

SYNERGIES OF NATIONAL AND INTERNATIONAL PROTECTION OF MINORITIES LIVING IN HUNGARY



ACTIVITIES OF THE OMBUDSMAN FOR MINORITY RIGHTS OF HUNGARY

2013-2019

**OFFICE OF THE COMMISSIONER FOR
FUNDAMENTAL RIGHTS OF HUNGARY**

SYNERGIES OF NATIONAL AND INTERNATIONAL PROTECTION OF MINORITIES LIVING IN HUNGARY

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Office of the Commissioner for Fundamental Rights of Hungary

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Foreword

The relevance of international law and international organisations for the protection and promotion of the rights of minorities is unquestionable. Various universal and regional instruments of international law are aimed at monitoring the situation of the rights of minorities, and the role of national human rights institutions in providing their input and sharing their point of views establishes an important link between national and international protection systems and allows for synergy and exchange of good practices.

The Commissioner for Fundamental Rights of Hungary was recognised as an ‘A’ status national human rights institution in 2014 and it is subject to the re-accreditation process at the moment. According to Hungarian law, one of the deputies of the Commissioner for Fundamental Rights is responsible for the protection of the rights of nationalities living in Hungary, namely the Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma, Romanian, Ruthenian, Serb, Slovak, Slovene and Ukrainian communities. As Deputy Commissioner, I consider international advocacy as a key task prescribed by law in the framework of my mandate to protect and promote the rights of national minorities living in Hungary – this also falls in line with the expectations towards a national human rights institution which has an ‘A’ status.

This book contains selected reports and various submissions to international human rights bodies formulated in the term of my mandate as Deputy Commissioner, organized around human rights issues or reporting mechanisms with description about the context and the role of a national human rights institution therein. I hope this book will serve as a useful and reliable source of information about the human rights situation of minorities living in Hungary as well as about the room of manoeuvre available for national human rights institutions in the field of international advocacy.

Elisabeth Sandor-Szalay

Deputy Commissioner for Fundamental Rights, Ombudsman for Minority Rights

1. Preventing and addressing violence and atrocity crimes targeted against minorities

One of the privileges of an “A” status national human rights institution is the possibility is to submit written statements and other documents such as reports for the UN Human Rights Council. This written statement was submitted on 20 February 2015 and disseminated at the 28th session of the Human Rights Council during the discussion of the agenda item “Recommendations of the Forum on Minority Issues at its 7th session”. Along with the support of the Deputy-Commissioner for Fundamental Rights of Hungary, who also emphasized the relevance of the issues discussed by the Forum on Minority Issues, the Human Rights Council decided to endorse these recommendations.

Written Statement in relation to the Recommendations of the Forum on Minority Issues at its 7th session: Preventing and addressing violence and atrocity crimes targeted against minorities¹

The Commissioner for Fundamental Rights is the single “A” status National Human Rights Institution of Hungary. The CFR aims to protect and promote fundamental rights and is vested with quasi-judicial competence to hear and consider complaints against public authorities and other entities providing public services. In compliance with the Paris Principles, the institution contributes to the promotion of human rights by the means of education, training and awareness raising activities as well as advocacy. One of the deputies of the Commissioner is responsible for the protection of the rights of minorities living in Hungary who represents the institution before international bodies in connection with the relevant topics.

On the purpose of the presentation of the Recommendations of the Forum on Minority Issues on preventing and addressing violence and atrocity crimes targeted against minorities to the Human Rights Council, the Deputy Commissioner confirms her support in favour of it and appreciates the guidance of the Special Rapporteur on minority issues in the discussion. As the attendee of the seventh session of the Forum on Minority Issues, the Deputy Commissioner agreed on the importance of the multi-stakeholder approach towards the issue which definitely increases awareness and creates a common sense of responsibility in the society to protect persons belonging to minorities from violence. In the present submission the

¹ Registered under [A/HRC/28/NI/2](#).

particular role of national human rights institution is considered with special focus on the work of the Commissioner for Fundamental Rights of Hungary.

The Deputy Commissioner is pleased to share that the recommendations concerning prevention of violence and atrocity crimes are already duly implemented. The institution receives complaints from individuals claiming that their fundamental rights were infringed by a public authority. In case of mentioning belonging to any of the thirteen minorities protected by the law of Hungary the case is assigned to the relevant special unit, the Deputy Commissioner and her bureau. This practice bears crucial importance since Hungary has been criticized several times by international human rights bodies for failing to collect disaggregated data on persons belonging to minorities. The Deputy Commissioner is allowed to initiate proceedings ex officio provided the prior approval of the Commissioner if she finds violations affecting indefinitely large group of people or aims to monitor the enforcement of a particular right. Furthermore, the Deputy Commissioner keeps close contact with the representatives and leaders of the minorities and arranges regular discussions with them.

To address ongoing violence is definitely a challenge for all stakeholders. The most serious racially motivated attacks since World War II happened lately in Hungary: in 2008 and 2009, six Roma Hungarians were murdered, 55 people were in clear physical danger, while the Roma community was pushed into a terrifying climate of physical fear and psychological anxiety. Romani individuals between 2010 and 2012 continued to be victims of intimidation, hate speech and various violent physical attacks. In March-April 2011, paramilitary groups marched and patrolled in village of Gyöngyöspata, harassing and intimidating the Roma community. In case of the last incident, the Minority Ombudsman, predecessor of the Deputy Commissioner, took a leading role in settling the situation when besides the press releases and appearances he initiated an investigation ex officio and issued a report based on a fact finding mission on the spot. The investigation in Gyöngyöspata focused not only on the issue of patrols and paramilitary marches which got great press attention, but also on the segregation of Roma pupils in school and the segregation in the field of housing, neither of which can be separated from the events that have occurred in the above mentioned period. The Minority Ombudsman proposed several state actors to take appropriate measures in order to end violence which later were taken into account by the lawmakers and the law enforcement authorities.

The Deputy Commissioner considers training, education and public outreach as the most appropriate means to restore a strong human rights culture in post-violence situations, bearing in mind its preventive function as well. As it was discussed during the seventh session of the Forum on Minority Issues, human rights infringements such as discrimination, exclusion and inequality in a given political, social, economic situation may escalate into abuse or even violence, therefore restoration and prevention overlap each other. Accordingly, the Deputy Commissioner gives priority to awareness raising by programs addressing the society as a whole and tailor-made to the needs of particular target groups as young people.

Finally, the Deputy Commissioner, also on behalf of the Commissioner for Fundamental Rights takes the opportunity to confirm their intention to actively engage with the international human rights system in the future, too.

2. Roma women’s reproductive health and rights

National human rights institutions are encouraged to supervise the implementation of the UN Convention on the Elimination of Discrimination against Women and report to its monitoring body. The Committee on the Elimination of Discrimination against Women addresses recommendations to the state parties of which the most pertinent ones are monitored in the middle of the reporting cycle in a so-called “follow-up procedure”. Based on information from the state, the national human rights institutions and non-governmental organizations, the Committee finds whether these recommendations have been implemented, partially implemented or not implemented. If the recommendations have not been fully implemented, as it has been found in this case during the monitoring of Hungary, the Committee calls upon the respective government to implement them by the deadline of the submission of the next state report.

Communication of the Deputy Commissioner for Fundamental Rights of Hungary on behalf the Commissioner of Fundamental Rights of Hungary in regard to the information provided by Hungary on the follow-up to the concluding observations of Committee on the Elimination of Discrimination against Women on the combined seventh and eighth periodic state report²

The Commissioner for Fundamental Rights is the single “A” status National Human Rights Institution of Hungary. The CFR aims to protect and promote fundamental rights and is vested with quasi-judicial competence to hear and consider complaints against public authorities and other entities providing public services. In compliance with the Paris Principles, the institution contributes to the promotion of human rights by the means of education, training and awareness raising activities as well as advocacy. Mrs Elisabeth Sándor-Szalay, writer of the present communication, is the Deputy Commissioner responsible for the protection of the rights of national minorities living in Hungary³ and represents the institution before international bodies in connection with relevant topics.⁴

² Date of submission: 31 March 2015.

³ According to Appendix No. 1 to Act CLXXIX of 2011 on the Rights of Nationalities the following shall qualify as national minorities in Hungary: Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma, Romanian, Ruthenian, Serb, Slovak, Slovene and Ukrainian.

⁴ The Section 3 (2) h) of the Act CXI of 2011 on the Commissioner for Fundamental Rights declares: “The Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary shall monitor the enforcement of the rights of nationalities living in Hungary, and [...] shall promote, through his or her international activities, the presentation of the merits of domestic institutions related to the interests of nationalities living in Hungary.”

The Deputy-Commissioner welcomes the commitment of the government to comply with its international obligations and the fact that the information on the follow-up to the concluding observation of the Committee was submitted in due time. Furthermore, she deeply agrees with the decision of the Committee to follow up the recommendations connected to the topics of violence against women and health because in these fields human rights infringement was previously found in individual complaint procedures. Mrs Elisabeth Sándor-Szalay is pleased to have the opportunity to share her views and opinion in the follow-up procedure of the Committee.

The Deputy-Commissioner is concerned that Hungary has not yet ratified two important international instruments, the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (signed in November 2010) and the Council of Europe Convention on preventing and combating violence against women and domestic violence (signed in March 2014). Recently, a group of Members of the Parliament proposed a resolution to the Hungarian Parliament with the aim to speed up the ratification of the Istanbul Convention but the majority of the MPs rejected it. However, according to the Ministry of Justice this decision has no influence on the ratification procedure which is under preparation, it was met with a public outcry.

Last year, 90 percent of individual complaints on discrimination falling in the mandate of Deputy Commissioner were submitted by Roma complainants. Romani women suffer multiple discrimination on the basis of their gender and ethnicity - among others - in access to healthcare and quality education. These result in poor level of awareness about reproductive health and rights, which is escalated by disadvantaged social status and geographical obstacles. However major policy documents adopted by Hungary to improve the situation of the Roma population has stipulated the disadvantaged situation of Roma women, these policy papers have not yet resulted in substantive improvements in the situation of most of them.

Previously in the case of A.S, the Committee recommended Hungary to review domestic legislation on the principle of informed consent in cases of sterilization and ensure its conformity with international human rights and medical standards. In spite of the fact that the law was amended, it is still not flawless: the Deputy-Commissioner is aware that a complaint was recently lodged to the European Court of Human Rights where the applicant alleged to be subject of coercive sterilization in a public hospital. However coercive sterilization is not a

practice in Hungary anymore, abuses still happen of which Romani women are more likely to suffer because of their vulnerability.

The Deputy of the Commissioner responsible for the protection of the rights of national minorities living in Hungary would like to show her support in favour of the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in Hungary and express her commitment to contribute to the work of the Committee on the Elimination of Discrimination against Women in the future.

3. Protection of minorities within the framework of the International Covenant on Civil and Political Rights

National human rights institutions can submit reports to UN Human Rights Committee, which monitors the implementation of the International Covenant on Civil and Political Rights at the State Parties. By this mean, the national human rights institutions can contribute to the preparation of the list of issue prior to reporting – if the state party agreed to take part in the simplified reporting procedure and replies only the questions formulated by the monitoring body – and/or the discussion of the state reports and submissions from other stakeholders. Based on this thematic report submitted by the Deputy Commissioner on 2 September 2015, the Human Rights Committee sent a list of issues prior to reporting to Hungary with several relevant questions related to the protection of minorities living in Hungary.

Thematic report submitted to the 115th session of the Human Rights Committee in support of outlining the list of issues prior to reporting for Hungary

3.1. Introduction

The current report is submitted by the Deputy Commissioner responsible for the rights of national minorities, dr. Elisabeth Sándor-Szalay, supported by the Commissioner for Fundamental Rights of Hungary, therefore it is a thematic paper and covers those provisions of the ICCPR which fall within her mandate. Accordingly, the implementation of the Article 2 as a provision mainstreaming the prohibition of discrimination, Article 8 in relation to trafficking in human beings, Article 20 (2) stipulating the criminalization of hate speech and Article 27 declaring minority rights are discussed. The report is based on the results of the investigations conducted by the former Commissioner for Fundamental Rights, dr. Máté Szabó, the former Parliamentary Commissioner for National and Ethnic Minority Rights, dr. Ernő Kállai, the Commissioner for Fundamental Rights in office, dr. László Székely and his Deputy responsible for minority rights protection, dr. Elisabeth Sándor-Szalay. External resources, such as court decisions, international organization and NGO reports are used as it is deemed necessary (with proper reference).

The Commissioner for Fundamental Rights (CFR) is the single “A” status National Human Rights Institution of Hungary celebrating its 20th anniversary this year. The CFR is independent from the government and subject only to the provisions of the Fundamental Law

of Hungary and the Acts of the Parliament. The CFR aims to protect and promote fundamental rights with special attention dedicated to the rights of the child, the most vulnerable social groups and people with disabilities. The Commissioner has two deputies: one of them is responsible for protection of the rights of national minorities living in Hungary, while the other deputy protects the interests of future generations. The National Preventive Mechanism under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) had been established as a separate department within the Office of CFR and started to operate on 1st January 2015.

The CFR is vested with quasi-judicial competence to hear and consider complaints against public authorities and other entities providing public services as well as to initiate investigations ex officio into the situation of a non-determinable group of people or the implementation of a particular fundamental right. In case of infringement, the CFR addresses a recommendation to the respective authority or its supervisory organ which is obliged to inform him of its position on the merits of the recommendation and on the measures taken within thirty days. Furthermore, the CFR scrutinizes laws, bills and policies and makes proposals for amendment, modification or repeal.

In compliance with the Paris Principles, the institution contributes to the promotion of human rights by the means of education, training and awareness raising activities as well as advocacy. The Commissioner works in close cooperation with other organisations aiming at the promotion of the protection fundamental rights including the civil society. Regarding the international obligations of Hungary, the CFR promotes the ratification of international human rights documents and monitors their implementation (among others by the submission of alternative reports to the treaty bodies of the United Nations). The special provisions governing the mandate and work of the Deputy Commissioner responsible for the protection of national minorities is elaborated in Chapter 1.4 under the Institutional Developments.

3.2. Legal developments

After the 2010 general elections, the whole legal system had gone under review and as a result the Constitution as well as several laws related to human rights had been repealed with re-enactment.

The Constitution of Hungary (Act of XX 1949) had been amended numerous times before it was repealed by the Fundamental Law of Hungary, adopted on 18th April 2011 and entered into force on 1st January 2012. The Fundamental Law incorporates the bill of rights, the inviolable and inalienable fundamental rights of man, protection of which primarily stands with the state. Quite a few landmark decisions of the Constitutional Court had been integrated by stating that a “fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of such fundamental right”.

The specific provision on anti-discrimination has an open-ended list of enumerated protected grounds furthermore it declares gender equality and defines as a state role to promote equal opportunity and social inclusion. Nevertheless, the “best interest of the child” is not mentioned in such way, the Fundamental Law states that “every child shall have the right to the protection and care necessary for his or her proper physical, mental and moral development”. Social rights are enhanced through the provision of social security, decent housing conditions and access to public services for all.

The Fundamental Law set aside the provision of the previous Constitution which declared that the state provides protection for minorities; however, it recognizes the nationalities living in Hungary as constituent parts of the state. In this article the enjoyment of the right to freely express and preserve minority identity and consequently all other minority rights are restricted to Hungarian citizens which is not in compliance with the ICCPR and the interpretation of the Human Rights Committee (General Comment No. 23.). In addition, the related legislation is also inconsistent in this question. The cardinal act, which is ordered to further elaborate the political, linguistic, cultural and educational rights of minorities, namely Act CLXXIX of 2011 on the Rights of Nationalities⁵ defines the personal scope of the minority rights and obligations as pertaining to every person who has a residence in Hungary and identifies himself or herself as a member of one of the national minorities and declares his or her identity as such in a way prescribed by the law. The Act was amended on 13 February 2014 and as a result the right to participate in the nationalities self-government elections was restricted to Hungarian citizens⁶ while the introductory provisions of the law defining the personal scope remained untouched.

⁵ The Act CLXXIX of 2011 on the Rights of Nationalities was promulgated on 19 December 2011 and entered into force on 1 January 2012.

⁶ Act XIV 2014 on the amendment of several laws.

However, this amendment is in line with the interests and aspirations of the nationality self-governments.

The Act on the Rights of Nationalities follows the minority definition of the previous one (Act LXXVII of 1993 on the Rights of National and Ethnic Minorities): "all ethnic groups resident in Hungary for at least one century are nationalities which are in numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities". The nationalities fulfilling these requirements are listed in the Appendix of the Act and namely are: Bulgarian, Greek, Croatian, Polish, German, Armenian, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovene and Ukrainian.

The Article 27 of the ICCPR is expressed in negative terms but the positive obligation upon the state to protect the rights of minorities to enjoy their own culture, practice their religion and speak their language against the acts of the other persons within its territory is not arguable. However, in our view, the state may define the scope of these positive obligations in a wider manner if it is based on objective criteria and without discrimination against other minority groups existing within the state. The Act on the Rights of the Nationalities provides more extensive entitlements for the above mentioned 13 nationalities than it is prescribed by the ICCPR. We believe that when a claim will be made from a minority other than these it will be thoroughly examined by the Parliament and in case of justifiable grounds it will be supported by our office.

As part of the legal reforms, a new Criminal Code⁷ was enacted with modifications concerning human trafficking, hate crimes and hate speech as well.

The new penal law reformed the trafficking in human beings in order to comply with the Palermo Protocol and the EU Directive 2011/36.⁸ According to the Explanatory Memorandum, since these two international instruments work with two different terms it was necessary to transpose both of them. In accordance with the Palermo Protocol the Criminal Code states that any person who sells, purchases, conveys or receives another person or exchanges a person for another person, also the person who recruits, transports, houses, hides or appropriates

⁷ Act C of 2012 on the Criminal Code which entered into force on 1 July 2013.

⁸ Article 192 of the Act C of 2012 on the Criminal Code.

people for such purposes for another party, is guilty of a felony punishable by imprisonment for up to three years, in case of aggravating circumstances it could go up to 20 years or life sentence. The term of exploitation was defined as a conduct to try to take advantage of the status of the victim taken into or kept in exploitative situation.

The previous Criminal Code - the Act IV of 1978 - defined five types of conduct falling under the category of hate crimes: genocide (Article 155), apartheid (Article 157), violence against a member of community (during 2009 modified: member of a national, ethnic, racial or religious group) (Article 174/B), incitement against a community (Article 269) and use of banned totalitarian symbols (Article 269/B). The new Hungarian Criminal Code introduced changes to the provisions protecting persons from hate-motivated assaults due to their real or perceived identity and extends the list of grounds with sexual orientation, gender identity and disability, but still does not include any general provision which states that discriminatory motivation can be taken into account as part of an investigation or prosecution of other crimes.

For the time being, hate crimes are intended to be criminalized as violence against a member of the community.⁹ According to the law, any person who, because of another person's being a member or a presumed member of a national, ethnic, racial or religious group or a certain group of population – especially due to disability, sexual identity or sexual orientation –, displays a conspicuously anti-social conduct that is capable of causing alarm in members of the group is guilty of a felony punishable by up to three years of imprisonment. In case of assault or compel by applying violence or threats to do, not to do or to endure something the punishment shall be one to five years of imprisonment. Under the aggravating circumstances, when the crime is committed a) by force of arms; b) armed with a weapon; c) causing a substantial injury to interests; d) by the torment of the injured party; e) as a group; or f) as a criminal conspiracy, it shall be two to eight years of imprisonment. Furthermore, the conduct in preparatory stage is already punishable (in the Hungarian criminal law preparation of a crime is only punishable when it is explicitly expressed). At the same time there is no specific legislation regarding property-related offences where the evidences could prove that the crime was motivated by racism or xenophobia.

In case of a more serious crime, such as aggravated assault or murder, if the perpetrator has any of the motives listed in the violence against a member of the community, the conduct will

⁹ Article 216 of the Act C of 2012 on the Criminal Code.

be probably classified as one committed with aggravating battery, namely with malicious intent. Therefore, the most serious crimes will not be classified as hate crimes. It is hotly debated in Hungary whether to introduce a hate motive for all crimes or to keep the classification under the malicious intent but rather develop the practice of the law enforcement agencies.

The hate speech in the new Criminal Code is covered by the crime of incitement against a community (which was previously called agitation against a community).¹⁰ According to the law, a person who incites to hatred before the general public against a) the Hungarian nation, b) any national, ethnic, racial group, or c) certain groups of the population—with special regard to disability, sexual identity, or sexual orientation— shall be liable to punishment for felony with imprisonment up to three years. Though only in a few cases, but courts have found that incitement against a community can be committed in an online environment which constitutes the general public (on a social network site or any other website).

3.3. Institutional developments

As a result of the legal reforms, by 1 January 2012, the ombudsman system of Hungary had been reorganized: the Commissioner for Fundamental Rights is responsible for the protection and promotion of fundamental rights with special attention to the rights of the child and people with disabilities and their deputies protect the interests of future generations (successor of the Parliamentary Commissioner for protection of the interests of future generations) and the rights of nationalities living in Hungary (successor of the Parliamentary Commissioner for national and ethnic minorities). The former Ombudsman for Data Protection was transformed into the National Authority for Data Protection and Freedom of Information which is a public administrative body. The transition phase was between 2012 and 2013, therefore 2014 already meant a year of independent work planning for the Deputy Commissioner within the unified ombudsman structure.

The mandate of the Deputy Commissioner is defined by the Fundamental Law and Act CXI of 2011 on the Commissioner for Fundamental Rights (CFR Act): the Deputy Commissioner has tasks which are connected to (and support) the competences of the Commissioner regarding the rights of nationalities, and tasks which require the Deputy Commissioner to act individually.

¹⁰ Article 332 of the Act C of 2012 on the Criminal Code.

Supporting the tasks of the Commissioner, the Deputy Commissioner shall regularly inform the Commissioner of her experience regarding the enforcement of the rights of nationalities living in Hungary, shall draw the attention of the Commissioner to the danger of infringement of rights affecting nationalities living in Hungary, may propose that the Commissioner for Fundamental Rights institute proceedings ex officio, shall participate in the inquiries of the Commissioner for Fundamental Rights, and may propose that the Commissioner for Fundamental Rights turn to the Constitutional Court.

Consequently, the Deputy Commissioner is not granted the right of inquiry or the right to take measures individually which is balanced by a legal safeguard: the CFR Act prescribes that if the Deputy Commissioner makes a proposal that the Commissioner for Fundamental Rights should institute proceedings ex officio or that he should turn to the Constitutional Court, the Commissioner for Fundamental Rights shall be bound to act accordingly or to inform Parliament in the annual report of the reasons for his or her refusal to do so. The importance of this legal safeguard is undeniable, even though it only creates an ex post obligation of justification. The seeming contradiction flowing from the partial overlap of the powers and tasks of the Commissioner and the Deputy Commissioner can however be resolved if the Commissioner safeguards nationality rights in a way that allows for the obligatory participation of his Deputy in such activities.

Then, tasks which require the Deputy Commissioner to act individually are to inform the institutions concerned and the public of his or her experience regarding the enforcement of the rights of nationalities, to draw the attention of the institutions concerned and the public to the danger of infringement of rights affecting nationalities. It is also the task of the Deputy Commissioner to review the Government's social inclusion strategy and monitor the implementation of its objectives concerning the nationalities. The Deputy Commissioner may also propose the adoption or the amendment of the relevant legislation. Furthermore, the Deputy Commissioner shall promote, through her international activities, the presentation of the merits of domestic institutions related to the interests of nationalities living in Hungary at international level (as well).

It is apparent that the Deputy Commissioner is endowed with only a portion of the possibilities of the Commissioner, and its individually exercised powers mostly encompass powers of observation, evaluation and awareness-raising (notwithstanding the power to propose

amendments to legislation). In terms of everyday protection of nationality rights, a continuous willingness to cooperate – based on a common set of values, mutual professional recognition and trust – is even more important. In this regards, 2014 proved to be an exemplary year.

3.4. Policy developments

3.4.1. Socio-economic background

The largest minority in Hungary is the Roma. In 2011, at the last census 315,000 people declared themselves as Roma. However, according to reliable research, the Roma population number is around 750,000, which makes up 7,5 percent of the total Hungarian population. The Roma communities have an uneven geographical distribution in the territory of the country, more than 60 percent of Roma live in the countryside, mainly in the most disadvantaged regions (e.g. Borsod-Abaúj-Zemplén and Szabolcs-Szatmár-Bereg county), and additionally they live mostly in segregated residential zones, in rather poor housing conditions. The employment rate of the Roma population barely reaches 20 percent, and 10 per cent employment rate amongst Roma women is particularly alarming. These figures are coupled with a poor state of health (Roma die 10 years younger than non-Roma on average).

The age composition of the Roma population is significantly younger than the non-Roma population. The proportion of children aged 0–14 is 34 percent among the Roma, while this proportion is a mere 16 percent within the non-Roma population. In Hungary today approximately 3 million individuals live under the poverty line, 1.2 million of them in extreme poverty. The risks of poverty particularly afflict children and those living in disadvantaged regions. Most of the Roma, some 500,000 to 600,000 of them (based on estimates) belong to that group.¹¹ The situation of Roma is further aggravated by discrimination, which is observable in all spheres of life, including education, healthcare, employment, housing, and access to services. Roma women may be regarded as a social group affected by multiple discrimination.

Hungary does not have a mainstream and comprehensive human rights strategy, although in different policy areas sector-specific strategy papers have been elaborated.

¹¹ [National Social Inclusion Strategy – Extreme Poverty, Child Poverty, The Roma](#) – (2011–2020), Pp.6.

3.4.2. National Social Inclusion Strategy

The European Commission presented its communication, the “EU Framework for National Roma Integration Strategies up to 2020” in April 2011, which was welcomed by Council Conclusions in May and endorsed by the European Council on 24 June 2011. The Framework, consummated during the Hungarian EU presidency is the most comprehensive policy paper, which was produced by the European Commission as an achievement of a long term advocacy and policy work, to facilitate the social inclusion of 10-12 million European citizens with Roma origin. The Commission defines the obligations and responsibilities of the EU member-states and candidate countries towards their Roma communities in four priority areas: education, employment, health, and housing. The main goal of the paper is to fight social exclusion, but it misses out a vital element: combating prejudice and discrimination. Based on this, the Hungarian National Social Inclusion Strategy (hereinafter: Strategy) was elaborated in December 2011, and was updated in 2014. The main source of the Strategy’s implementation is the Action Plan of the Strategy. The Strategy targets several vulnerable groups, explicitly but not exclusively targeting Roma. This approach may pose challenges to successful and substantive policy-making and implementation, while some interventions may promote Roma inclusion.

Various strategies and action plans have been accepted in Hungary to improve the situation of disadvantaged social groups, e.g. in 2007 the state joined the Roma Decade¹² and published a strategy, in the framework of this programme specific measures focusing directly on the Roma population. The recent Strategy itself refers that ‘As pointed out several times in the government program, dealing with the problems disadvantaged social groups face has yielded very few results over the past period. This is especially true for problem areas, which, according to research, are the key areas underpinning social inequality. Employment among social groups in the most deprived situation (permanently unemployed individuals), Roma issue, the problems of disadvantaged settlements, alongside child poverty and creating opportunities for children are areas in which programs and impressive initiatives have been launched without managing to achieve any major breakthrough. Their situation, the severity of

¹² The Decade of Roma Inclusion 2005–2015 is an unprecedented political commitment by European governments to eliminate discrimination against Roma and close the unacceptable gaps between Roma and the rest of society. The Decade focuses on the priority areas of education, employment, health, and housing, and commits governments to take into account the other core issues of poverty, discrimination, and gender mainstreaming.

their poverty, their life chances, income and social status went from bad to worse. Moreover, interethnic conflicts which shocked and preoccupy the entire Hungarian society became more violent and acute, and even tragic at times.¹³

The State Audit Office of Hungary examined in 2008 the amount and efficiency of programs aiming at the improvement of the situation of Roma since the transition.¹⁴ Between 1997 and 2006 overall 74.7 billion Hungarian Forints were spent on social and equal opportunity programs, but due to the lack of the definition of the target group, in most cases data is not available regarding how much of the budget of these programs were directly invested in, and/or reached the Roma population. The conclusions of the study may provide important information from the aspect of evaluating the results programs, but data collection and data protection are not only important from a scientific point of view, but can be also decisive problems in the developments and funding concerning the situation of Roma since for practicing minority rights and for utilizing the institutions of equal opportunity.

The Strategy's analysis on Roma communities is well-elaborated, it uses several statistical resources and materials with data collected and published by acknowledged researchers, however, the implementation and the monitoring need deeper attention. Furthermore, it happens several times that the legislation and the mainstream policies and programs are not harmonized with the aims of the Strategy.

3.5. Main issues related to minority protection

3.5.1. Collection of disaggregated personal data

Hungary received several recommendations from international organizations to withdraw the prohibition on the collection of disaggregated personal data. In November 2009, Data Protection and Minorities Ombudsmen published a joint report in order to clarify the regulations regarding the collection and processing of data on ethnicity. Despite the legal reforms which affected the law on data protection as well, the recommendations of the report were not taken into account and the prohibition still stands.

¹³ [National Social Inclusion Strategy – Extreme Poverty, Child Poverty, The Roma](#) – (2011–2020), Pp.11.

¹⁴ State Audit Office (2008) (The size and efficiency of the assistance for the Roma inclusion and improvement since the beginning of transition. A summary and overview study (A magyarországi cigánység helyzetének javítására és felemelkedésére a rendszerváltás óta fordított támogatások mértéke és hatékonysága. Összegző helyzetfeltáró tanulmány. Állami Számvevőszék) Budapest.

3.5.2. Trafficking in human beings

Hungary is a country of origin, transit and destination in relation to trafficking in human beings which is most often committed with the purpose of sexual exploitation. The potential victims are children and women; among minors two groups are considered at-the-risk: children living in state care and Roma minors.

Concerning the first group, children removed from their family have less tight family relations, feel like the decisions of the authorities are forced upon them and might already have suffered some kind of violence. The other factor, which is actually one of the key issues, is that minor victims of trafficking are placed in child care institutions, unlike the adult victims who could opt to be placed in secret shelters. These children could be easily identified, located and taken again by their perpetrators. Not to mention that staff in these institutions are not prepared or trained to provide tailor-made support for victims of trafficking.

Despite the lack of disaggregated data based on ethnicity – which is a deficiency in the field of the fight against human trafficking too – several research results confirmed that Roma children are more vulnerable but not because trafficking is considered as a cultural practice. The vulnerability factors are poverty and social exclusion, ethnic and gender discrimination, lack of education, growing up in state care and usury – all of which put Roma people at risk of human rights violations in other cases, too.

There are two more issues in connection with the work of the law enforcement agencies. First, despite the criminalization of child prostitution (an individual is considered a child under 18) the policemen often treat these children as young offenders (if they are aged between 14 and 18) of crimes or petty offences in relation to prostitution. Second, the victim blaming approach of the society is deeply rooted in the officials as well which makes it difficult to detect human trafficking cases, even in cases of child victims.

3.5.3. Hate crimes

Prejudice and discrimination against Roma have escalated into violent actions and physical assaults between 2008 and 2012 in Hungary. Right-wing extremists committed a series of attacks on members of the Roma community in 2008 and 2009, when, according to police records, six Roma Hungarians were murdered (including a 5-year-old child and women), another 55 people were put in clear physical danger due to 78 shots and 11 Molotov cocktails.

This was the first time when racially motivated homicides were committed in Hungary since World War II. In August 2013 in the first instance criminal court three of the convicted quartet were found guilty of the racially motivated murders of six Roma and were handed life sentences, the fourth man received 13 years in prison for collusion. Lawyers for the defence asked for a retrial, claiming the first-level judge was biased and that the police investigation had been negligent, but in May 2015 the appeals court upheld the verdict and the sentences.

Police misconduct and procedural errors were documented during the investigation of one of these violent crimes against Roma, as raised by NGOs and later confirmed by the Independent Police Complaints Committee and by the Head of Police. Misconduct by the National Security Service was also found. One of the most serious police misconducts or procedural errors was that the authorities did not consider the attacks racially motivated crimes.

The Minority Ombudsman in that period within his limited power tried to urge the authorities and the Parliament to protect the Hungarian Roma community. The Ombudsman issued a press release in November 2008 calling the series of attacks on Roma in Hungary alarming and he also emphasized that it was important that political leaders, regardless of their political affiliations, stood by the victims and condemned all forms of violence as soon as possible. The Ombudsman also released a statement concerning the attacks on Roma families following consultation with several Roma public figures, where he called for the establishment of a special investigation unit with national jurisdiction to investigate the previous attacks against Roma and for the authorities to pay special attention to exploring the possible bias motivation behind the crimes.¹⁵ In February 2009 the Ombudsman made an extraordinary step and addressed the national parliament in plenary session about the spate of attacks on Roma families. In his speech he urged the Parliament to elaborate an ethnic peace plan, furthermore he also criticized the police for failing to catch the perpetrators of murders.

At the same time, according to official information provided to OSCE ODIHR by the Government of Hungary, there is no statistical information on crimes committed against Roma.¹⁶ Recorded cases of hate crimes are also not disaggregated further by bias motivation,

¹⁵ Dr. Ernő Kállai: "Report on the Activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities 2008", Pp. 79.

¹⁶ Office for Democratic Institutions and Human Rights Addressing Violence, Promoting Integration Field Assessment Of Violent Incidents Against Roma In Hungary: [Key Developments, Findings and Recommendations June-July 2009](#), data on hate crimes is collected by the National Police, the Prosecutor General's Office and the Ministry of Justice and Law Enforcement.

so there are no available data of how many of the cases were based on bias against Roma. There are no records kept on cases where the hate motivation was considered as a base motivation and evaluated as an aggravating circumstance. As such, there is no statistical information on the extent and pattern of hate crimes, only a few cases have been considered by the courts to have had racist motivation, even though upwards of 61 incidents were reported by the European Roma Rights Centre (ERRC) between 2008 and 2012.¹⁷

Even though the new Penal Code has modified the regulation of hate crimes in a favourable way compared with the previous legislation, Hungary has not yet developed specific protocols or guidelines for police and prosecutors on how to investigate and prosecute hate crimes. In 2009, when the series of attacks against Roma happened, the European Commission against Racism and Intolerance established that the Hungarian authorities are unwilling to accept the racial and anti-Semitic motivations behind these attacks and would prefer to consider these incidents as common offenses rather than hate crimes.¹⁸

By contrast it has to be mentioned that charges have been made against Roma for alleged anti-Hungarian crimes. In 2009 when nine Roma men were charged for committing a hate crime against Hungarians when they attacked a car in which they believed skinheads were sitting. The people in the car - one of whom had ties with racist groups - suffered minor injuries. Despite the lack of sufficient evidence, “disproportionate” prison sentences were imposed on the defendants but their crime was later reduced to disorderly conduct by an appeal court. Parallel with this proceeding in another case in 2013, Roma, motivated by anger at racist groups arriving in their town, were charged and sentenced for committing a hate crime against Hungarians.

The cooperation between the government and the NGO Coalition called Working Group against Hate Crime is considered a positive development, with regard to the trainings and advocacy provided by the civil society organizations. Beside the implementation of a criminal protocol in line with international standards, introduction of special training for law enforcement

¹⁷ The list of incidents are available at [website of the European Roma Rights Centre](#).

¹⁸ “It has been reported that, in some instances, even where there was strong enough evidence of racist motivations to support an indictment for racist violence, the offence was finally treated by the courts as having arisen solely out of a conflict situation rather than as having had racist motivations.” Cited from the [European Commission against Racism and Intolerance \(ECRI\) report on Hungary](#). Forth monitoring cycle, 2009.

(integrated in their studies), improvement of victim protection, development of an effective data collection and statistical monitoring system would be also asset in fight against the phenomenon of hate crime.

