' practice both refugees and asylum seekers, as well as foreigners or stateless individuals not requesting asylum but leaving their country due to some pressure – regardless of their legal status – are unquestionably to be considered members of a group to be protected. All this is based on the fact that these are individuals who, after a longer period of escape,end up in a country, culture and linguistic environment alien to them. Increased state protection and the Ombudsman's attention is especially important when children end up in this severely defenseless situation.

In case No. AJB-1235/2016, the UNICEF National Committee of Hungary, on behalf of some of the members of the Child Rights NGO Coalition, filed a submission to the Commissioner, in which they requested that an investigation into the compliance of the provisions on the special rules of the Criminal Procedures Act (Be) regarding the procedures that can be launched for criminal actions committed in relation to the border barrier, with the constitutionality and international human rights standards be conducted, with regard to the fundamental rights of the accused under legal age. The submission was filed because on September 15, 2015, the provisions on the special rules of the Criminal Procedures Act (Be) regarding the procedures that can be launched for criminal actions committed in relation to the border barrier came into effect. As a result of this, a new chapter was added to the Criminal Procedures Act, in which the rules of the procedure launched because of crimes related to the border barrier are stipulated. In these procedures, the provisions of Be require the application of rules different from the general ones. Simultaneously, it is declared by the Be that the provisions set out in the chapter of the Criminal Procedures Act on persons under legal age are not applicable in any criminal cases related to the border barrier. All this resulted in the lack of a procedure law hierarchy in the case of the accused under legal age in the case of the criminal actions related to the border barrier, as Chapter XXI contains provisions on the special rules of the criminal procedure launched against young accused, taking the increased sensitivity of this social group, due to their age characteristics, into account.

The Commissioner launched an inquiry regarding the regulation and turned to the Minister of Justice. However, in his response, the Minister stressed that despite the exclu-

sion of the special chapter on persons under legal age, the provisions of the Be other than those specified in Chapter XXI, which are enforced in general in all the procedures, and which are more favorable for youngsters, can still be applied in these procedures. During the review of the regulation, the Ombudsman scrutinized in detail the individual special provisions and procedural guarantees, based on the governing chapter of the Criminal Procedures Act, by also taking into account what role they play in the criminal procedures related to the border barrier. Based on all this, the Commissioner concluded that the special procedural law provisions of the Be concerning the criminal actions related to the border barrier were basically not formulated by taking the interests of persons under legal age into account, except in the definition of the general goal regarding the special attention to be paid to the interest of youngsters in the case of court-ordered supervision. As a result of this, the state obligation of legal protection related to the right of children to care and protection is not fully enforced. This method of regulation is basically not in line with the international children's right standards, the provisions of the Convention of the Rights of the Child, as it disregards the key interests of the youngsters who belong this special group of perpetrators, different from the general rules. The lack of a special regulation that takes the age characteristics into account gives reason for concern in itself.

The Commissioner also pointed out that, as it turns out from the facts of the matters, the perpetrators of these acts are almost always refugees or migrants, among whom one can also find youngsters. Due to the application of this regulation, it is in their very case that the different rules, which are otherwise applicable for youngsters in other criminal cases, are not enforced, which thus brings up a guarantee issue with regard to both the Fundamental Law and the non-discrimination required by the international human rights standards. This is why weighing and picking between the application of the individual special guarantees would basically not be right, as the legislator found all guarantees necessary with regard to the young offenders, this is why they were codified. All this is so even if, due to the circumstances of conducting the procedures concerned, as well as the underlying special situations, it is difficult for the law enforcers to apply some of the individual guarantees. In the case of such special criteria, very prudent codification solutions will become necessary.

It is pointed out in the report that if the special guarantees provided to the young accused are considered from a content aspect, it is an issue to be highlighted from among the details of the draft report that the legal representation (guardian ad litem) of unaccompanied minors is not guaranteed in the procedures concerned. This violates the principle required by Article 3 of the Convention of the Rights of the Child, according to which it is the best interests of the child that should be kept in mind in the procedures. The exclusion of the requirement of the special condition that serves as the basis for ordering preliminary detention, i.e. exceptional gravity, is of special concern, which is not compatible with the requirements of the Convention, and ultimately, with those of he Fundamental Law either. During the investigation, due to the lack of a regulation that focuses on the best interests of minors required by both the Fundamental Law and the international standards, the Commissioner considered the lack of special requirements for public hearings, the postponement of indictment, the renouncement of a hearing as described in the chapter on minors as worrisome.

In summary, the Commissioner concluded that in the regulation of the criminal procedures concerning crimes committed in relation to the border barrier, such a legal situation was generated by the Criminal Procedures Act for the youngsters, with the unjustified disregard for the guarantees, which has caused an impropriety related to the

children's rights to protection, care and a fair procedure arising from the Fundamental Law and the international regulations.

The regulation also contains that the codification of the new Criminal Procedures Act is in progress, the wording of which does not exclude, i.e. basically incorporates the special requirements set out in Be's chapter on youngsters for the set of rules of the criminal procedures on crimes related to the border barrier with regard to the future. By this, the draft aims to make the application of special procedural guarantees for youngsters equally compulsory in the future, which concept of the legislator is accepted by the Commissioner. However, the Commissioner proposed to the Minister of Justice that he should consider the modification of the Be's criminal procedure rules related to the crimes in connection with the border barrier in such a way that procedural guarantees concerning the accused under legal age be incorporated, which is in line with the requirement of equal treatment and guarantees the enforcement of the rights of children.

2.2 Further investigations revealing the enforcement of fundamental rights

In addition to the areas of examination prioritized by the Ombudsman Act, as well as the protection of the most vulnerable social groups, in 2016 the Commissioner launched investigations in several individual cases, also of comprehensive nature, based on a concrete complaint, as well as ex officio.

1. In case No. AJB-883/2016, the Commissioner received one comprehensive and two individual complaints, in which the complainants drew his attention to the regulatory anomalies and practical difficulties of the legal recognition of gender. According to the submission, in Hungary there is currently a theoretical possibility for the legal recognition of gender, however, there is no regulation in place for the relevant procedure, which is due to the medicalization approach. It was the subject of complaint that it causes a serious practical problem that no authentic, comprehensive, accessible information, coordinated with the bodies involved in the procedure, is available on the procedure of sex change and name change, the documents required for this, the deadline of the procedure, the possible options of legal remedy and the method of such a change. In the two individual cases, 17-year-old youngsters turned to the Commissioner because it had been established by specialist doctor's opinions that it was justified to launch the process of sex and name change, that there was no medical contraindication against the sex reassignment surgery. The complainants said that the Health Policy Department of EMMI, i.e. The Ministry of Human Capacities did not approve the sex and name change after a long period of waiting, based on which the Immigration and Asylum Office rejected their application.

The report draws attention to that the legal recognition of gender, the procedure aimed at the sex and name change do not presume the (medical) gender confirmation surgeries. The legal recognition and administrative change of gender based on identity are without a doubt a question of fundamental rights. The Commissioner stressed that gender identity is a category independent from sexual orientation, which is protected as a key characteristic trait of the personality. The gender identity of some persons is not identical with their

external sexual characteristics, i.e. with their primary and secondary sexual characteristics, they are called transgender persons. In line with the international standards, it is not required by the Hungarian legal regulation to perform the gender confirmation surgeries as a prerequisite for sex and name change in the legal sense of the word, it is only the diagnosis of transsexualism that is a requirement. This is why it was pointed out by the report that in the regulation to be established, it is the actual regulatory distinction between the two procedures, one that respects the needs and identity of transgender persons is in harmony with the enforcement of the right to human dignity and self-determination.

In Hungary, it is possible to legally recognize and change gender, however, the relevant procedures are not legally regulated. In the Hungarian legal system, gender change and the related name change exist as civil registry procedures. It can be reconstructed that in the procedure, the role of the EMMI department extends to examining the diagnosis related to the sex change in the framework of an "expert opinion" and informs the civil registry office of this, however, the procedural and formal rules of this are not elaborated. In his response, the Minister of State emphasized that the role and responsibilities of the EMMI Department in the procedure, as well as the legal frameworks are not clarified, so at the moment, there are legal consequences added to a legally unregulated procedure. There are no uniform, well-established standards and a stable practice that can be shared with the other state bodies with regard to the source, the form and the content of obtaining the expert opinion. It was revealed by the investigation that among those who are concerned, it is spread by word of mouth what conditions have to be met at any time, in order to receive a favorable response to the application. It is the consequence of the lack of a uniform and available legal regulation that the definition of procedural conditions may become arbitrary, and their availability will also become incidental as a result of this, i.e. the procedure is unpredictable for those concerned.

The protraction of the procedures is the consequence of the high number of procedures aimed at the completion of documents, which arises from the above circumstances. This, on the one hand, is problematic from the aspect of the authority, and on the other hand, it exposes those concerned to an unnecessarily lengthy period of uncertainty in such a sensitive issue, and due to this, a psychological trauma. Since no formal decision is made on the sex and name change, the legal remedy is also incidental. In summary, the Ombudsman concluded that the absolute lack of a legal regulation that defines clear frameworks, guarantees, tasks and responsibility in a procedure that is of key significance for the enforcement of the principles of human dignity and self-determination violates the principle of legal certainty. Furthermore, the lack of a clear and accessible practice and generally available information on the latter causes an impropriety regarding the right to a fair procedure, legal remedy, human dignity and self-determination.

The Commissioner pointed out that the procedure established by practice applies an automatic rejection in the case of petitioners under legal age, despite the fact that a petition meets all the requirements, as the case may be. In the cases presented by the complainants, the information was provided, and the negative "decision" was adopted with a delay of four-five months, after several warnings and inquiries, or was not provided or adopted at all. The protraction of the procedure causes a high level of uncertainty among the petitioners under legal age, it increases and maintains the psychological traumas, and at the same time, it also imposes a considerable financial burden on them. The Commissioner concluded that besides the lack of regulation and predictability, this practice all in all abuses the right of the complainants to a fair procedure. When the legal regulation for the procedure

of sex and name change is elaborated, based on all this, the legislator should take a stand on whether they will establish a lower age limit for initiating a sex and name change, emphasizing that the subject of the petition is not the sex reassignment surgery here.

It is highlighted in the report that the affected person is entitled to receive the necessary documents, cards and certificates adjusted to their changed sex and name. After the registration of the sex and name change, however, it causes a problem related to changing the official deeds that the institutions of higher education are currently not obliged to replace the degrees obtained there, or to correct the affected data. It is true that statutory regulation provides for the withdrawal of certificates, however, this rule only extends to withdrawals due to illegally obtained degrees. The Commissioner emphasized that the withdrawal or replacement of the certificates shall not depend on the decisions adopted by the institutions of higher education. Due to the lack of the enforceability of the change, the affected transgender person has to disclose such information qualifying as sensitive personal data to the employer or to the institution of higher education (i.e. the fact of the sex and name change, the date thereof) which concern their innermost private sphere, and which has no relevance for the legal relationship in question. It was also established by the Ombudsman that all this violates the principle of legal certainty, as well as the right of transgender persons to privacy.

The Commissioner formulated several recommendations to the Minister of Human Capacities. On the one hand, he asked him to consider the preparation of a statutory level regulation, or a related government or ministerial decree regulation that ensures the sex and name choice, or sex and name change of transgender persons in line with their gender identity, which, besides the enforcement of the guarantees of the right to a fair procedure, as well as to legal remedy, and separated from gender confirmation surgeries, by prescribing the proportionally defined criteria of content of the necessary extent, as well as rules on age. Furthermore, the Ombudsman also asked the Minister to initiate the modification or supplementation of the Act on Higher Education with such content that allows, upon request, the registry of the name of transgender persons in line with their real gender identity in their documents certifying academic qualification, also in line with the registry in their birth certificates.