3.5.4. Hate speech

Hate speech, prejudice-driven verbal and physical actions typically affect and threaten the most vulnerable groups of society; however, they have a number of adverse effects at the level of the society as a whole, too. In 2013, the Commissioner for Fundamental Rights launched the project “With Communication for Equal Dignity – Integrating Speech vs. Hate Speech” with the aim to examine what state organs, international and civil society organizations, churches and national minority self-governments do in order to facilitate the establishment of an open, tolerant and prejudice-free social environment since criminalization should be only a last resort.¹⁹

The Commissioner emphasized that education and training at every level and in every form, from early childhood to the training of law enforcement staff (policemen, judges and prosecutors). The role of mass media was identified as tool of socialization, life-long education which affects people irrespective of their ages, beliefs and social statuses. The work done by civil society organizations was recognized but their limits were identified as well: without state support, long-term, nationwide and unified implementation even the best practices are not more than good examples, furthermore, they cannot substitute appropriate state measures in the field of awareness raising.

The training of law enforcement professionals is of major importance. Most faculties of law, in accordance with the profile of legal education, lay emphasis on transferring encyclopaedic legal knowledge instead of developing the students’ social and practical skills. There are good examples such as the establishment of various legal clinics at certain universities, but the results of a study conducted among law students, which was used in the course of the investigation, showed a rather disheartening picture of the students’ attitudes (prejudices and exclusion) and legal education’s influence thereon.

The Commissioner identified many useful efforts at both state and civil level, but found that these efforts do not have the same effect on each vulnerable group: while numerous measures

¹⁹ Report No. AJB-1199/2013.

are aimed at reducing prejudice against the Roma, much less attention is focused on building tolerance towards other vulnerable groups, e.g., people living with disabilities, sexual minorities and the homeless people. Furthermore, it was pointed out that state-run projects could be more effective if they use civil initiatives methodology as a good example, support and complete already existing projects and build on the cooperation with civil society organizations.

3.5.5. Discrimination against Roma

3.5.5.1. Housing

More than 60% of Roma live in the countryside, mainly in the most disadvantaged regions, mostly in segregated residential zones, in rather poor housing conditions. The shortage of social housing persists and efforts by the Government to improve access to housing are sometimes obstructed by local authorities; Roma are often forced out of social housing in order for apartments or land to be sold at a profit. The structural problems within the housing sector, such as an unfavourable tenure structure which includes only a 3 percent social rental sector, may raise problems like we witness in Miskolc. Although cities are required to prepare local equal opportunity (desegregation) plan as a part of integrated urban development strategies, in many cases these have not improved the housing situation of Roma. Recently the housing strategy was consulted in connection with the Social Inclusion Strategy, hopefully through this framework the Government will prevent and take steps in cases where local authorities attempt to force Roma out of social housing or evict them from their homes without ensuring suitable alternatives, or subject them to directly or indirectly discriminatory rules in respect of housing.

The Deputy Commissioner recently published a flagship report concerning the raid-like joint official control activities of the authorities of Miskolc (town) and the right to housing of Roma people living there.²⁰ The investigation covered several issues: the joint official control practices coordinated by the Miskolc Local Government Police (MLGP), the local government housing decree and other measures of the Miskolc Local Government regarding housing conditions, as well as the decree modifications by municipalities surrounding Miskolc.

In this case it was concluded that the official control activities were conducted by employees of various authorities and utility providers jointly, simultaneously, at a previously determined date and time, following a pre-determined route. The controls were organized by the public order

²⁰ Report No. AJB-1474/2014.

adviser of the Miskolc Local Government, with briefing by and the participation of the MLGP. Having regard to these facts, the report has found that the often raid-like, joint, and often mass official control activities conducted in the segregated living areas by local government authorities, public utility providers, and other institutions of different profiles, different competences and different rights of investigation were organized without explicit legal authorization; this is incompatible with the principle of the rule of law and the requirement of legal certainty.

The investigation further established that two decrees of the Miskolc Local Government also raise serious fundamental constitutional and legal concerns. According to the report, a provision of a local government decree which makes the reimbursement payable upon the termination of a lease contract with the local government contingent upon the purchase of real estate outside the premises of the municipality (thus quasi conditional upon moving out of the municipality) is unacceptable from the point of view of equal treatment. Similarly, it was found that the fact that some municipalities surrounding Miskolc have responded to the abovementioned provisions with decrees which are exclusionist in content and violate national law also raises concerns.

As a conclusion, the Deputy Commissioner assembled a list of recommendations addressed to the relevant ministries and authorities, furthermore, draw attention to the unfeasibility of the living conditions and vulnerability of Roma inhabitants living in these segregated areas, including a significant number of children. Since the realization of the right to housing mainly stands with subnational governments - bearing in mind the responsibilities of the central government-, they intend to support the local governments to develop a proactive role in this context.

3.5.5.2. Employment

In 2011, only one-quarter of Roma aged between 15-64 were employed in Hungary. The chances of the Roma population to get into the labour market are limited. The low level of employment is strongly interrelated with educational and geographical disadvantages; on the other hand labour market discrimination has not been addressed by the National Social Inclusion Strategy.

The public works scheme has been the dominant employment program in Hungary since 2010, and seems this is the only possibility for disadvantaged people, at the same time yet, it has not

significantly improved employment prospects of participants, scarcely only 10 percent²¹ of participants find a job on the regular labour market after taking part in the program. Also has to be mentioned that public work does not meet fully with the requirement of labour law, e.g. the minimum wage is not provided to the public workers. Unemployment benefits in Hungary are linked to the acceptance of employment opportunities regardless of the recipients' educational levels or skills. If there are no employment opportunities, one is obliged to join the public works scheme for at least 30 days, however public work schemes are not able to employ all the unemployed.

The monitoring report on the Strategy prepared by the European Commission emphasized those continuous and individualized supporting services of temporary public work schemes should be reinforced with a view to effective integration in the open labour market. A comprehensive package of measures targeting private employers including extending social considerations in public procurement, promoting diversity in the workplace, coupled by job trials, recruitment subsidies, targeting Roma under the Youth Guarantee should be considered. Fighting and monitoring discrimination in the labour market needs to be ensured and attention needed to be paid in order to eliminate discriminatory practices in the public work scheme.²²

3.5.5.3. Health

Another area of exclusion of Roma is access to health services. Geographical inequalities and public health measures are not effective in reaching out to the most disadvantaged, parallel with this phenomenon sector-specific policy has witnessed severe cut-backs and reorganization in this area. Special attention needs to be paid to children whose health condition is heavily impacted by the socio-economic status of their parents.

Last year, the Deputy Commissioner made a recommendation to investigate the state health system relating to premature births, with regard to the effectiveness of the system's work in the prevention and management of the issue. The recommendation was made because while the birth-rate decreased significantly over the last one and a half decade, the ratio of premature births more or less stayed the same (and in the last year, the positive tendency of decrease in

²¹ European Commission ESPN – [Flash report Public works in Hungary: an efficient active labor market tool?](#)

²² [Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Report on the implementation of the EU Framework for National Roma Integration Strategies](#) Brussels 2.4.2014 COM(2014) 209 final {SWD(2014) 121 final}.

neonatal mortality rates has also changed). Today, the main reason for neonatal mortality is premature birth and low birth-weight. Pointing to research results, the Deputy Commissioner emphasized that one of the main reasons behind premature birth is poverty, which has a territorial aspect in Hungary, too.

3.5.5.4. Education

The National Social Inclusion Strategy recognizes that the system of public education is struggling with a number of problems affecting disadvantaged groups, including the Roma in particular, which can only be resolved through further long-term development. In addition to honoring the basic principle of equity, effective action is urgently necessary also on account of the fact that the Roma represent a significant and increasingly large proportion of the school-age population and, as a consequence, of the employees of the future.

The Hungarian educational system is one of those OECD countries which barely provide equal opportunities and the educational success of children largely depends on the education and occupation of their parents. However, numerous EU directives have been transposed into Hungarian law including Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Equal Treatment Act forbids segregation in education, in practice the segregation of Roma pupils is widespread in the country. The Strategy does not assign well-tailored anti-segregation programs. According to different studies and taking into consideration official statistics, there are 3000 segregated Roma classes in primary schools as opposed to 150 in 1980.²³ Segregation many times also means direct discrimination: in segregated classes Roma children's education is of lower quality, which decreases their chances to get into higher education, and to reach a better financial and social situation.

Despite the fact that the Strategy refers to many equal opportunity programs and also implements many of them in order to assist Roma students' school achievement, some legislation seems contrary to that aim. For example the compulsory school age has been reduced from 18 to 16 years. The early drop out rate among Roma students are higher, it was observable that certain schools made efforts to get rid of students considered to be problematic, typically multiply disadvantaged students, usually Roma, this circumstance may

²³ Havas Gábor–Kemény István–Liskó Ilona [Cigány gyerekek az általános iskolákban](#) (Roma children in the elementary school), 2005.

led large numbers of Romani students to leave school early. The “Bridge training/program” was introduced before starting secondary education, which can potentially result in spending one or even two years out of the secondary education and finally leaving the education system without qualification. In 2014, the Deputy Commissioner has drawn the attention of the Commissioner to early school leavers in public education, which characteristically affects multiple disadvantaged children – with a large proportion of Roma among them.

The monitoring report of the European Commission states that the integrated Pedagogical System contributes positively to Roma pupils’ education; nevertheless, more efforts are needed to promote their access to the mainstream education system. The impact of recent reforms needs to be closely monitored in this regard. A systematic approach to desegregation needs to be put in place, building on the opportunities presented by the school centralization. Early school leaving should be carefully tackled, particularly in vocational education and training. Increased participation of Roma pupils in pre-school should be accompanied by qualified staff, necessary infrastructure and sustainable funding.

Another issue is that Roma minority education (and actually only the Roma minority education) may be organized without offering minority language teaching. However, it is in line with the general rules that the minority education has to be organized when at least 8 parents request it, the Roma minority education turned to be a ‘school saving’ opportunity in cases where only low number of students attend school. Nevertheless, those schools which provide Roma minority education properly are still in lack of well-trained minority language teachers, adequate books and teaching materials. We know the tendency: the quality of these schools is being decreased, they turn to be less attractive for non-Roma and middle class parents and at the end of the day become segregated.

In a recently published report the Deputy Commissioner shared her opinion about the government proposal for the amendment of the Act LXXIX of 2011 on the National Public Education adopted on 8 November 2014.²⁴ According to the proposal, the Act would give an authorization for the government to set up the criteria for exemption from the prohibition of segregation in case of minority and religious education in the form of a government decree. Several civil society organizations expressed concerns, furthermore, on 12 December, 2014 the Deputy Commissioner issued a press release in which she firmly and consistently stood

²⁴ Report No. AJB-6010/2014.

out for social integration. Then, on 16 December 2014, the Parliament adopted the amendment but with a reservation stating that the government decree shall be prepared with special regard to the prohibition of segregation.²⁵

The prohibition of segregated education is prescribed by the Act CXXV of 2003 on Equal Treatment which contains three exemptions, separation based on gender and in case of minority and religious education. In both cases strict requirements must be fulfilled as well: it must be voluntary, based on the initiative and informed consent of the parents, the students do not suffer any disadvantage as a consequence of it and it reaches the objective state requirements concerning quality education. The amendment giving authorization to the government to establish further exemptions, at a lower level of regulation, raises several human rights concerns.

The report builds on the results of previous investigations conducted by the former Minority Ombudsman and the Deputy Commissioner. One of the main conclusions of these cases was that even if separated education is formally in compliance with the regulations it does not fulfil the objective quality requirement, it might constitute unlawful segregation. Furthermore, the Hungarian case law on segregated education is discussed with special focus on the latest decision of the Supreme Court in which it was found that the separated education of Roma students in a church run school is not unlawful if it complies with provisions of the Equal Treatment Act since the church plays a key role in Roma pastoration by providing education.²⁶ However this ruling is contradictory to the previous case law, it shows clearly the initiatives which aim to blur the borders of minority and religious education and ultimately to justify segregation.

In order to support the government in the enactment of the decree, the Deputy Commissioner made several proposals. She emphasized that if an institution runs separated education for the same students, at the same time based on two exemptions, namely as minority and religious education, it must fulfil the requirements of both of them, respectively. The decree shall respect the legislative hierarchy and only further elaborate on the special conditions of the exemptions prescribed by law. At last but not least she warned the government, if the segregation aims to

²⁵ Article 25 (5) of the Act CV of 2014 on the amendment of the National Public Education Act.

²⁶ Decision of the Curia, Pfv.IV.20.241/2015/4.

provide the so-called “catch up” education, it will definitely infringe the principle of equal treatment therefore it will constitute to human rights violation.

3.5.6. Participation in political life

The legal reforms introduced a new opportunity for people belonging to minorities to take part in political life beside the already existing minority self-governments systems: preferential Parliament seats and in case of failing to fulfil the requirements, the institution of the nationality advocate. In the 2014 elections, the first possibility remained a theoretic one as the preferential conditions were not met by the nationalities, meaning that currently, the thirteen nationalities can participate in the work of Parliament by way of their nationality advocates.

According to Act CCIII of 2011 on the Elections of Members of Parliament, obtaining a parliamentary mandate was possible under preferential conditions for individuals who were nominees on the lists drawn up by the country-level nationality self-governments. From nationality lists a mandate is obtained when the preferential quota of votes is reached, i.e. 0.27% of all votes submitted for national party lists. Bearing in mind data regarding the 2014 elections, this quota would have meant around 22000 votes. It is worth noting that Hungary has seven nationalities which have a total population of less than 8000, thus they would not have been able to meet the preferential conditions even if every single nationality group member (who had the right to vote) would have registered themselves in the nationality electoral roll and would have voted for the nationality list.

In accordance with the law, any national minority which drew up a nationality list but failed to win a mandate by such list is represented in Parliament by a nationality advocate. The nationality advocate may take office regardless of the number of votes submitted for the list drawn up by the nationality self-government, but is not entitled to exercise important rights which members of Parliament have: the nationality advocate is not entitled to vote in sessions of the Parliament, and may only speak in plenary if the agenda item in question may, according to the Committee of the Parliament, be relevant regarding the rights or interests of nationalities. The nationality advocate-system ensures the participation of nationalities in the work of the Parliament, but does not carry the same weight as a fully-fledged parliamentary representation. It should also be noted that the concept of ‘agenda item relevant regarding the rights or interests of nationalities’ is not well defined.

The election of the members of nationality self-governments in 2014 were only possible to be held in settlements where the number of individuals belonging to the nationality in question (according to relevant data from the latest census, based on voluntary answers regarding nationality identity) reached at least 25 – i.e. in settlements where the census has shown the existence of nationality communities. With this provision, the aim of the legislator was to rule out abuse of the system ('ethno-business'). However, tying these elections to census data may be problematic, as during the census (especially in small settlements) less people declared their nationality identity than was expected based on the real presence of nationalities in some settlements. On the contrary, in some larger cities and in some districts of Budapest, the census shows a large presence of nationalities – the realistic nature of this is questioned even by the country-level nationality self-governments themselves. In this regard it is important to note that although the majority of the population has chosen to make a declaration regarding nationality identity in censuses (2001 census: 94%; 2011 census: 85%), due to the voluntary nature of the declaration, the census data cannot be seen as an accurate depiction of the nationality population of Hungary. If we further add that in 2010, 2315 nationality self-governments were established, and in 2014 the number was only slightly less (2143), then it becomes clear that abuses probably did not cease.

In 2014, the nationalities were furthermore allowed to set up self-governments on three levels according to new regulations (partly aimed at reducing the possibility of misuse).

An old-new element of nationality self-government elections is the 'transformed nationality self-government'. Local self-governments (excluding those of the metropolitan districts) may decide on transformation into a nationality self-government if more than half of the citizens recorded in the electoral roll in the locality are recorded in the given nationality's electoral register, and more than one half of the elected members ran as the given nationality's candidates at the local municipality elections. These strict requirements foretold the fact that such transformations only happen in very small numbers. (To the best of our knowledge, only two such transformed nationality self-governments were established in 2014).

According to the new provisions, a preferential local self-government mandate was established: if at least fifty percent of the citizens recorded in the electoral roll at the time of the calling of the elections were also recorded in the given nationality's nationality register, and if none of the candidates of the given nationality obtained a mandate either at the election of

mayor or on the individual list, it is necessary to determine the two thirds of the valid votes cast for the candidate obtaining a mandate on the individual list with the fewest votes. A nationality candidate who has a higher number of votes than the number of votes determined according to the method described above shall obtain a preferential mandate.

However, the new electoral rules did not solve the previously existing problems of registration into the nationality electoral roll; it is still possible for anyone who has electoral rights in local self-government elections (and mayoral elections) to request to be registered into the nationality electoral roll provided they declare their nationality identity. The requirements were however made stricter in the sense that it is possible to utilize criminal sanctions regarding an individual who makes a false declaration regarding the fact whether he or she has been a candidate of a different nationality self-government in the preceding ten years. False declarations regarding knowledge of nationality language by the candidate still have no sanctions attached.

Under the new provisions, any registered association (apart from political parties and trade unions) that, according to its deed of foundation, is engaged in activities directly related to the protection and representation of the interests of a given nationality or to the cultural autonomy of the nationality may put forward nationality candidate. The possibility that the number of nominating organisations participating in the establishment of 'fake' nationality self-governments has risen cannot be excluded.

3.5.7. Linguistic rights

The Act on the Rights of Nationalities ensures broad linguistic rights for minorities among others in civil, criminal and administrative proceedings and affirms the role of the state to support minority language education. The Commissioner for Fundamental Rights conducted a thorough investigation into use of linguistic rights provided for people belonging to minorities and the nationality self-governments.²⁷ It was found that the average knowledge of minority languages is at colloquial level but does not include the technical terms necessary in official proceedings (however it is a quite broad generalization because there is a significant difference between the 13 minorities but the high degree of assimilation is common). The nationality self-governments use the Hungarian language in preparing minutes and documents

²⁷ Report No. AJB-5577/2012.

for practical reasons: it was said that it would be difficult for the administrative bodies to translate them and the people whom they represent would prefer the Hungarian versions, too.

The use of forms in minority languages in administrative proceedings is quite rare; the local governments are not able to provide the office routine in minority languages while the courts stated that claims for proceedings in minority languages is uncommon. Although the Act on the Rights of Nationalities provides the opportunity for representatives of minorities and nationality advocates to speak in their languages in front of the Parliament, the Act on the Parliament does not elaborate on that, only the Code of Conduct. The Commissioner proposed seven amendments in law in order to improve the implementation of linguistic rights of minorities.

3.5.8. Minority education

The minorities in Hungary have been witnessing language assimilation in their communities in the last decades. Behind this phenomenon there are several causes, like globalization and regressive practicableness of minority language, assimilation policy in the communist era, but situation of the minority language education also plays a role. Some larger minority communities like Germans, are in a more favourable situation, but e.g. the Polish community has no elementary or- secondary minority school. Although the Greek and Ruthenian communities have minority elementary school, minority secondary schools are also not available for students in these communities.

The provision of minority education is essential for the existence of a minority group. Bearing in mind this approach, from 2010 all the three levels of education had been scrutinized: the former Minority Ombudsman analysed the kindergarten²⁸ and the elementary education,²⁹ while the Deputy Commissioner issued her report about the secondary and tertiary education.³⁰

The Minority Ombudsman stated that minority education in kindergarten is not in accordance with law if it is not voluntary, if it used to cover unlawful segregation of children or if children not belonging to the minority took part in it; during the investigation he found examples for all these cases. The institutions struggle because children generally do not bring knowledge of the minority languages from their family and it is quite difficult to find teachers and nurses who are able to work in these languages. The role of minority self-governments was recognized but

²⁸ Report No. NEK-368/2010.

²⁹ Report No. NEK-441/2011.

³⁰ Report No. AJB-3894/2012.

amendments were proposed – among others - to clarify the provisions in relation to the informed consent of parents. Concerning the elementary education numerous similar issues were identified, furthermore, the setup of an objective quality assurance system was recommended in order to monitor and evaluate minority education.

The Deputy Commissioner concluded in her report that both the secondary and tertiary minority education has several shortcomings. Despite that the minority language education in practice rather serves as an opportunity to learn foreign languages, the recruitment of students is getting more difficult. In the last five years 6.7% of secondary students were enrolled in minority education, of which 90 % belonged to either the German or the Roma community. The provision of secondary minority education is jeopardized by the shortage of minority teachers; the teacher career is not attractive nowadays which makes more difficult to fill up the university seats from the low number of students finishing in minority secondary schools. The investigation uncovered several issues in relation to Roma minority education of which were discussed in Chapter 5.5.4.

Another emerging issue is the decreasing number of junior minority teachers. Even more alarming is the situation of Roma minority education, since Romani and Beas³¹ minority teacher training courses are missing from the tertiary education system which results in lack of trained Beas and Romani speaking teachers. Obviously, this speeds up the language assimilation and the loss of minority languages. Although the Romology course is available in some colleges/universities, this course does not provide specific language training. On one hand it means that textbooks, dictionaries and other teaching materials are not available in Romani and Beas languages, on other hand eventually it jeopardizes the quality of Roma minority elementary and secondary education.

³¹ Three different Roma groups live In Hungary: Hungarian Roma/Romungro, Vlah Roma and Beas Roma. In the 1990s approximately 80 percent of Roma in Hungary, mainly the Hungarian Roma/Romungro speaks Hungarian as their first and only mother tongue, approximately 20 percent of Roma is bilingual, and speaks Romani or Beas languages Romani languages also. Since the language assimilation or loss of minority language this ratios has been changed, and less Roma speak minority languages. Romani language belongs to the Indo-European languages, it has many dialects, among these dialects Lovar (Vlax Romani) is the most widespread in Hungary. Beas is an archaic dialect of Romanian language.

4. Minority protection at the Universal Periodic Review

The Universal Periodic Review (UPR), under the auspices of the UN Human Rights Council, is a unique process to assess the human rights situation in all UN Member States. National human rights institutions, as reliable and independent source of information, can submit reports as any other stakeholder. The human rights records of the respective state are first discussed at the UPR Working Group, then at the Human Rights Council. The Commissioner for Fundamental Rights of Hungary submitted a comprehensive report at the 2nd UPR cycle on 21 September 2015, covering also the situation of national minorities living in Hungary, which was discussed at the UPR Working Group on 4 May 2016. The Deputy Commissioner joined the discussion on the UPR of Hungary at the Human Rights Council via video statement on 21 September 2016 and raised attention to the fact that not all recommendations formulated by the UPR Working Group on minority rights protection was accepted by the government. Nevertheless, she ensured the government about her support to improve the situation of the minorities living in Hungary. The discussion of the UPR of Hungary at the 3rd cycle is scheduled at the 39th session of the UPR Working Group (Apr-May 2021).

4.1. National Human Rights Institution report for Universal Periodic Review of Hungary at the 2nd cycle

Methodology

1. The current report is submitted by the Commissioner for Fundamental Rights (CFR) of Hungary on the occasion of the 2nd Universal Periodic Review on human rights of Hungary at the Human Rights Council.³² The CFR aims to protect and promote fundamental rights with special attention dedicated to the rights of the child, people with disabilities, vulnerable groups, people belonging to minorities and the interests of the future generations.³³ The report is based on the recommendations given in individual cases and the outcomes of comprehensive investigations initiated ex officio between October 2010 and July 2015.

National Human Rights Institution

2. In December 2014 the Commissioner for Fundamental Rights has been accredited as an “A” status **National Human Rights Institution** by the ICC. In accordance with the Paris Principles the CFR aims to protect and promote fundamental rights in close cooperation with other

³² The full report covering all field of human rights protection is available at [the website of the Commissioner for Fundamental Rights](#). Date of submission: 21 September 2015.

³³ Act of CXI of 2011 on the Commissioner for Fundamental Rights.

organizations aiming at the promotion of the protection of fundamental rights including the civil society while the institution is independent from the government and subject only to the provisions of the Fundamental Law of Hungary and the Acts of the Parliament. The Commissioner has two deputies: one of them is responsible for protection of the rights of national minorities living in Hungary, while the other deputy protects the interests of future generations.

3. The CFR is vested with **quasi-judicial competence** to hear and consider complaints against public authorities and other entities providing public services as well as to initiate investigations *ex officio* into the situation of a non-determinable group of people or the implementation of a particular fundamental right. In case of infringement, the Commissioner addresses a recommendation to the respective authority or its supervisory organ which is obliged to inform him of its position on the merits of the recommendation and on the measures taken within thirty days. Furthermore the CFR scrutinizes laws, bills and policies and makes proposals for amendment or repeal as well as contributes to the **promotion of human rights** by means of education, training and awareness raising activities. Regarding **international obligations** of Hungary, the CFR promotes the ratification of international human rights documents and monitors their implementation. [R.94.17- R.94.27; R.95.15]

4. The **National Preventive Mechanism** (NPM) under the UN OP-CAT was established as a separate department within the Office of CFR in 2014 and started to operate on 1st January 2015. In accordance with the Paris Principles, a Civil Consultative Body (CCB) was set up with the participation of 8 NGOs chosen through open calls; the members are *inter alia* entitled to recommend visits to places of detention and external experts to participate in visiting delegations. So far the NPM has carried out 11 visits of which results will be briefly summarized as well. The major challenge of the NPM's work is the lack of adequate funding. [R.94.1-R.94.5; R.94.80; R.94.88; R.95.1]

5. The **Independent Monitoring Mechanism** (IMM) under the UN CRPD was designated to the National Disability Council (NDC) which fails to comply with the Paris Principles for several reasons.³⁴ The NDC is the advisory body of the government and headed by minister in office responsible for promotion of equal opportunities however it works with the participation of NGOs. The Committee on the Rights of People with Disabilities in its concluding observations

³⁴ Report No. AJB-2979/2014.

called upon Hungary to set up an IMM in accordance with the Paris Principles as well, of which at the moment in Hungary only the CFR complies with.³⁵ [R.94.59]

[...]

Minority protection

21. Out of the thirteen national minorities enjoying special minority rights under Hungarian law the members of the Roma community are the most likely to fall victims of human rights violations. Disadvantageous social situation of **Roma** is aggravated by **discrimination** especially in the field of education, health, employment, housing and access to services, while Roma women are facing multiple discrimination. As it was stressed before, the collection of disaggregated data – among others - by ethnicity would be essential to tackle discrimination.³⁶ [R.94.8; R.94.40-R.95.51; R.94.101-R.94.103]

22. However **segregation in education** is prohibited by law, in practice the segregation of Roma students is widespread. As it was discovered by the Commissioner, segregation in most of the cases is the consequence of different direct³⁷ and indirect discriminatory³⁸ practices against Roma students, but at the same time Roma minority education may also lead into segregation³⁹ or malpractice⁴⁰. The latest human rights concern is the amendment of the National Public Education Act in such a way that it gives authorization for the government to set up criteria for exemption from the prohibition of segregation in case of minority and religious education in the form of a government decree.⁴¹ [R.94.93; R.94.94-R.94.97]

³⁵ Concluding observations on the initial periodic report of Hungary adopted by the Committee at its eighth session (17-28 September 2012), CRPD/C/HUN/1.

³⁶ Hungary has received several recommendations from international organizations for ethnic data collection. In November 2009, Data Protection and Minorities Ombudsmen published a joint report in order to clarify the regulations regarding the collection and processing of data on ethnicity. At the same time in our reports many times have been suggested to elaborate data system on segregation (segregation map) in sphere of public education.

³⁷ Report No. 5572/2007., 1541/2008., 1542/2008., 1543/2008., 1544/2008., 1545/2008., a 1552/2008., and 1553/2008, No. NEK-356/2011., NEK-425/2011., NEK-476/2011., NEK-356/2011., NEK-1022/2010.

³⁸ Report NEK-356/2011., NEK-425/2011., NEK-476/2011 in cases of placement of Roma student diagnosed with mental disability.

³⁹ Report No. AJB-6010/2014., AJB-3894/2012.

⁴⁰ Report No. NEK-368/2010., NEK-411/2011.

⁴¹ Report No. AJB-6010/2014.

23. In the field of **employment** the Commissioner found that Roma is increasingly engaged in public work programs which actually fail to improve the employment prospects of participants⁴² and often does not meet fully with the requirements of labour law (e.g. minimum wage is not provided to the public workers) therefore create discriminatory settings again.⁴³ [R.94.99]

24. The Commissioner, in his recently published report on **control activities of the authorities** of Miskolc and **the right to housing** of Roma people has found that the authorities' often raid-like, joint and mass official control activities conducted in the segregated living areas are incompatible with the principle of the rule of law and the requirement of legal certainty.⁴⁴ It was further mentioned that the number of flats in social housing schemes with appropriate living conditions is decreasing, while the rate of evictions of disadvantaged families is increasing. The disadvantaged social and housing situations also affect the general health conditions of the poor, furthermore geographical disadvantages may constitute barriers to access to health care and other services.⁴⁵ The right to care and protection as well as the right to health of children living in segregated neighbourhood is at risk, too.⁴⁶ [R.94.106-R.94.110]

⁴² Report No. AJB-5317/2012.

⁴³ Report No. AJB-3025/2012.

⁴⁴ Report No. AJB-1474/2014.

⁴⁵ Report No. AJB-2050/2013.

⁴⁶ Reports No. AJB-2050/2013. and AJB-1474/2014.

4.2. Video statement of the Deputy Commissioner for Fundamental Rights of Hungary on behalf of the Commissioner for Fundamental Rights of Hungary at the 33rd session of the Human Rights Council in relation to the discussion of the UPR of Hungary

Video statement of the Deputy Commissioner for Fundamental Rights of Hungary on behalf of the Commissioner for Fundamental Rights of Hungary at the 33rd session of the Human Rights Council

Mr. President, distinguished members of the Human Rights Council,

My name is Elisabeth Sandor-Szalay, I am the Deputy-Commissioner responsible for minority rights protection in Hungary. In my capacity I have been following the second cycle of the Universal Periodic Review on Hungary and I made my contribution by writing a chapter about minority rights in the report submitted by the Commissioner for Fundamental Rights, the A status national human rights institution of Hungary.

Hungary received 221 recommendations, of which 70 were related to the protection and promotion of minority rights. I would like to welcome the positive approach of Hungary to accept or at least partially accept all of these recommendations, which includes the series of commitments to end discrimination against Roma in education, health, employment, housing and access to services, particularly to eliminate the segregation of Roma children in education, to address the multiple discrimination of Roma women and to effectively combat racism and hate speech. However, I note with disappointment that recommendations concerning the ratification of the Optional Protocol of the UN Convention on the Rights of the Child and the UN International Covenant on Economic, Social and Cultural Rights were only noted.

I encourage the government to take all the necessary steps to implement the accepted recommendations while at the same time I am available to provide support for the follow-up in order to strengthen the protection of minorities living in Hungary.

Thank you.

5. Right to housing

In 2014, the unlawful practice of the local government of Miskolc against Roma inhabitants living in segregated neighbourhoods caused outrage both on national and international level. The Deputy Commissioner jointly with the Commissioner – in a detailed report based on field visits - were among the first authorities finding discriminatory the official control activities of the authorities of Miskolc and the infringement of the right to housing and other fundamental rights of Roma people living there. The Deputy Commissioner took the opportunity to present the findings of the report to the Human Rights Council at its 29th session via video message and the English summary of the report was distributed among the participants in the room.

Since several international organizations expressed interest to follow closely the situation - the Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe payed a visit to the office of the Deputy Commissioner -, a follow-up report was prepared and circulated.

Nevertheless, the local government of Miskolc refused to withdraw from its unlawful practices. In 2016, the Hungarian Civil Liberties Union and the Legal Defense Bureau for National and Ethnic Minorities filed a civil lawsuit against the local government with reference to the report of the Deputy Commissioner. In the first instance, on 12 December 2018, the Miskolc Regional Court ruled in favour of the applicant and forbade the local government from the further infringements. The ruling was affirmed in full by the Court of Appeal of Debrecen on 9 May, 2019, and therefore turned to be the most significant successful discrimination litigation in front of Hungarian courts.

5.1. Information presented by the Deputy Commissioner for Fundamental Rights of Hungary on behalf of the Commissioner for Fundamental Rights of Hungary at the 29th session of the Human Rights Council

5.1.1. Video statement addressed to the Human Rights Council

Mr. President, distinguished members of the Human Rights Council,

This statement is made on behalf of the Commissioner for Fundamental Rights of Hungary, “A” status national human rights institution. My name is Elisabeth Sandor-Szalay, I am the Deputy-Commissioner responsible for minority rights protection.

Today, on the occasion of the release of the Comprehensive study on the human rights situation of Roma worldwide, I would like to share the findings of our recently published report related to this topic which will be disseminated in the room.

We have concluded that the authorities of Miskolc, one of the largest towns in Hungary, have developed a practice of intimidating, raid-like joint official control activities without explicit legal authorization which infringe the right to fair procedures, the right to privacy, the right to legal remedy, the principle of equal treatment and the rights of the child. More than 90% of these joint official control activities took place in segregated living areas inhabited by impoverished people belonging to the Roma minority. The joint investigation, which we launched ex officio and then merged with petitions from NGOs, dealt with the issues of local government decrees restricting the free choice of residence of Roma as well.

As a conclusion, we have assembled a list of recommendations addressed to the relevant ministries and authorities, furthermore, we have drawn attention to the unfeasibility of the living conditions and vulnerability of Roma inhabitants living in these segregated areas, including a significant number of children.

We share the view of the Human Rights Council that the primary responsibility for combating discrimination against Roma and for promoting their inclusion lies with the States of which Roma are nationals, and at the same time, we confirm our role as a national human rights institution in supporting the fulfilment of these obligations.

Thank you.

5.1.2. Submission by the Commissioner for Fundamental Rights of Hungary⁴⁷

Mandate of the Commissioner for Fundamental Rights of Hungary

The Commissioner for Fundamental Rights (CFR) is the single “A” status National Human Rights Institution of Hungary celebrating its 20th anniversary this year. The CFR is independent from the government and subject only to the provisions of the Fundamental Law of Hungary and the Acts of the Parliament. The CFR aims to protect and promote fundamental rights with special attention dedicated to the rights of the child, the most vulnerable social groups and people with disabilities. The Commissioner has two deputies: one of them is responsible for protection of the rights of national minorities living in Hungary⁴⁸, while the other deputy protects the interests of future generations. The National Preventive Mechanism under

⁴⁷ The information was submitted on 12 June 2015 ([A/HRC/29/NI/1](#)).

⁴⁸ According to Appendix No. 1 to Act CLXXIX of 2011 on the Rights of Nationalities the following shall qualify as national minorities in Hungary: Armenian, Bulgarian, Croatian, German, Greek, Polish, Roma, Romanian, Ruthenian, Serb, Slovak, Slovene and Ukrainian.

the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) had been established as a separate department within the Office of CFR and started to operate on 1st January 2015.

The CFR is vested with quasi-judicial competence to hear and consider complaints against public authorities and other entities providing public services as well as to initiate investigations ex officio into the situation of a non-determinable group of people or the implementation of a particular fundamental right. In case of infringement, the CFR addresses a recommendation to the respective authority or its supervisory organ which is obliged to inform him of its position on the merits of the recommendation and on the measures taken within thirty days. Furthermore, the CFR scrutinizes laws, bills and policies and makes proposals for amendment, modification or repeal.

In compliance with the Paris Principles, the institution contributes to the promotion of human rights by the means of education, training and awareness raising activities as well as advocacy. The Commissioner works in close cooperation with other organisations aiming at the promotion of the protection fundamental rights including civil society actors. Regarding the international obligations of Hungary, the CFR promotes the ratification of international human rights documents and monitors their implementation (among others by the submission of alternative reports to the treaty bodies of the United Nations).