In his response to the report, EMMI's Minister of State for Health indicated that they agreed with that the acknowledgment of gender based on identity and its administrative modification, as well as the related name change are issues basically related to fundamental rights, more precisely, to the birth registration procedure. In his response, the Minister of State also said that a joint statement had been established by the Department of Psychiatry and Psychotherapy of the Health Professional College according to which being transgender cannot be regarded as a mental illness. The response shows that it is the ministry responsible for registry issues (which was the Ministry of the Interior until December 31, 2016 and the Prime Minister's Office after this date) that has primary competence in this regulation. At the same time, the Minister of State took action on initiating a government proposal that would provide a solution with the involvement of the competent bodies. Furthermore, the Minister of State underlined that in the current quasi rules of procedures, the practice of producing "expert opinions" will be suspended by EMMI's Department concerned, in lack of a law entitling them to issue expert opinions. In his response, the Commissioner for Fundamental Rights emphasized that the continuity of the practice of sex and name change procedures is a key issue from the aspect of fundamental rights. Due to the unclear competences, no such situation may occur which would lead to the suspen-

sion or stoppage of these procedures until the relevant legal regulation is in place. Based on all this, he asked for the involvement of the Minister of Human Capacities in conducting coordination talks with the Ministry of the Interior, as well as the Judicial Expert Board on Health Care concerning the beneficiaries and procedures of the issuance of expert opinions until the new legal regulation becomes effective. He asked the Minister to give an answer on the legislative proposal concerning the replacement of certificates of higher education.

2. In case No. AJB-760/2016, the Commissioner established, in his report on his comprehensive investigation, that the way how the disability supply system can respond to situations that require special consideration gives rise to concern, from the aspect of the protection of human dignity. It is underlined by the report that the Act on the Benefits to Persons with Changed Working Abilities and the Amendment of Some Laws (hereinafter referred to as: Mmtv) took effect on December 31, 2011, which fundamentally transformed the supply system of persons receiving pension for the deterioration of their health and other pension-like social benefits. The past four years have seen quite a number of submissions to the Commissioner, in which the transformation of the supply system was complained of. Besides investigating into the individual complaints, the Commissioner dealt with the systemic issues of the transformation in two comprehensive reports and he also made a proposal to the Constitutional Court regarding some of the provisions of the Mmtv.

When the Mmtv took effect, a health insurance service took the place of a pension-like service, where basically it was the service period that qualified as the criterion for eligibility (i.e. the period for which the insured person's pension contribution was deduced or paid). Consequently, in determining the eligibility for the benefits, now disregarding the period of service, it is only the period of 15 years prior to the submission of the application covered by the payment of health insurance contribution that counts (insurance period), which change, however, the invalid persons could not count on. As a result of the transformation, on the one hand, a personal scope was established, which consists of such persons with seriously deteriorated health who have not been able to fulfill the preliminary period of insurance that is required for the granting of the benefits due to their health condition. In a number of cases, these persons had lengthy periods of service from before the deterioration of their health, during which they paid both pension contributions and health insurance contributions. Due to their service periods, they would have obtained eligibility to benefits in the disability pension scheme and they also paid the health insurance contributions for several decades. Due to the transformation, however, they were faced with a requirement of such criteria which they cannot fulfill with a subsequent effect, as they cannot accumulate a service period any more. Thus, these persons with seriously deteriorated health conditions "dropped out" of this supply system through no fault of their own.

Also, those persons dropped out of this scope who received such benefits (e.g. care allowance or benefits for persons in active age) for a longer period of time, i.e. for several years or decades, from which no health insurance contribution is deduced, thus the disbursement period of the benefits does not qualify as an insurance legal relationship that results in eligibility to benefits. The proportion of persons who received care allowance is high among those persons who are not eligible to receive any allowance under Mmtv. This deficiency raises serious concerns also because the disbursement period of the care allowance gives entitlement to a service period, which means that in a way, the state acknowledges the strenuous work performed at home, which is involved by taking care of a relative with a serious condition or disability. However, such a situation may occur in

which the health of a person who has been taking care of their relative for several decades deteriorates, and they cannot receive any benefits that they would be entitled to due to the deterioration of health after they are no longer able to take care of their disabled relative.

It also causes a problem that the eligibility to benefits was allowed by the earlier regulation in the case of a predefined service period and extent of health deterioration, however, this regulation also contained an element of exceptional equity, the decisions on which were made by the head of the pension insurance administration. Mmtv does not allow the practice of exceptional equity. It was stressed by the report that it cannot be disputed that the legislator has broad discretionary powers in the development of the detailed rules of social security, its structure, as well as the transformation thereof. However, it cannot be disregarded from the aspect of the enforcement of the right to human dignity that Mmtv, due to placing the pension-like system on the foundations of health insurance, has excluded thousands of people, partially or entirely, from eligibility to benefits, through no fault of their own. The principle that a person cannot be an object or instrument of the law should be taken seriously. On the contrary, a person should always remain an individual subject, and thus, one whose interests should be equally considered. During the elaboration of the disability pension scheme, the prevention of abuse is a legitimate goal, the reconsideration of incentives is not to be objected to either but no transformation of scheme can constitutionally result in criteria that cannot be subjectively fulfilled by those concerned.

The complainants cannot accumulate the required insurance period with a backward effect, and so, they cannot fulfill the legislative condition that has been newly enacted and it is their very deteriorated health condition that explains that they will not be able to enter into a legal relationship by which they could obtain a further insurance period, and thus, eligibility to the benefits granted to persons with changed working abilities. In their case, the encouragement of return to the labor market, or rehabilitation cannot come up as a possible goal, it is not the extent of their health deterioration that is a question but the only reason for their dropping out of the system is the lack of an insurance period. The situation is especially serious in the case of persons who receive care allowance, who have performed a highly exhausting job by their having taken care of their relatives but they cannot count on receiving benefits that persons with changed working abilities are entitled to if their health deteriorates. It is recorded by the report that it is a serious dilemma how the current system could give an efficient response to special situations that require genuine equity by taking the right to human dignity and a fair procedure into account. The Commissioner thinks that only a solution based on compromise, which would also keep the coherence of the system, could remedy the situation, which would allow the practice of equity if the normatively defined conditions exist, in line with the principle of legal certainty.

The Commissioner concluded that the legal situation that had evolved on the basis of the provisions set out in Mmtv, as consequence of the transformation of the disability supply system and in lack of the ability to certify the required insurance period, causes an impropriety related to the right of those persons to human dignity who cannot enter or re-enter the system due to the lack of the required insurance period. According to the conclusions made by the report, it became obvious from the complaints that in the law enforcement practice, it has become uncertain whether the unpaid leave received for the period of the disbursement of child care allowance qualifies as an employment relationship from the aspect of social security and based on the laws, i.e. whether this period can be reckoned with in defining eligibility to the allowances granted to persons with changed working abilities. It became necessary to release the contradiction between the

legal interpretation of the legislator and NRSZH (National Office for Rehabilitation and Social Affairs) and that of the Curia.

The Commissioner requested the Minister of Human Capacities to initiate the amendment of the relevant laws with the appropriate content in order to ensure that in the case of persons who need special protection, those who are very vulnerable and very needy, with special focus on the persons who were granted care allowances in the reference period, it should become possible to take the individual interests into account in the calculation of the insurance period as part of the criteria for receiving benefits for persons with changed working abilities, and to prevent their dropping out of the system through no fault of their own. The Commissioner also brought it up when consulting the Minister that the latter should clearly and unambiguously point it out to the affected persons and the legislator that the unpaid leave received for the period of the disbursement of the child care allowance will qualify as an insurance period from the aspect of eligibility to benefits granted to persons with changed working abilities.

The Minister of State explained that the purpose of the creation of the law (Mmtv) was to establish a uniform and transparent system of services provided to those whose health has deteriorated, in which the criteria of employability are more strongly enforced. He also mentioned that the legislator paid attention to the elaboration of the appropriate transitional rules, aimed at protecting the acquired rights, in the case of those persons who were already the beneficiaries of the social welfare system at the time of its transformation. However, in the rules set out in Mmtv, such situations could not be taken into account where the disability benefits were not yet used, although the health status of the beneficiaries had in fact deteriorated. In the case of complainants in this group, several years had typically passed without their having performed any earning activities or having used the otherwise available benefits. He thinks that in such cases, the affected persons had no such eligibilities, the changes wherein they should have prepared for.

The Commissioner noted that the majority of the complainants had considerably lengthy periods of insurance prior to the deterioration of their health, during which they paid the health insurance contributions for several years, and they had service periods of several decades. Such complainants also turned to him who applied for the benefits granted to persons with changed working abilities right after their health had deteriorated but it was then that they realized that the eligibility criteria had changed and their eligibility acquired earlier, or sometimes their service period of several decades did not entitle them to receive the benefits. In the social welfare system that worked on an unchanged basis for two decades, they could believe, in good faith, that they fulfilled the requirements only by having acquired the service period. Some of the persons who apply for these benefits consult the institution of disability pensions only as a last resort. In a high number of cases, these persons try to find employment in the open labor market for a long time after their health has deteriorated, and only after a series of failures and the further deterioration of their condition do they apply for the allowance provided by the Mmtv.

In the case of a similarly large-scale transformation of the system, which did not simply affect the extent of the benefits but also the bases thereof, which involved placing a system that has existed for two decades on brand new foundations within a short period of time, as well as the formulation of eligibility criteria, the protection of human dignity represents very high significance. The legislator should take it into account how the potentially affected persons can respond and accommodate to the changed statutory environment. The Commissioner maintained his legal position, according to which

a regulation that reckons with individual interests and situations should be created in defense of the right to human dignity, which, however, is not incompatible with the foundations of the newly established system either. All this means that this requirement can be met by the legislator either by constant legislative corrections or clarifications, or by restoring equity involving controlled and legal guarantees. He was glad to learn, however, that the responsible ministry would consider the amendment of the Mmtv with regard to reckoning with the unpaid leave used for the disbursement period of child care allowance qualifying as an insurance period. Furthermore, he approved of the written information according to which, in order to ensure that the social welfare system for persons with changed working abilities, similarly to the pension system, also acknowledges the socially useful activity performed by those who receive care allowance, the ministry finds it justified to look into the possibility of making the period of the disbursement of the care allowance recognizable as an insurance period in the application of Mmtv.

3. The basis for launching an investigation in case AJB-361/2016 was that the Ombudsman became aware of the practice according to which kindergartens refuse to admit children who have already turned three due to the lack of vaccination. Also, some signals came in regarding the procedural practices of public administration and enforcement authorities related to the rejection of mandatory vaccinations. The petitioners complained of the narrowly defined and inflexible application of the criteria for postponement and exemption that can be taken into account in the case of mandatory vaccinations. It is emphasized by the report that the purpose of using vaccinations is to develop active and passive immunity to infectious diseases, furthermore, that age-based vaccinations cannot be qualified as unnecessary restrictions of fundamental rights, as age-based vaccinations qualify as suitable and necessary tools for ensuring the appropriate physical, mental and moral development of children on the one hand, and for protecting the society from infectious diseases and epidemics, on the other hand. Persons obliged to vaccination shall subject themselves to vaccination or medical examination. It is the legal representative of children under legal age who is responsible for the child's appearance at the doctor's office for a mandatory vaccination. The state health care authority may give exemptions from mandatory vaccination upon request, based on an expert opinion expressed by the therapist and supporting that the exemption is justified. If, on the other hand, the person who is obliged to be vaccinated fails to fulfill this obligation even after having received a written warning, the state health care authority will order such vaccination. However, in the opinion of the responsible ministry and the head of the acting authority, the substantive sanctions do not result in real enforceability in the case of refusing to accept vaccinations. The Ombudsman pointed out that for the enforcement of ordering the mandatory vaccinations, it is not only substantive law sanctions that are available but also, some coercive measures can also be ordered but he also drew attention to that the joint application of substantive sanctions regulated in the Act on Administrative Procedures and the Act on Minor Offenses is not possible, and he also regards it as a key question that proportionality should be examined when obligation is enforced in individual cases.