Comprehensive Investigation: joint official control practices coordinated by the Miskolc Local Government Police; the local government housing decree; other measures of the Miskolc Local Government regarding housing conditions; and decree modifications by municipalities surrounding Miskolc⁴⁹

1. The Hungarian Civil Liberties Union (Társaság a Szabadságjogokért, TASZ) and the Legal Defence Bureau for National and Ethnic Minorities (Nemzeti és Etnikai Kisebbségi Jogvédő Iroda, NEKI) have submitted a common petition to the Commissioner for Fundamental Rights in March 2014, voicing fundamental rights-based concerns regarding the practice of official control activities coordinated and carried out jointly by the Miskolc Local Government Police (MLGP) and other local authorities. In their petition they claimed that the MLGP is conducting official control activities together with other authorities and institutions in the segregated living areas of Miskolc. These controls focused on the following: the obligation to state the change of address; adherence to the rules regarding the keeping of animals; waste collection contracts;

⁴⁹ Summary of Joint Report No. AJB-1474/2014.

contracts on lease of flats; documents attesting the right to property. Control activities were also carried out regarding sanitation, utilities, social administration and child services. The stated aim of the official control activities was the protection of local government property. The controls were carried out in segregated or impoverished ghetto-like streets and areas mostly inhabited by Roma. Certain locations were visited repeatedly by the authorities and repeated controls were also carried out. Officials from the various authorities were usually present in large numbers when visiting these living areas. It happened that during the controls, the authorities' representatives took a look in the refrigerator, the toilet and the bathroom as well. According to the petitioners, the inhabitants of said areas perceived the raid-like, coordinated joint control activities carried out by officials as harassing and fear-inducing.

Regarding the legal background of the official controls in Miskolc, the petition has indicated that the legal basis of the comprehensive control activities was a decree adopted by the Miskolc Local Government regarding the fundamental rules of community living and the legal consequences of the infringement of these norms; the authorities were mostly controlling adherence to the provisions of this decree. The petitioners have also held that the provisions of the abovementioned decree were incompatible with the Fundamental Law: they overstep the regulatory mandate provided by the Act on Local Governments – they have accordingly requested that the ombudsman investigate the relevant legal regulations as well.

The official control activities carried out commonly but on different legal bases have raised the possibility of the infringement of various fundamental constitutional rights. Having regard to all of the above, the Commissioner for Fundamental Rights and the Deputy Commissioner responsible for the protection of the rights of nationalities have initiated a comprehensive joint ex officio investigation.

Following the initiation of the ex officio investigation, the petitioners have submitted another complaint. In their petition, they have objected to the 8 May 2014 modification of the Miskolc Local Government housing decree, which affected Roma citizens living in rented flats owned by the local government negatively. The modification of the housing decree made it possible to move inhabitants of a low social status living in deep poverty (mostly Roma citizens) outside of the territory of Miskolc. The petitioners have requested that the Commissioner initiate the review of this modification by the Constitutional Court. Furthermore, the petitioners have also drawn attention to the allegedly unlawful conduct of the Miskolc Real Estate Management Ltd.

(Miskolci Ingatlangazdálkodó Zrt., MIK), and to the human rights obligations of the local government as regards housing, welfare and child-protection.

Subsequently, the European Roma Rights Centre Foundation (Európai Roma Jogok Központja Alapítvány) and the Chance For Children Foundation (Esélyt a Hátrányos Helyzetű Gyerekeknek Alapítvány) have together submitted a petition to the Commissioner for Fundamental Rights, complaining about the discriminative practice of housing, police and other authorities of the Miskolc Local Government which resulted in the exclusion of the Roma population. As the modification of the local government decree on housing and other related measures of the Local Government concerning housing conditions raised the possibility of the infringement of fundamental rights, the ex officio investigation covered this issue as well.

In January 2015, the petitioners also submitted a petition regarding the modification of the Miskolc housing decree. They have deemed illegal the decrees adopted by municipalities surrounding Miskolc which limit access to social welfare and local government benefits, the right to lease out local government-owned flats, and participation in the public employment programme for disadvantaged individuals who have moved in with financial support from another local government. The petitioners have requested that the Commissioner initiate the review of these decrees by the Constitutional Court. As these local government decrees raised the possibility of the infringement of fundamental rights, the ex officio investigation covered this issue as well.

In the course of their investigation, the Commissioner and the Deputy Commissioner have turned to numerous local authorities and utility providers; and officials from the Office have also conducted on-the-spot investigations in order to be able to gather and thoroughly examine all information, data and circumstances relevant to the investigation. During these on-the-spot activities, the officials have met not only with the relevant local authorities but with the individuals living in the relevant segregated environment as well. In their report, the Commissioner and the Deputy Commissioner emphasize that besides the fundamental rights based approach of the report, the aim was also to draw attention to the issues at hand and to provide constructive criticism.

2. As the conclusion of the report, the Commissioner and the Deputy Commissioner have established that the official control activities were conducted by employees of the various authorities and utility providers jointly, simultaneously, at a previously determined date and

time, following a pre-determined route. The controls were organized by the public order adviser of the Miskolc Local Government, with briefing by and the participation of the MLGP. Having regard to these facts, the report has found that the often raid-like, joint, and often mass official control activities conducted in the segregated living areas by local government authorities, public utility providers, and other institutions of different profiles, different competences and different rights of investigation were organized without explicit legal authorization; this is incompatible with the principle of the rule of law and the requirement of legal certainty.

Furthermore, the execution of the official controls resulted in various fundamental rights infringements or raised the immediate risk thereof. The individuals affected by the official controls were unable to properly interpret and follow the legal background and legal basis of the numerous simultaneously conducted activities (which were based on deficient or false interpretation in the first place). All of the above have led to impediments regarding the right to fair procedures and the right to legal remedy. The mass official controls conducted with a preventive intention, with police support, without explicit reasons and often repeatedly have had an intimidating effect and have, according to the standpoint of the Commissioner and the Deputy Commissioner, restricted the right to privacy of the (mostly disadvantaged) individuals – a large proportion of whom were individuals belonging to the Roma minority – without a sufficient constitutional reason and to a disproportionate extent.

Regarding the procedure, the report has found – in line with the resolution of the National Authority for Data Protection and Freedom of Information – that the right of informational self-determination of the concerned individuals was also infringed. The investigation has further established that the joint official control activities were pre-organized, and that the organization and planning of these controls has infringed the requirement of equal treatment. According to available data and documents, more than 90% of the joint official control activities conducted in Miskolc took place in those segregated living areas which house economically disadvantaged, impoverished individuals, most of whom belong to the Roma minority. Having regard to these facts, the Commissioner and the Deputy Commissioner have established that the recurring official controls concentrating on the segregated areas resulted in direct discrimination based on social origin and financial status, and indirect discrimination based on belonging to a minority.

The report emphasizes the firm position of the Commissioner and the Deputy Commissioner that in a democratic state based on the rule of law, having regard to equality before the law, a direct obligation arises to bring the practice of organizing and conducting joint, coordinated official controls in Miskolc which infringe equality and the right to fair procedures to an immediate stop. According to the Commissioner and the Deputy Commissioner, the constitutionally acceptable way to deal with the issue of poverty and exclusion is via appropriate policy measures. They have also emphasized that similar joint control activities must be avoided as regards all Hungarian municipalities.

The investigation has further established that two decrees of the Miskolc Local Government also raise serious fundamental constitutional and legal concerns. Thus the statutory scrutiny procedure by the Government Office of Borsod-Abaúj-Zemplén County and the subsequent petition by the Government Office to the Curia (the highest court of Hungary) was justified and well-founded. The adoption of (and the sanctioning of the infringement of) rules which interfere with the privacy of vulnerable individuals and do not respect equal dignity is objectionable from the point of view of the rule of law and the protection of fundamental rights. According to the report, a provision of a local government decree which makes the reimbursement payable upon the termination of a lease contract with the local government contingent upon the purchase of real estate outside the premises of the municipality (thus quasi conditional upon moving out of the municipality) is unacceptable from the point of view of equal treatment. (Acting upon the petition of the Government Office, the Curia has determined that this provision of the local housing decree was contrary to national law, and has annulled the provision in question.) Similarly, the Commissioner and the Deputy Commissioner have found that the fact that some municipalities surrounding Miskolc have responded to the abovementioned provisions with decrees which are exclusionist in content and violate national law also raises concerns.

3. The Commissioner and the Deputy Commissioner have assembled a list of recommendations addressed to the Miskolc Local Government. They have recommended that the local city council take the following steps.

- The official control activities conducted by large numbers of officials of authorities and public utility providers should be terminated. It should be guaranteed that the procedures and practice

of all authorities, institutions and bodies falling under the direction and authority of the Miskolc Local Government abide to the relevant national laws and governmental decrees.

- The local government decree containing the rules of community living (which was declared to infringe national law by the Government Office and was brought before the Curia) should be repealed.
- Effective cooperation should be established with the Hungarian Charity Service of the Order of Malta operating in the segregated areas, and with the professional support institutions of the local government. Furthermore, relevant institutions should coordinate assistance to prevent evictions from the segregated areas.
- An action plan should be developed to solve the housing issues of families left homeless, in cooperation with the Hungarian Charity Service of the Order of Malta and social, child and family services.
- The local government should take part, cooperating with its professional support institutions and the Hungarian Charity Service of the Order of Malta, in the preparation of the complex programme in development under the professional guidance of the Ministry of Human Resources regarding the phasing-out and the prevention of colony-like living environments in the city.

The Commissioner and the Deputy Commissioner have requested the Minister in charge of the Prime Minister's Office to – in order to guarantee the effective prevention of the consequences of the joint official control activities conducted in Miskolc – investigate, with the assistance of the Government Offices, whether similar coordinated control activities are conducted in the country; and, should the answer be in the affirmative, to take measures to put an end to these practices.

The Commissioner and the Deputy Commissioner have invited the local city councils of the towns of Sátoraljaújhely and Szerencs to immediately repeal the exclusionist local government decrees which make the reimbursement payable to the former lessor upon the termination of a lease contract with the local government contingent upon the purchase of real estate outside the premises of the municipality, and which are in infringement of national law.

The Commissioner and the Deputy Commissioner have requested the Minister of Human Resources to review and investigate the situation and circumstances of the segregated living areas and their inhabitants in Miskolc, with regard to the problems identified by their report.

They have invited the Minister to develop a complex action plan in cooperation with the Miskolc Local Government which determines an exact programme and a task list to be carried out in order to phase out the colony-like living areas and prevent their reappearance, so as to avert housing segregation. Finally, they have invited the minister to consider the modification of relevant acts, and to initiate measures which guarantee that appropriate human resources are available to conduct activities related to the protection of children and young persons.

4. With their report, the Commissioner and the Deputy Commissioner draw attention to the unfeasibility and the consequences of the living conditions of individuals living in segregated areas. The number of flats in social housing schemes actually suitable for living is decreasing, and at the same time the rate of eviction of disadvantaged families is constantly increasing. To effectively prevent a massive increase in homelessness – taking into account inter alia the rights of the children concerned – there is an immediate need for communication between the relevant institutions and a coordinated, common response and aid. The report makes it clear that, having regard to the serious fundamental rights concerns, neither the repeated joint official control activities, nor the practice of evictions will be able to solve the problems of or phase out the segregated living areas. The investigation has reaffirmed the findings of the previous report by the ombudsman: the fundamental rights of the impoverished, excluded individuals – particularly vulnerable children and individuals belonging to the Roma minority – living in the segregates areas are seriously infringed due to the severe conditions of housing, employment, education, and circumstances of living in general. The report has established the fact that those living in deep poverty and exclusion cannot change their living circumstances on their own. It also showed that the state and local governments have added responsibilities regarding the systematic and continuous improvement of the situation of those living in segregation. Since 1997 every single government decree concerning the social integration of the Roma minority has determined tasks regarding colony-like living environments. The National Social Inclusion Strategy of the Government determines the medium-term challenges and targets of the social and labour market integration of those living in poverty, including the Roma, as well as the necessary interventions over a period of 10 years.

Based on their investigation, the Commissioner and the Deputy Commissioner have come to the conclusion that the 13 segregated living areas located in the town place a serious burden on the Miskolc Local Government, representing a challenge that the Local Government will definitely not be able to handle on its own, without the cooperation of civil society and support from the government. These complex problems result in challenges which can evidently not be solved via the resources and possibilities of the Local Government. Law enforcement type responses and constant resettlement do not solve the conflicts but rather deepen them even further. In order to truly solve the problems at hand, Miskolc is obviously in need of professional assistance and targeted subsidies from the state, and an active assistance by civil society.

5.2. Follow-up of the report of the Commissioner for Fundamental Rights of Hungary and his Deputy on the joint official control activities coordinated by the Miskolc Local Government Police, the local government housing decree, other measures of the Miskolc Local Government regarding housing conditions and the decree modifications by municipalities surrounding Miskolc

The Commissioner for Fundamental Rights of Hungary and his Deputy responsible for the protection of national minorities living in Hungary released their report No. AJB-1474/2014 on 27th May, 2015 and gave sixty days for the authorities concerned to inform them of their positions on the merits of the recommendations and on the measures planned or already taken. According to the law, the Commissioner and his Deputy can repeat their recommendations if the authorities are reluctant to comply with them and send reminders in case of lack of response. The current document summarizes the first and second round of the answers from these authorities as of 23 September, 2016.

5.2.1. Mayor of Miskolc and the Local Government

Recommendations addressed to the Mayor of Miskolc and the Local Government (May, 2015)

The official control activities conducted by large numbers of officials of authorities and public utility providers should be terminated. It should be guaranteed that the procedures and practice of all authorities, institutions and bodies falling under the direction and authority of the Miskolc Local Government abide to the relevant national laws and government decrees.

The local government decree containing the rules of community living - which was declared to infringe national law by the Government Office and brought before the Curia, which eventually turned to the Constitutional Court - should be repealed.

In order to address the housing issues in Miskolc an action plan should be developed to solve the situation of families left homeless as well as to prevent evictions, while the long-term solution shall be a complex programme regarding the phasing-out and the prevention of colony-like living environments in the city developed under the professional guidance of the Ministry of Human Resources. Effective cooperation should be established with the Hungarian Charity Service of the Order of Malta operating in the segregated areas for the implementation of the above mentioned recommendations.

Concerns were raised related to the termination of lease contracts by the local government and the practice of the local government institutions in charge of providing assistance to families in such situations.

Response from the Mayor of Miskolc on behalf of the Local Government (July, 2015)

The Mayor did not agree with the outcomes of the report and did not accept its recommendations. Accordingly, the official control activities will continue in accordance with the human rights safeguards mentioned in the report because they are supported by the local population and necessary according to the crime statistics. Miskolc Local Government emphasized that it does not have a mandate over the control activities conducted by utility providers.

According to the Mayor the local government decree containing the rules of community living cannot be repealed until the case is pending at the Constitutional Court. While the relevant provision of the local government decree on housing has been amended.

The Mayor raised several excuses hindering the development of an action plan to solve the housing issues of families left homeless and a complex programme aiming the phasing-out and the prevention of colony-like living environments in the city but stated that they are cooperating with all the relevant stakeholders and they are eager to enhance the cooperation with the Hungarian Charity Service of the Order of Malta. The Mayor emphasized that only law can prescribe the development of an action plan to provide accommodation for families left homeless and to prevent evictions, therefore such recommendation made by the Commissioner and the Deputy infringes the autonomy of the Local Government.

Concerning the work of the local government institutions dealing with housing issues, the Mayor said that no one has ever challenged the lease contracts before court and Miskolc Real Estate Management Ltd. provides assistance for the people living segregated areas.

Answer to the response of the Mayor of Miskolc (July, 2015 and November, 2015)

The Commissioner and the Deputy has reaffirmed their recommendations and called upon the Mayor again to stop the official control activities without conditions and reservations, especially because they firmly believe it is not feasible to keep this practice and respect the human rights safeguards at the same time. Additionally, the reasoning about the lack of mandate over the work of the utility providers has not been accepted neither.

The amendment of the local government decree on housing has been welcomed, furthermore they have drawn attention to that there is no legal restriction on repealing a local government decree while the case is pending before the Constitutional Court.

In the answer of Commissioner and the Deputy it has been stated that there is a lack of adequate answer for the recommendations concerning the housing issues and it was stressed that the cooperation in this field is not an opportunity but an obligation. They declined that a general proposal for the development of action plan solving housing issues would infringe the autonomy of the local government since the Act on the Commissioner for Fundamental rights provides the opportunity to make recommendations for authorities on general basis. In addition, they are still waiting for the complex programme aiming the phasing-out and the prevention of colony-like living environments in the city which sets the frameworks, the timeframe, the responsibilities as well as the funding of the project.

Furthermore, it has been argued that the reasons behind that no one turned to court concerning the lease contracts could be that they supposed the reasoning is justified or they simply cannot afford it.

We have not received any reply from the Mayor of Miskolc since then, however we have sent a reminder in November, 2015.

5.2.2. Miskolc Local Government Police

Recommendations addressed to the Miskolc Local Government Police (May, 2015)

It was requested from the Head of Miskolc Local Government Police (MLGP) to conduct their activities in line with the law and as prescribed by their mandate with special focus on the relevant provisions of the Act on Control of Public Space.

Response of the Miskolc Local Government Police (July, 2015)

The MLGP conducts its activity in line with relevant provisions.

Answer to the response the Miskolc Local Government Police (July, 2015)

The Commissioner and the Deputy have not accepted the response and requested the MLGP to reconsider its response. It has been stated that the activities of the MLGP should not be conducted in the private houses/homes, only in exceptional cases. The MLGP may go beyond its power with its control activities.

Second of the Miskolc Local Government Police (October, 2015)

The MLGP informed the Commissioner and the Deputy in a short letter that they conduct their activities in line with all relevant provisions.

5.2.3. Sátoraljaújhely and Szerencs, the municipalities surrounding Miskolc

Recommendations addressed to the municipalities surrounding Miskolc (May, 2015)

It was suggested to local governments of the towns of Sátoraljaújhely and Szerencs to immediately repeal the exclusionist local government decrees which are in infringement of national law.

Response from the municipalities surrounding Miskolc (July, 2015 and February, 2016)

Local government of Sátoraljaújhely repealed the concerned local government decree, while in case of Szerencs, the Supreme Court annulled it in September, 2015. The local government of Szerencse informed us about the decision of the Supreme Court in February, 2016 (after a reminder sent).

Answer to the response from the municipalities surrounding Miskolc (July, 2015)

The Commissioner and the Deputy have accepted the responses.

5.2.4. Minister in charge of the Prime Minister's Office

Recommendations addressed to the Minister in charge of the Prime Minister's Office (May, 2015)

In order to guarantee the effective prevention of the consequences of the joint official control activities conducted in Miskolc, the Minister in charge of the Prime Minister's Office was requested to investigate - with the assistance of the Government Offices - whether similar coordinated control activities are conducted in the country; and, should the answer be in the affirmative, to take measures to put an end to it.

Response of the Minister in charge of the Prime Minister's Office (September, 2015)

The same type of coordinated, joint control activity has not been conducted in other settlements, but some similar controls occurred in Monor and Ózd (details have not been provided). At the same time the Minister considers that coordinated control activities like the ones conducted in Miskolc are in accordance with the law.

Answer to the response from the Minister in charge of the Prime Minister's Office (October, 2015)

The Commissioner and the Deputy have not accepted the response. It has been highlighted again that these control activities conducted in segregated living areas by local actors of different profiles, different competences and different rights of investigation were organized without explicit legal authorization, which is eventually incompatible with the principle of the rule of law and the requirement of legal certainty, not to mention it is contrary to national law and the European standards. The Government and Government Offices should address these practices through a coherent and complex strategy.

Second response of the Minister in charge of the Prime Minister's Office (January, 2016)

The Minister informed the Commissioner and the Deputy that in case of the two towns mentioned (Monor and Ózd) all the legal safeguards have been respected during the work of the local authorities. Furthermore, he said that according to the information received by his office the joint official control activities in Miskolc has been ceased, therefore he supposes that no further steps are needed.

5.2.5. Minister of Human Resources

Recommendations addressed to the Minister of Human Resources (May, 2015)

The Commissioner and the Deputy Commissioner requested the Minister of Human Resources to review and investigate the situation and circumstances of segregated living areas in Miskolc with regard to the issues identified by the report. The Minister was invited to develop a complex action plan in cooperation with the Miskolc Local Government which determines a comprehensive programme and task list to be carried out in order to phase out the colony-like living areas and prevent their reappearance so as to avoid housing segregation. Finally, they called the Minister to consider the modification of relevant Acts of Parliament and to initiate measures which guarantee that appropriate human resources are available for the protection of children and young persons in such situations.

Response from the Minister of Human Resources (August, 2015)

The Minister has provided a complex and constructive answer. The Ministry is planning to analyse the situation in Miskolc in depth through field visits, although they have already been following the situation of these segregated areas. The Ministry will initiate at Miskolc Local

Government to set up a working group to develop an action plan for intervention with the participation of experts delegated from the Ministry of Human Resources and Ministry of Interior. Since this issue belongs to the scope of the Local Government of Miskolc, the Minister considers out of mandate to intervene directly.

At the same time the State Secretary of the Ministry of Human Resources indicated that 143,6 million HUF (cc. 460 000 €) was awarded within the framework of a social inclusion action programme to Miskolc to develop the one of the segregated areas called Lyukóvölgy Gulyakút through an integrated and complex housing program.

In relation to the recommendations of the protection of child and youth, the Ministry referred that a methodology guideline with special focus on the warning and signalling system was developed in 2014, while the issue of designated staff dealing with child and youth protection placed in schools could be integrated into projects funded by the Human Resources Operational Programme (EFOP), which implements Europe 2020 Strategy in Hungary.

Answer to the response from the Minister of Human Resources (August, 2015)

The Commissioner and the Deputy have welcomed the initiatives of the Ministry and requested update on the activities mentioned, however, they have highlighted that the child protection services and activities have to be provided on continuous and firm basis.

6. Segregation of Roma children in education

Deputy Commissioner responsible for the protection of national minorities and her predecessors in the last two decades have devoted special attention to the right to education since unlawful segregation of Roma children is still a widespread practice in Hungary. The methodology to investigate segregation cases and findings of the reports of the ombudsmen have been applied in strategic litigation of NGOs in front of domestic courts which took them into consideration or even referred to them in their decisions.

In November 2014, the Parliament adopted the amendment of the Public Education Act empowering the Government to issue a decree specifying further requirements of religious and minority education. The Commissioner for Fundamental Rights and his Deputy responsible for the protection of national minorities in their joint report expressed concerns as these “further requirements” defined by the Government would have widened the space for cases of segregation considered lawful. The concerns were shared with the Human Rights Council in video statement at its 31st session.

In May 2016, the European Commission launched infringement proceedings against Hungary regarding the discrimination of Roma children in the education system, which has been still pending at the time of the finalization of this publication.

6.1. Video statement of the Deputy Commissioner for Fundamental Rights of Hungary on behalf of the Commissioner for Fundamental Rights of Hungary at the 31st session of the Human Rights Council

Mr. President, distinguished members of the Human Rights Council,

This statement is made on behalf of the Commissioner for Fundamental Rights of Hungary. My name is Elisabeth Sandor-Szalay, I am the Deputy-Commissioner responsible for minority rights protection.

On the occasion of the Debate on the state of racial discrimination worldwide I would like to share my experiences concerning the segregation of Roma children in education.

Although segregation in education is prohibited by the Hungarian law, in practice the segregation of Roma students is widespread. During my investigations I found that segregation is the result of direct or indirect discriminatory practices against Roma students, while Roma minority education and religious education may also lead to segregation or malpractice.

We shall not forget that we are talking about children here. The best interest of the child shall be assessed and taken into account as a primary consideration in all actions or decisions that concern him or her. Segregation can never be justified by the aim of promoting social inclusion because the separation of children at the same age on the basis of race generates the sense of inferiority as to their status in the community which has everlasting harmful effects on their development.

I am deeply concerned about the recent legal developments in this field. Minority and religious education, as exceptions to the prohibition of segregation, were invoked by the parent's rights to choose the kind of education that shall be given to their children. Nevertheless, the State has not transferred or get rid of its obligation to provide quality education, therefore it still has to ensure that the parental choice is not abused by any stakeholder in order to justify any form of segregation in education.

Thank you.

6.2. Summary of the Joint Report of the Commissioner for Fundamental Rights and the Deputy Commissioner responsible for the protection of national minorities in Hungary regarding the amendment of legislation on separation in education

6.2.1. The procedure

On 8th November 2014 the Government adopted the Bill No. T/2085. regarding the amendment of the Public Education Act: it proposed to empower the Government to issue a decree specifying further requirements of religious and minority education which fall under the categories of exceptions to the prohibition of segregation under Hungarian law. Several civil society organizations expressed concerns, furthermore, on 12nd December 2014 the Deputy Commissioner issued a press release stating that she firmly and consistently stands out for social integration. On 16th December 2014 the Parliament adopted the amendment of the Public Education Act but with a reservation stating that the government decree shall take into account the prohibition of segregation.⁵⁰

The investigation of the Commissioner and his Deputy was prompted by the ongoing public debate as well as by complaints from civil society organizations. It was aimed to define the room of manoeuvre of the Government derived from the amendment and reduce the risk of human rights violations in the future.⁵¹

6.2.2. Relevant domestic law

According to the Article 10 (2) of the Act CXXV of 2003 on Equal Treatment “unlawful segregation is a conduct that separates individuals or groups of individuals from other individuals or groups of individuals in a similar situation on the basis of their characteristics as defined in Article 8⁵², without any law expressly allowing it.” Segregation in education is unlawful if a person or a group of persons are segregated “in an educational institution, or in a division, class or group within such an educational institution” or provided substandard education therefore the students cannot proceed with their studies or successfully pass state exams. Furthermore, extracurricular activities or societies and organizations which discredit, stigmatise or exclude some individuals or groups are not allowed in educational institutions neither. The exceptions are well-defined by the Article 28 of the Act on Equal Treatment:

⁵⁰ Article 25 (5) of the Act CV of 2014 on the amendment of the National Public Education Act.

⁵¹ Report No. AJB-6010/2014.

⁵² Article 8 contains a non-exhaustive list of prohibited grounds of discrimination.

Article 28 (1) If the education is organised only for students of one sex, it does not violate the principle of equal treatment, provided that the participation in such an education is voluntary, and will not result in any disadvantages to the participants.

(2) The principle of equal treatment is not violated if, a) in public education, at the initiation and by the voluntary choice of the parents, b) in institutions of higher education, by the students' voluntary participation, such education based on religious or other ideological conviction, or education for ethnic or other minorities is organised whose objective or programme justifies the creation of segregated classes or groups; provided that this does not result in any disadvantage for those participating in such an education, and the education complies with the requirements approved, laid down and subsidised by the State.

(3) Any legal act may divert from the provisions of Article 27(2)a) in respect of educational institutions serving the protection of linguistic or cultural identity, or in respect of educational institutions of churches, ethnic, national or other minorities.

As it was mentioned above, the Public Education Act has been amended to include a provision empowering the Government to issue a decree “defining special requirements aiming to meet the requirements set forth in Article 28(2) Equal Treatment Act concerning the organization of education based on religion, belief or nationality taken into account the prohibition of unlawful segregation”. The government decree has not been issued so far.⁵³

6.2.3. Relevant case law

The report also summarizes segregation cases in front of Hungarian courts from the past 10 years. Under Hungarian civil law the “general right of personality” is protected which includes human dignity and other related personality rights such as personal liberty and privacy. The court may establish discrimination as violation of personality rights, apply prohibitory (prohibits a party from doing or continuing to do a particular thing) or mandatory (orders a party to carry out a certain act) injunction and award damages to the plaintiff for the loss suffered.

⁵³ As of 05/11/2015.

Most of the segregation cases were *actio popularis* litigated by an NGO called Chances for Children Foundation against different stakeholders concerned in educational segregation. In these cases, the courts found the violation of equal treatment in cases when the children were segregated in a separate class, building or educational institution, awarded damages because of segregation, misdiagnosis and misplacement of Roma children and granted injunctions (including desegregation measures).

Contrary to the above mentioned case law, the Supreme Court in a recent decision (of 22nd April 2015) held that the separated education of Roma students in an institution run by the Greek Catholic Church is not unlawful since it complies with the provisions of the Equal Treatment Act concerning religious education. It was argued that since the Greek Catholic Church plays a key role in pastoral care of the Roma by providing education it is reasonable to establish a school in a Roma settlement.⁵⁴

The briefings of segregation cases (civil lawsuits for violation of personality rights and damage claims) in Hungary are included in the Addendum.

6.2.4. Consideration of the merits

The Commissioner and his Deputy Commissioner first reiterates that the Constitutional Court confirmed in several decisions that the principle of rule of law includes legal certainty which prescribes that the law should be clear and precise with foreseeable legal implications. Furthermore, in case of conflict between the prohibition of discrimination and any fundamental right the strict test of necessity and proportionality shall be applied - which was lately embodied in the Fundamental Law, too.

It was noted that the former Minority Ombudsman as well as the Commissioner for Fundamental Rights and his Deputy Commissioner have dealt with segregation. In these cases it was found that substandard minority education in full compliance with the anti-discrimination law constitutes unlawful segregation since it fails to fulfil the aim of the right to education to gain the highest attainable standard of education. The segregation of children violates human dignity since it creates “the sense of inferiority”, set back the child in social development and at the end of the day it reproduces uncompetitiveness in the labour market, unemployment, low income and lack of ability of mobility. It was confirmed numerous times that inclusive education is the only mean to enhance social inclusion.

⁵⁴ Decision of the Curia, Pfv.IV.20.241/2015/4.

Having regard to all of the above, it is stated that any law amendment which adjust the exceptions to the prohibition of segregation in a way to weaken the general prohibition constitutes human rights violation and does not conform to the Fundamental Law. The right to equal treatment put a positive obligation on the state which could be implemented – among others – by promoting social inclusion. Nevertheless, segregation can never be justified by the aim of promoting social inclusion not even in cases when the education is organized based on religion, belief or nationality. The exceptions to educational segregation was invoked by the rights of the parents to choose the education of their children (based on informed consent).

According to the Commissioner and his Deputy, the Government has a very narrow room for manoeuvre in this case. The requirements of requirements defined by the decree might cover the rules of parental choice, the interrelation between minority and religious education if it is organized in parallel or the standards of the education keeping in mind the case law in segregation. It is emphasized that the two exceptions shall not be blurred: if an institution organizes minority and religious education at the same time, it has to comply with the requirements of both of them, respectively. Therefore, the Government is expected to further elaborate on the requirements of religious and minority education in accordance with the provisions of the Act on Equal Treatment.

6.2.5. Recommendations

The Commissioner and the Deputy Commissioner warn the Government that the decree will not violate the principle of equal treatment only if it meets the following requirements, respectively:

- it respects the hierarchy of sources of law and elaborates only on the requirements prescribed by the Act on Equal Treatment, therefore it sets only the requirements of the requirements which define the exceptions of lawful segregation and shall not add further ones;
- it shares the objective of Article 28(2) of the Act on Equal Treatment i.e. supporting institutional autonomy based on religion or belief and nationality;
- it takes into account that equality before law, equal opportunities and social inclusion are all rooted in the principle of equal treatment, accordingly separated education aiming social inclusion is totally contradictory.

6.2.6. Addendum

Case of Miskolc

Identification

Chances for Children Foundation (CFCF) vs. Local Government of Miskolc, Debrecen Regional Court of Appeals, No. Pf. I.20.683/2005/7

Facts

In 2004, the Local Government of Miskolc implemented the integration of several schools in the city in terms of administration and financial issues but it did not adjust the school attendance boundaries accordingly which contributed to the preservation of the existing educational segregation of Roma children.

Procedural History

The applicant, the CFCF claimed (in actio popularis) that the Local Government of Miskolc infringed the principle of equal treatment in respect of the Roma children living in the areas concerned. In 2005, the court of first instance (Borsod-Abaúj-Zemplén County Court) dismissed the applicant's claim. In 2006, the Debrecen Regional Court of Appeals partly reversed the first instance judgement.

Issue and holding

The Local Government of Miskolc infringed the principle of equal treatment in respect of Roma children living in the city when contributed to preserve the existing educational segregation by not adjusting the school attendance boundaries accordingly. Therefore the Court held that an omission to act may constitute the breach of the principle of equal treatment.

Reasoning

The Court stated that once the protected ground and the disadvantage suffered had been established, the burden of proof shifts to the defendant to prove the lack of link between them or a legitimate aim intended to achieve. Otherwise the defendant cannot argue that he respected the principle of equal treatment. In addition, the Court found that the omission to act may constitute infringement of equal treatment if it contributes to preserve an already existing

situation; without this interpretation child subject to - previously evolved - less favourable treatment may not have access to justice.

Commentary

The case was the very first litigation on segregation in education, not later than the Equal Treatment Act entered into force (2003).

Case of Hajdúhadháza

Identification

Chance for Children Foundation (CFCF) vs. Local Government of Hajdúhadháza, Bocskai István Bilingual Elementary School and Dr. Földi János Elementary and Arts School, Supreme Court of Hungary, No. Pvf.IV.20.936/2008/4.

Facts

The Local Government of Hajdúhadháza maintained two primary schools with six buildings in different locations. In the central premises of the primary schools a relatively low number of Roma children were placed (less than 30 %), while in the other buildings more than 80 % of the students were Roma, actually in two cases all of them. In addition to the separation of children on the ground of their ethnicity, school premises and equipment of the same quality was not provided neither. In some cases Roma minority education was provided.

Procedural History

The applicant brought an action popularis against the Local Government of Hajdúhadháza and the primary schools concerning direct discrimination of Roma children. In 2007, the court of first instance (Hajdú-Bihar County Court) ruled in favour of the applicant, which was overruled by the Debrecen Regional Court of Appeals. The applicant requested the judicial review from the Supreme Court, which partially reversed the ruling of the first instance.

Issue and holding

The Local Government of Hajdúhadháza infringed the principle of equal treatment when segregated Roma children in educational facilities and provided substandard education for them. The Court granted prohibitory injunction (to cease the unlawful practice) and mandatory injunction (to implement desegregation measures).

Reasoning

The Supreme Court found unlawful segregation in line with the first instance ruling and emphasized that both act and omission may lead to segregation (contrary to the opinion of the appellate court). Although, the Supreme Court did not set deadlines concerning the implementation of the desegregation measures claiming lack of professional knowledge in this field.

According to the Equal Treatment Act, the segregation based on minority education is lawful only if it is voluntary and based on the initiative of the parents/students. The Court found that if the parents opt for Roma minority education it does not mean they consent to segregation: the separated education of children is not necessary as Romani studies are taught in Hungarian as a distinct subject three hours per week.

During the first instance procedure a public education expert was appointed to establish the proportion of Roma students in the different educational facilities according a methodology set forth by the County Court; the Supreme Court declared this method in accordance with the protection of privacy rights and took into account the results of it.

Commentary

The CFCF requested the initiation of a preliminary ruling procedure concerning the direct application of the Racial Equality Directive which was rejected by the Supreme Court.

Case of Miskolc II

Identification

Kolompár et al vs. Local Government of Miskolc, Supreme Court of Hungary, No. Pfv.IV.20.510/2013/3

Facts

The case involved five Romani young people who studied in schools where the Debrecen Regional Court of Appeals found the violation of the principle of equal treatment due to segregation in the previous *Miskolc case*.

Procedural History

The applicants brought a damage claim against the Local Government of Miskolc before the Borsod-Abaúj-Zemplén County Court which held the violation of the principle of equal treatment but not awarded compensation. The appeal was dismissed by the Debrecen Regional Court of Appeals but the Supreme Court accepted the applicant's claim.

Issue and holding

The Supreme Court held that the applicants suffered indirect discrimination and awarded cc. 328 € damages for each of them.

Reasoning

The Supreme Court referred to its previous decision on the case of Miskolc where the violation of the principle of equal treatment was found. Accordingly, the applicants who were the students of the educational institutions concerned do not have to prove any other elements of the claim in order to be entitled to compensation.

Commentary

First case ever when the court awarded damages for victims of educational segregation.

Case of Kaposvár

Identification

Chance for Children Foundation (CFCF) vs. Local Government of Kaposvár, Supreme Court of Hungary, No. Pvf. IV.21.568/201065.

Facts

The Local Government of Kaposvár in partnership with nine other local governments runs twelve schools in the town; in one of the schools 90 % of the students are in disadvantageous situation, they are mostly Roma children. However, this school is situated in a settlement mostly inhabited by Roma people, the Local Government instead of integration measures kept the school running even with only one class per year.

Procedural History

The applicant brought an actio popularis claim against the Local Government of Kaposvár. Both the first (Somogy County Court) and second instance (Pécs Court of Appeal) partly accepted the claim (but disagreed in some details), while Supreme Court partly reversed the first instance ruling.

Issue and holding

The Local Government of Kaposvár infringed the principle of equal treatment when segregated Roma children in particular premises of the elementary school and provided substandard education for them. The Supreme Court rejected to grant injunction.

Reasoning

All the courts handling the case agreed on the infringement of the principle of equal treatment but made different opinion concerning the injunctions to be ordered. The Supreme Court refused to grant a prohibitory injunction without a proper claim aiming a realistic, feasible solution to end unlawful segregation of Roma children.

Commentary

The CFCF has filled another civil lawsuit claiming the implementation of appropriate desegregation measures which is still pending before court.

Case of Jászladány

Identification

Chances for Children Foundation (CFCF) & Jászsági Roma Polgári Jogi Szervezet (NGO) vs. Local Government of Jászladány & Zana Sándor Imre Nevelési és Oktatási Közhasznú Alapítvány (Foundation), Supreme Court of Hungary, No. Pfv.IV.20.037/2011/7.,

Facts

Until 2003, the village of Jászladány had one elementary school situated both in renovated premises (for the lower classes) and in a building of poor condition (for upper classes), while many children (mostly non Roma) attended school in the nearby town. The Foundation – of which Mayor was board member - established a private school with a tuition fee of 10-13 € for

the children “who wished to study” and concluded a contract with the Local Government to rent one part of the renovated building. In addition, the Local Government provided additional financial support for the private school. Consequently, the Roma and socially disadvantaged children were schooled in the facility of poor conditions.

Procedural History

The two NGOs initiated at the court to render the lease contract between the Local Government and the Foundation null and void and establish unlawful segregation of Roma children. Both first instance (Jász-Nagykun-Szolnok County Court) and the appellate court (Debrecen Regional Court of Appeal) dismissed the claim but the Supreme Court partly ruled in favour of the applicants.

Issue and holding

The Supreme Court found that the Local Government infringed the principle equal treatment because the students in the private and the public school had been segregated based on their ethnicity and social status. However, the Court did not establish direct discrimination because of the substandard education and dismissed the claim with regard to the lease contract.

Reasoning

According to the Supreme Court, since the Local Government was the owner of both of private and public school facility, it unlawfully segregated the Roma and socially disadvantaged children by concluding the lease contract (omission). The claim concerning direct discrimination was dismissed because the students in the schools were not in comparable situation as the maintenance of the two schools – responsible for the quality of education – were different (the Local Government and the Foundation, respectively).

Commentary

The CFCF requested a preliminary ruling concerning the direct application of the Racial Equality Directive which was rejected by the Supreme Court.

Case of Gyöngyöspata

Identification

Chances for Children Foundation (CFCF) vs. Local Government of Gyöngyöspata, Nekcsei Demeter Elementary School and the Klebelsberg Institution Maintenance Centre, Budapest Court of Appeal, No. 2.Pf.20.305/2013/20.

Facts

In the elementary school of Gyöngyöspata the Roma students were placed in separate classes and provided substandard education compared to other classes (which meant literally different curriculum), they had lunch separately, furthermore they were excluded from swimming classes and after school care.

Procedural History

The applicant brought an action popularis against the Local Government of Gyöngyöspata, the elementary school and Klebelsberg Institution Maintenance Centre regarding discrimination of Roma children. The court of first instance (Eger Regional Court) partly ruled in favour of the applicant which was affirmed by the appellate court (Budapest Court of Appeal).

Issue and holding

The Court found the violation of equal treatment concerning the unlawful segregation of Roma children in separate classes and the substandard education provided for them but rejected the claim concerning the separate lunch practice and the exclusion from swimming classes and after school care.

Reasoning

The Court rejected the defence of the respondent claiming that since the collection of disaggregated data based on ethnicity is prohibited by law, they were not aware of the ratio of Roma children in the different classes, therefore the ground of discrimination cannot be established and they do not bear the burden of proof to prove the lack of link between the protected ground and the disadvantage suffered. According to the Equal Treatment Act a person may suffer discrimination because they are perceived to have a protected

characteristics; the Court held that even the separation of children perceived to be Roma from other children in comparable situation constitutes unlawful segregation.

The Court partly dismissed the claim arguing that in these cases the ground of discrimination cannot be established. According to the practice of the school one class has lunch together at one time because there is no place for more people in the dining hall. In addition, only those students can attend swimming classes who has the necessary equipment (provided by the parents) and the after school care is available only for children whose both parents are employed.

Commentary

Gyöngyöspata got press attention in March-April 2011 when paramilitary groups marched and patrolled the village harassing and intimidating the Roma community. The Court took into account the outcomes of the report of the Parliamentary Commissioner for Minority Rights focusing on the issue of patrols and paramilitary marches and the segregation in education as well as in the field of housing (published in April 2011).

Case of Nyíregyháza

Identification

Chances for Children Foundation (CFCF) vs. Local Government of Nyíregyháza, Hajdúdorog County of the Hungarian Catholic Church, Szent Miklós Greek Catholic Kindergarten, Elementary School and Grammar School, Sója Miklós Greek Catholic Kindergarten and Elementary School and the Klebelsberg Institution Maintenance Centre, Supreme Court of Hungary, No. Pvf.IV.20.241/2015/4.

Facts

In 2007, thanks to the lobbying and advocacy of the CFCF, the elementary school in the Roma settlement of Nyíregyháza had been shut down by the Local Government and free school bus had been provided for Roma children with the aim to integrate them in mainstream elementary schools all over the city. In 2011, the Greek Catholic Church – which ran a kindergarten, an elementary and grammar school in the city centre considered elite institution - decided to reopen the school in the settlement which was actually initiated and supported (financially too)

by the Mayor of the city. In September, 2011 sixteen students of first grade enrolled to the Sója Miklós Greek Catholic Kindergarten and Elementary School.

Procedural History

The applicant brought an actio popularis against the Local Government of Nyíregyháza et al. regarding the infringement of equal treatment and unlawful segregation of Roma children. Both the court of first instance (Nyíregyháza Regional Court) and the appellate court (Debrecen Regional Court of Appeals) ruled in favour of the applicant, but the Supreme Court of Hungary rejected the claim.

Issue and holding

The Supreme Court held that the respondents did not infringe the principle of equal treatment and did not unlawfully segregate Roma children since the Sója Miklós Greek Catholic Kindergarten and Elementary School provides religious education in accordance with the anti-discrimination laws.

Reasoning

The Supreme Court did not find unlawful segregation in this case for several reasons. First, the applicant did not challenge the quality of education, the parents did not withdraw the right to education and the education provided was not different from the one the parents consented to, therefore the children did not suffer any kind of disadvantage. Then, the parents practiced their freedom of religion and the right to free choice of school when decided to enrol their children in a school ran by the Greek Catholic Church, especially because they were not discouraged to send their children to other schools in the city (including the other, elite school of the Greek Catholic Church). Furthermore, it was argued that since Greek Catholic Church plays a key role in pastoral care of the Roma by providing education it is reasonable to establish a religious school in a Roma settlement.

Commentary

This is the most recent segregation case which does not follow the holdings of the previous ones (however in Hungary there is no legal precedents as such).

7. Discriminatory practice related to the pre-boarding screening of international passengers at the airport

Complicated cases with transnational aspects, such as the discriminatory practices related to the pre-boarding screening of international passengers at the airport, require harmonized advocacy activities on national, regional and international level. The Operational Platform for Roma Equality (the OPRE Platform) - which is an initiative of Council of Europe in collaboration with the European Union Agency for Fundamental Rights (FRA), European Network of Equality Bodies (Equinet), and the European Network of National Human Rights Institutions (ENNHRI) - provided a platform to discuss the cases and seek cooperation with national human rights institutions from other states. The Ad hoc Committee of Experts on Roma and Traveller Issues (CAHROM) of the Council of Europe also included the issue in its agenda with the intention to create an opportunity for discussion with the representatives of the Embassy of Canada. Unfortunately, no one attended the meeting on behalf of the Embassy. Furthermore, the unlawful practice of pre-boarding screenings at airports were discussed the meetings of the European Network of Equality Bodies and pro-Roma NGOs were involved, too.

The most successful co-operation is actually a unique initiative, the Public Defender of Rights of the Czech Republic and the Deputy Commissioner for Minority Rights of Hungary jointly submitted a report to the United Nations Committee on the Elimination of Racial Discrimination in the monitoring of Canada. In its Concluding Observations, the Committee formulated several recommendations in relation to ethnic profiling and proposed Canada to establish an independent ombudsman mandated to receive and investigate human rights complaints against Canadian corporations operating in other countries.

7.1. General Comment No.1. of the Deputy-Commissioner for Minority Rights of Hungary on issues related to the pre-boarding screening of international passengers at the airport

7.1.1. Introduction⁵⁵

1. The Deputy-Commissioner for Minority Rights of Hungary protects and promotes the rights of national minorities living in Hungary with quasi-judicial competence to hear and consider complaints against public authorities and other entities providing public services as well as to initiate investigations ex-officio concerning the situation of a non-determinable group of people or the implementation of a particular fundamental right. The Act on the Rights of Nationalities defines national minorities as “all ethnic groups resident in Hungary for at least

⁵⁵ Date of issue: on 15 July 2016.

one century which are in numerical minority amongst the population of the State, are distinguished from the rest of the population by their own language, culture and traditions and manifest a sense of cohesion that is aimed at the preservation of these and at the expression and protection of the interests of their historically established communities". The national minorities fulfilling these requirements are listed in the Appendix of the Act and namely are: Bulgarian, Greek, Croatian, Polish, German, Armenian, Roma, Romanian, Ruthenian, Serbian, Slovak, Slovene and Ukrainian.

2. The mandate of the Deputy Commissioner for Minority Rights includes activities supporting the work of the Commissioner for Fundamental Rights of Hungary in the field of minority protection as well as taking individual actions. The Deputy Commissioner supports the work of the Commissioner by providing up-to-date information about the situation of national minorities and early warnings aimed at preventing human rights violations. The Deputy Commissioner takes part in the inquiries of the Commissioner and may propose to initiate investigations *ex officio* in relation to minority rights issues.

3. In her individual capacity, the Deputy Commissioner shares her experiences concerning the promotion, protection and enforcement of minority rights in Hungary with all the stakeholders as well as the wider public and draws attention to the potential violation of minority rights in case she identifies warning indicators pointing to the probable occurrence of such violations. Within this mandate, the Deputy Commissioner issues general comments in order to express her concerns in relation to the protection of minority rights and to provide standards, guidelines and best practices with the aim to reduce cases of human rights abuses as well as to prevent further human rights violations. Dissemination of the general comments to a wider audience is part of her international activities prescribed by law.

7.1.2. Background

4. According to some media reports and complaints lodged with the Office of the Commissioner for Fundamental Rights, in 2015 several Hungarian citizens (mainly families) belonging to the Roma minority could not depart for Canada from the Budapest Liszt Ferenc International Airport irrespective of the fact that they had valid travel documents and air tickets. The airline company denied the boarding to them as a result of the pre-boarding screening and questioning that was performed out of records, by officials of unknown affiliation and most of

the times in front of fellow passengers which rendered the victims subject to public humiliation. They also complained about not having received proper information about compensation for denied boarding and the ways to file complaints. In addition to the Office of the Commissioner for Fundamental Rights, many of the victims also submitted complaints to the Hungarian Equal Treatment Authority (equality body) and sought legal advice from an NGO, the Legal Defence Bureau for National and Ethnic Minorities.

5. The Deputy Commissioner for the Protection of Minority Rights decided to prepare a general comment on issues related to the pre-boarding screening of international passengers at airports from a human rights perspective for several reasons. As the result of the investigation it has been revealed that several stakeholders concerned in this case fell outside of the mandate of the Deputy Commissioner but may be willing to accept recommendations in order to avoid human rights violations. Furthermore, the Deputy Commissioner is aware of similar cases of Hungarian victims occurred in the international airports of Vienna and Brussels, while the direct flight to Canada from Budapest has been relaunched this summer.

7.1.3. Concerns in relation to the protection of minority rights

6. The reason behind the pre-boarding passenger control practice introduced in several European airports is that if the passenger is turned back by the Canadian border control authority supervising immigration to Canada (Canadian Border Services Agency – CBSA) due to the lack of proper documentation or failure to fulfil the entry requirements, the airline concerned is obliged to arrange their transportation back to the country of origin and could be fined up to 3200 CAN \$ per passenger. The practice of the Canadian authorities induced the airline companies to try to screen out at the airports of departure those passengers whose entry to Canada would be probably refused by the CBSA.

7. The pre-boarding screening on the Budapest International Airport was performed by the BUD Security Ltd, a company providing security services and owned by Budapest Airport Plc, based on a service contract between them and the Canadian Air Transat airline company. The employees of the security company checked the documents of the passengers heading to Canada as well as interviewed them about their personal circumstances including questions related to their employment, financial background (income, real estates), family relations in Hungary and in Canada, purpose of travel and the financial resources allocated for the travel. If it was obvious that the passenger would fail to fulfil the entry requirements to Canada, the

security officer recommended the airline company to deny the boarding to the passenger concerned. In case of any doubts, the security officer asked for clarifications from the representative of CBSA present on the spot and made their recommendations based on that. The decision on denied boarding in each case was made solely by the Canadian airline company.

8. The Canadian Air Transat airline, upon the request of the Deputy Commissioner, confirmed that according to the relevant Canadian laws they are only required to make sure of the passengers having valid and complete documentation needed to enter Canada, they are normally not required to actively investigate the intentions of passengers for travelling, their means of financial support while travelling or their risk for illegal migration. However, the airline company argued that the pre-boarding screening performed by their local partners (in this case the security company of the airport) and the representatives of the CBSA deemed necessary after several dozens of Hungarians applied for asylum upon arrival to Canada by a direct flight operated by them and another company in the summer of 2015. Relevant legal provisions were not referred at all.

9. According to the complaints, the security officers did not introduce themselves neither claimed authorization to perform such screenings, besides, they did not inform the passengers about the purpose and the consequences of the questioning, e.g. the denial of boarding. Concerning the pre-boarding screening of the passengers performed by the security company based on the service contract with the Canadian airlines, it has been revealed that such contractual obligation which includes screening of passengers by the means of questioning and observation with the aim to prevent illegal immigration attempts totally lacks a legal background.

10. Consequently, in relation to the pre-boarding screenings of air passengers of Roma origin heading to Canada performed at the place of departure several human rights concerns have been raised: the potential violation of the right to fair procedure, the right to remedy and eventually the failure to respect human dignity as well as the principle of equal treatment.

7.1.4. Standards, guidelines and best practice

11. First of all, rules of pre-boarding screening processes of air passengers should be clearly set out in the form of a written protocol and include safeguards which guarantee the

right to fair procedure for everyone. The person performing the screening shall wear a name badge, introduce themselves and state their affiliation, furthermore, shall inform the passenger about the purpose, legal basis and the consequence of the procedure. All passengers travelling with the same flight shall be screened in accordance with the rules of the procedure and exactly the same way in all cases in order to avoid any allegation of discrimination. All circumstances of the screening and the people involved shall respect the human dignity of the passengers.

12. Then, in case of denied boarding, the passengers shall receive the decision as well as the information about the available remedies and compensation in written form, both in English and Hungarian language. The document shall include at least the name of the company as well as the employee performing the screening, the airline company concerned, the formal denial of boarding with reasoning based on facts and the legal background (e.g. Canadian laws on entry requirements), the available remedies in case of denied boarding and complaints mechanism concerning the performance of the screening procedure. Besides, the passenger rights, the basic rules to claim compensation and the designated national enforcement body under Regulation [EC] 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights shall be covered, too.

13. All the guidelines mentioned above are of crucial importance in pre-boarding screenings of certain groups of air passengers by the relevant authorities of the country of destination but performed at the place of departure. Irrespective of that the passengers travel from the territory of one country to another, from one jurisdiction to another, their human rights such as the right to fair procedure, the right to remedy and their human dignity shall be protected and respected by all stakeholders without discrimination on any ground.

7.2. Joint submission of the Public Defender of Rights of the Czech Republic and the Deputy-Commissioner for Minority Rights of Hungary concerning the Twenty-first to twenty-third periodic reports of Canada to the United Nations Committee on the Elimination of Racial Discrimination, 93rd session, (31 Jul 2017 - 25 Aug 2017)⁵⁶

7.2.1. Introduction

7.2.1.1. Aim of the submission and the core issue

The present paper is submitted jointly by the Czech Public Defender of Rights and the Deputy-Commissioner for Minority Rights of Hungary. It is aimed to inform the United Nations Committee on the Elimination of Racial Discrimination, within the framework of the compulsory reporting procedure on the implementation of the Convention, that Canada allegedly failed to comply with its obligation and discriminated non-citizens on racial ground under extra-territorial jurisdiction. Canada referred to the Roma minority in the state report only one time and in a non-related context, the two national human rights institutions⁵⁷ decided to take a joint action and present the cases of Roma passengers heading to Canada who were subject of discriminatory and humiliating procedures during the pre-boarding screenings in European airports.

The pre-boarding screenings of Roma passengers, holding different nationalities, were implemented in an unlawfully discriminatory manner as mostly Roma people who were identifiable by appearance or by name were questioned, in an intrusive and unreasonable way e.g. requested to provide additional documentation compared to the general immigration rules. Often personal and sensitive questions were raised by unknown officials in front of the whole queue, in some cases in the presence of Canadian immigration officers. Unfortunately, the issue of extra-territorial jurisdiction cannot be discussed here due to lack of information about the involvement of the Canadian immigration services.

Based on different sources, this practice apparently aims to identify potential asylum-seekers before they arrive to Canadian territory and fall under the scope of the Refugee Convention. Carrier sanction legislations imposing financial penalties on airline companies bringing

⁵⁶ The full report, including the chapters drafted by Office of the Czech Public Defender of Rights, is available at [the website of the UN Committee on the Elimination of Racial Discrimination](#).

⁵⁷ Czech Public Defender of Rights is not accredited NHRI, but we do believe that it has standing to make the submission and in the document the Defender is referred as NHRI for simplification.

passengers without valid documentation or visa is not a recent development in Canadian law nor a unique practice on a global level. But the practice of the airline companies shall not infringe the principle of legality and the right to a fair procedure: in the cases discussed here the passengers were not provided with proper information about the screening procedure and the available remedies in case of denied boarding.

The present submission of the national human rights institutions in relation to the Canadian state report is of high relevance for several reasons. In line with General Recommendation XXX of the Committee on discrimination against non-citizens, the right of non-citizens to have access to services intended for use by the general public shall be guaranteed without discrimination, which includes public transportation such as travel via airplane. Also we would like to recall that the States Parties shall ensure that the immigration policies does not have the effect of discriminating against persons on the basis of race, colour, descent or national or ethnic origin. The States Parties are obliged to report about the implementation of these obligations as well.

Although the Czech and the Hungarian national human rights institutions' mandate covers several national actors involved in these cases, their thorough investigation is not possible without cooperation with the Canadian authorities. The authors of the present paper are deeply concerned that the Canadian authorities have refused to cooperate so far. At the same time, they hope that the discussion of the state report at the UN CERD will open a platform for a constructive dialogue on how to ensure the protection of human rights of passengers travelling from the territory of one country to another - without discrimination on any ground.

7.2.1.2. About the authors

The Public Defender of Rights of the Czech Republic protects people against the conduct of authorities and other institutions if the conduct is against the law, does not correspond to the principles of a democratic legal state and the principles of good administration, or the authorities are inactive. He/she also carries out preventive systematic visits to places where people are restricted in their freedom and seeks to ensure that their rights are respected. The Defender also contributes to promotion of the right to equal treatment and protection against

discrimination as a national equality body pursuant to the law and applicable directives of the European Union (e.g. 2000/43/EC, 2000/78/EC etc.) since 2009.⁵⁸

The Deputy-Commissioner for Minority Rights of Hungary protects and promotes the rights of national minorities living in Hungary with quasi-judicial competence to hear and consider complaints against public authorities and other entities providing public services as well as to initiate investigations ex-officio concerning the situation of a non-determinable group of people or the implementation of a particular fundamental right. The mandate of the Deputy Commissioner for Minority Rights includes activities supporting the work of the Commissioner for Fundamental Rights of Hungary in the field of minority protection as well as taking individual actions. The Deputy Commissioner supports the work of the Commissioner by providing up-to-date information about the situation of national minorities and early warnings aimed at preventing human rights violations. The Deputy Commissioner takes part in the inquiries of the Commissioner and may propose to initiate investigations ex officio in relation to minority rights issues.⁵⁹

[...]

7.2.3. Case-law of the Deputy-Commissioner for Minority Rights of Hungary

7.2.3.1. Background

According to some media reports and complaints lodged with the Office of the Commissioner for Fundamental Rights, from 2015 at least 80 Hungarian citizens (mainly families) belonging to the Roma minority could not depart for Canada from the Budapest Liszt Ferenc International Airport irrespective of the fact that they had valid travel documents and air tickets. The airline company denied the boarding to them as a result of the pre-boarding screening and questioning that was performed off the record, by officials of unknown affiliation and most of the times in front of fellow passengers which rendered the victims subject to public humiliation. They also complained about not having received proper information about compensation for denied boarding and the ways to file complaints. In addition to the Office of the Commissioner for Fundamental Rights, many of the victims also submitted complaints to the Hungarian Equal

⁵⁸ More information about the institution is available at <https://www.ochrance.cz/en/>

⁵⁹ More information about the institution: <http://www.ajbh.hu/en/web/ajbh-en/>

Treatment Authority (equality body) and sought legal advice from an NGO, the Legal Defence Bureau for National and Ethnic Minorities.

The Deputy Commissioner for the Protection of Minority Rights decided to prepare a general comment on issues related to the pre-boarding screening of international passengers at airports from a human rights perspective for several reasons. As the result of the investigation it has been revealed that several stakeholders concerned in this case fell outside of the mandate of the Deputy Commissioner but may be willing to accept recommendations in order to avoid human rights violations. Furthermore, the Deputy Commissioner is aware of similar cases of Hungarian victims which occurred in the international airports of Vienna and Brussels, while the direct flight to Canada from Budapest has been relaunched this summer.

7.2.3.2. Concerns in relation to the protection of minority rights

The reason behind the pre-boarding passenger control practice introduced in several European airports is that if the passenger is turned back by the Canadian border control authority supervising immigration to Canada (Canadian Border Services Agency – CBSA) due to the lack of proper documentation or failure to fulfil the entry requirements, the airline concerned is obliged to arrange their transportation back to the country of origin and could be fined up to 3200 CAN \$ per passenger. The practice of the Canadian authorities induced the airline companies to try to screen out at the airports of departure those passengers whose entry to Canada would be probably refused by the CBSA.

The pre-boarding screening on the Budapest International Airport was performed by the BUD Security Ltd, a company providing security services and owned by Budapest Airport Plc, based on a service contract between them and the Canadian Air Transat airline company. The employees of the security company checked the documents of the passengers heading to Canada as well as interviewed them about their personal circumstances including questions related to their employment, financial background (income, real estate), family relations in Hungary and in Canada, purpose of travel and the financial resources allocated for the travel. If it was obvious that the passenger would fail to fulfil the entry requirements to Canada, the security officer recommended the airline company to deny the boarding to the passenger concerned. In case of any doubts, the security officer asked for clarifications from the representative of CBSA present on the spot and made their recommendations based on that.

The decision on denied boarding in each case was made solely by the Canadian airline company.

The Canadian Air Transat airline, upon the request of the Deputy Commissioner, confirmed that according to the relevant Canadian laws they are only required to make sure of the passengers having valid and complete documentation needed to enter Canada, they are normally not required to actively investigate the intentions of passengers for travelling, their means of financial support while travelling or their risk for illegal migration. However, the airline company argued that the pre-boarding screening performed by their local partners (in this case the security company of the airport) and the representatives of the CBSA deemed necessary after several dozens of Hungarians applied for asylum upon arrival to Canada by a direct flight operated by them and another company in the summer of 2015. Relevant legal provisions were not referred at all.

According to the complaints, the security officers did not introduce themselves neither did they claim authorization to perform such screenings, besides, they did not inform the passengers about the purpose and the consequences of the questioning, e.g. the denial of boarding. Concerning the pre-boarding screening of the passengers performed by the security company based on the service contract with the Canadian airlines, it has been revealed that such contractual obligation which includes screening of passengers by the means of questioning and observation with the aim to prevent illegal immigration attempts totally lacks a legal background.

Consequently, in relation to the pre-boarding screenings of air passengers of Roma origin heading to Canada performed at the place of departure several human rights concerns have been raised: the potential violation of the right to fair procedure, the right to remedy and eventually the failure to respect human dignity as well as the principle of equal treatment.

7.2.3.3. Standards, guidelines and best practice

First of all, rules of pre-boarding screening processes of air passengers should be clearly set out in the form of a written protocol and include safeguards which guarantee the right to fair procedure for everyone. The person performing the screening shall wear a name badge, introduce themselves and state their affiliation, furthermore, shall inform the passenger about the purpose, legal basis and the consequence of the procedure. All passengers travelling with

the same flight shall be screened in accordance with the rules of the procedure and exactly the same way in all cases in order to avoid any allegation of discrimination. All circumstances of the screening and the people involved shall respect the human dignity of the passengers.

Then, in case of denied boarding, the passengers shall receive the decision as well as the information about the available remedies and compensation in written form, both in English and Hungarian language. The document shall include at least the name of the company as well as the employee performing the screening, the airline company concerned, the formal denial of boarding with reasoning based on facts and the legal background (e.g. Canadian laws on entry requirements), the available remedies in case of denied boarding and complaints mechanism concerning the performance of the screening procedure. Besides, the passenger rights, the basic rules to claim compensation and the designated national enforcement body under Regulation [EC] 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights shall be covered, too.

All the guidelines mentioned above are of crucial importance in pre-boarding screenings of certain groups of air passengers by the relevant authorities of the country of destination but performed at the place of departure. Irrespective of that the passengers travel from the territory of one country to another, from one jurisdiction to another, their human rights such as the right to fair procedure, the right to remedy and their human dignity shall be protected and respected by all stakeholders without discrimination on any ground.

7.2.4. Pending cases and the latest developments

The outcome of the investigation of the cases discussed in Chapter III was presented in a General Comment issued by the Deputy-Commissioner for Minority Rights of Hungary in June 2016. Thanks to the broad media coverage, several new complaints have been lodged with the Office of the Deputy-Commissioner and other cases have been identified, too.

Since during fall and winter, no direct flight operates between Hungary and Canada, passengers travelling to Canada have to take connecting flights in other European airports. Recently, Hungarian citizens belonging to the Roma minority who have submitted complaints were rejected boarding to Canada in the airports of Brussels, London and Paris. In these cases, the passengers started their journey and were checked-in in Budapest, then were

rejected boarding to a flight to Canada right before the gates at another European airport. The procedures were quite similar to the pre-boarding screenings, the security officers neither introduced themselves nor claimed authorization to perform such screenings, besides, they did not inform the passengers about the purpose and the consequences of the questioning, among others, the denial of boarding. Furthermore, translators were not provided and all the passengers were returned to Budapest airport without informed consent and information about the ticket reclaim procedures. In some cases, elder passengers with health problems and children had to wait several hours without water and food at the airport after they were rejected. The tickets were not refunded in any of the cases. When the passengers claimed for a refund, the travel/ticket companies informed them that since they had all the necessary documents to travel to Canada and lacked the formal evidence of being rejected to boarding, the price of the ticket will not be repaid.

Due to the recent developments, this issue was put on the agenda at several European meetings. The practice of pre-boarding screening at the airports was discussed by the representatives of the European equality bodies at the European Network of Equality Bodies (EQUINET) working group meeting on 10 May 2017.

The aim of the Operational Platform for Roma Equality ("the OPRE Platform") - coordinated by the Council of Europe (CoE) with members such as the European Union Agency for Fundamental Rights (FRA), EQUINET and the European Network of National Human Rights Institutions (ENNHRI) - is to enhance closer co-operation between national and international bodies working in the field of the protection of Roma rights. At the 4th OPRE Platform meeting, held in Paris on 15-16 May 2017, the cases discussed here were presented in order to inform the national human rights institutions and equality bodies and seek international cooperation to investigate them. As an outcome of the meeting it was agreed that national bodies, the Office of the Commissioner for Fundamental Rights of Hungary, the French Defender of Rights, the Belgian UNIA (Interfederal Centre for Equal Opportunities) and the Equality and Human Rights Commission of Great Britain will initiate procedures to investigate the Hungarian complaints concerning the airports of Brussels, London and Paris. These procedures are under preparation.

Between 31 May – 3 June 2017, at the 13th plenary meeting of the Ad hoc Committee of Experts on Roma and Traveller Issues (CAHROM) of the Council of Europe, the issue was

also raised, unfortunately without the Canadian Embassy representatives who did not attend the meeting despite of the Council of Europe's invitation.

8. Cultural autonomy of national minorities

In 2019, the Ombudsman for Minority Rights in Hungary issued two significant documents about the enforcement of the rights related to the cultural autonomy of the national minorities: General Comment No. 3/2018 on the enforcement of the cultural autonomy of the nationalities in public service media broadcasting and the General Comment No. 4/2018 on the enforcement of the cultural autonomy of the nationalities in the field of cinematic art and film production in Hungary.

In these General Comments, Elisabeth Sándor-Szalay elaborated professional recommendations and guidelines to facilitate the effective enforcement of nationality rights, in particular nationality cultural autonomy in the operation of both the public service media providers and the bodies responsible for cinematic art and film production.

8.1. General Comment No. 3/2018 on the enforcement of the cultural autonomy of the nationalities in public service media broadcasting (Executive summary)

The relation of nationality communities and the media enjoyed a special attention in 2018: the Minority Ombudsman had started a comprehensive study back in 2016 about the enforcement of nationality rights, which was, at the same time, a follow-up review of the ombudsman's media study published in 2004. In the recent years the nationality MP, the nationality advocates and also the representatives of the national self-governments of the nationalities have raised concerns several times about the problems related to the nationality programs in public service media broadcasting. The Minority Ombudsman also received concrete complaints in the context of outsourcing the production of nationality programs and the reorganisation of the studios. Visits in the counties also proved that the local problems connected to nationality media are similar to the ones indicated on national level.

In the framework of the comprehensive study, the Minority Ombudsman compared the present situation with findings of the nationality media study published in 2004 and she also examined in details the actual realisation in these days of the public service media provider's obligations related to the nationalities. In the first phase of the follow-up study, the Minority Ombudsman set up – on the basis of the information received from the national self-governments of the nationalities – the problem-map of public service nationality media broadcasting. Based on the above, she requested written information from the director general of the Media Service Support and Asset-management Fund (MTVA). In the summer of 2017 – in the next phase of

the study – she organised a roundtable discussion in the Office of the Commissioner for Fundamental Rights about the enforcement of nationality rights in public service broadcasting for the purpose of exploring the current situation of nationality public service media and to discuss the potential solutions to the problems identified. In addition to the written request, in 2017 and in 2018 she also had personal discussions with the executives of public service media. To place the evaluation of the Hungarian nationality media situation into international context, the Minority Ombudsman reviewed in details the country reports issued by the Advisory Committee of the Council of Europe’s Framework Convention for the Protection of National Minorities concerning the findings and the recommendations related to the nationalities’ access to media and the enforcement of nationality rights in the media, both in terms of Hungary and the neighbouring countries.

In the General Comment prepared on the basis of the study, the Minority Ombudsman established that the legal regulation of the field is well-developed and the problems and concerns explored in the study are primarily related to the practical implementation of the regulations and to the operation of the institutional system. Actually the special factors related to the character of the media and to the wider social environment are not always taken into account in practice, in particular regarding the scheduling of broadcasting times of nationality programs, the technical accessibility of receiving high quality broadcasting as well as the expressed demands and wishes of the relevant communities. In line with that, the General Comment’s focal points are the coordination and cooperation between the nationality communities and the management of the public service media holding, the media-image formed of the nationalities, the infrastructure, organisation and the financing of nationality media, technical and organic access to nationality programs, as well as the question of the absence of a comprehensive strategic concept of the nationality public service media.

Based on the above, due to the priority importance of the study topic and the necessary potential amendments in the regulation, the Minority Ombudsman recommends that a real dialogue on the merits should be started between the management of the public service media holding and the representative bodies of the nationalities living in Hungary in the interest of reviewing the situation, examining the merits of the problems raised by the nationalities and the discussion of the potential solutions. Furthermore the Parliament’s committee of the nationalities living in Hungary should review – with the contribution of the leaders of national

self-governments of nationalities and of the involved experts – the present situation related to public service media broadcasting.

Findings:

Public service media play a crucial role in developing the mentality of conscious and well-informed citizens, thus in transferring democratic values based on the fundamental human rights.

It is in particular important in the case of nationality communities to maintain an intermediary tool that can timely reach a wide scale of the majority of the members of the target group, transferring in a barrier-free way the specific information needed for the preservation of cultural patterns and for practical everyday use. It's role is especially important in our country, where the members of nationality communities do not live in single blocks within the country and the messages to be transferred are diverse.

With account to the above, the State has a triple obligation concerning public service media broadcasting – and with its nationality content:

- the legislative bodies should provide the framework of legislation and the guarantees in line with the Fundamental Law and the constitutional traditions of Hungary, and the institutional system responsible for implementing the above should be set up;
- the public service broadcaster of radio and television should grant the professional and high level production of nationality programs in line with the above requirements and professional standards, in close, continuous and constructive cooperation with the affected people;
- the supervisory bodies should guarantee the lawful and professional operation of the institutions and the enforcement of the regulations, by involving the affected persons into the process.

In the year 2004, the media report of the minority ombudsman focused on the lack of adequate legislation and the absence of guarantees. In this respect, there has been a serious development in the past decade: the Hungarian legislation is now in line with the international standards.

The general regulatory framework connected to the media representation of the nationalities is in line with the applicable international requirements and recommendations, indeed, in many respects it provides more than the expected level, therefore the Minority Ombudsman holds that the lawmaker only has to implement some fine-tuning of the system of legal guarantees.

The problems and concerns found and presented in the General Comment are primarily related to the practical implementation of the laws and the operation of the institutional system. The Minority Ombudsman has found that in practice the special factors connected to the nature of the wider social environment are not always taken into account and evaluated, resulting in anomalies concerning the content of minority programs, their broadcasting time schedules, their technical accessibility or the proper channelling of the needs and explicit requests of the relevant communities of the nationalities.

8.1.1. Coordination and cooperation

From among the problems and deficiencies found, the most important one is undoubtedly the lack of constructive and real dialogue between the management of the public service media broadcaster and the elected bodies and officials of the nationalities. It is the cornerstone and an important element of all the recommended measures that they should be planned, elaborated and implemented by way of real consultations and cooperation between the Duna Media Service Co., the Media Service Support and Asset-management Fund (MTVA) as well as the national self-governments of the nationalities, their association and the Parliament's committee of the nationalities living in Hungary. Creating effective and successful cooperation between the parties would, in itself, be a significant step towards solving most of the problems.

8.1.2. Media image

The public service media broadcaster is obliged to present the members of the nationality communities living in Hungary in a diverse way, transferring the values of such communities.

The communities expressed as a criticism that the relevant magazines provide an ethicising image of the nationalities: they usually present the folk traditions of the communities while they fail to speak about those members of the communities who are active in contemporary arts, science or the public affairs. Concerns may also be raised with respect to the programmes made for the members of the majority society and reinforcing stereotypes instead of presenting

the real values of the nationalities. Just as in the commercial media, in public broadcasting, too, only the problems of the nationalities are handled as “news” and they do not present positive content in the adequate extent and proportion. Thus the members of the majority society get a distorted picture of the nationalities and the results and programs of the nationalities do not gain enough space in the media.

The Minority Ombudsman holds that in order to have the contents preferred by the members of the nationalities presented in a more remarkable way in the public service media, it would be indispensable that the representatives of the nationalities express their needs, requirements and expectations explicitly, clearly and in a documented manner towards those who produce the programs, including the management of the public service media broadcasting holding. This would guarantee the accountability of public service media for the quality of nationality content in their programs.