By now, the most important question of maintaining the mandatory system of vaccination has become to what extent the parents can be supported by the state in that they do not feel that their involvement in the vaccination is a constraint but a cooperation based on providing information and serving everybody's interests. The tools for protecting the institutions that support the system of vaccinations should be reconsidered,

along with the efficiency thereof, as well as the optimum operation of the mandatory vaccination program. It was established by the report that the documents to be submitted for enrollment to the kindergarten are defined by law, and these do not include any provisions that would require the parents to present any medical certificates supporting the acceptance of vaccinations, i.e. that would certify that "the child may be admitted to the community". The kindergartens are not allowed to set any such requirements in their internal rules either. The Commissioner thinks that the kindergarten principal will act lawfully if they ensure the operation of a school health care agency at the kindergarten, in the context of which the medical doctor is obliged to check the acceptance of the age-based vaccinations of the children who are admitted to the kindergarten and also, to notify the district authority of any potentially missed vaccinations.

It was revealed by the investigation that this improper kindergarten practice was caused by the methodological letter of the National Center for Epidemiology (OEK) until 2016, according to which children can be admitted to any community of children or an educational institution only if they have received the required vaccinations. The Commissioner pointed out, in connection with the OEK action, that it is not a law, so it cannot define any mandatory requirements either. It was also disclosed by the inquiry that the group of medical doctors entitled to give the children the missing vaccinations was defined in the methodological letters of both 2015 and 2016 differently from how it was stipulated by the NM (Ministry of National Welfare) decree.

The Commissioner defined several measures, among others, regarding the coercion of vaccinations by taking proportionality into account, the disclosure of the Hungarian situation regarding the phenomenon of anti-vaccination, the harmonization of the methodological letters with the laws, as well as the modification of the internal rules of kindergartens. The recommendations were basically accepted by the organizations concerned. In his response to the report, the Minister of State for Health pointed out, regarding the planned measures, that they wish to investigate into the possibility of introducing the requirement to submit documentation that certifies parental responsibility in the case of children who enter communities but are not vaccinated. The Ombudsman did not agree with the quoted measure, in his response, he emphasized that he was not in the position to assess the threat that these children pose to the community but if there is in fact such a risk factor which is posed by the children who were not immunized, then the related questions of liability cannot point to exclusive parental responsibility. He stressed that through its obligation to protect institutions, the state is responsible for ensuring a healthy environment for its citizens in fulfilling the requirement of compulsory education as well. Thus, if unvaccinated children pose a health threat to the other members of the community, it is the obligation of the state to ensure protection to the children who have received vaccination by creating and enforcing the appropriate regulations.

2.3
On the Commissioner's sphere of authority initiating norm control

Pursuant to the Fundamental Law of Hungary, the Constitutional Court reviews the harmony of the laws with the Fundamental Law, at the initiative of the Commissioner for Fundamental Rights. According to this regulation, the Ombudsman may directly, without

conducting a procedure or an investigation, initiate that the Constitutional Court hold a procedure on the basis of a complaint. Besides directly filing a motion, the Commissioner is also entitled to apply to the Constitutional Court for a measure in relation to a specific case.

If the Commissioner for Fundamental Rights finds out, during his investigation, that the impropriety related to fundamental rights is caused by the contradiction between a local government decree and another law, he may propose that the Curia review the compliance of the local government decree with another law.

In 2016, the Commissioner for Fundamental Rights proposed such review by the Constitutional Court and the Curia on one occasion each.

The Commissioner for Fundamental Rights found it out from press news that a decree had been accepted by the Municipality of Ásotthalom, in which they qualified the activities of the muezzin, the wearing of clothes that cover the whole body and head, as well as partially or entirely, the face, and also, the performance of any and all "propaganda activities" which represent marriage as a relationship other than one established between a man and a woman, furthermore, in which the basis for a family relationship is other than a marriage or a relationship between parents and children, as public behavior contrary to the fundamental rules of co-habitation.

The Commissioner proposed that the Constitutional Court annul the decrees in question, with regard to that they violate the freedom of conscience and religion, as well as the freedom of expression, and they also affect the right to human dignity and the principle of equal treatment. The Commissioner pointed out that the legislator cannot constitutionally prohibit a type of behavior related to a religion or ideological conviction, while it supports or tolerates the similar external manifestations of other religions. Furthermore, it is also unconstitutional if the legislator prohibits the expression of such opinions, based on values, which are closely related to the right to human dignity, the principle of equal treatment, as well as the right to privacy and family life.

2.4
Activity related to legislation

The Commissioner for Fundamental Rights takes part in the development of norm texts only in exceptional cases; however, with the wording of legislative recommendations and giving his opinion on draft legal regulations, he can influence the preparation of legal regulations on the merits. According to the legislative act, the party preparing the legal regulation is obligated to secure that in case that the draft affects the legal standing or responsibilities of a particular organization, the affected party can enforce its right to provide an opinion.

In 2016, the Commissioner for Fundamental Rights provided his opinion on 212 draft legal regulations, upon request. The ministries sent several of the motions to the Ombudsman; however, they did not fully satisfy their obligation to ask for an opinion. On occasion, they did not ask for the Ombudsman's opinion on draft legal regulations important from the aspect of fundamental rights.

Similarly to the previous years, they sent the motions to the Ombudsman with characteristically very short deadlines, which made it difficult to provide meaningful opinions. This is why the Commissioner reserved the right, in each opinion, to propose the

modification of the already promulgated law with a subsequent effect if he has established a constitutional impropriety related to the regulation.

The Ombudsman provided meaningful opinions in appr. 40 percent of the motions. The opinion of the Commissioner for Fundamental Rights presented during the preparation of legal regulations has no binding force but it may help the success of codification and the elimination of shortcomings and contradictions. It has also happened that the Commissioner for Fundamental Rights proposed that the motion be withdrawn or conceptually revised.

In the formulation of opinions, it is an important aspect how legislation may affect children's rights, the interests of future generations, the rights of nationalities and the most vulnerable social groups, which are priority areas in the Ombudsman Act. The Commissioner and the Deputy Commissioners, as well as the departments of the Office cooperate in the preparation of the opinions, so the viewpoints of the individual areas can be taken account in a complex manner, supplementing each other. The OPCAT Department is also involved in this internal process of professional coordination, as the expression of opinions on the draft legislation concerning detention is a responsibility of the National Preventive Mechanism defined in an international convention.

In some 40 percent of the reports issued in 2016, i.e. in as many as 59 cases, the Ombudsman motioned for the creation or modification of a law. In some of his reports, the Commissioner also formulated several codification proposals. In summary, he motioned for the modification of as many as 25 laws, 23 government or ministerial decrees, 4 municipality decrees, while he made proposals for the general review of the regulation in 21 of his reports.

In his report, the Ombudsman indicated that the ministries responsible for the preparation of laws should pay more attention to giving meaningful responses to the proposed codifications addressed to them.

If the public body in question refuses to take the measure proposed by the Ombudsman or does not give a meaningful response, the Commissioner for Fundamental Rights may present the case to the National Assembly as part of the annual report. The Commissioner for Fundamental Rights, using his authorization to do so, called the attention of the National Assembly to four of the codification proposals that had been worded in the previous years and had been unsupported by the affected ministries.

2.5
Activity related to the protection of whistle-blowers

The Ombudsman Act and the Act on Complaints and Public Interest Disclosures define different tasks for the Commissioner in connection with the management of public interest disclosures. Through his Office, the Ombudsman provides for the operation of the electronic system serving the purposes of making and recording public interest disclosures. In addition to this, the person making the public interest disclosure may file a submission with the Commissioner if the acting body did not fully examine his disclosure, he does not agree with the result of the investigation, or if his disclosure was found unsubstantial. The Commissioner may investigate the practice of acting bodies examining public interest disclosures ex officio, as well.

Operation of the electronic system handling public interest disclosures

Public interest disclosures can be made in person at the customer services of the Office, or through the electronic system. Electronic submission is possible through the webpage of the office of the Commissioner for Fundamental Rights, using the designated form. The discloser may request that his submission be treated anonymously. In this case, the acting body may get acquainted only with the excerpted version of the public interest disclosure, and any data that would reveal the identity of the discloser are removed. Thus, the acting body may only liaise with the whistle-blowers through the electronic system of the Office, his identity will remain hidden, he may not suffer any disadvantages because of his disclosure.

The Commissioner makes the disclosure and its annexes (in the case of such request, its excerpt without personal data, i.e. the so-called anonymous excerpt) accessible to the body authorized to investigate (the acting body) in the electronic system within 8 days. The acting bodies record the information on their (interim and meaningful) measures taken during their investigation in the electronic system. The discloser may follow the investigation of his disclosure on the webpage, i.e. to query the status of his case. In addition to that, a brief excerpt of the disclosure (the so-called public excerpt), without personal and individual institutional data, is accessible to everybody.

In 2016, a total of 314 public interest disclosures were received by the Office. The overwhelming majority of these came through the electronic system, while the rest was presented in person to the Complaint Office. Nearly 90% of the whistle-blowers asked that their personal data be exclusively accessible to the Office.

The subject of the disclosures was really varied, just like in the previous years. Without being exhaustive, we can say that there were disclosures complaining of unfair and misleading trading procedures, the irregular operation of a private pension fund, the operation of health care institutions, the unlawful utilization of tender resources, the unlawful spending of the collected local taxes, the lack of public procurement procedures, practices that violate the human dignity of physically disabled persons, environmental problems, as well as disclosures criticizing the procedures followed by municipalities, municipality decrees, disclosures reporting the tax evading behavior of some companies and other tax frauds, the sound exposure caused by summer music festivals, the unlawful claims for administrative service fees by public bodies, the extent of highway tolls, furthermore, disclosures calling attention to the content of billboards that jeopardize children, the expansion of the beggar mafia, as well as corruption.

The five most frequently addressed acting bodies were: the Ministry of National Development, the Budapest Police Headquarters, the Government Office of the Capital City Budapest, the Budapest Mayor's Office, the Ministry for National Economy.

After investigating into the disclosures, it can be established that more than half, i.e. 56 percent of the submissions were substantiated. In these cases, the acting bodies took care of remedying the situation in question in order to protect the social interest which was endangered.

Reviewing the management of public interest disclosures

Based on the complaints submitted by whistle-blowers, the Commissioner examines the appropriate management of disclosures, as well as the practice of handling public interest disclosures by the acting bodies, ex officio. During the investigation, the relevant

body may be requested to provide information or to submit the documents of the case. If necessary, the representatives of the acting body may be interviewed in the form of a personal consultation, and on-site investigations may also take place. If, based on the investigation, the Commissioner finds improprieties, he may make recommendations on the remedy to those involved, or their superior body.

In 2016, 73 applications were received for the review of the proceedings of bodies investigating the public interest disclosures. It happened in 12 cases that the procedure followed by the authority under review did not fully comply with the requirements of the respective laws, therefore the right to petition, legal certainty and the right to the fair management of official matters were violated. In 21 of the closed cases, no fundamental law impropriety was established while handling the public interest disclosures.

The acting bodies reviewed were the following: the Government Office of Hajdú-Bihar County, the Government Office of Pest County, the National Tax and Customs Administration, the Prime Minister's Office, the Ministry of National Development, the Government Office of the Capital City Budapest, the Metropolitan Directorate of Disaster Recovery, the Ministry for National Economy, the National Electronic Information Security Authority, the Central Office for Administrative and Electronic Public Services, the Göd Municipality, the Government Office of Somogy County, the Tab Joint Council Office, the Andocs Joint Council Office, the Government Office of Veszprém County, the Budapest Mayor's Office, the Nágocs Municipality, the Ministry of Human Capacities, the Zánka Joint Council Office, the National Inspectorate for Environment and Nature, the National Transport Authority, the Budapest 2nd District Municipality, the Government Office of Vas County, the Budapest 2nd District Police Station, the Ministry of Justice, the Government Office of Fejér County.