8.1.3. Infrastructure, organisation and financing

The transformation of the public media system started in 2010 had a significant impact on the previous system and practice of producing and broadcasting nationality programs. Although the organisational reform undoubtedly had some positive results in producing nationality programs, the adaptation to the new organisational framework necessarily raised some practical issues that are experienced by the affected minorities as problems.

Due to the elimination and the transformation of the formerly operating regional nationality studios and professional workshops as well as because of the connected layoffs, the staff members are overwhelmed and there is threat that these organisational units gradually turn to “news-producing factories”, although in the past they were real centres of keeping and nurturing the cultural identities of the nationalities concerned. It may imply that the topics of regionalism, the situation and the problems of the countryside and as a whole the aspects of public service might gain less attention.

The reorganisation of production, the closing down of former studios, layoffs and outsourcings cause merging the boundaries of producing TV and radio programs, there are less resources allocated to production, which may necessarily result in too much load on the staff members as well as the decreasing quality of the nationality programs produced.

Although the outsourcing of programs for external companies had, on the one hand, a positive effect of improving the technical conditions of production in many cases (e.g. modern digital equipment, studio equipment etc.), but this does not outweigh the remarkable negative effect that the companies involved in the outsourcing are profit-oriented ones and their primary concern is making money rather than supporting the safeguarding of the cultural identity of the nationality concerned.

In this context, the Minority Ombudsman emphasizes that the operating conditions of the Pécs studio should be significantly improved in the near future as in the long run the present conditions pose a huge risk concerning high quality work.

The indication in a single budgetary line of the resources allocated to nationality public service media in the annual budget of Hungary as well as its independent indication within the budget of the public service media would greatly support the practical implementation of planning, execution and transparency.

8.1.4. Technical access and viewing habits

Based on the principle of the need to take into account the special requirements of nationality communities, the complaints by the national self-governments of the nationalities are justified about the unsuitability of the broadcasting time slots of the programs targeting nationality communities. Programs broadcasted in the morning are not accessible by the wide audience, and the repeated changes of broadcasting times does not allow the members of the community to get used to any regular viewing time of the programs targeted to them. The accessibility of repeated broadcasting on the Duna World channel is again problematic as it is only accessible via cable network or satellite, but not through ground-based broadcasting. Although the accessibility of the programs through the internet is a good technical solution, we need to count on the fact that the members of the primary target group of public service media are the older generations who had been socialised by watching traditional TV channels.

Nationality radio programs are still broadcasted on medium-wave or UHF frequencies that can only be received in unstable quality with the radio sets presently available. Thus the reception of these programs by the target audience is limited due to technical reasons.

The Hungarian audience typically prefers programs broadcasted on the FM frequency. It is not by coincidence that almost all of the Hungarian language public service and commercial radio stations broadcast on the FM frequency. Taking this into account, the broadcasting of nationality programs on medium wave is a negative discrimination of the nationality communities as compared to the rest of the society.

The plans of MTVA for the future may adequately address most of the above concerns: if the inclusion of the program of MR4 Nationality Radio within the multiplex of digital broadcasting means that it will be accessible on FM frequency, this development would be undoubtedly worth welcoming and supporting.

8.1.5. The absence of a comprehensive concept

Among the long term and strategic concerns related to the situation of nationality public service media, the lack of a comprehensive concept on nationality public service media is in particular important. Although the management of public service media have showed some degree of readiness to implement a complex approach to nationality content in the media, unfortunately no comprehensive concept have been discussed and elaborated so far in cooperation with the representatives of the minority communities.

According to the Minority Ombudsman, this concept should focus on the following questions and issues:

- a) The nationalities living in Hungary are constituent elements of the State, thus the programs and news of the nationalities should be fitted into the context of the Hungarian society as a whole, rather than presenting them as isolated phenomena or ethnographic curiosities. This approach should be enforced both in the programs produced in nationality languages for the members of the relevant minority communities and also in the general programs targeting the members of the majority society.
- b) Programs produced in the mother tongues of the nationalities are the most important tools of communication in the minority language – securing the preservation of national cultural identity – in addition to speaking within the family and education in the minority language. These programs can only fulfil the above role if they are broadcasted regularly in the same time slot, at the times suitable for the members of the minority community and if they are technically accessible.

- c) A nationality media concept should necessarily address the recognition that the workshops, studios that produce nationality programs fulfil a much more important role than being only a local radio or TV studio in the countryside. These nationality studios are, in most of the cases, intellectual hubs for the relevant nationality or nationalities that offer a chance for the local and regional intelligentsia to keep and manifest their nationality identity. This is why it is particularly important to secure – in a manner consulted with the elected bodies of the concerned nationalities – the long term, stable and foreseeable conditions of operation of nationality studios and editorial staffs in terms of the materials and personnel.
- d) It is also important to guarantee the further training of nationality program producers and the training of their new generation.
- e) The programs produced by the nationality studios also document phenomena of ethnography, of the mother tongue or of traditions that qualify as last-minute value-saving, thus enriching the Hungarian culture with irreplaceable treasures. However, this treasure-safeguarding role may only be fulfilled by continuously guaranteeing the digital archiving, using the most up-to-date technology, of the nationality programs made in the past years and produced today.

Professional recommendations:

Based on the above, taking into account the primary importance of the topic addressed in the General Comment and the needs as well as the possibilities to amend the relevant regulations, the Minority Ombudsman recommends the following:

- 1) Real and substantial dialogue should be started between the management of the public service media broadcasting holdings and the representative bodies of the nationalities living in Hungary for the purpose of providing an overview of the situation, examining the merits of the complaints raised by the nationalities and discussing the potential solutions.
- 2) The Parliament's committee of the nationalities living in Hungary should provide an overview – with the contribution of the heads of national self-governments of the nationalities and of the relevant experts – of the present situation of public service media and

- a. participate in settling the situation and in the preparation of the changes to be initiated by the executives of public service media broadcasting holdings for the purpose of implementing the General Comment;
 - b. consider initiating the amendment of the Media Act in order to grant special organisational and budgetary independence for the editorial department in charge of the production of nationality programs;
 - c. consider initiating the amendment of the Media Act for the purpose of setting up consultation fora for the dialogue mentioned under section 1 above;
 - d. consider initiating the amendment of the Nationalities Act for the purpose of a more remarkable provision of the independent organisational and budgetary basis of the production of nationality public service media programs (also required under the presently applicable law), with special regard to guaranteeing that the resources allocated to nationality public service media should be indicated in an independent budgetary line within the relevant title in the Act on the central budget of Hungary;
 - e. consider initiating the amendment of the Media Act in order to qualify the Association of National Self-Governments of the Nationalities (ONÖSZ), as a priority delegating body, to have an unconditional delegation right into the Public Service Body.
- 3) The executives of Duna Media Service Nonprofit Zrt. and the Media Service Support and Asset-management Fund (MTVA) should provide an overview – by continuously operating the proposed consultative fora and by taking their opinion and proposals into account – of the present situation of public service media and
- a. elaborate, by involving all affected parties, the comprehensive and long term concept related to providing nationality content in the media;
 - b. implement the measures necessary for maintaining and developing the professional quality of nationality media programs, in particular by providing the optimal level of the material and personal conditions of programme production and by reforming the method of financing;
 - c. prepare a comprehensive survey on the content-related work of the production bases in Pécs and Szeged, and consider the necessary structural reforms that might be necessary on the basis of the survey findings;

- d. take the necessary steps for creating financial transparency;
- e. implement the necessary measures to allow for tracing the potential nationality content of all broadcasted programs;
- f. elaborate an internal quality assurance system to regularly and anonymously monitor the professional satisfaction level of the affected staff members;
- g. organise regular professional meetings with the participation of the authors of nationality media programs and the representative leaders of the nationalities to discuss the current issues of producing nationality media programs as well as their development concept;
- h. consider the development of cooperation with the relevant institutions in order to include in the curricula of journalist trainings and further trainings an element on the importance of nationality-related content, equal opportunities and integration;
- i. promote the takeover and broadcasting of media content from mother countries as well as the dissemination in the mother countries of nationality media content produced in Hungary.

8.2. General Comment No. 4/2018 on the enforcement of the cultural autonomy of the nationalities in the field of cinematic art and film production in Hungary (Executive summary)

In the year 2018 the Minority Ombudsman elaborated a document examining a special aspect of the enforcement of the cultural autonomy of the nationalities: this General Comment reviews the cultural autonomy of the nationalities in the field of cinematic art and film production in Hungary.

The Minority Ombudsman issued this General Comment for the purpose of exploring the complex situation of the enforcement of the rights of the nationalities, in particular the cultural autonomy of the nationalities in the field of cinematic art and film production in Hungary.

Movie is the most versatile tool for artistic self-expression, and at the same time it may directly form the attitude of the society due to its wide-scale, well-organised and long-lasting publicity, thus it plays a significant role in shaping the relations within the society. Furthermore, the freedom of art and the independence of artists are democratic principles to be respected by all State institutions.

The Minority Ombudsman's study covered not only the summary of the measures aimed at facilitating the production, dissemination and preservation of nationality-films and at presenting the values of cinematic art of the nationalities; it also explored the tools and opportunities for active self-representation of the nationality communities. In this framework, it lists the challenges faced by the authors of nationality cinematic workshops, the distributors and the safe-keepers of films in the course of securing, exercising and enforcing the relevant rights, and at the same time it presents the domestic and international good practices revealed.

This General Comment is in organic interrelation with the General Comment No. 3/2018 on the enforcement of the cultural autonomy of the nationalities in public service media broadcasting. The two documents together present the today's situation and the potentials as well as the social mechanism of action of the two most important fields of nationality self-representation in terms of forming the community and the society.

During the study, the Minority Ombudsman provided a follow-up of the findings of the study carried out in 2010 by the parliamentary commissioner of nationality and ethnic minorities, comparing them to the present situation. The study also provides a detailed analysis of the

legislative environment applicable to the production, support, distribution and archiving of nationality cinematic art as well as the relevant practical experience by exploring the values of nationality cinematic art movie industry in Hungary. In the course of the study, the Minority Ombudsman obtained information by way of requesting the affected parties in writing: she asked information from the government actors, public administration bodies and public service providers engaged in producing, distributing, archiving and supporting nationality films, and she also studied the documents available in the area including the relevant domestic law and Union law, international treaties, recommendations as well as the results of scientific research in the field concerned.

In the study, the Minority Ombudsman reviewed the following thematic fields:

- defining the scope of nationality content;
- defining the works of nationality cinematic art;
- presenting works of nationality cinematic art;
- the state of nationality film-festivals;
- registration and archiving works of nationality cinematic art, the possibilities of research;
- institutional background, infrastructure;
- guarantees and the transparency of the financing environment.

The Minority Ombudsman did not find any structural problem related to the State's mandatory duties related to nationality cinematic art and film production, however, she identified several difficulties that affect the area, including the production, distribution, safekeeping or other utilisation of works of cinematic art.

On the basis of the findings of the study, in the General Comment, the Minority Ombudsman puts forward professional recommendations and presents guidelines in principle for the purpose of developing the production, distribution and the safekeeping of works of nationality cinematic art as well as for the more effective enforcement of collective nationality rights connected to nationality films.

With account to the primary importance of the field examined in the General Comment as well as to the potential amendments of the regulations, the Minority Ombudsman formulated some concrete proposals.

By way of the proposals contained in the General Comment, the Minority Ombudsman called upon the Parliament's committee of the Hungarian nationalities and the government actors, public administration bodies and public service providers engaged in producing, distributing, archiving and supporting nationality films to act in cooperation and to review – by involving and requesting opinion from the leaders of national minority self-governments – the legislative and the financing environment of nationality film production and cinematic art, and to consider forming a common position about the amendment of the legal regulations and the system of supporting the movie industry to meet the needs and the interests of the nationalities living in Hungary.

9. National Human Rights Institution protecting national minorities

In accordance with the Paris Principles, national human rights institutions have a broad mandate to protect and promote human rights in their countries. Every national human rights institution developed their own working methods tailor made to the political, social and cultural context. In order to provide solid basis for international advocacy, the Deputy-Commissioner for Fundamental Rights of Hungary implements wide array of activities supporting national minorities on local and national level. This chapter is intended to showcase examples of communication tools used as well as the annual reports summarizing these local and national activities.

9.1. Statements

9.1.1. Communication of the Minority Ombudsman on the International Holocaust Remembrance Day (January 27, 2018)

In 2005, the United Nations General Assembly, by unanimous decision, declared the date of the liberation of the Auschwitz death camp in 1945, the 27th of January, as the International Day of Remembrance for the Holocaust Victims. The moral duty of all of us is to commemorate the victims, but our common responsibility is to teach and sensitize the next generations to human rights.

World War II had deeply rooted social and historical antecedents and the events occurring in the era of the Holocaust illustrate how can a society turn from the toleration of isolated human rights violations to the massive and systematic extinction of the lives of millions.

For too long time, the Roma have not been mentioned among the victims of Holocaust. Compensation for victims and the development of a memory culture – such as the adoption of a memorial day, the creation of memorials and the birth of scientific research – are the result of several decades of work, in which the work of Roma and Sinti activists and artists plays a major role. Losses and the silence of European Roma and Sinti communities have led to an international Roma movement launched in the 1970s to focus on the subject of the Roma Holocaust and the compensation of victims – these goals have been finally achieved over several decades.

In today's world, increasing intolerance and xenophobia, and the unreasonable fears of people and communities blamed to have a set of values contradicting the values of the majority society can create dangerous processes in European societies. In Hungary, we also find a tragic example of processes that have caused our fellow citizens to lose their lives due to their ethnic/national affiliation. The prevalence of online and offline hate speech can be regarded as the forerunner of the murders of Roma people committed during 2008-2009, as well as of the dozens of attacks against Roma committed in this period.

The importance and necessity of the teaching of the Holocaust has been explicitly stated in several international human rights documents in recent decades, and the United Nations Organization's Guidelines and Recommendations on human rights education advocate the incorporation of anti-racist and intercultural elements into education.

As the ombudsman for the protection of the rights of national minorities, I issued in October 2017 a general comment on the role of education on the Roma Holocaust in shaping the attitude of the society. The document covers the analysis of the domestic regulatory environment of holocaust education, the examination of the appearance of the Roma Holocaust in formal and non-formal education, the related domestic ombudsman activities and the presentation of international and domestic good practices. The work was also greatly assisted by a professional roundtable discussion with the topic's experts. The resolution states that the quality education of the Roma Holocaust can become a tool in Hungary that can not only help Roma and other communities to live up to their right to freely confess and to preserve their identity as laid down in the Fundamental Law, but also to develop and to strengthen the value system based on respect for human rights.

9.1.2. Statement of the Deputy Commissioner for the Right of National Minorities on the Day of National Minorities (December 8, 2018)

It was 26 years ago, on December 18, 1992 that the General Assembly of the United Nations Organization adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Commemorating this decision, which was a milestone from the aspect of international law and for society too, the Day of National Minorities has been celebrated on December 18 every year since 1995. In addition to the European Charter for Regional or Minority Languages, which was adopted by the Committee of Ministers of the Council of Europe in 1992, this UN declaration was the first comprehensive

international document which specifically called the attention of the states to the protection of the identities of national minorities as a value to be held in high esteem. It made provisions, among others, on the right of national minorities to their own culture and education in their respective mother tongues, on their meaningful participation in the decision-making on matters affecting the national minorities, as well as the possibility for them to keep contact with their mother countries freely and across borders.

The process of recognizing the rights of national minorities in international legal instruments continued in 1994, by the Framework Convention for the Protection of National Minorities adopted by the Committee of Ministers of the Council of Europe, which plays a critical role among the international mechanisms that are available in Europe for the protection of national minorities. During the control of the implementation of the provisions set out in the convention, the Advisory Committee that was entrusted with the task of monitoring established such frameworks and standards of interpretation which are regularly and increasingly often quoted by other international organizations and institutions in making their decisions.

As the deputy commissioner for the rights of national minorities and as a member of the above-mentioned Advisory Committee, I find it important to stress that the fundamental rights of national minorities are the indispensable building blocks of democracy. Almost all the general fundamental human rights have their respective special national minority aspects: the violation of the right to dignity may often be put down to the presumed or actual nationality of the injured party, the right of national minorities to the use of their mother tongue or the cultivation of their national identity are closely related to the freedom of speech and expression, while the right to national minority education is the special sphere of the enforcement of the fundamental right to education and culture, which is also ensured in the Fundamental Law of Hungary.

Act CLXXIX of 2011 on the Rights of Nationalities stipulates the following as a fundamental principle: each national minority is entitled to exist and survive as a national community. In order to ensure this, the individuals who belong to the national minority communities have their own rights, and the communities themselves have cultural and political rights for the cultivation and preservation of their national cultures and identities as well. For practicing democracy, the establishment of national minority self-governments is an important form of exercising national minority rights, which ensures the national minorities the possibility of collective participation in

public life. Thus, the extent of rights ensured to disadvantaged or simply, minority groups is an important measure of the level of democratic development of a society.

Thus, on the Day of National Minorities, I would hereby like to greet all those citizens of Hungary who belong to one of these national minorities, including those who cultivate both their national minority and Hungarian identities.

9.1.3. Statement by the Commissioner for Fundamental Rights and his Deputies on the International Day against Homophobia and Transphobia (May 17, 2018)

On May 17, 1990, homosexuality was deleted from the Diagnostic and Statistical Manual of Mental Disorders by the World Health Organization (WHO). This means that from this day, sexual orientation which is different from the mainstream does not qualify as a disorder.

According to the decisions adopted by the Constitutional Court, gender identity and sexual orientation are the constituent parts of the multicolored human personality, a characteristic feature that is at the core of one's personality, is unchangeable, on the grounds of which no one should be discriminated against. This is guaranteed by numerous laws both in Hungary and all over Europe. Still, it is very important to commemorate this day each year, all the more so because unfortunately, the research findings indicate that the members of sexual minorities still often encounter discrimination, verbal or physical abuse and they suffer from the everyday manifestations of prejudice on a painfully high number of occasions as well. This is why it comes as no surprise that many conceal their identity and frequently live in hiding and fear, even from the people of their immediate environment or their work colleagues. For example, the research findings of the European Union Agency for Fundamental Rights have shown that as many as 67% of those concerned do not disclose their sexual orientation in front of their peers and teachers. However, hiding and prejudice create a vicious circle: until the members of the majority society are confronted with the different sexual orientation or gender identity of the persons who live right next to them, who work or study with them, who cure or teach them, they may only have a simplified view to confirm their prejudice rather than seeing reality in its full diversity.

This means that the existence of clear statutory frameworks in itself is not sufficient: this is well illustrated by the fact that the majority of the victims of abuse do not turn to the authorities or state institutions for legal remedy or support. It is in this spirit that we should take further efforts

to win and strengthen the confidence of the affected persons, to create such a safe and liveable environment where sexual orientation is not a stigma but only one feature of the multicolored personality of these persons - although an important one with regard to the right to human dignity.

9.1.4. Communication of the Minority Ombudsman on the International Mother Language Day (February 21, 2018)

At the initiative of UNESCO, on 21 February each year, we celebrate the international mother language day. In 1952 in Bangladesh, which was a part of Pakistan at that time, the Urdu language was declared the only official language. Since Bangladeshi's mother tongue is not Urdu, but Bengali protests and demonstrations have begun. In a major demonstration organized on 21 February in Dakka, the violent action of the police led to five deaths. On Bangladesh's proposal, the United Nations declared this day as the international mother language day to commemorate the event. More than 6,000 languages are spoken on Earth, about half of them are at risk. Of the endangered languages, two languages spoken by native people die out every month. Although the process of extinction of languages seems unstoppable, UNESCO considers it important to point the world's attention to this phenomenon.

As a deputy ombudsman in charge of defending the rights of nationalities living in Hungary, I consider this day to be of paramount importance, as it puts linguistic diversity in the spotlight. There are many nationalities in our country who do their utmost to preserve and care for their mother tongue for the survival of their own identity. In Hungary, the Fundamental Law guarantees that the nationalities living here have the right to use their mother tongue, to use individual and community names in their own language, to cultivate their own culture and to teach in their mother tongue. This constitutional right is regulated in detail in the Act on the Rights of National Minorities. The Act safeguards the right to celebrate family events and related ceremonies in the mother tongue of the persons belonging to nationalities and the right to register their names and the names, surnames of their children according to the rules of their mother tongue on official documents; the right to learn, cultivate, convey, and participate in education in their mother tongue. In their connections with public authorities, such as judicial and administrative proceedings, the relevant procedural laws ensure the right to use the mother tongue. In the National Assembly, the nationality representative and the

nationality advocate - as well as the representative of the local government - may use their mother tongue. In addition, the law provides for the publication of municipal decrees, announcements and forms in the mother tongue of the national minority, as well as the names of the public offices and the indication of locality and street names in the mother tongue.

The international mother language day is a great opportunity to raise awareness of the variety of national minority languages spoken in our country, as well as raising public awareness of the importance of linguistic and cultural diversity and language learning.

9.1.5. Communication by the Ombudsman for the Rights of National Minorities on the occasion of the European Day of Languages (September 26, 2018)

At the initiative of the Council of Europe, we celebrate the European Day of Languages every year on 26 September. As the Ombudsman for the Rights of National Minorities in charge of defending the rights of Hungarian nationalities, I consider this day to be of paramount importance, as it sets the linguistic diversity of our continent into the spotlight.

The nationality communities in Europe, including Hungary, can do their utmost for the survival of their own identity by preserving and caring for their mother tongue, teaching their mother tongue and teaching in their mother tongue. Europe's colorful language kaleidoscope consists of 225 native languages, 24 official EU languages, 60 regional and minority languages, and many other languages spoken by people from other parts of the world. The European Day of Languages is an excellent opportunity to raise awareness among European citizens about the variety of languages in our continent and to raise public awareness of the importance of linguistic and cultural diversity and language learning.

Globalization, as well as the deepening of European integration and increasing mobility, are all factors in which European citizens are, in their everyday life, increasingly confronted with the fact of linguistic diversity. It is worth knowing that at least half of the world's population is bilingual or multilingual, in Europe this is a common phenomenon among members of nationality communities. Bilingualism has many advantages: it simplifies learning more languages, makes thinking more sophisticated, and promotes relationships with other people and their culture. In addition, bilingualism and multilingualism also provide economic benefits: those who speak multiple languages are more likely to be employed in the labour market, and multilingual businesses are more competitive than the monolingual ones.

The European countries that signed and ratified the European Charter for Regional or Minority Languages adopted by the Council of Europe in 1992, including Hungary, have undertaken to protect the linguistic rights of certain minority communities living in their territory, which is a key element in ensuring the education of national minorities at different levels. On the European Day of Languages, I must point out that encouraging the use of native language by nationalities, increasing the number of our multilingual or multilingual compatriots and linguistic diversity, in general, are invaluable advantages for the whole society in all areas of life.

9.2. Annual reports of the Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities

9.2.1. Annual report of 2014

Introductory remarks

Following my appointment as Deputy Commissioner responsible for the protection of the rights of nationalities in October 2013, this is the second time that I have the honour of providing a report for the Parliament and the general public about my activities and the situation of the rights of nationalities in Hungary. The year 2013 was in more ways than one a period of transition, and not yet a full year of activities for me. 2014, however, was the first full year that I have the opportunity to report about.

The principles and values that I regard as important concerning the rights of nationalities are upheld in an impeccable way by the colleagues at the Secretariat, in close cooperation with the staff of the Department for Nationality Rights, both when processing individual petitions and when conducting system-wide examinations. I firmly believe, and it is my professional opinion that the perpetuance and prosperity of our nationality communities is to the benefit of the entire public, including legislators and legal practitioners. The nationalities that have been part of Hungarian society since historic times need to be treated in an integral way in every situation of life, be it positive or negative: when they are living their everyday lives without interruption and conscious of their nationality identity, but also when their lives are filled with problems or burdens, or when they are living in miserable circumstances, or require protection or support by the Deputy Commissioner precisely because of their nationality identity.

The protection system established for nationalities following the change of regime, including its current institutional framework, is an important value that entails obligations. It obliges its

creators and its addressees to maintain a psychological climate which is indispensable for the historically developed, organic and valuable coexistence of our thirteen nationality communities and the majority society. As Deputy Commissioner, it is my duty to take part in this process with all available tools at my disposal: if necessary, by praise, and if it is not avoidable, by constructive criticism. This is the principle that guides my work when I examine individual cases or general issues of special importance, and when I am representing the Hungarian experiences of nationality rights issues on the international plane.

What follows is a description of some of the most important elements of the work of the Deputy Commissioner.

The Deputy Commissioner responsible for the protection of the rights nationalities in the unified ombudsman structure

2014 was the first full year where the protection of the rights of nationalities was guaranteed by a deputy commissioner who was expressly elected by the Hungarian Parliament as deputy commissioner. The transition phase of 2012-2013 is thus over, as 2014 already meant a year of independent work planning for the Deputy Commissioner within the unified ombudsman structure. The Deputy Commissioner's scope of action in this system (be it in cooperation or autonomous) is defined by the Fundamental Law and Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter: CFR Act).

According to the second sentence of paragraph 3 of Article 30 of the Fundamental Law, the Deputy Commissioner shall protect the rights of nationalities living in Hungary. The tasks of the Deputy Commissioner are defined in more detail by Section 3 (2) of the CFR Act. According to this provision, the Deputy Commissioner has tasks which are connected to (and support) the competences of the Commissioner regarding the rights of nationalities, and tasks which require the Deputy Commissioner to act individually.

Supporting the tasks of the Commissioner, the Deputy Commissioner – according to Section 3 (2) points a) (first recital), b) (first recital), c), d), and e) of the CFR Act – shall regularly inform the Commissioner of her experience regarding the enforcement of the rights of nationalities living in Hungary, shall draw the attention of the Commissioner to the danger of infringement of rights affecting nationalities living in Hungary, may propose that the Commissioner for Fundamental Rights institute proceedings ex officio, shall participate in the inquiries of the

Commissioner for Fundamental Rights, and may propose that the Commissioner for Fundamental Rights turn to the Constitutional Court.

According to Section 3 (2) points a) (second recital), b) (second recital), f), g), and h) of the CFR Act, the Deputy Commissioner acts individually when informing the institutions concerned and the public of his or her experience regarding the enforcement of the rights of nationalities living in Hungary, when drawing the attention of the institutions concerned and the public to the danger of infringement of rights affecting nationalities living in Hungary. It is also the task of the Deputy Commissioner to review the Government's social inclusion strategy and monitor the implementation of its objectives concerning the nationalities living in Hungary. The Deputy Commissioner may also propose the adoption or the amendment of legislation regarding the rights of nationalities living in Hungary. Furthermore, the Deputy Commissioner shall promote, through her international activities, the presentation of the merits of domestic institutions related to the interests of nationalities living in Hungary at international level (as well).

It is apparent that the Deputy Commissioner is endowed with only a portion of the possibilities of the Commissioner, and its individually exercised powers mostly encompass powers of observation, evaluation and awareness-raising (notwithstanding the power to propose amendments to legislation).

According to the Fundamental Law, the Commissioner is entitled (and obligated) to inquire into any violations related to fundamental rights, that come to his or her knowledge, or to have such violations inquired into, and to initiate general or specific measures to remedy them. By contrast, the Deputy Commissioner responsible for the protection of the rights nationalities is also required to protect these rights while the Fundamental Law does not grant her rights of inquiry or a right to take measures. As the safeguarding of the rights of nationalities is, according to the Fundamental Law, one of the tasks of the Commissioner as well, and as according to the CFR Act this task requires special attention, the Deputy Commissioner is responsible for fulfilling the tasks relating to nationalities' rights expressly addressed to it by the Fundamental Law insofar as the Deputy Commissioner has the possibility to substantively influence the protection of the rights of nationalities within the unified ombudsman structure. The seeming contradiction flowing from the partial overlap of the powers and tasks of the Commissioner and the Deputy Commissioner can however be resolved if the Commissioner

safeguards nationality rights in a way that allows for the obligatory participation of his Deputy in such activities.

The legislator aimed to lend weight to the participatory rights of the Deputy Commissioner by a legal safeguard: Section 3 (3) of the CFR Act prescribes that if the Deputy Commissioner makes a proposal that the Commissioner for Fundamental Rights should institute proceedings ex officio or that he should turn to the Constitutional Court, the Commissioner for Fundamental Rights shall be bound to act accordingly or to inform Parliament in the annual report of the reasons for his or her refusal to do so. The importance of this legal safeguard is undeniable, even though it only creates an ex post obligation of justification. In terms of everyday protection of nationality rights, a continuous willingness to cooperate – based on a common set of values, mutual professional recognition and trust – is even more important. In this regards, 2014 proved to be an exemplary year.

According to the bylaws of the Office of the Commissioner for Fundamental Rights in effect in 2014, the Deputy Commissioner is responsible for the preparation of the work of the Commissioner concerning nationality rights; to this end the Deputy lays down strategic guidelines and may adopt investigation guidelines and positions of principle. The bylaws ensure that the Deputy Commissioner may act in a delegated capacity as well, regarding powers delegated by the Commissioner. As the Deputy Commissioner responsible for the protection of the rights nationalities had also become entitled to set up a nationality rights working group (which has rights of consultation and initiative), and to maintain a separate extended Secretariat, the Deputy Commissioner was able to have substantive influence on the work of the Department of Nationality Rights (which was established in 2014, and falls in administrative terms under the direction of the Secretary General of the Office).

The Deputy Commissioner as the head of professional activities concerning the rights of nationalities

Professional coordination by the Deputy Commissioner can essentially be divided into three phases. At the beginning of the year, she has informed the Department for Nationality Rights of her professional manifesto, the values she considers fundamental and her essential expectations. Every week she has held a case discussion meeting where she has defined the fundamental elements and methodology regarding individual cases dealing with nationality rights (after hearing the opinion of all colleagues), and has regularly scrutinised and affirmed

various draft reports and other documents, including interim postal correspondence related to cases and examinations, before submitting said documents for signature by the Commissioner. The Deputy Commissioner has participated in giving opinions on draft legislation relevant for the legal regulation of the rights of nationalities, she has provided opinions either on the actual draft text or on internal working documents dealing with said drafts. In 2014, the Deputy Commissioner has provided professional coordination regarding nearly 250 working documents.

‘Internal’ activities of the Deputy Commissioner within the Office of the Commissioner for Fundamental Rights

In 2014, the Deputy Commissioner has made use of the possibility to draw the attention of the Commissioner to occurrences, trends or tendencies which could in the future have an effect on fundamental rights protection provided by the Commissioner on five occasions; this type of signalization takes place without an actual proposal for an investigation by the Commissioner.

Concerning the rise in number of those living in poverty and social exclusion, the Deputy Commissioner has inter alia emphasized that the European Commission, in its evaluation of the 2014 national reform- and convergence programme, has devoted special attention to the worsening social situation, the reason of which was deemed partly to be economic stagnation, and partly the weakness of the social protection system. The Commission has ascertained that the proportion of those living in poverty or social exclusion amounts to a third of the total population, and among those affected, the ratio of children and Roma is disproportionately high: ‘Roma are particularly affected by unemployment, discrimination in the labour market and poor living and health conditions, with 60 % living without basic amenities.’ Reacting to the Commission’s assessment, the European Council gave a recommendation to emphasize that Hungary shall ensure that the goals of the National Social Inclusion Strategy are taken into account in all policy areas, as dealing with poverty requires additional efforts; the European Council seems to link the growth of poverty with the not sufficiently effective nature of social inclusion measures, and it is well known that in Hungary, the probably most important social integration problem is that of the social exclusion of Roma.

The Deputy Commissioner has also called attention to the regressing nature of nationality education (as shown by statistical data), and the trends behind this phenomenon: Roma

nationality education has shown constant increase for a longer period, but the tendency has changed, beginning with the school year of 2012/2013. This process became apparent at the same time as the financing system was reformed: from school year 2012/2013 onwards, the additional financial contribution for nationality education is only available for non-state school maintainers. The minister for education evaluated the aforementioned connection by stating that according to the ministry's experiences, in previous years, the organization of Roma nationality education was in many cases motivated by the possibility of obtaining additional funding, and that it is thus likely that the decrease in students engaged in Roma nationality educations is the consequence of the reform of the underlying financial scheme (i.e. normative subsidization replaced by the financing of activities; the discontinuation of the 'nationality normative subsidy'). The Deputy Commissioner has organised education forums during her working visits to Békés and Baranya Counties, the experiences gathered from the forums point in the same direction.

The Deputy Commissioner has emphasized that if the availability (or the non-availability) of additional subsidies is a determining factor in the number of students taking part in nationality education, this brings up an important question: namely, how can the right of children and parents belonging to nationalities to choose the place of education prevail? This question is given more weight by the fact that one of the fundamental requirements of the legality of the separation of students in order to organize separate nationality education is that this happens at the initiative and request of the parents concerned; if this is not the case, the separation must be deemed illegal.

The Deputy Commissioner has also drawn the attention of the Commissioner to the difficulties related to the content of national public education textbooks regarding the Roma nationality; as the unbiased, fact-based teaching of history and social studies is one of the most important elements in promoting norms of coexistence, multiculturalism and the enforceability of nationality rights. According to previous research, content pertaining to the Roma nationality is underrepresented in textbooks. According to new research, the monopolization of the publishing of public education textbooks also leads to the fact that pupils learn even less about the history of the Hungarian Roma nationality than before, as the majority of the textbooks which remained on the official list of textbooks are problematic as regards both content and quantity.

Furthermore, the Deputy Commissioner has drawn attention to early school leavers in public education, which characteristically affects multiple disadvantaged children – with a large proportion of Roma among them. The phenomena of early school leavers is neither new nor unknown in domestic public education, but as a majority of the other Member States of the EU managed to take steps forward in this regard, in Hungary, the ratio of early school leavers has increased further. Early school leaving of pupils is first and foremost a consequence of their disadvantaged social situation, and mostly affects multiple disadvantaged Roma youths. Referring to statistical data, the Deputy Commissioner has emphasized the strong link between the degree obtained (or the lack thereof) and unemployment.

The Deputy Commissioner has also drawn the attention of the Commissioner to the street law project 'Utcajogász' of the group 'A Város Mindenkié'. In 2014, the Deputy Commissioner has made twelve recommendations for investigation by the Commissioner. All but one have been followed by ex officio investigations.

The Deputy Commissioner has recommended an investigation regarding the role that churches play in the life of nationalities, as religion is, for many communities, a source of national identity, self-realization and self-expression; still today, some churches are actively working for nationality communities first and foremost by preserving common (liturgical) traditions. The Deputy Commissioner has also pointed out that churches fulfil tasks related to education, social welfare and administration as well, and thus have a significant role in shaping social attitudes.

The Deputy Commissioner made a recommendation to investigate the state health system relating to premature births, with regard to the effectivity of the system's work in the prevention and management of the issue. The recommendation was made because while the birth-rate decreased significantly over the last one and a half decade, the ratio of premature births more or less stayed the same (and in the last year, the positive tendency of decrease in neonatal mortality rates has also changed). Today, the main reason for neonatal mortality is premature birth and low birth-weight. Pointing to research results, the Deputy Commissioner emphasized that one of the main reasons behind premature birth is poverty, which has a territorial aspect as well in Hungary.

The Deputy Commissioner has organized two working visits in 2014 to Békés County, which is one of the most colourful Hungarian counties from the point of view of nationalities. Here, during the 2001 census, almost 25.4 thousand individuals have stated that they belong to a nationality; the overwhelming majority expressed belonging to one of the thirteen legally recognised nationalities: 96% of these individuals belonged to the Roma, Slovak, Romanian and German nationalities. Based on the experiences of the working visits, the Deputy Commissioner has made proposals for ten ex officio investigations. These include investigations into nationality teacher training; summer childcare and child alimentation in a nationality institution; the situation of nationality public education in Békés County; the situation of nationality civil organizations in Békés County; the role of churches in managing nationality public education institutions in Békés County; rules regarding the preparation of the 'teachers portfolio' of nationality teachers which seemed to contradict language usage rights; the lack of representatives of nationality teachers in the leadership of the National Teachers' Chamber; the problem of changes in legislation affecting (among others) nationality textbooks; school-leaving examinations from nationality languages and a discriminatory differentiation regarding language exams obtainable at the language exam centres; and regarding the division of work between the two premises of a small-town school (which reinforced nationality segregation).