The supervisory procedure of national security check-ups

Under the Act on the National Security Services, with respect to improprieties affecting fundamental rights, the Ombudsman investigates the ordering and execution of the supervisory procedure of national security check-ups. The individuals affected by the supervisory procedure may request the execution of the investigation from the Commissioner; furthermore, the practice of national security services on supervisory procedures can also be investigated ex officio. In the event of the establishment of a fundamental right impropriety, the Commissioner informs the minister in charge of national security, initiating that the necessary measures be taken. If he does not find the measures appropriate, he informs the National Security Committee of the National Assembly on this.

In 2016, three complaints concerning national security check-ups were sent by citizens to the Office of the Commissioner for Fundamental Rights. In two cases, the complainants criticized the accomplished national security check-ups and the performance of the supervisory procedures, as well as the issue of providing legal remedy. In the third case, the complainant was not satisfied with the tools applied in the course of the national security check-ups, as well as the resulting exemption from his position, and the suspension of his service relationship. Based on the complaints, the principle of legal certainty arising from the principle of the rule of law, as well as the suspicion of breaching the right to a fair procedure, human dignity, privacy, legal remedy and petition arose, with regard to which the Commissioner launched an inquiry.

2. 6
The Ombudsman's OPCAT activity

The visits to places of detention **were not announced in advance** by the Commissioner for Fundamental Rights in accordance with the UN guidelines (Guidelines on national preventive mechanisms, United Nations CAT/OP/12/5, Article 25) issued for National Preventive Mechanisms. In 2016, the NPM **also conducted a follow-up investigation** in accordance with the international requirements and he informed his partners on this. In 2015, the NPM paid special attention to children's rights, while he put special focus on isolation. In 2016, the NPM visited 10 places of detention, in the framework of nine investigations, as follows:

1. Visiting a person in house arrest (February 8, 2016)
2. Forensic Psychiatric and Mental Institution (February 16-18, 2016)
3. Budapest Cseppkő Children's Home (March 1-2, April 26, 2016)
4. Visit and follow-up investigation at the Tököl Juvenile Penitentiary Institution (June 28-29, 2016) (July 26-28, 2016)
5. Sátoraljaújhely Strict and Medium Regime Prison (July 19-21, 2016)
6. Szombathely National Prison (July 26-28, 2016)
7. EMMI (Ministry of Human Capacities) Debrecen Reformatory Institution, Nagykanizsa Unit (September 13-14, 2016)
8. EMMI (Ministry of Human Capacities) Debrecen Reformatory Institution (September 26-27, 2016)
9. Baranya County Bóly-Görcsöny Unified Social Institution (November 8-9, 2016)
10. Budapest Police Headquarters, 14th District Police Department (December 6, 2016)

In selecting the places to visit, besides the proposals of the Civil Consultative Body and the type of the place of detention, geographical criteria and the principles according to the number of detainees were taken into account. In 2016, the focus of OPCAT NPM activities was placed on isolation at places of detention, and in one case, on the prevention of suicides. During the 10 visits paid in the year under review, the regulations prescribed by OPCAT were fully met, except for one site. The members of the NPM group of visitors had free and unlimited access to the places of detention, to the persons de prived of their liberty, as well as the documents related to detention at the other sites. During 2016, the NPM disclosed the following ten reports on its homepage:

1. Budapest Police Headquarters, Central Detention Facility and National Police Headquarters, Operational Police, Police Detention Facility of the National Bureau of Investigation (2015 visit). Key issues: the access of the NPM is made difficult, generally poor conditions, unusable prison yard, small prison cells, scarce living space, lack of independent medical examinations, disregarding the notification of the defense lawyer and the third party.
2. Zita Special Children's Home, Kaposvár (2015) Key issues: structuring of leisure time, scarce activities, lack of supervision for the staff, insufficient staff headcount, drug abuse, child prostitution, changing of the place of childcare, information provided to children, isolation period running counter to the rules.
3. István Károlyi Children's Center, Special Children's Home (2015). Key issues: Irregular isolation, children treated at adult psychiatric units, lack of qualification in the case of the staff.

4. Somogy County Remand Prison (2015) Key issues: lack of living space required by law, joint placement of young and adult detainees, joint placement of those in pre-trial detention and those sentenced by a binding judgment, contradictory practice of suicide prevention, strip search.
5. Pécel Old-Age Home (2015) Key issues: lack of technical accessibility, bathing practices violating the patients' modesty, burn-out and lack of tolerance of the staff.
6. István Károlyi Children's Center, Special Children's Home (2015). Key issues: lack of technical accessibility, limitation of contact, lack of gender balance in staff, problems with the enforcement of the right to complain, number of children's homes not compliant with the principle of de-institutionalization.
7. Écs Segítő Kéz (Helping Hand) Public Benefit Company Old-Age Home (2015). Key issues: incomplete technical accessibility, hardly legible information on the notice board, the roles of the maintainer and the owner are not fully separated.
8. A site of house arrest (2016). Key issues: The NPM examined the conditions of detention in the apartment that was the site of the house arrest, as well as the use of the tracking device. No impropriety was identified by the visiting group during the continuous wear and use of the tracking device. An impropriety related to the detainee's right to health was caused by his not having been allowed to leave his house arrest even for a medical examination.
9. Cseppkő Children's Home (2016) The head of the institution was not cooperative during the visit. Key issues: high turnover of staff, threat of child prostitution, aggression among the children, three homes on one site.
10. Tököl Juvenile Penitentiary Institution – follow-up investigation (2016). As a result of the conclusions and proposals presented in the report on the 2015 visit, several changes have taken place in the institution. The Tököl National Penitentiary Institution de-merged from the Juvenile Penitentiary Institution. The cells of the quarters were revamped: the cells were redecorated, the toilet bowls, sinks, lights, as well as the doors and windows were replaced. As part of the renovation of the transfer cells, some benches were set up and cameras were installed. In order to prevent the ill-treatment of the detainees and the aggression between them, training programs were held for the prison guards. The NPM proposed measures in order to ensure that as many detainees as possible take part in primary level education.

During the NPM's on-site check-ups, the visiting group almost always came across execution or guarantee issues related to isolation or restrictive measures. At several places, difficulties arising from the gender composition of the staff, as well as from the gap between the required professional qualifications and the real qualifications of the staff emerged. It gives rise to concern that quite a number of instances of physical and sexual abuse among children, child prostitution, as well as drug abuse were experienced at the places of detention visited by the group, furthermore, there were statutory and professional deficiencies in the isolation procedures. The dialog conducted with the authorities and the maintainers is an essential element of the activities of the NPM, as part of which the Ombudsman formulated as many as 239 recommendations in his reports in 2016. It has happened several times that the reports of the Commissioner for Fundamental Rights became the focus of social dialog, not only of the one conducted with the authorities. The media reported on the NPM's activity in 246 cases in 2016.

3.
Report of the Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities

Introduction of the Ombudsman for the Rights of National Minorities

My mandate as Deputy Commissioner reached mid-term in October 2016. Three years ago, based on the support received from the national minorities and the nomination of the Commissioner for Fundamental Rights, as well as the approval of the National Assembly, I was given the opportunity to actively contribute to the enforcement of the right of nationalities in Hungary for a term of six years. I was repeatedly given the chance to inform the National Assembly and the public on my activities performed in the area of nationality rights and the enforcement of these rights in Hungary in a special chapter of the Ombudsman's report.

Our national minorities, which have been an integral part of our society for several centuries, should be treated as full-fledged members of Hungarian society, both in peaceful times and in transitional eras with many changes. I am convinced that the objectives and institutions of the protection of the rights of nationalities in Hungary represent an exceptional value: the regulation of the nationality rights to preserve national identity and to improve self-organization in the Fundamental Law of Hungary and at the level of stand-alone provisions, as well as the budgetary support allocated to these goals allow a wide space of maneuver for the affected communities. My experience has shown that the national minority self-governments and organizations of other status do use these opportunities.

My responsibility lies in monitoring the enforcement of nationality rights: in the course of such activity, the contradictions in the nationality laws, the systemic unevenness arising from the interaction of the individual laws, and sometimes the obvious deficiencies or errors in law enforcement come to light. In the course of handling the individual petitions and conducting the complex inquiries, we analyze and assess the arising issues by adhering to all those principles and values regarding nationality rights in which our team believes. In taking these efforts, we also rely on the openness and continuous cooperation of the institutions and partners that we address.

However, the efficient performance of tasks also involves the conveying of knowledge in several directions: on the one hand, the knowledge concerning life as a member of a national minority, the situation and rights of the national minorities, and on the other hand, on the role of the Deputy Commissioner for the Rights of National Minorities, the tasks involved by the protection of rights, from the aspect of the relationship between the different nationalities, between the majority society and the nationalities, as well as in an international context. Together with my colleagues, I convey and obtain knowledge within the framework of the existing laws but by using novel devices and methods, through continuous contact with the organizations of the individual nationalities, as well as through

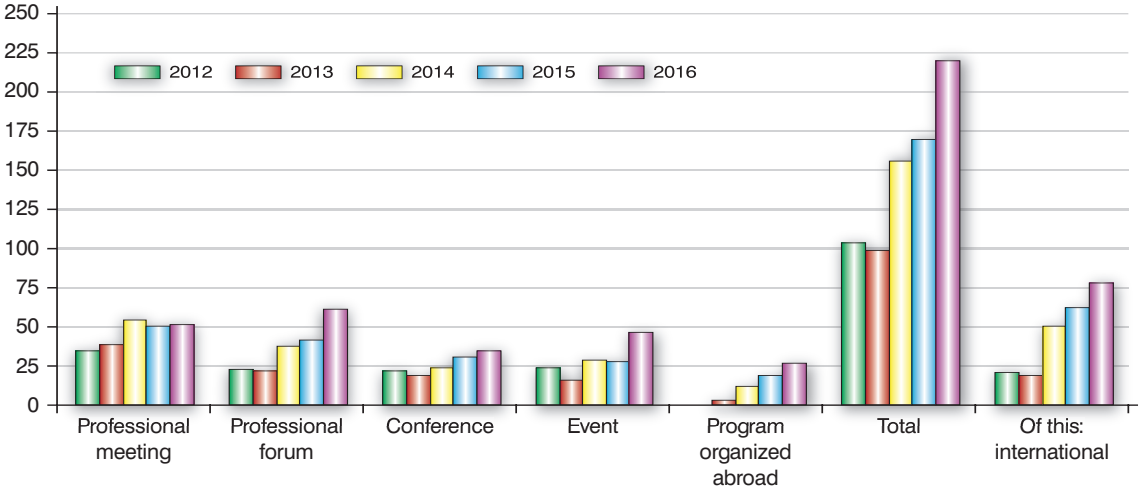
the communication channels more widely used by the younger generation. Ever since the beginning of my term, I have regarded raising awareness of the rights related to nationalities as a major goal. My activities to this end in 2016 have already borne fruit: it is here that we present to the reader the data and some of the especially important elements of the activities of the deputy commissioner responsible for the rights of national minorities performed last year.

Elisabeth Sándor-Szalay

1. The activity of the Deputy Commissioner

Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities Ms. Elisabeth Sándor-Szalay endeavored to be present in the everyday lives of the national minorities in 2016 as well: she strove to follow, gather and process the information related to the enforcement of their rights, the situation of their communities and their public lives.

Number and distribution of secretariat events



There has been a continuous increase in the number of events since the inception of the institution of the deputy commissioner, what is more, the year 2016 saw a 30 percent increase in the number of meetings with the members of these communities as compared to the previous year. During the 255 work days, as many as 219 events were organized, of which 83 contained a kind of international element, and 27 of which were set up abroad.

Professional meeting with the staff members of the Máltai Jelenlét (Malta Presence) Program

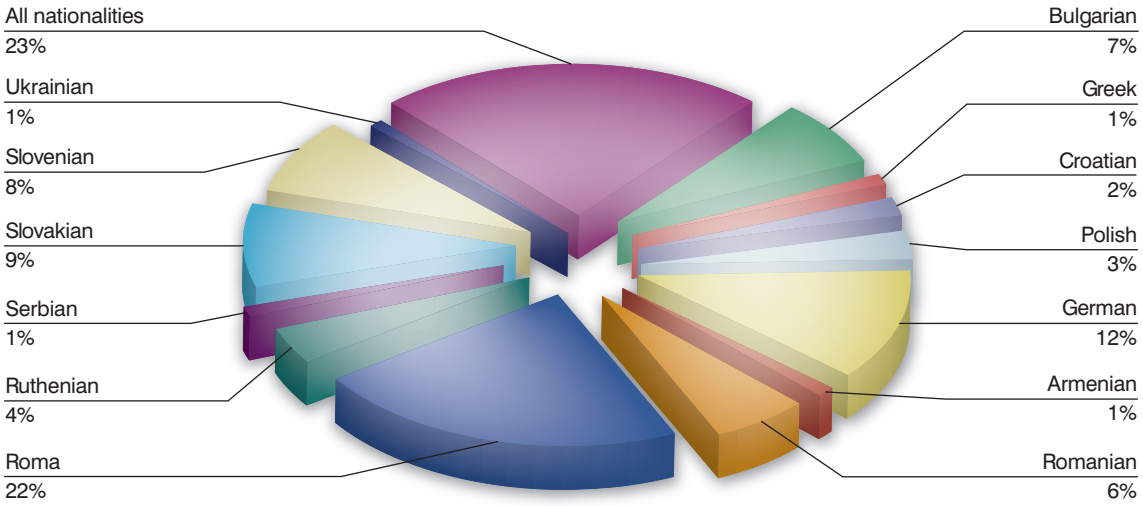
Swabian music festival

Professional forum with the heads of the Eger national minority self-governments

Closing conference of the No Hate Campaign of the Council of Europe

The Deputy Commissioner intensively liaised with all the national minorities in Hungary in 2016 as well, and the distribution of these events by nationalities well reflects their demographic situation.

Distribution of secretariat events by nationalities



1.2 Providing information

The Deputy Commissioner regularly provides information on the situation of the national minorities in Hungary both to the nationalities themselves and to the members of the majority society. This requires three types of activities, which partially differ from each other.

1.2.1 Active media presence

There was constant coverage of the activities performed by the Deputy Commissioner in the press of the national minorities, especially of those matters or events which affected a specific national minority. These articles were usually published by the media of the respective mother countries as well, so the activities of the Deputy Commissioner received international attention too.

The Deputy Commissioner for the Rights of National Minorities informed the public of her activity and called its attention to the key events that affected the minorities in as many as 22 press releases in 2016. Furthermore, she held three press conferences and gave quite a number of interviews.

Taking into account the diverse needs and technical accessibility of the younger generation, the Deputy Commissioner launched her independent Facebook profile (/ombudsmanhelyettes) in March 2016, and as a next step, her Twitter account in December (@MinorityOmbudsman), which are primarily targeted at the international partners and visitors. Both platforms lived up to the expectations, which is confirmed not only by the users' activity but also, by other measurable indicators: more complainants contacted the secretariat than before, and the requests for participation in professional forums, as well as applications for internship also grew.

1.2.2 Events presenting national minorities

The conference DaSein/JelenLét organized in 2015 was not only one of the priority nationality events of the year but it came to be the first in the series of events whose

goal was to jointly celebrate the special value of a national minority and to present this to as wide an audience as possible. The year 2016 saw as many as five priority events hosted at the Office of the Commissioner for Fundamental Rights and organized by the Deputy Commissioner, more precisely, events held for the Bulgarian, Roma, Ruthenian and Slovenian communities.

1.2.3 County visits

Besides the above, county visits were a less frequent but priority form of liaising. The Commissioner and his deputies pay several-day on-site visits to a specifically selected county of Hungary on two occasions each year. The meetings and discussions of the

Meeting with the Slovenian spokesperson and the heads of the National Slovenian Minority Self-Government

Professional meeting with the staff members of the Máltai Jelenlét (Malta Presence) Program

Deputy Commissioner with the heads of the national minority self-governments working in the county at a regional or settlement level, the representatives of the civil organizations and the experts concerned are a constant element of these events, which are mostly accompanied by visits to the communities' own institutions.

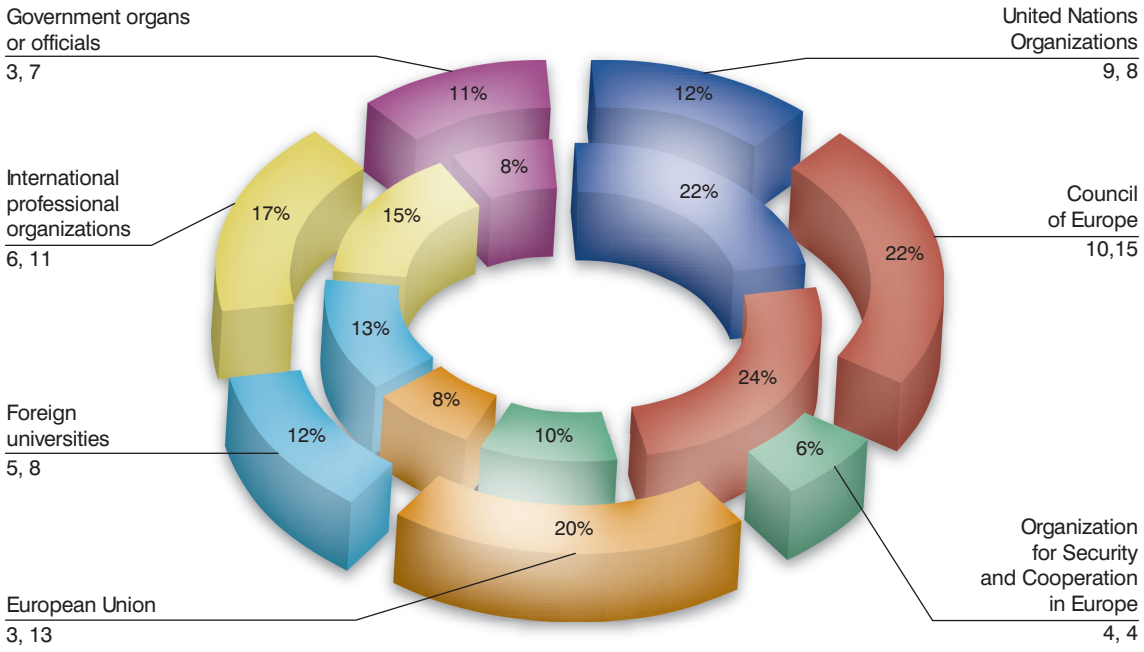
1.3 Proposing and conducting investigations

Besides the above, county visits were a less frequent but priority forms of liaising. The Commissioner and his deputies pay several-day on-site visits to a specifically selected county of Hungary on two occasions each year. The meetings and discussions of the Deputy Commissioner with the heads of the national minority self-governments working in the county on a regional or settlement level, the representatives of the civil organizations and the experts concerned are a constant element of these events, which are mostly accompanied by visits to the communities' own institutions.

1.4 International actions

On the one hand, regular professional communication with the governmental and non-governmental organizations of the mother countries of the nationalities is important and inevitable, on the other hand, the bodies in charge of controlling the international minority rights standards also often request specific professional information from the Deputy Commissioner. Thus, regular communication with the international organizations, professional associations, experts and advocacy groups was of key importance in 2016 as well, 38 percent of the total number of events was international. It should be noted that the number of events related to European Union institutions has grown considerably as compared to 2015, the reason for which is that the EU put special emphasis on the situation of the Roma this year.

The distribution of international relations by partners



1.4.1 Events held abroad

The Deputy Commissioner and her staff were actively involved in the following events:

Date	Invited by	Topic	Purpose of travel	Location
28. 01	FRA – Council of Europe –	Platform on Economic and Social Rights and Equality	Conference, task force meeting	Strasbourg, FR
17. 02	Equinet	Policy Formation task force meeting	Task force meeting	Brussels, B
23-25. 02	Council of Europe	55th Advisory Committee on framework convention for the protection of national minorities (COE AC FCNM)	Meeting of the Advisory Committee	Strasbourg, FR
22.03	Equinet	Equality Law in Practice	Task force meeting	Brussels, B
05-06. 04	Council of Europe	High Level Meetingon Strategy for the Rights of the Child (2016–2021)	Strategic meeting	Sofia, BG
28-29. 04	FRA	Improving Reporting and Recording of Hate Crime in the EU	Task force meeting	Amsterdam, NL
07-08. 06	FRA – Council of Europe – Equinet – ENNHRI	Meeting of the Operational Platform for Roma Equality (OPRE)	Conference, task force meeting	Athens, GR
13-14. 06	European Ombudsman	European Network of Ombudsmen	Seminar	Brussels, B
15. 06	Equinet	Networking Reception – Towards an equal Europe	Seminar	Brussels, B
16. 06	Equinet	Strengthening the effectiveness of European Equal Treatment Legislation	Conference	Brussels, B
18-19. 09	Bundestag	Tagung der Vorsitzenden und stellvertretenden Vorsitzendender Petitionsausschüsse des Bundes und der Länder	Conference	Potsdam, D
20-22. 09	European Schoolnet	ENABLE 2 Act Conference	Conference, workshop	Zagreb, HR
22.09	Equinet	Equality Law in Practice	Task force meeting	Riga, LV
26-28.09	The Office of the Public Defender of Rights, Slovakia	Meeting of the ombudsmen of V4 countries	Professional forum	Bratislava, SK
29-30.09	Equinet	Annual General Meeting 2016	General meeting	Brussels, B
06. 10	Equinet	Policy Formation	Task force meeting	Brussels, B
13. 10	ERIO	5th workshop with equality bodies	Task force meeting	Brussels, B
10-14.10	Council of Europe	AC FCNM 57th Advisory Committee plenary session	Meeting of the Advisory Committee	Strasbourg, FR
15-18.11	Council of Europe	12th plenary session of CAHROM	Conference, task force meeting	Strasbourg, FR
07.12	Equinet	Diverse, Inclusive and Equal: Innovating at the intersections of gender equality – conference	Conference, task force meeting	Brussels, B

1.4.2 International events organized in Hungary

On November 9 and 10, 2016, the Office of the Commissioner for Fundamental Rights hosted a professional event on the fight against racial and ethnic discrimination organized by Equinet. For two days, the leading European experts of the topic shared their experience with the representatives of the equal treatment authorities of several dozen European states. The key topics included the general increase of xenophobia, as well as hostile public sentiment towards racial and ethnic minorities all over Europe.

Equinet seminar

1.4.3 International actions

The Deputy Commissioner for the Rights of National Minorities took part in the work of the UN Human Rights Council in 2016 as well. At the 31st session of the Council, the Deputy Commissioner joined a debate on the global situation of racism with a video message, in which she shared her experience regarding the educational segregation of Roma children.

The Deputy Commissioner has been involved in the work of the OPRE Platform (Operational Platform for Roma Equality) since the very beginning. This participation is aimed at discussing professional issues and best practices, as well as performing advocacy and other lobbying activities.