In 2014, the Deputy Commissioner has on one occasion recommended that the Commissioner turn to the Constitutional Court. This was based on the Commissioner's investigation regarding the establishment of joint self-government offices of nationality settlements, and the negative reply of the responsible minister. The Commissioner has pointed out that according to the rules of the Act on self-governments, settlements which have a population ratio of 7 nationalities above 20% may set up joint self-government offices under easier conditions, but the Act does not determine the procedural rules regarding the consent of the minister, thus there is no deadline for the processing of the request. The minister is not obliged to give reasons for his decision, and no legal remedy is available against the negative decision of the minister.

2014 – the year of parliamentary and local elections

2014 was election year, which the Deputy Commissioner has monitored closely, since nationality communities have for the first time had the opportunity to elect representatives to become members of the Parliament under preferential conditions. In case the preferential conditions were not met, they had the opportunity to send nationality advocates to the

Parliament, to become members of the Nationality Committee. In the 2014 elections, the first possibility remained a theoretic one as the preferential conditions were not met by the nationalities, meaning that currently, the thirteen nationalities can participate in the work of Parliament by way of their nationality advocates. In 2014, the nationalities were furthermore allowed to set up self-governments on three levels according to new regulations (partly aimed at reducing the possibility of misuse). The fundamental elements of the new regulation include: a reformed personal scope regarding nationality elections, the relevance of census data, the reformed appointment procedure, and the abolishment of the elector-system. The reformed rules are meant to ensure that representatives of the nationality communities can obtain local self-government mandates under preferential conditions (however subject to some stricter rules).

The 2014 national and local elections were implicitly affected by the fact that the personal scope of the Act on Nationalities has changed. The definition of 'nationality' according to the Act no longer contains Hungarian citizenship as a requirement. Rights and obligations of nationalities are subject to the condition that the individual in question considers himself a member of a nationality, and declares his identity as such in a way prescribed by the Act or related implementing acts. Based on census data, the abolishment of the citizenship requirement did not bring about any substantial change, as the members of the nationalities are usually Hungarian citizens. In the case of three nationalities however, citizens from of the mother country represent a significant ratio (Ukrainian 57%, Romanian 40%, Slovakian 12%).

According to Act CCIII of 2011 on the Elections of Members of Parliament, obtaining a parliamentary mandate was possible under preferential conditions for individuals who were nominees on the lists drawn up by the country-level nationality self-governments. From nationality lists, a mandate is obtained when the preferential quota of votes is reached, i.e. 0.27% of all votes submitted for national party lists. Bearing in mind data regarding the 2014 elections, this quota would have meant around 22000 votes. It is worth noting that Hungary has seven nationalities which have a total population of less than 8000, thus they would not have been able to meet the preferential conditions even if every single nationality group member (who had the right to vote) would have registered themselves in the nationality electoral roll and would have voted for the nationality list. According to the Act, any national minority which drew up a nationality list but failed to win a mandate by such list is represented

in Parliament by a nationality advocate. The nationality advocate may take office regardless of the number of votes submitted for the list drawn up by the nationality self-government, but is not entitled to exercise important rights which members of Parliament have: the nationality advocate is not entitled to vote in sessions of the Parliament, and may only speak in plenary if the agenda item in question may, according to the Committee of the Parliament, be relevant regarding the rights or interests of nationalities. The nationality advocate-system ensures the participation of nationalities in the work of the Parliament, but does not carry the same weight as a fully-fledged parliamentary representation. It should also be noted that the concept of 'agenda item relevant regarding the rights or interests of nationalities' is not well defined.

The election of the members of nationality self-governments in 2014 were only possible to be held in settlements where the number of individuals belonging to the nationality in question (according to relevant data from the latest census, based on voluntary answers regarding nationality identity) reached at least 25 – i.e. in settlements where the census has shown the existence of nationality communities. With this provision, the aim of the legislator was to rule out abuse of the system ('ethno-business'). However, tying these elections to census data may be problematic, as during the census (especially in small settlements), less people declared their nationality identity than was expected based on the real presence of nationalities in some settlements. On the contrary, in some larger cities and in some districts of Budapest, the census shows a large presence of nationalities – the realistic nature of this is questioned even by the country-level nationality self-governments themselves. In this regard it is important to note that although the majority of the population has chosen to make a declaration regarding nationality identity in censuses (2001 census: 94%; 2011 census: 85%), due to the voluntary nature of the declaration, the census data cannot be seen as an accurate depiction of the nationality population of Hungary. If we further add that in 2010, 2315 nationality self-governments were established, and in 2014 the number was only slightly less (2143), then it becomes clear that abuses probably did not cease.

An old-new element of nationality self-government elections is the 'transformed nationality self-government'. Local self-governments (excluding those of the metropolitan districts) may decide on transformation into a nationality self-government if more than half of the citizens recorded in the electoral roll in the locality are recorded in the given nationality's electoral register, and more than one half of the elected members ran as the given nationality's candidates at the

local municipality elections. These strict requirements foretold the fact that such transformations only happen in very small numbers. (To the best of our knowledge, only two such transformed nationality self-governments were established in 2014).

According to the new provisions, a preferential mandate was established: if at least fifty percent of the citizens recorded in the electoral roll at the time of the calling of the elections were also recorded in the given nationality's nationality register, and if none of the candidates of the given nationality obtained a mandate either at the election of mayor or on the individual list, it is necessary to determine the two thirds of the valid votes cast for the candidate obtaining a mandate on the individual list with the fewest votes. A nationality candidate who has a higher number of votes than the number of votes determined according to the method described above shall obtain a preferential mandate. However, the new electoral rules did not solve the previously existing problems of registration into the nationality electoral roll; it is still possible for anyone who has electoral rights in local self-government elections (and mayoral elections) to request to be registered into the nationality electoral roll provided they declare their nationality identity. The requirements were however made stricter in the sense that it is possible to utilize criminal sanctions regarding an individual who makes a false declaration regarding the fact whether he or she has been a candidate of a different nationality self-government in the preceding ten years. False declarations regarding knowledge of nationality language by the candidate still have no sanctions attached.

Under the new provisions, any registered association (apart from political parties and trade unions) that, according to its deed of foundation, is engaged in activities directly related to the protection and representation of the interests of a given nationality or to the cultural autonomy of the nationality may put forward nationality candidate. The possibility that the number of nominating organisations participating in the establishment of 'fake' nationality self-governments has risen cannot be excluded.

The Deputy Commissioner's working visit to Békés County (29-30.04.2014)

The Deputy Commissioner dedicated a working visit between 29-30.04.2014 to gathering first-hand experiences about the situation of nationality communities in Békés County.

At the Applied and Professional Arts Faculty of the Szent István University, the Deputy Commissioner has consulted with the dean regarding nationality teachers' education, and the

future of the institution. Consultation regarding the abovementioned issues also took place with the head of the Nationality and Foreign Language Department, and the head of the Study Office. They all agreed that in order to maintain nationality communities, well-trained nationality teachers are required, who are not only dedicated but are well versed in the nationality language – to guarantee this, the teachers would require strong financial support and legal guarantees by the state. Members of the faculty leadership voiced their concerns regarding the lack of a state-funded student quota and the threshold of the entrance exam. The Deputy Commissioner also met with Romanian, Slovakian, German, and Roma teacher students on campus, discussing their career outlook and the possible challenges and achievements of their future profession. On the afternoon of 29 April, the Deputy Commissioner visited the Slovakian Primary School, Kindergarten and Student Home of Szarvas, which is maintained by the National Slovak Self-Government. During her visit, the Deputy Commissioner awarded an ombudsman's medallion to the director of the institutions for his exceptional work in education and for his continuing efforts for the well-being of the Slovak community. At the school, the Deputy Commissioner met with students during various classes and extracurricular activities, and became reinforced in her belief that this institution is one of the fundamental pillars of the Slovak nationality community in Hungary. The director of the institution mentioned not only their successes but also some problematic issues (regarding summer childcare and child alimentation; some debates with the local self-government were also mentioned). At the end of the day, the Deputy Commissioner held a consultation with the heads of the country-level and the local Slovak nationality self-governments (in line with her general aim of maintaining continuous communication with nationality self-governments). Among other issues, the discussion focused on the possibilities of non-governmental organisations (including youth organisations), the relationship between the Slovak nationality and churches, and on experiences connected to operating nationality educational institutions.

On the 30th of April, the Deputy Commissioner visited the Békés County Government Office, where she met with education professionals (school directors, education officers of nationality self-governments, school district directors, members of the education directorate of the government office). The participants of the education forum evaluated the situation of nationality education in Békés County, including personnel and equipment, the legal framework, the tendencies of the last five years, and the role of the Klebelsberg Institution Maintenance Centre in the county regarding nationality education (in terms of quality and

continuity, and nationality education issues in the county connected to integration and segregation of pupils).

The Deputy Commissioner informed the participants of the forum about the practice of the ombudsman pertaining to Békés County, and about her fundamental general expectations regarding the organization and coordination of nationality education. The Deputy Commissioner, having regard to data received from the Government Office emphasized inter alia that public education in Békés will in the immediate future face a very serious equal opportunities challenge due to the growth in number of multiple disadvantaged pupils (among them a large proportion of Roma) in the region – this will have a determining effect on the future of the county. Analysing the data, the Deputy Commissioner has also pointed out that nationality education has partly become an element of selection mechanisms. Furthermore, she stressed that education authorities (just as any other organ of the state) must use their competences to their full extent, and in an efficient way.

In the afternoon of the same day, the Deputy Commissioner has organised a forum for civil society organisations operating in the county in the Slovak House (with assistance from a local Slovak organisation called 'Csabai Szlovákok Szervezete'). At the forum, the Deputy Commissioner has informed the civil society organisations about investigations concerning civil society organisations by the Office of the Commissioner for Fundamental Rights, and about changes in the relevant legislation and available grant possibilities; she has also summarized the work of civil society organisations in Békés County in the year 2013, based on data provided by the organisations themselves. The presentation was followed by discussion. The forum also provided good opportunity for Békés County civil organisations to voice their requests or complaints directly. The organisations reported, for example, problems with the financing of their work having regard to the changing regulations, and complained about rising administrative burdens. They have also stated that they face difficulties when trying to involve the youth more in their activities, and communication between organisations themselves is sometimes also problematic.

Working visit to Baranya County (29-30.09.2014)

The Deputy Commissioner has visited Baranya County – the most colourful Hungarian county from the point of view of nationalities – on 29-30 September 2014. The Deputy Commissioner

has visited the Gandhi Secondary School – the only Roma language-teaching nationality secondary school in Hungary – where she discussed with the leadership of the institution about successes and challenges of the everyday operation of the school, and about the mission of the institution. The school leadership informed the Deputy Commissioner about the insecure budgetary status of the school and about the need to rethink their role (switching from ‘elite education’ and preparation for higher education to prevention of early school leaving and guiding towards vocational education). The Deputy Commissioner also participated in a discussion class with final year pupils, aiming to get to know their future prospects; she experienced great insecurity.

Following the school visit, the Deputy Commissioner met with evangelic clergymen Dániel Peterdi and Zoltán Ócsai, with whom she discussed the activities of churches regarding nationality communities. They also touched upon the efforts made to conserve German and Croatian sacral traditions, and community-building and pastoration activities as part of the ‘Roma mission’. Successful local initiatives were analysed in detail, as the ongoing investigation of the Deputy Commissioner regarding churches also lays emphasis on mapping the integrative role of churches.

The Deputy Commissioner also held a lecture and a student forum at the Faculty of Humanities of the University of Pécs. The topics of the event were nationality education and the integration of Roma in Hungarian society. The forum dealt with important questions such as the role of nationality education in preserving nationality identity, voluntary assimilation of nationalities, and the worsening situation of the Hungarian Roma population (and its reasons). Following the forum, the Deputy Commissioner met with Ferenc Fischer (the dean of the Faculty), Zsuzsanna Gerner, Anna Orsós and István Blazsetin (the latter being heads of faculty departments dealing with nationality education: the Department of Romology and Sociology of Education, the Institute of Germanic Studies, and the Institute of Slavic Studies). The conclusion was that nationality teacher training is in danger due to the small number of students participating in nationality teacher education and to insecure career prospects. The participants drew the Deputy Commissioner’s attention to the fact that changes in the regulations of teacher training also affect nationality teacher training, and sometimes lead to problems. The Deputy Commissioner has also taken the first step in getting to know Roma Special Colleges¹: she met with two leaders of the Henrik Wlislöcki Honor Society. Director

Anna Orsós emphasized among others that the institution provides not only financial support for students, but also focuses on strengthening their Roma identity and community-building. Institutions referred to as 'special colleges' in Hungarian higher education terminology are most similar (yet not identical) to what are known as honor societies in the United States. They are focused on providing high-level additional training for their student members and encouraging self-learning and research, and usually focusing on community-building as well. Students are guided by mentors/tutors who are university lecturers and/or experienced students.

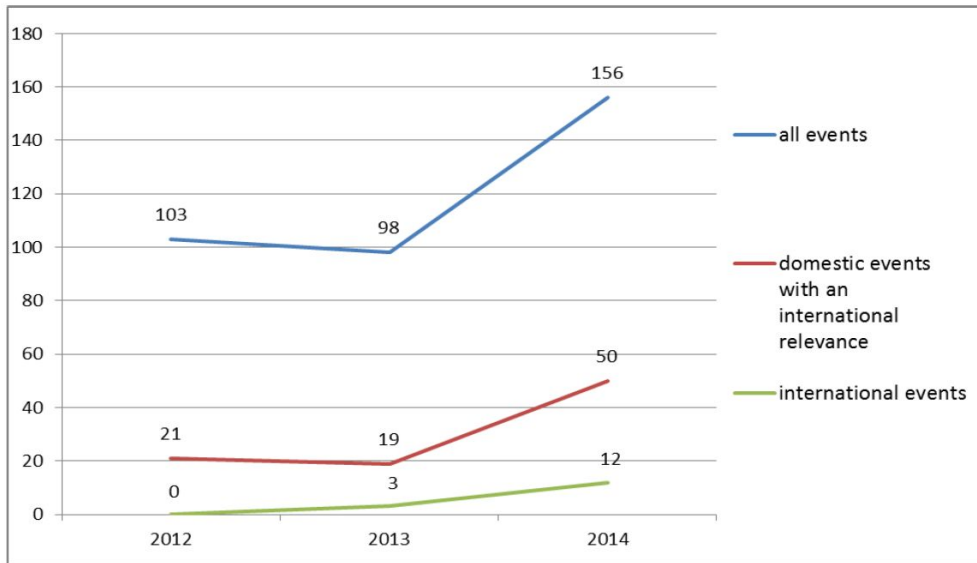
On the 30th of September, an education forum was organised with the assistance of the Baranya County Government Office: participants included officials from the education department of the Government Office, school district directors from the county, leaders of nationality secondary schools, and other education professionals. The topic of the forum was the situation of nationality public education in Baranya. Some participants noted problems with the publication of nationality textbooks, while others referred to the risks of 'mass' nationality education, leading to a shift in the balance between the identity-preserving and language educating functions of nationality education. Based on his experiences with multiple disadvantaged Roma pupils, the director of the Szigetvár School District drew attention to the importance of increasing the effectiveness of equal opportunities measures, as well as the need to strengthen vocational education, and a lack of corresponding state financing.

Communication, information-gathering, providing of information

Following the unification of the specialised ombudsman system, communication- and information-related activities became central elements of the work of the Deputy Commissioner. Important areas of this activity include professional discussions, and taking part in nationality-related events in an active (communication of information) or passive (gathering of information) role. When establishing the framework of these activities, the members of the Secretariat had to be aware not only of their limited personnel, but also of the fact that nationality rights represent a cross-cutting area of law, which encompasses various social sciences as well (such as sociology and ethnography).

In just under a year, the concept was born wherein the lost autonomous competences were replaced by a 'universal participant' role, which became the basis of communication- and information-related activities (and was deemed successful). The volume of information-related

activities did not decrease in 2014; on the contrary, their intensity grew even more as new elements were added. As a result, much of the work of the Secretariat of the Deputy Commissioner was related to information: gathering and providing information, and communication with stakeholders. The various domestic and foreign events and programmes in which the Secretariat participated (unrelated to actual investigations) are shown in the chart below.

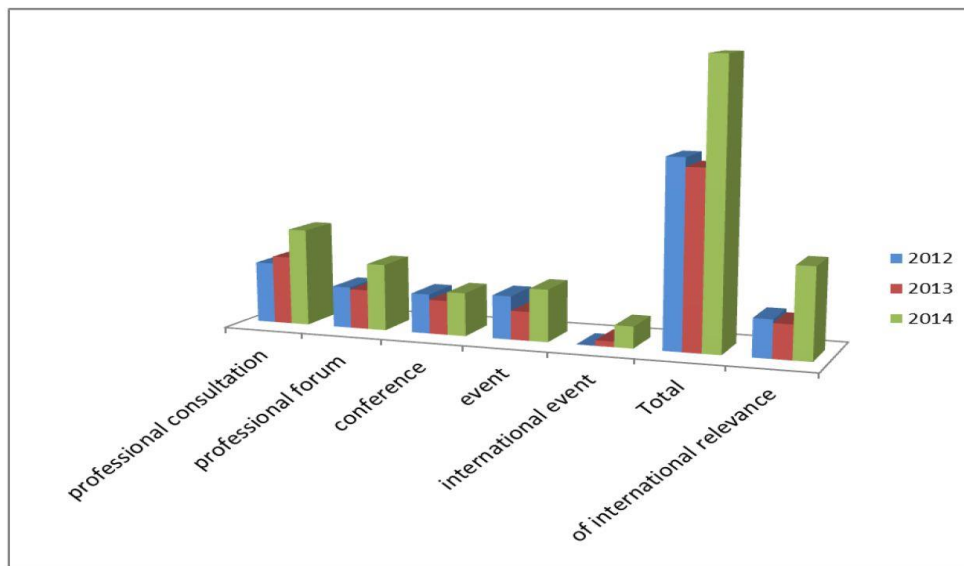


The number of events in 2012 and 2013 essentially remained constant, so it seemed foreseeable that this activity will remain at a stable level. However, in 2014 the members of the Secretariat participated in 60% more domestic events. The number of international events grew at an even larger rate, as the number of such programmes was 2.5 times more than in 2013. The largest shift, however, pertains to the third category: the Secretariat participated in international events abroad four times more often than in the previous year.

As for the reasons of the aforementioned growth, it is worth looking at the fields regarding which the changes happened. This is shown in the chart below with regard to key areas.

	2012	2013	2014
professional consultation	34	38	54
professional forum	23	22	37
conference	22	19	24
event	24	16	29
international event	0	3	12
Total	103	98	156

The significant increase was not due to a balanced increase in all fields of activity, with the exception of participation in international events abroad, which have quadrupled (the reasons will be further analysed later). What follows first is a visual representation of the growth.



The question arises: what was the cause of the overall growth, and will the trend continue in the coming years? First it should be noted that the Secretariat of the Deputy Commissioner has continued its work in 2014 under unchanged circumstances, i.e. there was no unusual, spontaneous increase in the number of professional contacts, forums or conferences. The change started internally: the Deputy Commissioner responsible for the protection of the rights

of nationalities has determined two fundamental problems and set out to solve them – in hindsight, it may be said that this effort was successful.

The first problem is connected to the realisation that the general information level of the public is low, and an ‘information deficit’ is perceivable. Members of nationality communities are able to get sufficient information about nationality rights and events via political organisations and civil society. However, cultural autonomy issues is for the most people an uninteresting area, whereas Roma issues are well known but are surrounded by prejudice and problems. The role of the Office in this regard is the communication and explanation of these issues, but this activity is often hindered. Reports delivered in individual cases and in ex officio investigations covering broader areas have always reached the persons concerned, but they have rarely been acknowledged by the wider public. Thus, working towards the aim of communicating nationality rights has had some effectivity issues. It also had to be acknowledged that the publicity of the ombudsman and his deputies is could be improved: it is indeed the individuals most in need of protection, with very low ability to advocate their own rights, who know the least about the ombudsman institution and its possibilities and competences. This is partly due to the severity of their individual problems, but also to the mostly passive behaviour of “intermediaries” (such as media, state institutions, etc.) which are only occasionally interested in the work, procedure and message of the Office.

The other identified problem relates to internal communication within the professional network and with other subsystems of society. It was often experienced that members of scientific think tanks or civil organisations active in the field, as well as decision-makers and practitioners in the state sector are – regardless of their exceptional knowledge and problem-sensitive approach – not in proper contact with each other, or communication is sometimes restricted to just one specific field or problem. This makes communication with the general public also more difficult. It is especially difficult to communicate complex sectoral policy issues in an way understandable for the public, especially where the communicator can expect almost automatic refusal (without reasoning) from the other party. The quality level of the public discourse was also hindered by the fact that discussion often did not focus on the proper issues: instead of rational reasoning, emphasis was laid on discontent, and the arguing parties did not recognize each other as equals entitled take part in the discussion.

Having regard to all of the above, the Deputy Commissioner has elaborated a long-term programme which encompasses attitude shaping and raising rights awareness, with the participation of the professional community. The first step in this regard was to determine the fields and the planned volume of communication and information-gathering and dissemination.

Discussions with members and co-workers of professional and advocacy organisations represented the backbone of activities: such meetings amounted to one-third of domestic events. In 2014, the Deputy Commissioner has met with all Secretaries of State and Deputy Secretaries responsible for nationalities and the Roma. She has also met with the most important civil organisations and has been in constant contact with the nationality advocates and the presidents of the country-level nationality self-governments. These consultations have provided invaluable information concerning political processes and relations, which proved invaluable for the strategic planning of the work of the Deputy Commissioner. Getting to know the activities of smaller – professional, cultural or societal – organisations was also quite important in order to achieve complexity and to strengthen everyday communication. During these meetings, numerous individual problems were discovered, and certain previously unidentified overarching tendencies affecting all nationalities regardless of size also became apparent.

Embassies representing the mother countries of nationalities, and cultural and research centres became key partners as well. The abovementioned inductive method of problem identification represented a new point of view, as mutual cognizance of various mechanisms or models for the safeguarding of rights allows for tools and methods to be implemented in domestic practice in the countries concerned. Useful lessons may also be drawn from a deeper knowledge and understanding of the historic and socio-cultural environment of the mother countries.

Apart from the aforementioned personal professional discussions (usually taking place behind closed doors), participating in professional and scientific events became an essential element of the toolbox of the Deputy Commissioner in 2014. The presence of the members of the Secretariat at forums and conferences (amounting to 39% of activities) meant in every case an active participation (i.e. taking part in discussions and representing the opinion of the Deputy Commissioner).

Participation at twelve foreign events also served the same goal, and at the same time also meant fulfilling an important legal obligation: according to Section 3 (2) h) of the CFR Act, the Deputy Commissioner shall promote, through her international activities, the presentation of the merits of domestic institutions related to the interests of future generations to the interests of nationalities living in Hungary. The Deputy Commissioner has fulfilled this obligation first and foremost by speaking at various professional conferences and workshops, and holding university lectures.

Thanks to good contacts, the Secretariat receives invitations to cultural events of various nationalities on a weekly basis. Apart from the Day of Nationalities which is relevant for all Hungarian nationalities, there are 24 national holidays or memorial days which are specifically connected to individual nationalities. Additionally, various localities and regions organise their own events as well – according to our estimate, nationality events in the country may exceed one annually. The Deputy Commissioner has attempted to honour as many invitations as possible, ranging from solemn commemorations to nationality balls. This activity (which amounted to circa 20% of the work of the Secretariat) is indispensable as it allows the strengthening of relationships and enhances intercultural awareness.

The public communication of the work of the Secretariat has also been reinforced: news items and announcements were published regularly, and the Deputy Commissioner has given numerous interviews in national and foreign media (partly during her official travels) regarding topical nationality-related issues. The members of the Secretariat have also held lectures throughout the country.

Special attention was given to the various meetings and discussions that took place in connection with the first autonomous investigation by the Deputy Commissioner. In the complex investigation looking into the relationship of churches and nationalities, the Secretariat got into contact with 18 traditional churches (by mail) and arranged 20 personal meetings. As these numbers suggest, the work connected to this inquiry was quite intensive during the year. It is quite positive that the Secretariat experienced an open and cooperative attitude on behalf of the churches. The topic is quite important and topical: cultural rights of nationalities can only be fully exercised as part of a community. For nationality communities, it is usually not only nationality self-governments (dealing with public affairs) but also state institutions, local self-

governments and non-state actors that facilitate access to cultural public services. Nowadays churches play a significant role in shaping social attitudes, and they often take part in the provision of public services in the field of education and social welfare, partly taking over responsibility for such services from the state. The Deputy Commissioner attaches special importance to initiatives by churches that concentrate on aiding those living in poverty or in sickness or those that are otherwise living on the periphery of society, in social exclusion. Numerous churches have made 'Roma pastoration' a part of their mission, utilizing significant resources; this phenomenon has become an important element in providing suitable, humane living conditions for those in need. The Deputy Commissioner had the opportunity to take part in various meetings and conferences where she consulted with professionals working in the field, and also met with members of the religious communities. In order to recognize the importance of missionary work and social services provided by the church, the Deputy Commissioner has proposed that the Commissioner for Fundamental Rights should honour József Lankó, the parish priest of Alsószentmárton with the *Justitia Regnorum Fundamentum* award in 2014. The recommendation was followed: with the award, the Commissioner recognized the decades long efforts of Father Lankó in helping thousands of Hungarians (including many Roma) living in deep poverty. (The investigation regarding the correlation of churches and nationalities will end in 2015 with a conference.)

In 2015, the Deputy Commissioner will endeavour to strengthen its communication- and information-related functions even further, with the continuing aim of shaping social attitude and raising rights awareness, involving also the wider professional community in its efforts. Communication based on personal presence and participation will remain an important tool, but electronic communication will be reinforced as well, as the digital world offers many fast, effective, and cost-efficient means of communication. This method is also the primary way to communicate with the youth in a more intensive way. The development of the content of the Secretariat's digital communication will take thus take into account the various target groups: children, pupils, university students, professionals and the general public should be provided with information materials of adequate depth attuned to their respective knowledge and needs. Yet personal participation remains indispensable – accordingly, the Deputy Commissioner and the members of her Secretariat will continue to lay special emphasis in activities related to shaping social attitudes regarding the nationalities living in Hungary, including professional communication as well as awareness-raising regarding vulnerable social groups.

9.2.2. Annual report of 2015

Introduction of the Ombudsman for the Rights of National Minorities

The present, 21st century composition of the population of Hungary is determined by the geographical location of the country, historical events dating back centuries, as well as European and world policy, current economic phenomena, and by series of the movement of individuals. The national minorities recognised in Hungary have a special place in this context. Twenty three years ago, in 1993, under the agreement of the society, thirteen minorities – based on their linguistic, national and ethnic status – constituting close to ten percent of Hungarian population, received in a separate act guarantees for the preservation of their self-identity and the development of their self-organisation.

Twenty years ago, in 1995, also as the sign of them being a state-constituting factor, the Hungarian legislator put the obligation of the highest-level protection of minorities and their rights into the hands of an independent public-law institution, the independent Ombudsman for minorities.

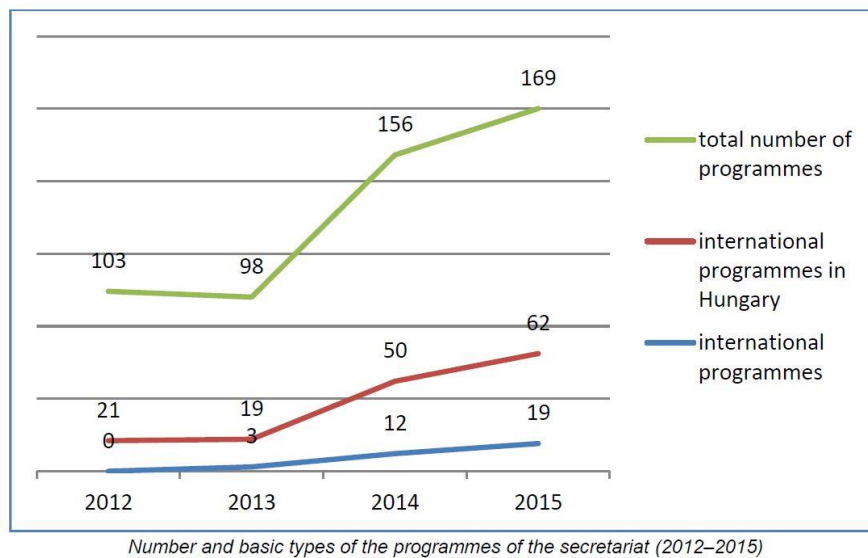
During the past two decades, there have been several steps of changes in the life and situation of the thirteen national minorities, the legal regulatory environment, as well as the nature and operation of the Ombudsman institution appointed for their legal protection.

2015 offered several lessons which emerged during execution of the tasks of the Ombudsman for the Rights of National Minorities: it confirmed my appreciation for the professional work of previous Commissioners for national minorities Jenő Kaltenbach and Ernő Kállai, and the conviction that their activities performed in this position and the results they achieved in the area of the protection of minority rights during their term in office are to be recorded and preserved in the appropriate form. At the same time, the experience of 2015 also reminded me that, in the interest of the efficient execution of tasks, more information should be communicated to the entire Hungarian society on the existence, situation and rights of the thirteen recognised national minorities, as well as on the role and legal protection tasks of the Ombudsman for the Rights of National Minorities, within the existing framework of legal regulations, but using novel devices and methods. My report below for the year 2015 is the summary of this work.

Elisabeth Sándor-Szalay

The activity of the secretariat of the Ombudsman for the Rights of National Minorities

In 2015, we celebrated the 20th anniversary of the Hungarian Ombudsman system and the commencement of our work. Back in the early 1990s, at the creation of the minorities act and the Ombudsman act, it became clear that a minority law system unique in Europe is being established and that the defence mechanism meant to safeguard it will be exceptional, as well. The uniqueness and virtues of the minority law system established in 1993 – new devices, new procedures and new institutions, the balance of state and civil role-taking – as well as the minorities' Ombudsman function and institution, emerging as part of the Ombudsman system established in 1995, was a rather honourable output of Hungarian public-law reality and the professional community preparing that. The knowledge and innovative force of the lawyers' generation of the time, their openness and special endeavour to protect the previously defenceless individuals and communities against the power – including the support of the international Ombudsman community – allowed for the kind of development as the result of which the activity of the Ombudsman for national minorities could become an influential element of Hungarian public-law reality.



The Ombudsman's system reorganised in 2012 was also built on this heritage, however, the independent position of the Ombudsman for national minorities ceased to exist. At present, the task of the Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities is to help the execution of the Commissioner's tasks related to national minorities.

Gathering and processing information, serving as the basis of all other activities, is the primary task of the Ombudsman for the Rights of National Minorities. The task of monitoring is rather complex: in connection with this, the Ombudsman for the Rights of National Minorities follows, collects and organises the information, news and studies related to the enforcement of the rights of minorities in Hungary, and parallel with that, those related to the life of national minority communities, their current situation and public life.

Within the framework of continuous liaising, the Ombudsman for the Rights of National Minorities and her colleagues attended professional forums, conferences and meetings, as well as different cultural events relevant to their activities in 2015 as well. This is well illustrated by the graph below showing the domestic and foreign programmes realised with the cooperation of the secretariat.

It is clear from the foregoing that the institution of the Ombudsman for the Rights of National Minorities has been developing continuously since its establishment on 1 January 2012. A close examination of the proportions of programmes in 2015, clearly illustrate the directions of the work of the Ombudsman for the Rights of National Minorities. As compared to previous years, the basis of the activity monitoring and evaluating the situation of national minority communities and checking the enforcement of legal regulations was constituted by the series of discussions, forums and conferences conducted with the members of professional and interest representation organisations, constituting 72% of the domestic programmes. Having in mind the widest possible circle of gathering information, the Ombudsman for the Rights of National Minorities kept in touch with all affected participants of national minority public life, looked for and organised connections with partners in charge of national minority legislation and enforcement of the law. During their meetings, they managed to reveal several individual problems, and the common elements of the conversations also made visible the tendencies which, regardless of nationality and number, affected several communities, however, had earlier remained invisible to the representative bodies. The activity consisting of attending events, which constitutes 17% of the work, is still indispensable in strengthening connections, and the best possible familiarisation with the culture of the individual domestic national minority communities.

In 2015, the Ombudsman for the Rights of National Minorities executed her informative and sensitising tasks characteristically through the “traditional” means of mediation – on-site

investigations, papers read at Hungarian and international, professional and scientific public events, lectures dispersing knowledge, interviews (in Hungarian and foreign newspapers and radio programmes, as well).

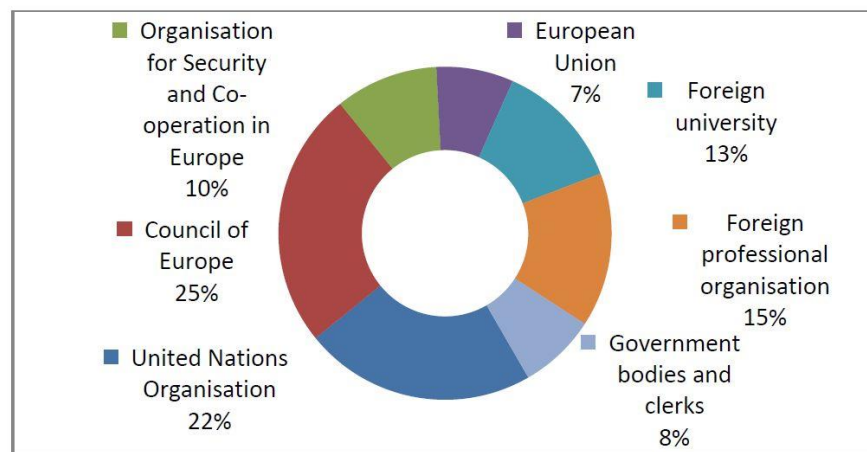
The unique character of media appearance of the activity of the Ombudsman for the Rights of National Minorities is to be emphasised separately. In Hungary, every national minority has its own, well-established and effectively working media surface – which offers reference points and universal sources of information primarily for the members of the given domestic community. With view to the special needs and possibilities of access of the special target group, instead of “mainstream media”, the Ombudsman for the Rights of National Minorities preferred appearance on domestic and international “alternative” surfaces reaching the national minority communities more intensively in 2015 as well.

Strong media interest followed every one of the conferences and round-table talks hosted and organised by the secretariat of the Ombudsman for the Rights of National Minorities. Through these events, the Ombudsman for the Rights of National Minorities managed to reach the “sectoral” media resources dealing with the actually related topic in addition to the national minority communities.

The Ombudsman for the Rights of National Minorities executed her work in close and harmonious cooperation with the Commissioner for Fundamental Rights in the year 2015 as well. It is to be emphasised that, since 1 January 2015, according to the modified organisational and operational rules of the Office of the Commissioner for Fundamental Rights, there has been a new distribution of work in the area of national minority rights, thus, acting in her transferred sphere of tasks, the Ombudsman for the Rights of National Minorities had more independence to execute her work. In the interest of securing a more effective performance of tasks, the Commissioner for Fundamental Rights transferred the right of issue of cases related to national minority rights in part to the Ombudsman for the Rights of National Minorities. With the help of this, on several occasions, the Ombudsman for the Rights of National Minorities independently issued calls aiming the elimination of endangerment situations, initiated measures and issued recommendations in the direction of the affected bodies.

In cases that did not allow for independent procedures to be conducted but application of the Ombudsman’s devices seemed necessary, the Ombudsman for the Rights of National Minorities performed an initiating, suggesting, “watchdog”-like role.