The Deputy Commissioner represented the Office at the sessions of the Platform on Social and Economic Rights as well: the situation of Roma communities and the educational segregation of Roma children are key issues in the activities of this platform too.

The fifth workshop of the Brussels-based European Roma Information Office was held on October 13, 2016, on the topic of the educational segregation of Roma children. At the one-day workshop, the Deputy Commissioner was represented by a staff member from the secretariat.

The European Network of National Human Rights Institutions has an observer status in CAHROM (Ad-Hoc Committee of Experts on Roma and Traveler Issues), in the twelfth plenary session of which it was the Deputy Commissioner for the Rights of National Minorities who took part on behalf of the Network (November 15-18, 2016).

It is the staff members of the Deputy Commissioner who take part in the work of the Equinet Equality Law in Practice and Policy Formation working groups on behalf of the Office. In 2016, the focus of the activities of the working groups was placed on racial and ethnic discrimination, with special regard to the Roma communities. In the framework of this, intersectionality, as well as the abuse of the rights of Roma women, persons with disabilities, as well as the youngsters of various social groups were revealed.

1.4.4 Special international mandate

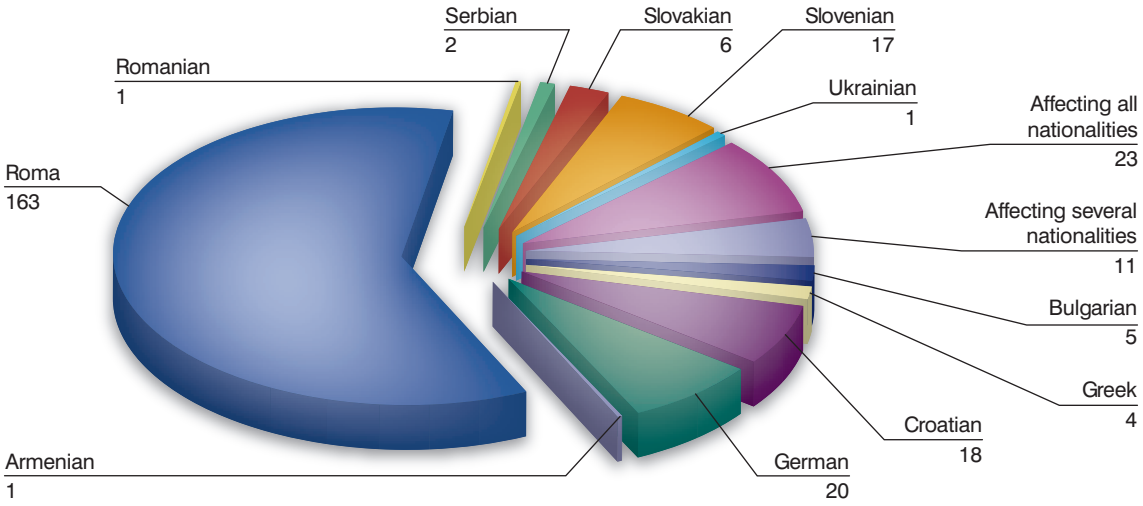
At the session of May 25, 2016 of the Council of Ministers of the Council of Europe, Elisabeth Sándor-Szalay was elected the permanent member of the Advisory Board on the Framework Convention for the Protection of National Minorities, on account of her academic and international legal expert activities of several decades in the area of minority protection. Her mandate is for four years, beginning on June 1, 2016.

2. The enforcement of nationality laws

2.1 Distribution by nationalities

2016 saw a considerable, almost 50 percent increase in the number of cases (petitions, inquiries launched ex officio) handled by the Office, as compared to the previous year. The factors contributing to the increase in the number of cases were closely related to the changes in the distribution of the 272 cases of nationality rights.

Complaints, petitions, inquiries launched ex officio by nationalities

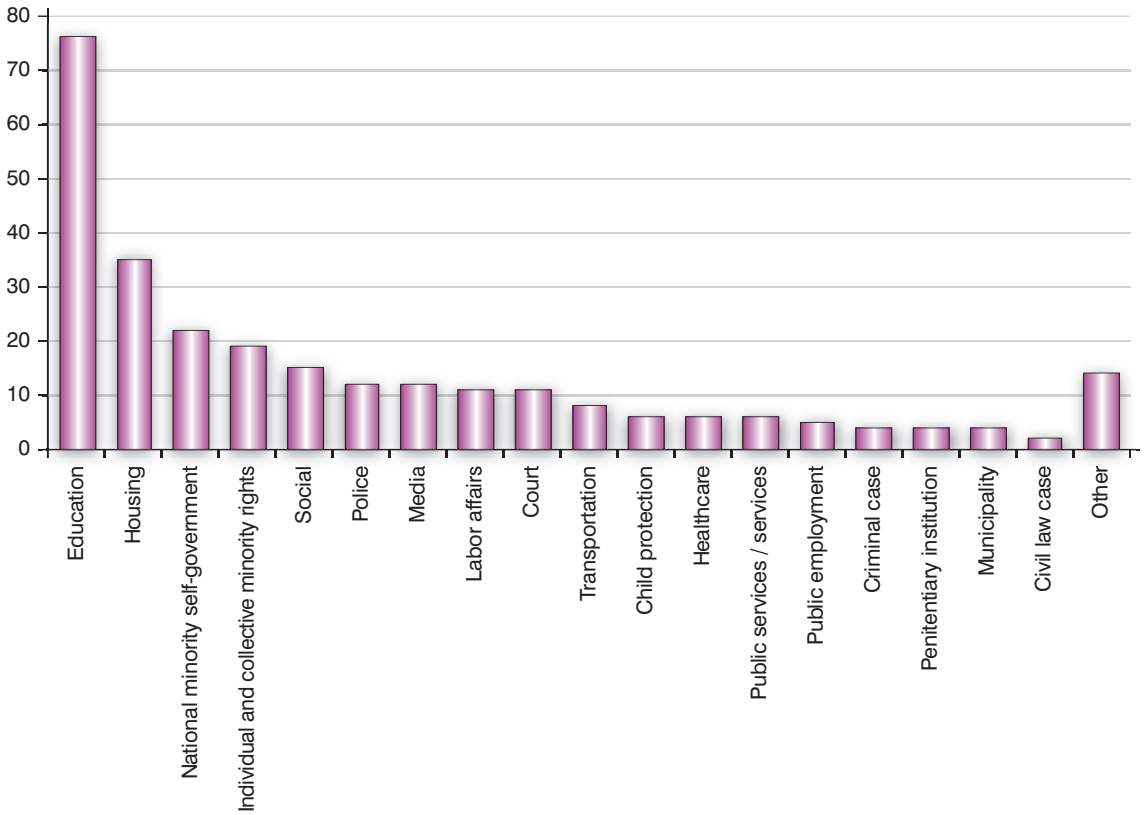


While the number of complaints filed by Roma complainants remained unchanged, there was a significant change in the number of petitions submitted by other nationalities. The rate of submissions received from the members, spokespersons and national minority self-governments of the German, Croatian and Slovenian communities can be regarded as especially high. The number of cases affecting several national minorities or all the national minorities in Hungary was also noteworthy (34 in total).

2.2 Distribution by the topics of the cases

The complexity of the topic of national minorities, as well as the different problems of the individual nationalities are demonstrated by the wide range of complaints. Some of the cases specifically concerned the issues related to the cultural autonomy of the nationalities, however, the number of those cases which are connected to the enforcement of the principle of equal treatment is also rather high – these are typically related to the Roma minorities.

Similarly to the previous years, in 2016, in the area of nationality rights, the highest number of complaints was received, or the highest number of inquiries was launched ex officio in relation to **public and higher education**. There was a nearly threefold increase



Types and topics of the individual complaints, petitions and inquiries launched ex officio in 2016

in the number of cases related to education, or higher education (76) as compared to 2015. Submissions, in which the behavior or attitudes of the heads of institutions and teachers, or the discriminatory procedures conducted by some of the educational institutions or other bodies were objected to, continued to come in, the majority of which was filed by Roma complainants. Complaints on hate speech and discriminatory practices based on the petitioners' disadvantageous social situation were also received.

Besides the education-related cases concerning the enforcement of the principle of equal treatment affecting Roma complainants, 2016 saw a major increase in the number of cases filed by the members and representatives of other national minorities concerning nationality education.

These cases primarily concerned the extent to which the current system of public education and the statutory environment are able to allow and ensure a successful nationality education, the preservation of the mother tongue and culture of the nationality, as well as the strengthening of the children's national identity. In the petitions, attention was drawn to those problems which prevent the realization of the above goals. The petitioners complained, for example, of the difficulties of the access to, and the deficiencies in the quality of the textbooks, workbooks, digital materials and other educational support materials necessary for nationality education, the lack of further education programs organized for teachers from national minorities, financing problems and the issues related to the operation of KLIK (the Klebelsberg Institution Maintenance Center).

Besides the cases related to nationality education, the highest number of complaints concerned the lack of **housing** conditions, housing problems, as well as residential segregation. In 2016, the majority of housing-related cases concerned the re-

jection of applications for social housing, the legally unclarified residential situation of the complainants, as well as protracted housing problems and evictions. A legal relationship of a flat rental is of a private law nature, the investigation into which is not the competence of the Commissioner for Fundamental Rights or the Deputy Commissioner for the Rights of National Minorities, however, the Deputy Commissioner asked for the support of, or intermediated between the affected self-governments and the disadvantaged Roma complainants on several occasions, with special regard to the vulnerable situation of the families and the interests of children.

The monitoring of the measures that followed the investigations into the **ghettos**, which took place in the past few years, was treated as a priority issue by the Deputy Commissioner, with special regard to the case related to the joint inspections performed by the authorities in Miskolc and the municipality measures affecting housing conditions. As regards the court proceedings that were still in progress in 2016, the Deputy Commissioner did not think that it made sense to conduct follow-up investigations.

In 2016, there were a total of 72 cases that could be listed in the group of cases concerning **social conditions** and living conditions in the broad sense of the word. These petitions came from Roma complainants, almost without an exception. It is not possible to provide direct financial support to the disadvantaged complainants in need, so in such cases, the Deputy Commissioner strove to provide highly detailed information to those concerned on the available allowances, the local bodies and authorities that can be consulted, as well as on foundations and organizations from which they can receive specific and direct support for the improvement of their livelihoods.

In the area of **employment**, 2016 saw an increase in the number of complaints as compared to the previous year, however, the number of petitions concerning public work decreased. The nature of the complaints remained unchanged: the majority of the petitions was about the rejection of hiring people, the termination of employment, the exclusion of citizens from public work, and it was the nationality-based discrimination applied by the employers that was the most strongly resented. The petitioners usually indicated that the circumstance that they had been excluded from the labor market for a long time / permanently resulted in serious issues in their livelihoods and housing. Thus, it should be underlined that housing-, social and employment-related cases are interconnected, which is taken into account by both the Commissioner for Fundamental Rights and the Deputy Commissioner for the Rights of National Minorities, in their procedures, primarily by mapping the more complex ways of providing support.

In 2016, the number of cases related to the regulation and operation of **national minority self-governments** was rather high, and also, there were several petitions that concerned the community and individual nationality rights stipulated in Njt (Act on the Rights of Nationalities). Some complaints were also filed on the financing and operation of national minority self-governments, as well as on the difficulties of cooperation with the municipalities.

The submissions related to **individual and community nationality rights** basically concerned the non-Roma communities. The majority of these cases was about the obstacles to the creation of the cultural autonomy of the national minority in question, among others, they dealt with those financing difficulties which affect the successful realization of these goals of the national minority self-governments and the civil organizations of the national minorities. A new law enforcement procedure, for instance, caused problems to the civil organizations of the national minorities. This was the practice of the mandatory reimburse-

ment of funds applied in the case of conflicting financial resources assigned to the same task. From among the complaints related to the individual nationality rights, those related to the use of the mother tongue are worth mentioning, the lack of priests whose native tongue is that of the national minority in question was complained of, for instance.