Continuous communication with international organisations, professional bodies, experts and representative organisations had outstanding importance during the secretariat’s work in 2015 as well, which is clearly indicated by the fact that of the 169 programmes of the Ombudsman for the Rights of National Minorities, there were 62 with international relevance, that is, 37% of all events. This form of liaising is not merely the completion of domestic activities: with regard to its complexity and specialised knowledge requirement, it could even be considered an independent portfolio. In 64% of the cases, the activities executed at the secretariat were in connection with the work of international organisations, characteristically within the framework of the expert-level cooperation and negotiations related to the operation and strategical planning of control mechanisms concerning those affected. The remaining 34% of liaising was work related to information servicing and “presenting the values of the domestic system of institutions” also declared by legal regulations. Characteristically this meant personal meetings and series of conference papers and university lectures.



Distribution of international relations according to partners (2015)

On the one hand, the Ombudsman for the Rights of National Minorities performs independent international activities in her own area, on the other hand, together with the Commissioner for Fundamental Rights, she steps up at forums where the condition of participation is accreditation as a Status ‘A’ national human rights institution.

As the representative of the national human rights institution, the Ombudsman for the Rights of National Minorities has participated in the work of the UN Human Rights Committee on two occasions during the year. She sent written comments to the 28th, spring session, in which she expressed her consent and support in connection with the report of the UN Minorities Forum accepted in November 2014, the topic of which was the prevention and management of violence and atrocities against minorities. Following this, at the 29th session, the Ombudsman for the Rights of National Minorities called the attention of Human Rights Council in a video message to the recommendations made in her report on the joint official check-ups in Miskolc and the measures affecting conditions of accommodation, the English-language resume of which was also received by those in the room.

The Ombudsman for the Rights of National Minorities helped the monitoring work of the international organisation on three other occasions. In March 2015, the United Nations Committee on the Elimination of Discrimination against Women investigated the progress Hungary has made in the execution of the recommendations worded in connection with the previous state report in the following two priority areas: the prevention and management of violence against women and the enforcement of women's right to self-determination concerning reproduction rights, with special respect to handicapped groups like women with disabilities and Roma women. The Ombudsman for the Rights of National Minorities indicated to the Committee that though the mass sterilisation of Roma women is not practiced in Hungary, given their handicapped situation, the chances of them falling victim to sterilisation executed without legal guarantees are greater. Based on the information received, the United Nations Committee condemned Hungary and repeatedly called upon it to implement appropriately the related recommendations.

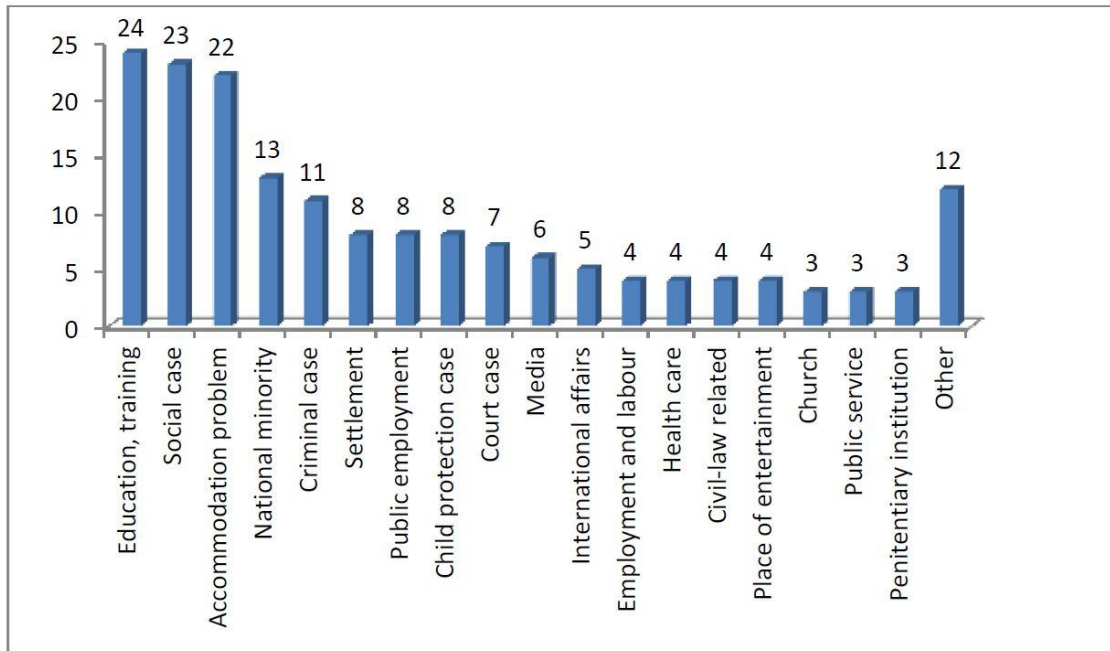
The Human Rights Committee of the UN prepared the monitoring procedure of Hungary with regard to the execution of the International Covenant on Civil and Political Rights in the fall of 2015, within the framework of which it compiled a series of questions for the government. During the course of this, the Committee took into consideration the statements of the thematic report submitted by the Ombudsman for the Rights of National Minorities, in which she presented the minority protection practice performed by the Ombudsman in the past 6 years, with special emphasis on still topical questions.

The next step of the monitoring procedure is receiving the government response, following which the Committee will evaluate the execution of the human rights obligations of our country, expected to take place in the first part of 2017.

The Advisory Committee on the Framework Convention for the Protection of National Minorities of the Council of Europe visited Hungary in December 2015, after the state report submitted by the government was processed. During the visit, the experts of the Committee met with the representatives of the government, the minorities and civil organisations working in the area both in the capital and the provinces. The Ombudsman for the Rights of National Minorities helped the work of the Committee with her thematic report summarising her work conducted in the field in the past 5 years and the English-language summary of the joint reports issued during recent investigations. The report of the Committee will be finalised in the first part of 2016, following which the government will have the opportunity to respond to the recommendations; the report will become accessible to the public together with the government response.

Main characteristic features of minorities rights cases

The wide spectrum and variety of complaints received by the Commissioner for Fundamental Rights and/or the Ombudsman for the Rights of National Minorities refers to the complexity of the national minority topic and the different problems of national minority communities. Complainants belonging to the Roma nationality most often talk about prejudices present in society, discriminative treatment, as well as severe social and accommodation problems in their submissions, while members of the other national minority community criticised mostly improprieties in connection with national minority cultural and educational rights. Complaints in connection with the activities and operation of national minority self-governments, the difficulties of cooperation between the local self-government and national minority self-governments of the settlement come from both Roma and other national minority communities. The variety of the topics and types of submissions is presented in the table below.



The types and topics of the complaints, submissions and ex officio investigations in the year 2015

Due to the lack of sphere of authority, the Commissioner for Fundamental Rights and the Ombudsman for the Rights of National Minorities could not provide citizens in need with material support in the year 2015 either. In case of complainants and families asking for help for their subsistence or the improvement of their life conditions – with special attention to the protection of children’s rights – they had the opportunity to provide detailed information on the allowances to be acquired under the present regulations, and within the framework of this, call attention to the bodies and institutions that can provide help and assistance to the families affected.

Some priority cases from the area of national minority rights

Complaints related to the co-decision license and institution maintainer tasks of national minority self-governments

One of the national minorities’ fundamental rights of outstanding significance is that they can form local and national self-governments. The aim of the operation of national minority self-governments is for the participation of national minority communities in public affairs, and the protection and representation of their interests to become more complete. National minority self-governments have reporting and agreement right in issues that are significant in the life of national minority communities (education, culture, language use, etc.). Several complaints have been received in connection with the operation and financing of national minority self-

governments. In addition to the fundamental right to national minority self-governance, several of these cases also affect the issues of educational self-governance of national minorities, with special regard to the restriction of national minority self-governments to agreement upon the appointment of the directors of state-maintained educational institutions serving national minority public education tasks.

Supporting the educational institutions maintained by the reorganised national minority self-government

The Act on the Rights of Nationalities, passed in 2011, reintroduced the institution of settlement-level national minority self-governments created indirectly, through reorganisation, the reorganised national minority self-government. Under the regulations in force, the creation of reorganised national minority self-governments is possible only under extremely strict (and thus existing exceptionally, very rarely) conditions. In their joint report, the Commissioner for Fundamental Rights and the Ombudsman for the Rights of National Minorities dealt with the severe financing problems of reorganised national minority self-governments.

The case affecting the regulation on educational segregation, isolation

In 2015 – just like in previous years – the Commissioner for Fundamental Rights and the Ombudsman for the Rights of National Minorities received several educational complaints that criticised the different forms of manifestation of segregated education. Of the segregated issues, we would highlight the report in which, related to the amendment of the Act on National Public Education, observations of theoretical significance were also made.

One of the points of the amendment of the National Public Education Act, submitted at the end of 2014, allowed the Government to establish in a regulation the special conditions of exceptions from the segregation ban in schools offering education and training committed to certain national minority, religious and ideological values. The Parliament passed the motion by adding that the government decree to be passed subsequently will have to be created on the basis of the authorising regulation, with special respect to the ban on unlawful segregation.

Social debate surrounding the amendment of the act and related to the interpretation of the ban on unlawful segregation, as well as a submission received in the meanwhile, called for the launch of the Ombudsman's investigation. The joint report of the Commissioner for

Fundamental Rights and the Ombudsman for the Rights of National Minorities on the rules of educational segregation was completed in 2015.

Self-government measures affecting segregated residential areas – the “Miskolc case”

The joint report of the Commissioner for Fundamental Rights and the Ombudsman for the Rights of National Minorities on the joint official controls performed in Miskolc and the measures of the self-government affecting residential conditions, completed in 2015, was one of the most significant cases with national minority relevance of the past year.

In 2014, civil legal aid organisations turned to the Commissioner for Fundamental Rights criticising in their submission the official control practice coordinated by the Security Guards of Miskolc Self-Government, executed jointly with other authorities and bodies, as well as the local regulation the control is based on.

The controls were executed in Miskolc segregates and ghetto-like streets and districts of low status, densely populated by mostly Roma minorities. Some locations were revisited by the authorities several times, and repeated controls were executed. Usually a larger number of colleagues of different bodies visited the real estate properties in question. During the controls, on occasion, members of the authorities looked into the fridges, the toilets and the bathrooms. According to the complainants, the residents of the districts affected by the control found the mass controls carried out by official persons jointly, on occasion repeatedly, expressly frightening and harassing.

Mass official controls, executed jointly but under various legal titles, brought up the suspicion of improprieties related to several fundamental rights. At the same time, with their report, the Commissioner and the Ombudsman for the Rights of National Minorities called attention to the impossible situation of the residential conditions of people living in the segregates, and its consequences. The Commissioner and the Ombudsman for the Rights of National Minorities submitted a list of recommendations to the bodies affected by the case, especially the Miskolc self-government.

In their recommendations, they requested – among others – that joint official controls be terminated and unlawful directions of local regulations be annulled. They also requested that they cooperate with other bodies in the interest of preventing evictions, developing an action plan for the management of the accommodation conditions of families that have become

homeless, and participating in the development of programmes on the elimination and prevention of re-emerging of urban segregates.

9.2.3. Annual report of 2016

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.

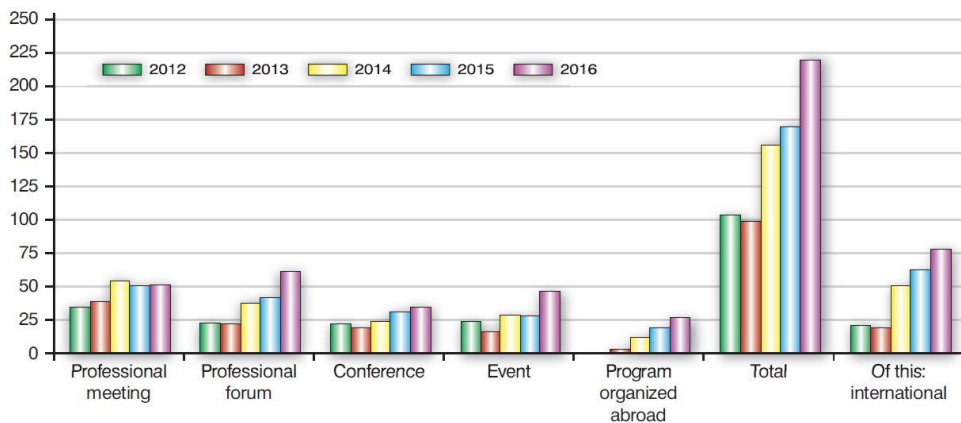
However, the efficient performance of tasks also involves the conveying of knowledge in several directions: on the one hand, the knowledge concerning life as a member of a national minority, the situation and rights of the national minorities, and on the other hand, on the role of the Deputy Commissioner 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

The activity of the Deputy Commissioner

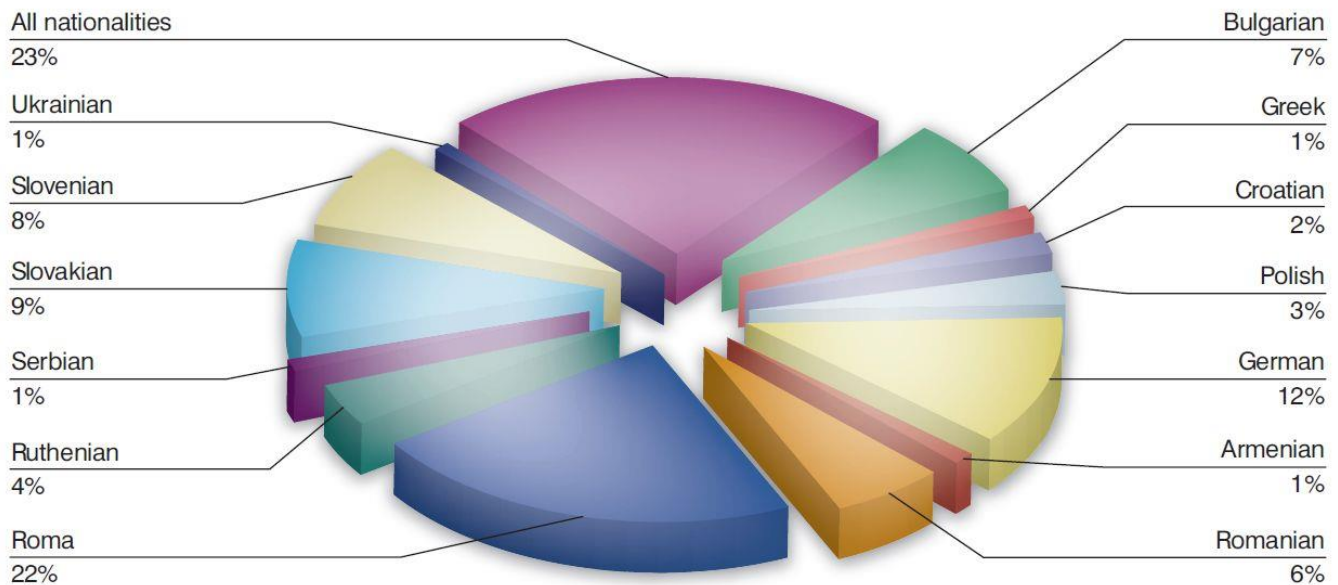
Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities Ms. Elisabeth Sándor-Szalay endeavoured to be present in the everyday lives of the national minorities in 2016 as well: she strove to follow, gather and process the information related to the enforcement of their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

Distribution of secretariat events by nationalities



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.

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.

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.

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.

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.

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.

Proposing and conducting investigations

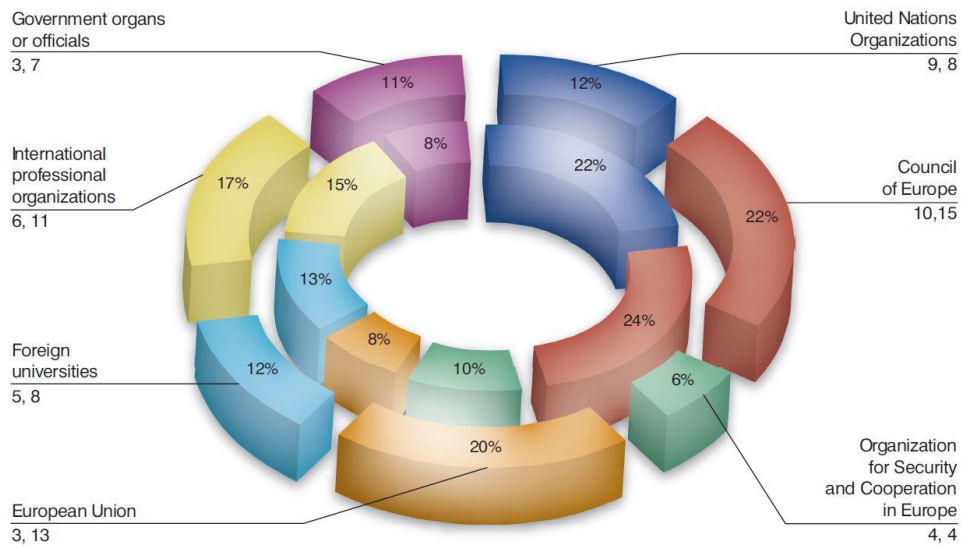
Besides the above, county visits were a less frequent but priority forms of liaising. The Commissioner and his deputies pay several-day on-site visits to a specifically selected county of Hungary on two occasions each year. The meetings and discussions of the Deputy Commissioner with the heads of the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

International actions

On the one hand, regular professional communication with the governmental and nongovernmental 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.

SYNERGIES OF NATIONAL AND INTERNATIONAL PROTECTION OF MINORITIES LIVING IN HUNGARY

The distribution of international relations by partners



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	55 th 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 Meeting on 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

SYNERGIES OF NATIONAL AND INTERNATIONAL PROTECTION OF MINORITIES LIVING IN HUNGARY

16. 06	Equinet	Strengthening the effectiveness of European Equal Treatment Legislation	Conference	Brussels, B
18-19. 09	Bundestag	Tagung der Vorsitzenden und stellvertretenden Vorsitzender der 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	5 th workshop with equality bodies	Task force meeting	Brussels, B
10-14.10	Council of Europe	AC FCNM 57 th Advisory Committee plenary session	Meeting of the Advisory Committee	Strasbourg, FR
15-18.11	Council of Europe	12 th 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

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.

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.

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.

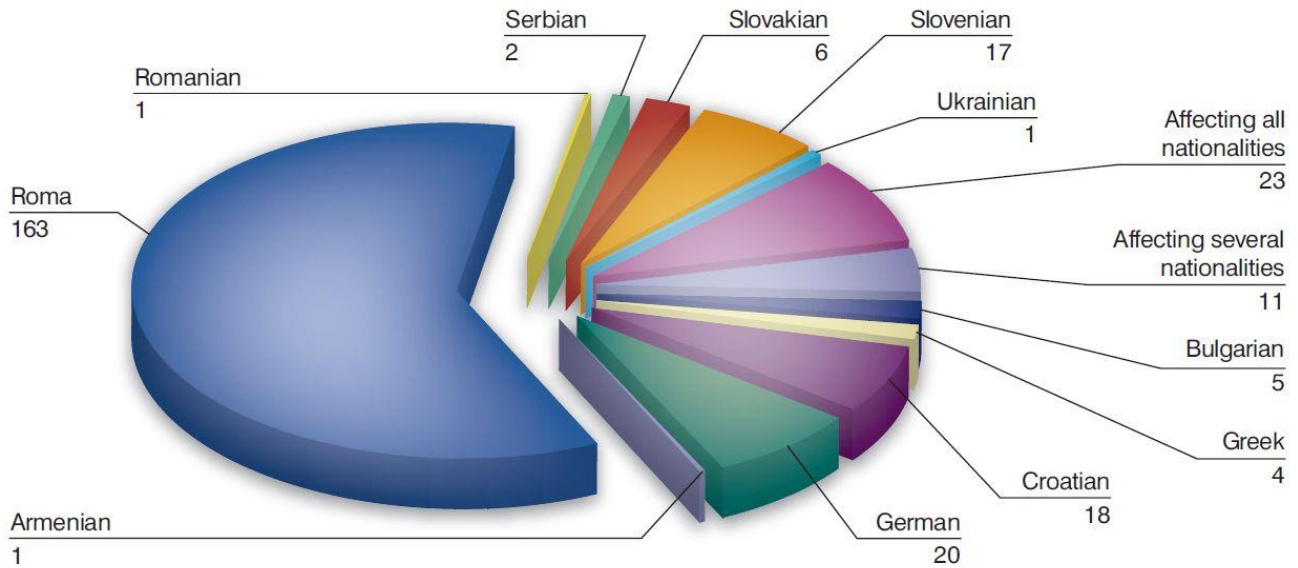
THE ENFORCEMENT OF NATIONALITY LAWS

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.

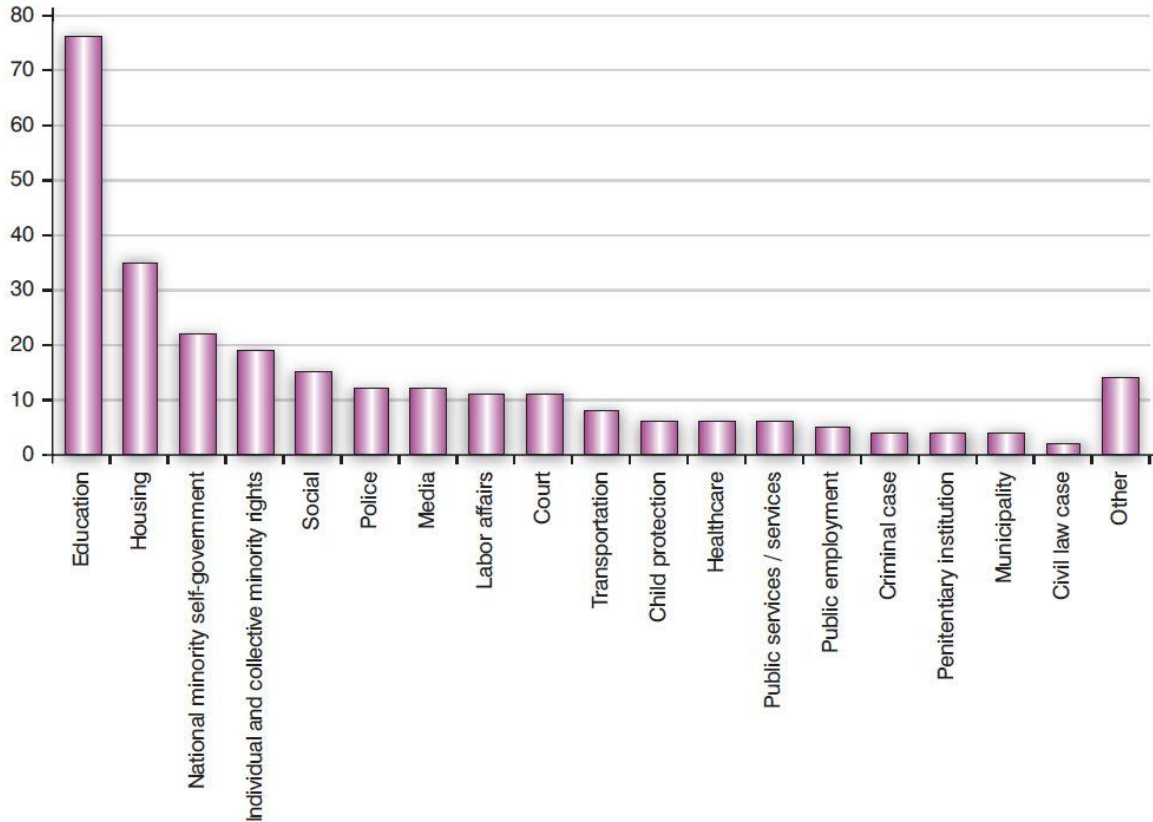
Complaints, petitions, inquiries launched ex officio by nationalities



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, nationality advocates 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).

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.



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

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 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 rejection 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 reimbursement 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.

9.2.4. Annual report of 2017

Introduction

2017 – the fourth year of the six-year mandate of the Deputy Commissioner for the Rights of National Minorities – was another year when me and my colleagues have made efforts within the available legal framework to do our best to protect the rights of the communities of national minorities living in Hungary against the instances of abuse of power by the authorities.

On the next few pages, we will illustrate the events of the reporting period with data and graphs: the figures suggest that the awareness of the public of the institution of the Deputy Commissioner for the Rights of National Minorities, the confidence in the institution have continued to show an upward tendency. It is not only the number of complaints and inquiries that has increased but the structure of the affected legal fields related to national minorities has also changed: there are more and more issues that concern classical nationality rights. Thus, it seems to be a logical conclusion that the joint interpretation of the Hungarian Act on national minorities and the Act that regulates the responsibilities and competence of the Deputy Commissioner for the Rights of National Minorities shows a positive picture: the protection of nationality rights based on these Acts may contribute, with increasing efficiency, to the enforcement of the rights of the communities of nationalities in Hungary.

However, to rely merely on data is not sufficient. Although figures and facts are stubborn things, the human factor is essential: there are real people who do the increasing amount of work of changing structure to the benefit of the communities of national minorities living in

Hungary. The members of the communities of nationalities, who are Hungarian citizens, on the one hand, wish to recognize and strengthen their nationality identities by smoothly exercising the related rights, and on the other hand, they are sometimes compelled to suffer discrimination that may be related to their origins. Furthermore, the role of those experts, nationality advocates, heads of national minority self-governments and organizations who demonstrate a high level of empathy and professionalism in the protection of the rights of national minorities, is also important.

Although actions against discrimination on any grounds, coupled with the need for nationality education, nationality self-governing, nationality media, as well as decision-making on situations that concern nationalities may serve several purposes, the core of all this should be nothing else but the preparation of the young generations of the nationality communities for a useful and meaningful participation in the life of a multicolored and inclusive society. For this, however, we also need awareness of one's own national minority rights and the related system of rights protection, the tools thereof, the need for obtaining information on all these, and the necessity of providing information on these questions.

The 2017 report that you can find in the upcoming pages is just a snapshot: it highlights – from the perspective of the Deputy Commissioner – the legislative gaps, the problems of applying the law, as well as coherence issues that emerged during the operation of the Act on the rights of minorities, which is, in 2018, in its 25th year of functioning. This is why I recommend it for reading to my compatriots who belong to nationality communities, those who are involved in the legislation and the application of the law, as well as to all the citizens who are interested in this topic.

Elisabeth Sándor-Szalay

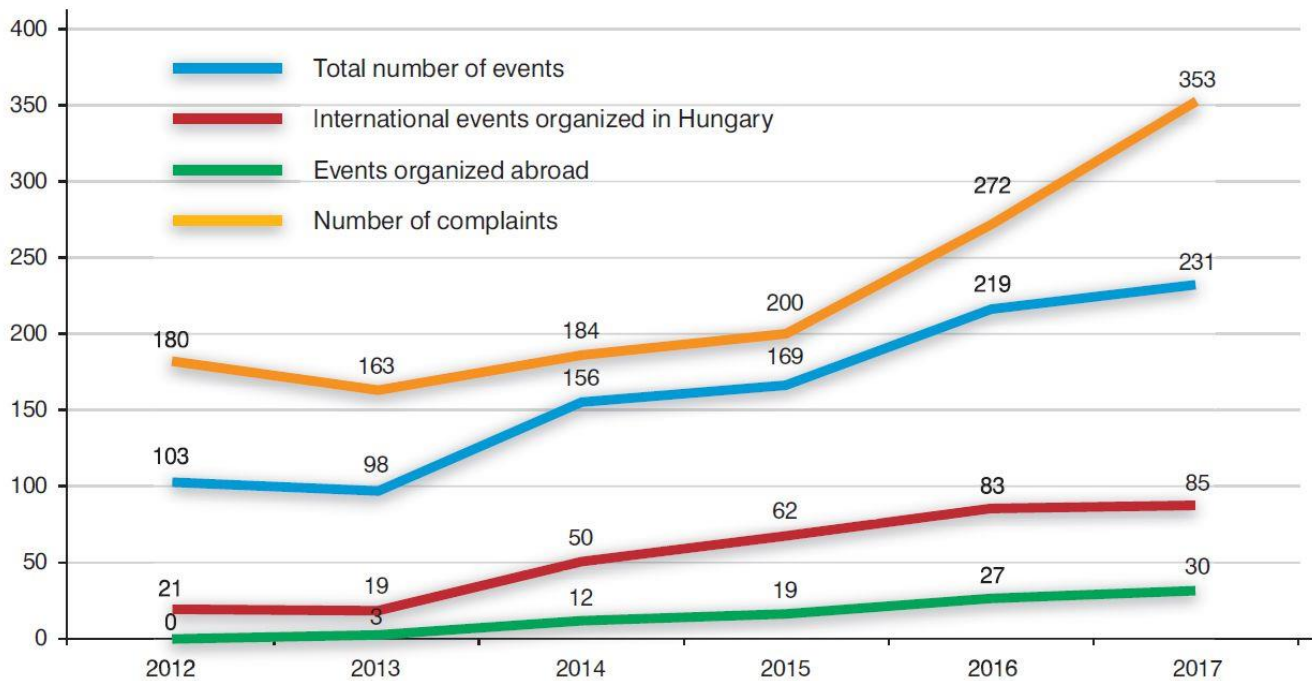
The activity of the Deputy Commissioner

Continuous liaising within the professional forums, obtaining and processing information are the priority tasks of the Deputy Commissioner, as the bases for all other activities and as a cornerstone for providing solid foundations for her professional work. Accordingly, the Deputy Commissioner endeavored to be present in the everyday lives of these communities and to monitor, collect and systematize information on the enforcement of the rights of the national

minorities living in Hungary, as well as on the current situation and the public life of these communities.

There has been an unceasing increase in the number of events since the inception of the institution of the deputy commissioner, what is more, the year 2017 saw a 30 percent increase in the number of meetings between the Deputy Commissioner and her staff, and the members of these communities as compared to the previous years.

Number and basic types of events at the Secretariat, as well as the number of complaints (2012-2017)



It should also be noted that the professional events that the Deputy Commissioner takes part in exert a much broader impact than the direct interactions. The figure below clearly shows that with the increase of professional activities more and more citizens turn to the Deputy Commissioner with their complaints and submissions related to nationalities.

As a result of the complex process, since Elisabeth Sándor-Szalay took office, i.e. since October 2013, the number of both the professional events and the complaints related to nationalities has doubled.

The Deputy Commissioner regularly provides information on the situation of the nationalities in Hungary both to the national communities themselves and to the members of the majority society. The key channels of such communication in 2017 were as follows: active media

presence, our own media platforms – the social media, county visits and on-site inquiries, shaping attitudes and human rights education, consultations with children, organization of conferences and cultural events.

The activities of the Deputy Commissioner for the Rights of National Minorities can be continuously followed on her homepage (nemzetisegijogok.hu), on her Facebook profile (facebook.com/ombudsmanhelyettes), on Twitter (@MinorityOmbud) and Instagram (#ombudsmanhelyettes), where you can find the latest news.

There was regular working cooperation between the Deputy Commissioner and the affected government leaders, especially the heads of the State Secretariat for Social Affairs and Inclusion at the Ministry of Human Capacities, in 2017 as well: the cooperation which had been previously established and which is based on constructive professional collaboration could be maintained and developed further both on the experts' and the leaders' levels. The Deputy Commissioner and her staff members participated as observers in the meetings of two specialized consultation bodies, i.e. the Roma Coordination Council and the Anti-segregation Roundtable, while she was present in the work of several thematic working groups of the Human Rights Working Group as an independent participant. These included the Thematic Working Group for Roma Issues, as well as the Working Groups for National Minorities, for the Freedom of Expression, as well as Other Civil and Political Rights. In 2017, the integration of special needs children and students, the prevention of the unjustified qualification of persons as ones with disabilities, intersectionality, as well as the role of local and county level cooperation in social inclusion were priority topics. The Deputy Commissioner also joined the series of professional consultations of the Working Group against Hate Crimes, where she took part in the analysis of hate crimes against the Roma and the elaboration of anti-latency measures.

The Deputy Commissioner for the Rights of National Minorities maintains close and continuous professional relations with the representatives of the nationality communities in Hungary, including the heads of the country-level nationality self-governments, as well as the nationality advocates.

Although there would have been a theoretical possibility for this, the Deputy Commissioner made no proposals in her own competence for the creation or amendment of the laws affecting

the rights of national minorities, however, she indirectly participated in the development and transformation of the laws on an ongoing basis. The key partners in this were the nationality advocates.

The Parliamentary Committee Representing the Nationalities in Hungary became the key player of the representative system of nationalities renewed in 2012. Although there were initially many professional and political debates on the substance elements of the regulation, practice has shown that this body has become an efficient institution of the National Assembly, initiating legislation related to the interests and rights of nationalities, making proposals, comments and controlling the activities of the government.

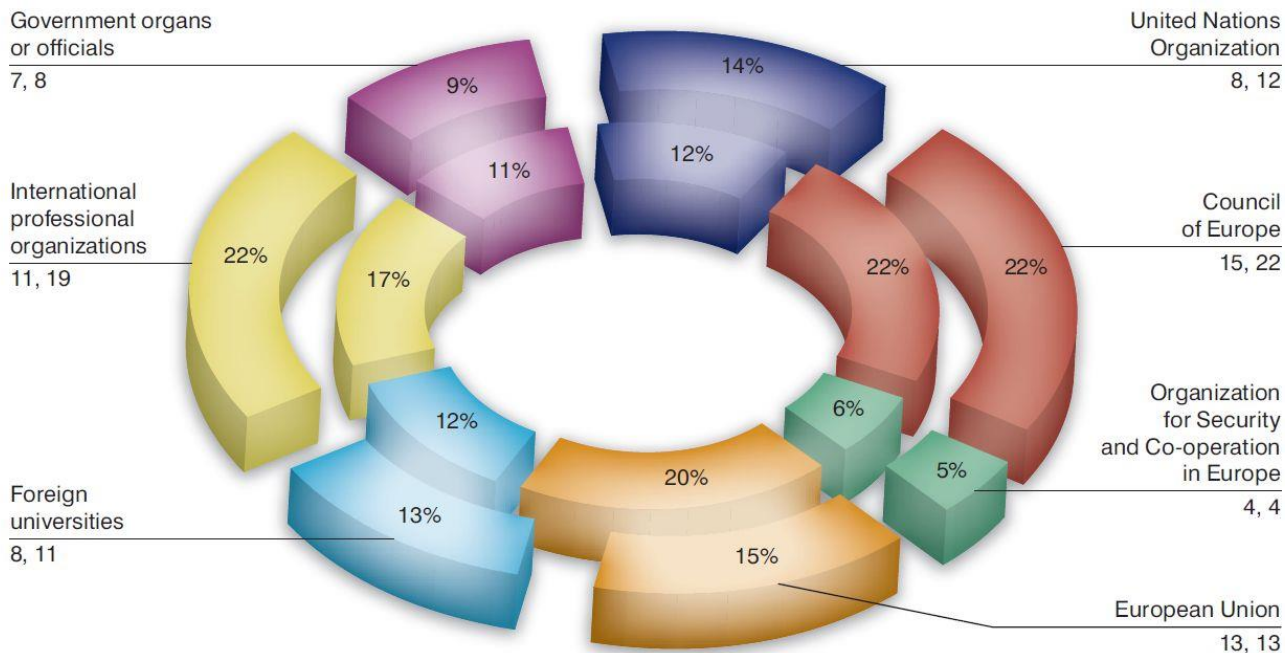
The nationality advocates have also achieved success in the area of the transformation of funding, the increase of resources, as well as guaranteeing transparency. The Parliamentary Committee Representing the Nationalities in Hungary has proposed that professional meetings be held with the Deputy Commissioner several times, and it also took into consideration and incorporated into codification processes that they had launched the conclusions drawn in their joint reports by the Commissioner and the Deputy Commissioner.