Besides the complaints concerning the difficulties of cooperation with the local municipalities, priority cases affecting several national minorities on a national scale also emerged, related to which the procedures and coordination talks of the Ombudsman or the Deputy Commissioner continue into 2017 as well. These concern, for example, the transparency of the task-based support system of the national minority self-governments or the legal standing of the employees working for the offices of the national minority self-governments.

In the group of complaints belonging to the **criminal law** type of cases, the number of complaints concerning police procedures has somewhat decreased, however, the rate of such cases was still high in 2016 if the court and law enforcement cases are also added (the total number of criminal law type of cases was nearly 30). In the group of law enforcement cases, two independent submissions came in, in which the Roma complainants resented the lack of special catering due to exercising their religion in the penitentiary institutions.

Quite a number of petitions arrived in relation to **public services**, especially concerning the restriction of the possibilities of using air transport and other transport services, on health care services, as well as regarding cases concerning other public services or other services, the media, or the local municipalities.

According to some petitions and media news, in 2015, several Roma citizens and families of Hungarian citizenship were not able to fly **to Canada** from the Budapest Liszt Ferenc International Airport, despite their having had valid travel documents and flight tickets. Their departure had been prevented before they boarded the airplane, mostly by rejecting to accept the baggage and tickets of those passengers who were removed from the queue in front of the check-in counters after a short conversation with persons possessing unknown authorizations. According to the inquiry into the case and the responses from the bodies and authorities that were affected and consulted, the requirement of a fair procedure, the right to legal remedy, as well as the human dignity of the persons who wished to use the right of free movement were violated by this control. In her statement, the Deputy Ombudsman for the Rights of National Minorities indicated that, in order to guarantee legal certainty, it is a fundamental requirement for the organization conducting the preliminary control to do so on the basis of a written protocol, in the same way in each and every case. The organization conducting the control is expected to inform the passengers on the fact and purpose of such control through providing information actively and in advance. The organization should take positive measures to ensure that the preliminary control of the passengers who wish to board any flight complies with the procedural, guarantee and formal criteria of anti-discrimination, which also include accurately informing the passengers on the possible forms of legal remedy.

In 2016, **two comprehensive inquiries** were also launched: one of them deals with the follow-up investigation of the training of teachers for national minorities and the review of the prospective careers of students from national minorities, while the other one is involved in examining the issues of public media services concerning broadcasts of programs for national minorities, as well as the enforcement of nationality rights in the public media. These inquiries are expected to be closed in 2017.

4.
Report of the Deputy Commissioner for Fundamental Rights, Ombudsman for Future Generations

Review of the Ombudsman's responsibilities

It is the responsibility of the Deputy Commissioner for Fundamental Rights, Ombudsman for Future Generations to represent the interests of future generations in harmony with the spirit and values of the Fundamental Law of Hungary. This task was fulfilled by Marcel Szabó between October 8, 2012 and November 30, 2016. He was elected judge of the Constitutional Court by the National Assembly with effect of December 1, 2016, so on this day he had to resign from his position of ombudsman. This report is the summary of his activities until November 30, 2016.

Through several of its Fundamental Law provisions, Hungary is committed to the protection of the interests of future generations, which is outstanding even among other European constitutions. The National Avowal considers the future generations as a part of the Hungarian nation, together with the Hungarians of the past and the present, and by emphasizing the alliance of the three generations, it regards them as symbolic legal entities as well. Article P) of the Fundamental Law of Hungary obliges the state and all the citizens to protect, maintain and preserve for the future generations the natural resources and cultural values making up the common heritage of the nation. Furthermore, the fundamental right to a healthy environment, which is stipulated in the earlier Constitution of Hungary in a pioneer spirit, was adopted by the Fundamental Law of Hungary in Article XXI with partly the same wording, so the laws concerning the protection of the environment do not only appear as a responsibility of the state in the regulation of the Fundamental Law but also, as a subjective right to which every citizen is entitled. Pursuant to Section 3 of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter referred to as: Ajbt), the Ombudsman has several authorities. The tasks wperformed by the Ombudsman and his secretariat are summarized by the following diagram:

Types of tasks fulfilled by the Ombudsman and his secretariat

Providing opinions on laws	50
Proposals for codification or amendment of laws	3
Ex officio inquiries	3
Independent position papers	3
Participation in conferences	15
Organization of conferences	10
Holding presentations	9
Expert coordination	92
Participation in OKT (National Environmental Council) /NFFT (National Council for Sustainable Development) /National Assembly committees	19
International events	18
Raising awareness	47
Press conferences	5
Press releases	17
Monitoring	57

By holding professional consultations and searching for publicly available information, the

Ombudsman monitors the enforcement of the interests of future generations on the one hand, and draws the attention of the affected public bodies and the public to the threats of violating the laws that may affect future generations, on the other hand. As part of these endeavors, the Ombudsman turned to the heads of government institutions in letters on several occasions, asking them to act, and he also reached out to the wider public in as many as 17 press releases, 5 press conferences and a high number of interviews. It was his statement on the environmental risks posed by the Trans-Atlantic free trade agreements (TTIP, i.e. the Transatlantic Trade and Investment Partnership and CETA, i.e. the Comprehensive Economic and Trade Agreement) that received the greatest attention: it reached some two hundred thousand people in the printed press, while more than two million in the electronic media.

Thirdly, the Ombudsman may propose that a law be created or modified. He used this authority of his on two occasions in 2016: when he submitted his proposed National Assembly decree on the Fatestvér (Birth Tree) program, and when he filed a motion for the modification of the bill on the new civil procedures code, which was aimed at the extension of the possibility for coordinated litigation to some of the procedures launched against environmental pollution.

Furthermore, the Ombudsman launched two inquiries ex officio in 2016, he conducted an inquiry that had been launched earlier, he was involved in the preparation of as many as twenty joint reports, he issued three independent policy statements, and he formulated his opinion on draft laws in fifty cases. The staff of the Ombudsman and his secretariat organized 10 conferences at the Office, they took part in another 15 conferences, and they held presentations at 9 conferences. In the course of performing the tasks of the secretariat, coordination talks with external experts were held on 92 occasions.

1. Proposed new law – the proposed National Assembly decree on the Fatestvér (Birth Tree) Program

The basic idea of the Fatestvér Program is simple but suggestive, and also, efficient from the aspect of environmental and climate protection: we should plant a tree for each Hungarian child born in a specific year. The Program represents quite a number of constitutional values, including equal opportunities, taking personal responsibility, social solidarity, as well as the unifying power of belonging to a local community, as well as the importance of local solutions for global problems.

The submission of the proposed regulation on the Fatestvér Program was preceded by several years of preparation, the initiative was formed in broad coordination with the civil organizations and state authorities. The proposed decree of the National Assembly, which was announced by the Ombudsman on May 10, 2016, was prepared by relying on the experience gained in many countries in initiatives on similar subjects that have been running for a longer time, especially those of the Plant! Program in Wales.

Besides the special legal protection of the trees planted in the framework of the Program, the draft also assigns due attention to the protection of Hungarian trees, concluding that the regulations on the protection of woody plants require a general review and they should be reformulated.

The proposed law was widely welcomed by civil organizations and other groups of the society, as well as professional organizations, and all the Parliamentary fractions supported it in unison. After incorporating the proposals made by the ministries competent in the decisions concerning the Fatestvér Program, the Ombudsman filed his motion to the National Assembly in late November 2016.

The Ombudsman and his family are planting a tree in Népliget (People's Park) at the inception of the Fatestvér Program

2. Proposed amendment of the law: supplementing the bill on the new civil procedures code

The Ombudsman filed a motion to the Justice Committee of the Hungarian Parliament for the supplementation of the bill on the new civil procedures code in order to make it easier for those suffering health damages because of environmental pollution to enforce their claims. As compared to the originally submitted bill, the Ombudsman now made a different proposal, i.e. one for the extension of coordinated litigation, thus also promoting the enforceability of the polluter pays principle.

The motion filed by the Ombudsman was adopted by the National Assembly, with some modifications. Thus, Point c), Section 583(2) of Act CXXX of 2016 on Civil Procedures already contains this option and provides that coordinated litigation can be initiated "in the case of the enforcement of claims arising from health damages directly caused by an unanticipated environmental impact based on human activities or negligence, or the enforcement of claims for material damage."

3. International involvement

Network of Institutions for Future Generations

The focus of the international activities of the Ombudsman was the development and promotion of the Network of Institutions for Future Generations (hereinafter referred to as: the Network), which is a network comprising the national and regional organizations involved in the case of future generations. The Network was established at the Ombudsman's initiative in 2014, inspired by the report of the UN Secretary General entitled "Intergenerational Solidarity and the Needs of Future Generations" published in 2013. The report lists the institution of the Hungarian Ombudsman and more precisely, the Office of the Deputy Commissioner for Future Generations as one of those eight national institutions in the world which promote the representation of the interests of future generations in a unique way and in an institutionalized form.

The annual meeting of the members of the Network took place at the Parliament of Finland in Helsinki on June 7-8, 2016, as part of the conference entitled "For the Next Generations" organized by the Committee for the Future. At this meeting, Marcel Szabó was elected chairman for two years by the representatives of the institutions. Furthermore, it was confirmed that the secretarial responsibilities of the Network are fulfilled by the secretariat of the Ombudsman. After his election to the position of constitutional judge on December 1, 2016, the Ombudsman became the honorary chair of the Network.

Cooperation with the UN

In September 2016, UN Independent Expert on Human Rights and the Environment John Knox invited the governments, as well as the public bodies and civil organizations to a consultation to discuss the correlations between and the challenges posed by the enforcement of human rights and biodiversity, and the kind of institutional solutions that may promote the development of adequate practices. By taking the incoming materials into account, the independent expert will submit his thematic report on the correlations between biodiversity and human rights to the UN Human Rights Council in March 2017. In order to contribute to this report, the Ombudsman submitted his professional material, in which he gave a detailed description of the Hungarian institutional practice and the statutory background, as well as the challenges posed by this topic.

Participation of the Ombudsman for Future Generations and his colleagues in international events

Date	Invited by	Topic	Purpose of travel	Location
25-26.02	European Network of National Human Rights Institutions	ENNHRI Meeting on SDG's	Information gathering on the possible roles of human rights institutions in the execution and control of SDGs	Berlin, Germany
29-30.03	UN UPR Info	UPR – Universal Periodic Review	Meeting for preparing for the session of the UN UPR working group	Geneva, Switzerland
07-08.06	Network of Institutions for Future Generations	Network of Institutions for Future Generations	Annual meeting of the international network	Helsinki, Finland
06-09.07	Voices of Future Generations	Voices of Future Generations: "2016 International Learning Circle on Inter-generational Equity, Children's Rights & the World's Sustainable Development Goals"	International meeting of children and experts committed to sustainable development and human rights	London, England
23.07	European Union Agency for Fundamental Rights (FRA)	Fundamental Rights Forum 2016 organized by the European Union Agency for Fundamental Rights (FRA)	International forum and exchange of ideas on the situation of fundamental rights	Vienna, Austria
20-22.09	UN Human Rights Council	UPR – Universal Periodic Review	Discussion of Hungary's UPR report, as well as the human rights situation in Hungary at the 33rd session of the Human Rights Council	Geneva, Switzerland
11-16.10	World Future Council	The presentation of the exemplary development of environmental literacy standards by the state of Maryland and the identificationof elements that can be transposed into the national law. Implementation of Sustainable Development Goals	Environmental literacy in the national legal systems, implementation of Sustainable Development Goal 4	Annapolis, USA

4. Protecting the common heritage of the nation

Soil conservation

In 2016, the Ombudsman issued a statement on soil conservation, in which he urged the development of a national soil strategy and he formulated proposals for halting the process of the qualitative and quantitative deterioration of the soil in the interim period. This

position paper was prepared by taking the Hungarian and international scientific viewpoints into account. According to the scientific consensus, the soil is a dynamic system of organic and inorganic substances, gases, solutions and live organisms, the components of which are in constant interaction with each other within this system and with the environment. The soil is a reserve of heat, water and nutrients, which mitigates the effects of excessive weather conditions, and which ensures the natural bases of human life through its constant renewal. The soil is an irreplaceable and immovable value, of which a layer of 10 centimeters is produced in a thousand years, this is why it requires special protection, which ensures the preservation of various soil functions. The preservation of the quantity and quality of soil also means keeping the possibility of choice for the present and future generations, including changing the types of land use.

In his position paper, the Ombudsman concluded that the legal frameworks of soil conservation do not reflect the priority role that the soil fulfills in ensuring the conditions of human life, or which would be justified by constitutional protection. The legal protection of the soil and its versatile functions is not complete, so the flora and fauna of the soil do not receive any legal protection. The area of our excellent and high quality arable lands is continuously decreasing, the soil sealing and soil degradation processes have not been stopped and reversed to date, despite the economic incentives. In the settlements, the tools of settlement planning and development are only suitable for the prevention of the soil's losing functions to a limited extent. With regard to all this, the Ombudsman formulated proposals which may contribute to halting the negative processes and which will preserve the possibility of choice for the future generations. The proposals, among others, include making the protection of our excellent and high quality arable lands stricter, the absolute prohibition of the withdrawal of lands from cultivation, the termination of allowing new mining activities, the prohibition of permitting greenfield investments until there are available brownfield areas; the consistent control and coercion of the rules (legal requirements and economic incentives) on the cultivation of land, the review and modification of land cultivation rules with a view to stopping the erosion and soil degradation processes.

The Ombudsman stressed that the protection of soil assets requires a new approach in conveying knowledge both in education and in consultancy. The scientific processing of the available data, the processing of the data from monitoring networks in the context of a predictable research program, the examination of the effect of chemicals used in agricultural activities on the flora and fauna of the soil, along with the disclosure of the findings, the operation of independent consulting and information systems all qualify as critical conditions of the preservation of our soil assets. The inappropriate distribution of tender resources, as well as the definition of inappropriate criteria, or the permission of exceptions and exemptions run counter to the state obligation arising from the Fundamental Law of Hungary.

Protection of biodiversity

Protection of the most endangered species of the Vojvodina blind mole rat

The Ombudsman for Future Generations issued a policy statement entitled "The Preservation of the Most Endangered Species of the Vojvodina Blind Mole Rat for Future Generations" in September 2015, in which he called attention to that this species, endemic in the territory of Hungary for about two millions years, the highly protected species of Vojvodina blind mole rats (Nannospalax [leucodon] montanosyrmiensis), is critically

endangered, it is on the verge of extinction and also, he drew attention to the related constitutional obligations of the state. It should be noted that in the past few decades, it was only in Hungary that viable populations have been found, in the region of Kelebia-Ásotthalom on the Hungarian-Serbian border, and also, in the yet unbuilt area of Baja.

In the policy statement, a proposal was made for compiling a complex, prioritized action package, adjusted to the habitats of the species, the short-, mid- and long-term objectives, as well as the responsibilities and competence of the parties involved in preservation. The position paper was welcomed and supported by state administration, the affected municipalities, a wide range of professional and civil organizations, and the proposed action package was regarded as a specific action plan by several affected parties.

Since the issuance of the position paper, several favorable processes have been kicked off. On the one hand, in September 2016, the Kiskunság National Park Management Center finished the professional and social coordination process of their proposal on declaring the Baja mole rate reservation a national nature protection area, in which effort our Secretariat was also involved. We made a comment on the draft law in the framework of a public administration coordination meeting in January 2017. On the other hand, in December 2016, the Vojvodina blind mole rat was listed in the "Natural Environment" category of the Bács-Kiskun County Collection of Hungarian Values, while the Hungarian Academy of Sciences had taken on the professional preparation and justification tasks of qualifying this species as hungaricum earlier. This is in harmony with the idea of the necessary increase of social support mentioned in the action package of the policy statement.

The Vojvodina blind mole rat – photo by Dr. Attila Németh

Policy statement on white acacia

The Ombudsman issued an independent policy statement on the requirements of the statutory environment regarding white acacia. White acacia is an invasive tree species non-native in the Carpathian Basin, with its origins going back to North America, which is capable of very fast growing to the detriment of endemic species and co-habitations. The most outstanding ecological and botanical research institutes of the country that were contacted

in the course of the elaboration of the policy statement uniformly assign significant risks to white acacia. However, white acacia is a tree species that is economically useful: its fast-growing wood is valuable, furthermore, it is the most important melliferous plant in Hungary, this is why it is inevitable that the legal regulations regarding white acacia appear as a compromise between environmental risks and economic interests. White acacia, pursuant to the effective laws, qualifies as an invasive, non-native tree species, however, in parallel to its qualification as hungaricum, the possibility for lifting these restrictions also came up. In view of the ecological concerns, it was thus justified to review the legal regulation of white acacia, considered from the aspect of the ecological effects of this tree species.

The purpose of the issuance of the position paper was to recommend some guidelines to the legislator for a potential future change of the legal regulation regarding white acacia. As the first recommendation, it encouraged a more differentiated legislative approach, i.e. that those areas where the cultivation of white acacia is justified on account of its effects and where the planting of this tree species is to be ensured, should be defined, however, in other areas, its cultivation should be confined within strict limits because of its invasive features. As the second recommendation, it was concluded that the current legal regulation is suitable for both restricting and supporting acacia, based on the requested professional opinions. As the third recommendation, it is emphasized by the position paper that the lifting of the current planting restrictions would pose serious ecological risks for the endemic flora and the forest cohabitations, this is why the lifting of this restriction would raise concerns with regard to Article P) of the Fundamental Law of Hungary.

Air protection: Policy statement on the air pollution caused by household combustion devices

The Ombudsman issued an independent policy statement on the alarming extent of air pollution emitted from household combustion devices and the necessity of the reduction thereof. Hungary belongs to the group of backward countries from the aspect of air quality both in European and global standards. In some of our geographical regions, the air of small settlements, especially in the fall and winter heating seasons, is extraordinarily polluted, which seriously and directly affects the health of the population of these communities. All this is unfortunately reflected in the Hungarian death and disease rates as well.

While in 2000, the share of residential heating in the total emission of tiny airborne dust particles was 24 percent, this rate has risen to 45 percent by 2013. According to the latest figures, the use of the poorest quality (due to its low heating value and high content of harmful substances) lignite for residential heating has shown a fourfold increase since 2007, which further deteriorates the air of the regions with extraordinarily poor air quality.

Besides the theoretical requirement concerning the general emission standards, in today's Hungary, there is no law governing household combustion devices, thus, in lack of the appropriate legal instruments, the use of lignite and other poor quality solid combustibles is absolutely uncontrollable and uncontrolled. This is why the Ombudsman, in his policy statement, called attention to the absolute necessity of the statutory definition of the quality requirements of solid combustibles that can be put on the market for residential use, with special regard to the heating value, specific sulphur content and the emission of tiny airborne dust particles of the combustibles.

5.
Statistical data

The statistical data of the Ombudsman's activities

In 2016, citizens filed 8,399 submissions with the Commissioner for Fundamental Rights. Nearly three thousand cases were carried over from the previous year, the majority of which was constituted by the submissions continuously coming in from September 2015 based on the call of Amnesty International. We closed as many as 7,426 cases.

Complaints received	
Registered complaints	8399
Closed cases	7426
Cases underway at the closure of the year	973

The finished cases could be listed in 92 case types, which, however, can be grouped. The previous proportion of case types turned upside down due to the submissions that came in because of the migrant crisis. In these submissions, it was mainly foreign citizens who asked the Ombudsman to investigate into the Government's border control concept, whose implementation began on September 16, 2015, as well as to propose that this be reviewed by the Constitutional Court. Of these, we finished 2,640 cases only last year.

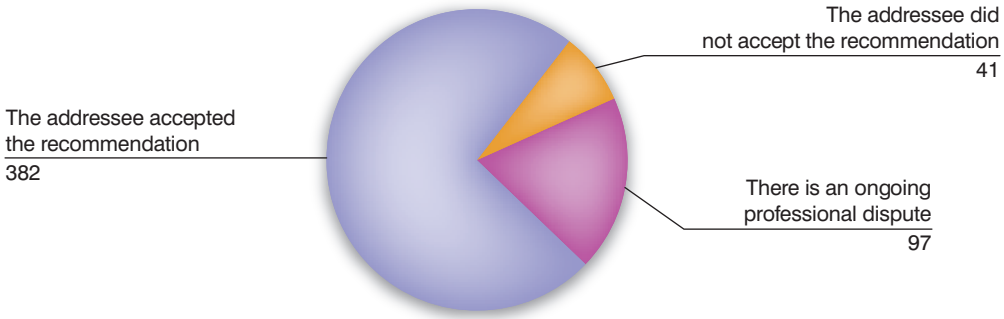
The majority of these cases (726) concerned complaints on the activity of the Ministry of Human Capacities on social, labor, educational and health care issues. The next large group was made up by civil law types of cases (711), including complaints on contractual pension and health insurance cases, as well as foreclosures and public services. There is a very high number of cases concerning criminal procedure, law enforcement

Distribution of finished cases by case types	
Case type	Total
Refugee-related cases	2640
Other cases	849
Social, labor, education and health care	726
Civil law case, pension and health insurance, foreclosures	711
Criminal and law enforcement cases, police cases	688
Municipality-related cases	443
Comments on laws, criticism of laws from a constitutional aspect	439
Public interest disclosures	367
Cases related to children's rights, family law, guardianship	336
Cases related to financial institutions, taxes and duties	227
Total	**7426**

and police actions (688) as well. As usual, the cases related to municipalities also generated many complaints (433), including complaints on housing, parking, transport and urban development. In as many as 439 cases, the Commissioner was invited to provide comments on laws, or to evaluate critical remarks on laws from a constitutional aspect. The number of public interest disclosures increases year by year, we handled 367 cases in 2016. The Ombudsman places special focus on complaints regarding children's rights, family law and guardianship. He investigated into 336 submissions on these subjects. 227 cases concerning financial institutions, taxes or duties were brought to the Commissioner. The 849 cases listed as 'other' belong to one of the further 80 case types. The table shows the complaints received in the individual case types.

140 reports were prepared for the 320 independent submissions completed with a report, in which we made a total of 520 recommendations. Of these, our proposals were accepted by the addressees of the recommendations in 382 cases, while in 41 cases, they were rejected. When the data of this report were closed, there was an ongoing professional coordination or exchange of opinions in 97 cases.

Recommendations by the response of the addressee



Customer services report

Customer service tasks are performed by two organizational units of the Office. In 2016, the Information Service received 12,087 inquiries from citizens over the telephone. On previously specified appointments, 1,973 clients were heard at the Complaint Office, who requested a personal hearing in connection with a concrete complaint. Clients visited one of the customer units of the Office on a total of 14,060 occasions. Of them, 256 still inquired about their data protection case at the Office, though this activity belongs to the competence of the Hungarian National Authority for Data Protection and Freedom of Information (NAIH) from January 2012. 168 individuals acted for the infringement of national minority rights, while 119 persons turned to the Office in connection with the right to a healthy environment.

Phone		Personal				Total
Request for appointment or information	Submission-related	Hearing at the Complaint Office	Submission-related	Submission or review of documents	Request for appointment or information	
9155	2932	1107	194	172	500	14 060

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