Our international relations

Regular communication with international organizations, professional bodies, experts and representative bodies was of key importance in the work of the Deputy Commissioner in 2017 as well, which is well shown by the fact that as many as 85 of the 231 events of the Deputy Commissioner, i.e. 36% of the total number of events were international in nature. In 61% of the cases, the activities related to international organizations were pursued by the Secretariat, typically in the framework of expert-level cooperation and negotiations related to the operation of the control mechanisms of the bodies and the creation of strategies. The remaining 39% of such collaboration was made up by providing information and the work on “presenting the values of the Hungarian system of institutions”, which was also required by the relevant law. Typically it included a series of personal meetings, conferences and university lectures. In 2017, fewer events were related to the European Union and its individual organizations than in the previous years but the number of events related to other international professional organizations has grown. This was primarily due to the closer professional cooperation that

was established with the largest European umbrella organization FUEN, which comprises the indigenous national minorities and ethnic groups.

The distribution of international relations by partners (2016 and 2017)



The distribution of international relations by partners (2016 and 2017)

Tools of establishing international relations:

1. meeting with international delegations;
2. participation in international professional programs and projects organized in Hungary;
3. international presentations in front of professional forums;
4. supporting the Minority Safepack Initiative;
5. special international mandate: member of Council of Europe, Advisory Committee on the Framework Convention for the Protection of National Minorities

The Deputy Commissioner for the Rights of National Minorities, both in her own competence and on behalf of the Ombudsman, established intensive relations with the international advocacy organizations, the benefits of which are invaluable: the experience gained by the partners and their good practices are continuously incorporated into the professional materials,

while the training sessions and the seminars make it possible to share the experience related to the nationality issues and the situation of equal treatment in Hungary. Key partners of the Deputy Commissioner include the Council of Europe, the organs of the UN, universities and research centers, as well as the European ombudsman's institutes, especially the ombudspersons of the V4 countries.

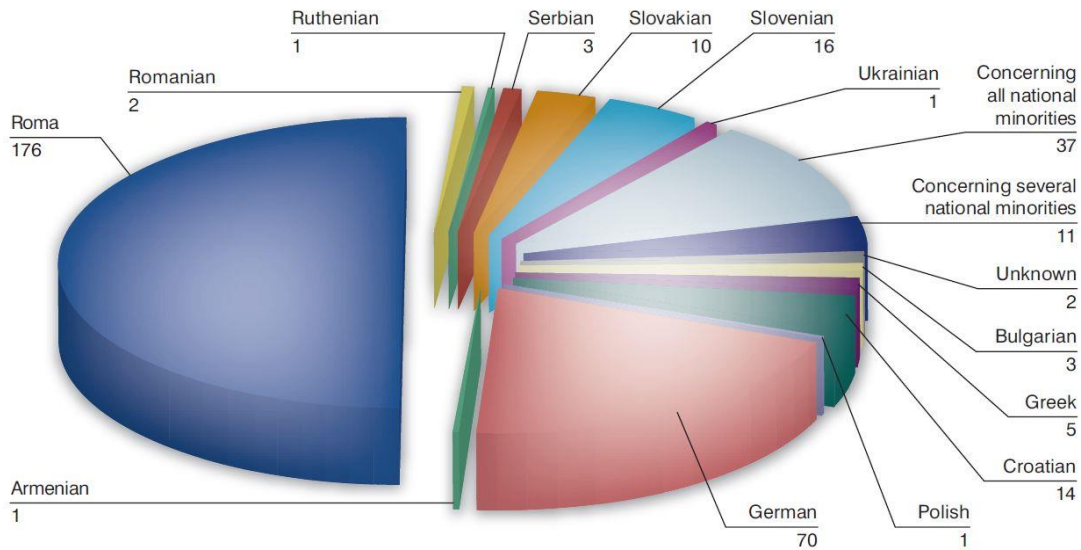
Among our international commitments, we should mention that at the meeting of the Committee of Ministers of the Council of Europe held on May 25, 2016, Dr. Elisabeth Sándor-Szalay was elected a permanent member of the Advisory Committee on the Framework Convention for the Protection of National Minorities. Her mandate is for four years from June 1, 2016, during which period she will have the opportunity, as an independent and impartial permanent member of the Advisory Committee, to assess the actual enforcement of the rights of national minorities in a number of European states and the achievements of the different minority protection models, as well as to play an active role in establishing the European-level minority protection standards.

Cases of nationality rights

The number of nationality-related cases within the professional competence of the Deputy Commissioner for the Rights of National Minorities (complaints, inquiries launched ex officio) has risen, similarly to the previous year. In 2017, a total of 353 cases were related to nationality rights accounting for a nearly 30% increase compared to the number of cases in 2016. Of these cases, 118 specifically concerned the enforcement of individual and community nationality rights, while 235 cases contained discrimination-related complaints connected to a specific national minority from many different walks of life such as social rights, education or civil law cases.

SYNERGIES OF NATIONAL AND INTERNATIONAL PROTECTION OF MINORITIES LIVING IN HUNGARY

Distribution of the individual complaints, petitions and inquiries launched ex officio in 2017 by national minorities



Based on reviewing the distribution of the cases of nationality rights by the individual nationalities, one may conclude that also in 2017 most of the cases were launched by Roma citizens or they concerned Roma themes. In addition to that, the highest numbers of cases concerned German, Slovenian, Croatian and Slovakian nationality communities.

The number of cases that concern “several national minorities” was 11 again in 2017, similarly to 2016. However, the number of cases that concerned “all national minorities” has grown to 37 from the 23 in 2016. These primarily include the cases concerning the general type of the functioning and funding of nationality education, nationality self-governments and civil society organizations, as well as the amendment of some specific laws with a content related to nationalities.

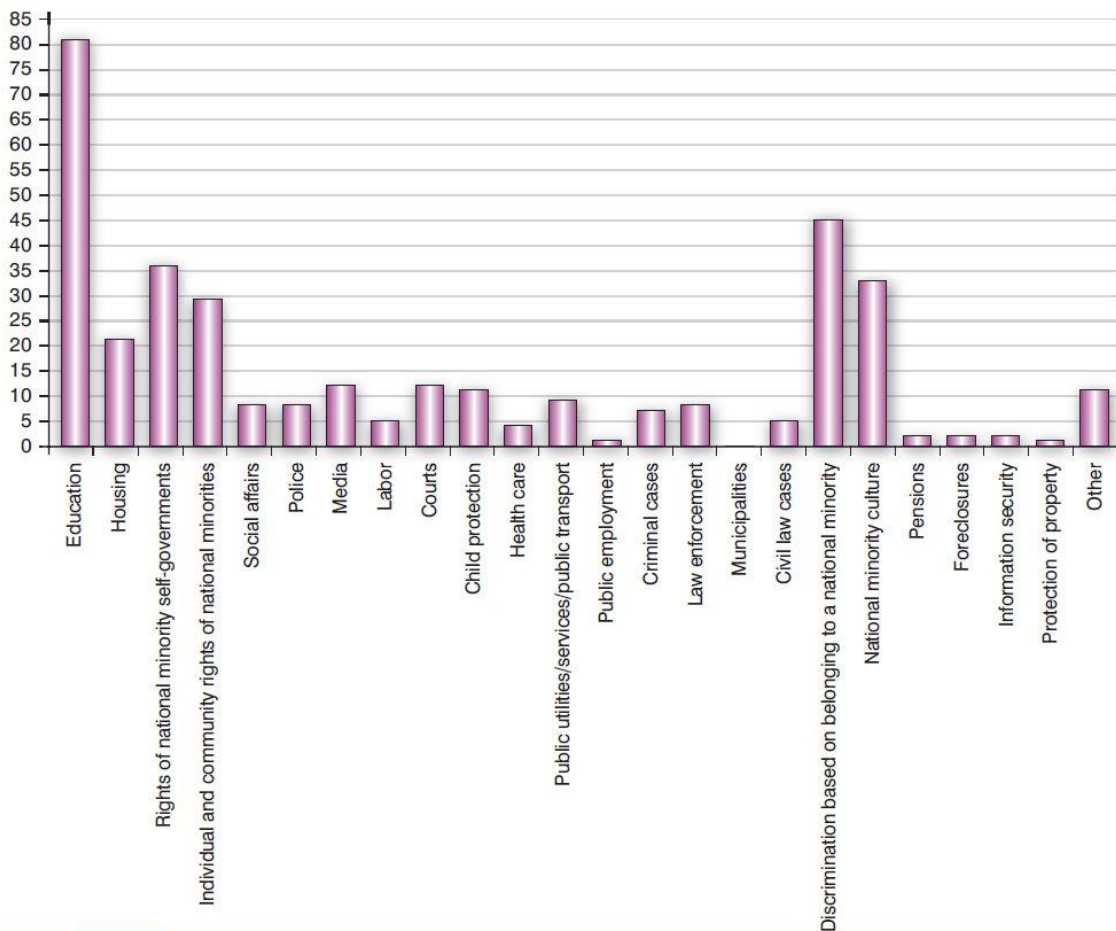
The figures show the proportions and tendencies very well. The high number of cases that concerns the Roma citizens still indicates that the social exclusion of Roma citizens and the problems that most often arise from this situation continue to be serious in Hungary, however, these problems and difficulties actually differ greatly from those of the citizens who belong to other nationality communities.

Types of complaints, petitions and inquiries launched ex officio

The categorization of nationality cases according to their subject gives an overview of the nature of petitions that the Deputy Commissioner received in 2017 and of the types of cases where she launched an ex officio inquiry.

From the Deputy Commissioner’s activities in 2017, the differences characterizing various problems of the nationality communities become obvious. The number of cases concerning individual and community nationality rights, and in relation to this, those related to cultural and self-government rights have increased. In the case of Roma citizens, the proportion of petitions complaining about the lack of enforcement of the requirement of equal treatment, as well as about their social status and living conditions, continues to be very high.

Types and topics of the individual complaints, petitions and inquiries launched ex officio in 2017



A sad tendency is important to be mentioned, too: as concluded by the Commissioner for Fundamental Rights and his deputy responsible for the protection of the rights of nationalities

in several of their reports, some of the local municipalities have recently intentionally prevented the successful performance of official investigations. The failure to fulfil their requests posed obstacles on many occasions and it restricted them in exercising their constitutional rights, which causes an impropriety related to the principle of legal certainty arising from the rule of law. The Commissioner for Fundamental Rights and his deputy responsible for the protection of the rights of nationalities have reported this anomaly to the National Assembly.

Cases related to education: Similarly to the previous years, in 2017, the number of cases related to education was the highest, the majority of which dealt with the operational deficiencies and funding difficulties of the system of institutions of public education for nationalities but the inquiries also concerned the statutory environment and the practice of applying the law of this area in each case. It is to be highlighted that 2017 saw the completion of a comprehensive inquiry and a follow-up investigation into teacher training for the nationalities, as well as the publication of a report on supplementary nationality education. The quality and contents of the textbooks, workbooks, digital materials and other educational support materials for nationalities were complained of by the representatives of several nationality communities in 2017 as well. In the opinion of the Deputy Commissioner, the availability of the nationality textbooks of appropriate quality as well as providing the tools aimed at the education of pupils who belong to nationality communities are one of the fundamental criteria of the enforcement of the right to education in the mother tongue, which is a right that belongs to both the individual and the community. In 2017 again, there was a high number of petitions in which Roma complainants objected to the behavior, prejudiced attitudes and discriminatory actions of the heads and teachers of public education institutes. Some of these are mentioned among the case types that are related to discrimination related to belonging to a nationality.

Individual and community nationality rights cases, as well as cases related to nationality cultures and the rights of nationality self-governments: in 2017 the Deputy Commissioner for the Rights of National Minorities received several complaints and signals concerning the obstacles to and the deficiencies of the creation or extension of the cultural autonomy of nationality communities. The majority of these cases concerned the communities of non-Roma national minorities. The heads and representatives of nationality self-governments highlighted the difficulties of cooperation, furthermore, they indicated the lack of funds and the financing

difficulties as grave problems. As several signals concerning the support system were received in 2017, the Deputy Commissioner shall deal with this topic in the framework of a targeted inquiry in 2018, including the issues related to the task-based support provided to the nationality self-governments as well as the applicable legal regulation.

Cases related to social living conditions: The submissions related to social living conditions were almost exclusively handed in by Roma families and persons living in extreme poverty. In their majority, they ask for support due to their housing problems, the lack of social benefits and support, as well as their difficulties of employment. When no impropriety regarding fundamental rights or the suspicion of discrimination emerges in relation to the complaints concerning social living conditions, the Deputy Commissioner primarily has the opportunity to get informed and ask the affected municipalities and authorities for help, with special regard to the best interests of the vulnerable families and children. In 2017, several petitions in which Roma complainants objected to the difficulties of public employment were handed in again. The primary objection was that these complainants had not been able to find public employment locally, or they could only be employed there for a very short time. As a consequence of all this, their regular income was very low, from which they were not able to cover their housing expenses and livelihood. Several of them also complained that their debts had even been deducted from their meager public employment salaries, so they struggle with very serious livelihood problems. The Commissioner for Fundamental Rights and the Deputy Commissioner for the Rights of National Minorities have no competence to provide financial support to the disadvantaged citizens in need. However, it is important that in the case of complaints that are similar to those above, which are primarily related to difficulties in livelihood, the citizen concerned should be provided detailed information on the available social benefits and services, as well as those authorities, institutions and foundations from which direct and personal support could be provided to the disadvantaged clients.

Cases related to public and other services: In 2017, the Deputy Commissioner received several complaints in which the quality of health care services or the procedures conducted by the utility providers or other private service providers (such as hairstyling salons, clubs) were complained of. In relation to the procedures conducted by the private service providers, generally the violation of the requirement of equal treatment also came up, in which the Deputy Commissioner had no possibility to conduct inquiries, in the lack of competence, so she closed

these cases by providing detailed information or transferring the cases to the competent authorities. Some complaints of public transportation services also came in, the majority of which concerned checks related to air transport. These petitions were closely related to the General Comment on issues related to the pre-boarding screening of international passengers at the airport, issued by the Deputy Commissioner in 2016.

Criminal law type of cases: The number of criminal law type complaints somewhat decreased in 2017. However, a joint report on the proceedings conducted by the police was prepared, in which the application of the rules of criminal proceedings regarding the hearing of a Roma complainant, the taking of the minutes, as well as the participation of the defense lawyer was examined. In the petitions affecting the prison services, the complainants mostly objected to ill treatment and the circumstances that gravely violate human dignity.

Informal education and shaping social attitudes: The General Comment issued by the Deputy Commissioner for the Rights of National Minorities on the incorporation of the topic of the Roma Holocaust in education was of outstanding significance from several aspects. The purpose of this General Comment was to draw attention to the fact that through the incorporation of the topic of the Holocaust in education from a human rights aspect, values in which tolerance plays a central role, as well as respect for fundamental rights and democratic values can be conveyed to the younger generations. As it was highlighted in the General Comment, getting the Roma Holocaust recognized, i.e. the compensation provided to the surviving victims, the acceptance of the Memorial Day, the establishment of monuments, as well as scientific research, are the result of work of several decades, in which the work of Roma and Sinti activists and artists played an important role. According to the document, in relation to commemorating the Roma victims of the Holocaust and the role of the Roma Holocaust in formal and informal education, it should be pointed out that the terrible things that happened had a long prehistory, as the Roma communities had been gradually deprived of their rights before the events of 1944. It should be noted that today's increasing global intolerance, anti-Roma sentiments and xenophobia, as well as the unjustified generation of fear of some peoples, groups of peoples or simply persons who are presented as citizens who believe in values conflicting with those of the majority society may trigger dangerous processes in the European societies.

The airport checks that the passengers of international flights were subjected to: In last year's report, the Deputy Commissioner for the Rights of National Minorities provided detailed information on her General Comment on the unlawful practices of pre-boarding control performed at the airport, which the passengers of international flights are subjected to. In 2017, new individual complaints about these airport checks were lodged to the Deputy Commissioner for the Rights of National Minorities, according to which, in addition to the airport checks conducted at Budapest Ferenc Liszt International Airport, similar incidents took place at other European international airports as well (such as the Paris Charles de Gaulle Airport, the London Heathrow Airport, or the Brussels Zaventem Airport). In the majority of cases, the passengers complained of checks that they were subjected to before boarding the plane or prior to changing planes, which they think happened in a humiliating manner, without providing the passengers with information on the purpose and consequences of such checks.

In these cases, those concerned did not receive any information on the compensation for, and complaint options arising from their missed trips. In the majority of the new cases of complaint, the Deputy Commissioner did not have competence to investigate, as these were about the procedures conducted at European international airports. However, in addition to providing information to the complainants, the Office's status as the UN's national human rights institution, as well as its membership in various international professional groups and networks allowed cooperation with the different European equality bodies and ombudsman's offices and the Office established within the framework of Equinet a special inter-network cooperation related to these cases. The Deputy Commissioner also sent signals on the systemic-level problems to CERD, OPRE Roma Platform and CAHROM.

9.2.5. Annual report of 2018

Introduction

From the beginning of my mandate as the Deputy Commissioner for the Rights of National Minorities on October 21, 2013, I have had five complete years and a few months to pursue my activities in the field of protecting the rights of nationalities living in Hungary. In objective terms, half a decade is not such a long period of time, however, it makes you look back and assess the joint professional work performed with and in the interests of the heads of the nationality communities, the nationality experts and the members of these communities. It also gives one good reason to look back that in the year of this report, the legal system of national

minority rights in the Hungary after the democratic transformation had its twenty-five year anniversary. It is my honor to have had the chance to serve our nationality communities in my capacity as a Deputy Ombudsman with my colleagues, in the past few years of this quarter of a century.

The 2013 report was still the chronicle of the transition: the chronicle of statutory and institutional changes and transitions, and a mere two months for me in my new position. I would label the year 2014 as my first attempt at filling the framework of the position of the deputy commissioner with meaningful content: meeting the organizations and the heads of organizations of our nationality communities, as well as the elaboration of the methods and tools of the new type of deputy commissioner 's institution. The experience gained in 2015, among others, warned me that in order to perform our tasks efficiently, it is worth conveying more information on the existence, situation and rights of the thirteen recognized nationality communities, as well as on the role and tasks of rights protection of the Deputy Commissioner for the Rights of National Minorities to the general Hungarian society, within the current statutory framework but with novel means and methods. Then in 2016, I became aware of more and more contradictions occurring in the laws on nationalities, the system-level unevenness arising from the mutual effects of certain laws, sometimes even of clear-cut deficiencies or the mistakes made in judicial practices and I started to investigate into these. Public awareness of the institution of the Deputy Commissioner for the Rights of National Minorities, and the trust towards it showed a growing tendency in 2017 as well: it is not only the number of complaints and inquiries that grew but the structure of the nationality-related legal fields also changed. This tendency remained in 2018 too: the joint interpretation of the National Minority Act and the law that regulates the responsibilities and competences of the Deputy Commissioner for the Rights of National Minorities gives cause for optimism: the rights protection of nationalities can contribute to the enforcement of the rights of the nationality communities living in Hungary in an ever more efficient way.

Figures and facts, of which we are trying to give a full view in the report below, are obstinate things, however, the point remains the human factor. The situation is that behind the work of increasing volume and changing structure done by the Deputy Commissioner for the nationality communities, there are human lives: the lives of people who wish to experience and strengthen their national identities but who are sometimes compelled to suffer discrimination on account of their ethnic origins. The 2018 report is a new snapshot of the enforcement of the

twenty-five-year-old National Minority Act, i.e. of the law about whose goals and institutions I sincerely believe represent exceptional value. Along with the allocated budget, it provides a wide space to manoeuvre for the preservation of the identity and the development of the self-organization of the communities concerned.

Our work in 2018 was also performed on the basis of those principles and professional convictions, investigation methods, new communication and social platforms which I, in my capacity as a deputy commissioner, regarded as necessary, possible and the most useful in the best interests of our nationality communities. This report gives the reader an opportunity to take a glimpse at the current status of the enforcement of the law related to nationalities: it gives one a snapshot of those issues and challenges that made the representatives and members of the nationality communities concerned turn to the institution of the Deputy Commissioner for the Rights of National Minorities, requesting protection and the representation of their legal interests in 2018.

Elisabeth Sándor-Szalay

The activity of the Deputy Commissioner

General liaising

Continuous liaising within the professional forums, obtaining and processing information are the priority tasks of the Deputy Commissioner, which are the bases for all the other activities and which are critical for laying meaningful foundations for all her professional work. Accordingly, the Deputy Commissioner endeavoured to be present in the everyday lives of these communities and to monitor, collect and systematize the information on the enforcement of the rights of the national minorities living in Hungary, and in parallel, on the current situation and the public life of these communities.

There has been a continuous increase in the number of events organized here since the institution of the deputy commissioner was introduced and the year 2018 was no exception either: the Deputy Commissioner and her colleagues participated in as many as 242 professional and national minority events during this year both in Hungary and abroad. It should be highlighted that the Deputy Commissioner and her colleagues regularly met with the members of these communities in 2018 as well, in the form of direct professional discussions, coordination talks, or through visiting the events of the nationality communities.

It should also be noted that the professional events that the Deputy Commissioner takes part in exert a much broader impact than the direct interactions. It is obvious from the figure above that as the professional activities increased, more and more citizens turned to the Deputy Commissioner with their complaints and submissions related to national minorities. This correlation is especially noticeable if we take the regional aspects of the complaints into account as well: the number of complaints submitted to the Deputy Commissioner multiplied in a very short time after the Deputy Commissioner's visit to Csongrád and Komárom-Esztergom Counties in 2018. As a result of the complex process, since Elisabeth Sándor-Szalay took office, i.e. since October 21, 2013, the number of both the professional events and the complaints related to national minorities has doubled.

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. Based on the communication channels established and professional standards laid down in the previous years, she continued her communication on the legal and social issues concerning the national minorities in Hungary towards the nationalities and the members of the majority society in 2018 as well. In line with the practices of the previous years, information was provided and the responses were taken into account, in an interactive form, in the following ways:

- active media presence;
- the Deputy Commissioner's own media platforms: the internet and the social media serving the protection of nationality rights;
- county visits and on-site inquiries; consultations with children; shaping professional and social attitudes, human rights education;
- organization of conferences and cultural programs.

The activities of the Deputy Commissioner for the Rights of National Minorities can be continuously followed on her homepage (nemzetisegijogok.hu), on her Facebook profile (facebook.com/ombudsmanhelyettes), on Twitter (@MinorityOmbud) and Instagram (#ombudsmanhelyettes), where you can find the latest news.

Key professional relations

There was regular cooperation between the Deputy Commissioner and the affected government leaders, especially the Deputy Prime Minister, the heads of the State Secretariat for Church and Nationality Relations of the Prime Minister 's Office, as well as the State Secretariat for Social Affairs and Inclusion at the Ministry of Human Capacities, in 2018 as well: the cooperation which had been previously established and which is based on constructive professional collaboration could be maintained and developed further both on the experts' and the leaders' levels. The Deputy Commissioner and her staff members participated in the meetings of two specialized consultation bodies, i.e. the Roma Coordination Council and the Anti-segregation Roundtable as observers, while she was present in the work of several thematic working groups of the Human Rights Working Group as an independent participant. These included the Thematic Working Group for Roma Issues, as well as the Working Groups for National Minorities, for the Freedom of Expression, as well as Other Civil and Political Rights.

In 2018, complex investigation into housing and school segregation, the phenomenon of intersectionality and the role of local communities and churches in social inclusion were key topics. The Deputy Commissioner also joined the series of professional consultations of the Working Group against Hate Crimes and the special project group of the National University of Public Service involved in the development of a special curriculum, where she took part in the analysis of hate crimes against the Roma and the elaboration of antilatency measures. The practical implementation of the integration programs was personally monitored by the Deputy Commissioner, in the context of which effort she met with the members of the civil society organizations and local experts performing practical onsite work at professional consultation sessions and on-site inquiries. On these occasions, it was especially the topics of education, housing segregation, unlimited access to health care services, as well as digital challenges that were focused on. In 2018, the Hungarian Charity Service of the Order of Malta was a key partner again, as through their complex professional profile, practical experience and extended professional network, the channelling of needs and the elaboration of the possible solutions proved to be very helpful.

The Deputy Commissioner for the Rights of National Minorities maintains close and continuous

professional relations with the representatives of the national minority communities in Hungary, including the heads of the country-level national minority self-governments, the representative of the German-speaking community, as well as the parliamentary nationality advocates for national minorities.

The Parliamentary Committee of National Minorities of Hungary became the key player of the representative system of national minorities that was renewed in 2014. Although initially there were many professional and political debates on the substance elements of the regulation, practice has shown that this body had become an efficient institution of the National Assembly, which initiates legislation related to the interests and rights of national minorities, makes proposals, comments and controls the activities of the government. The nationality advocates also achieved success in the area of the transformation of funding, the increase of resources, as well as guaranteeing transparency in the first Parliamentary term between 2014 and 2018. The composition of the Committee changed after the 2018 Parliamentary elections.

Imre Ritter, the earlier nationality advocate was elected a full-right MP of the German-speaking community in Hungary, while many nationality communities elected a new advocate for the new term. The Secretariat of the Deputy Commissioner continued to maintain uninterrupted professional relations with the Parliamentary Committee of National Minorities of Hungary, in the meetings of which the staff members of the Deputy Commissioner always participated. The Committee always accepted and took into account the conclusions drawn and general opinions expressed in the joint reports of the Commissioner and the Deputy Commissioner in drafting or amending the laws on the rights of the nationalities.

Shaping social attitudes and sensitization

In the past few years, several inquiries conducted by the Deputy Ombudsman dealt with the education of nationalities, however, the Deputy Commissioner for the Rights of National Minorities also wishes to contribute to increasing the practical rights awareness of children and young people from national minorities through her activities. To fulfil this aim, she supported the implementation of several children's rights projects of the Council of Europe in Hungary, in several cases through joint efforts with the non-profit company called Hope for Children Hungary. Such key projects included the professional support provided for the preparation of the handbook for the campaign (No Hate Speech Movement) organized by the Council of

Europe for young people against hate speech and Bőngésző (Compass, a Manual for Human Rights Education with Young People), as well as participation in the implementation of the respective Hungarian campaigns.

Working together with children and young people also resumed this year: besides the involvement in training sessions on children's rights, the students of the nationality schools had the chance to get acquainted with children's rights and nationality rights in the framework of special awareness-raising classes from the spring of 2018. In terms of methodology, these classes leaned on the various publications of the Council of Europe on children's rights, especially the professional guideline entitled "I have rights, you have rights, he/she has rights..." as well as the Compass manual. In each case, the staff members shared the experiences gained during these classes with the principals and class masters/mistresses of the institutions, who promoted – on more than one occasion – the insertion of these non-formal, training-like educational elements into the curriculum.

In addition to these special awareness-raising classes implemented in public educational institutions, the Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities attaches great importance to other forms of rights awareness development and training on human rights, too. As such, she has cooperated with the Hungarian National Police Headquarters and the National Roma Ministry of the Reformed Church in the execution of various training programs.

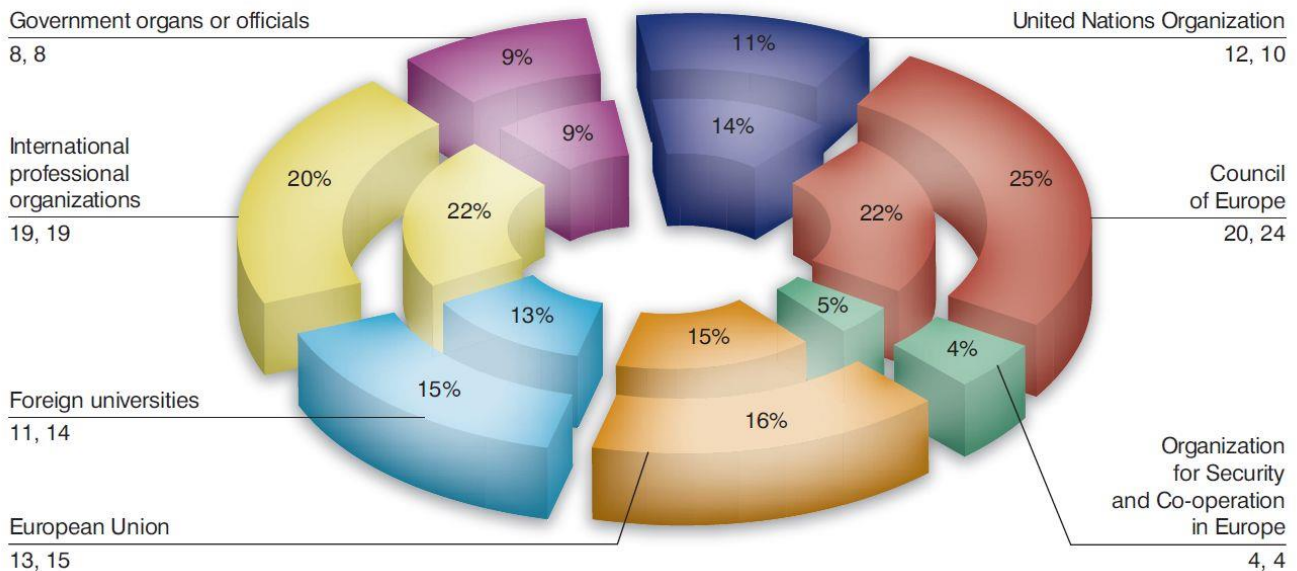
In line with the practices of the previous years, it also became possible in 2018, with support from the Deputy Commissioner, that one of the nationality communities introduced itself to a wider audience, or celebrated their special events in the building of the Office of the Commissioner for Fundamental Rights.

Our international relations

Regular communication with international organizations, professional bodies, experts and representative bodies was of key importance in the work of the Deputy Commissioner in 2018 as well, which is well shown by the fact that as many as 94 of the 242 events of the Deputy Commissioner, i.e. 39% of the total number of events were international in nature. In 62% of the cases, the activities related to international organizations were pursued by the Secretariat, typically in the framework of expert-level cooperation and negotiations related to the operation

of the control mechanisms of the bodies and the creation of strategies. The remaining 38% of such collaboration was made up by providing information and the work on “presenting the values of the Hungarian system of institutions”, which was also required by the relevant law. This typically meant a series of personal meetings, conferences and university lectures. Comparing the data of 2017 and 2018, it can be observed that the international relations of the Deputy Ombudsman are balanced and lasting.

The distribution of international relations by partners (2017 and 2018)



Tools of establishing international relations:

1. priority international programs or events of international nature organized in Hungary;
2. cooperation with the neighbouring countries in the field of the protection of the rights of nationalities;
3. cooperation between the Ombudsmen of the Visegrád Group (V4) countries;
4. Minority Safepack Initiative;
5. special international mandate.

The Deputy Commissioner for the Rights of National Minorities, both in her own competence and on behalf of the Ombudsman, established intensive relations with the international advocacy organizations, the benefits from which are invaluable: the experience gained by the partners and their good practices are continuously incorporated into the

professional materials, while the training sessions and the seminars make it possible to share the experience related to the nationality issues and the situation of equal treatment in Hungary. The key partners of the Deputy Commissioner include the European Union, the Council of Europe, the organs of the UN, universities and research centers, as well as the European Ombudsman's institutes, especially the ombudsmen of the V4 (Visegrád) countries.

Among our international commitments, we should mention that at the meeting of the Ministers of the Council of Europe held on May 25, 2016, Deputy Commissioner for the Protection of National Minorities in Hungary, University Professor Elisabeth Sándor- Szalay was elected permanent member of the Advisory Committee on the Framework Convention for the Protection of Minorities, with regard to her academic and international legal expert activities in the field of minority protection. Her mandate is for four years from June 1, 2016, during which period she will have the opportunity, as an independent and impartial permanent member of the Advisory Committee, to assess the actual enforcement of the rights of national minorities in a number of European states and the achievements of the different minority protection models, as well as to play an active role in establishing the European-level minority protection standards.

Cases of nationality rights

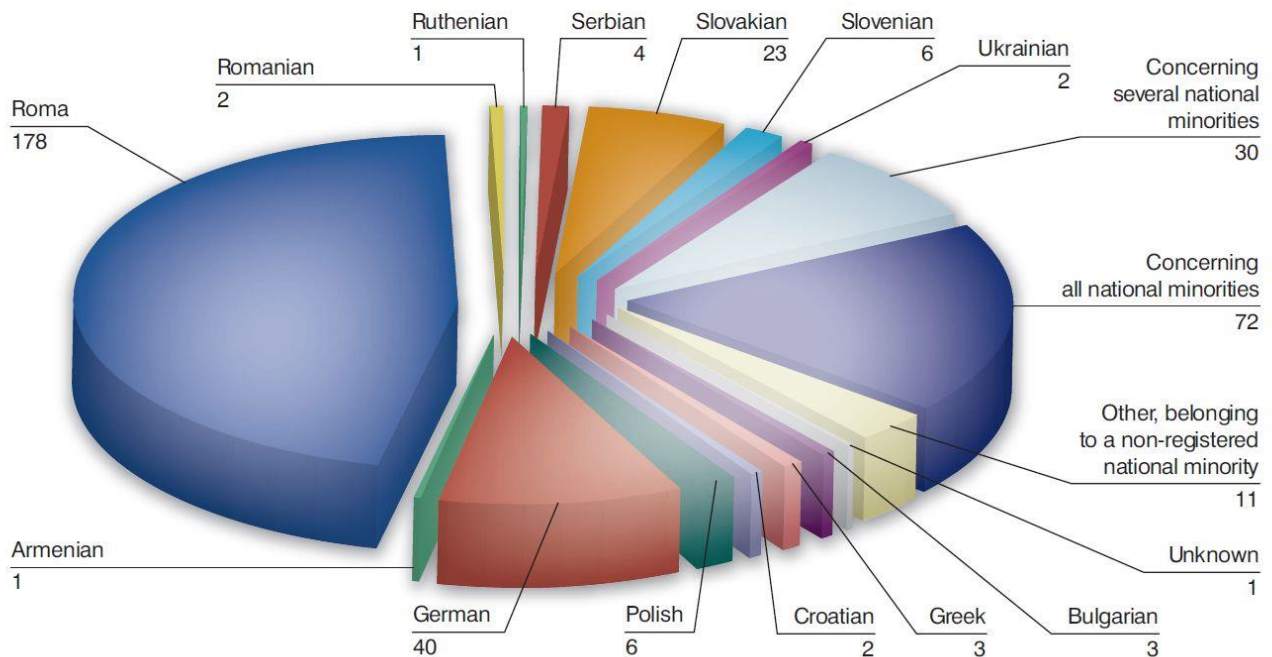
The number of national minority-related cases that belong to the professional competence of the Deputy Commissioner for the Rights of National Minorities (complaints, inquiries launched ex officio) rose from 2017 to 2018. In 2018, there was a total of 385 cases related to nationality rights, while in 2017, there were 353 such cases. The rising number of cases indicates that after the transformation of the Ombudsman's system, the institution of the Deputy Commissioner for the Rights of National Minorities became more and more well-known to, and accepted by the members and representatives of the nationality communities in the recent years.

Public awareness of the institution was also increased by the fact that in 2018, the Deputy Commissioner for the Rights of National Minorities further strengthened her relations and cooperation with the representatives of the nationality communities in Hungary, especially with the new nationality MP and the nationality advocates, as well as with the heads of the national minority self-governments. The nationality leaders concerned proposed that the Deputy

Commissioner launch an inquiry in several cases and also, that she take action for the disclosure and elimination of issues and infringements that they had identified. The year 2018 also saw such cases where the conclusions and proposals mentioned in the joint report of the Commissioner and the Deputy Commissioner, or in the general opinion of the Deputy Commissioner for the Rights of National Minorities were specifically discussed by the Parliamentary Committee of National Minorities of Hungary and its Subcommittee on Public Education, Culture and Church, with a view to preventing and eliminating the deficiencies of regulation and judicial practices.

Besides the individual complaints, the number of those cases in which ex officio inquiries were launched by the Deputy Commissioner for the Rights of National Minorities, was also high. Such included, among others, the examination and monitoring of the problems, observations and proposals identified during the county visits, based on the personal discussions with the representatives of the local national minority self-governments and institutions of the counties concerned.

Distribution of the individual complaints, petitions and inquiries launched ex officio in 2018 by national minorities



In 2018, similarly to the previous years, the number of cases related to Roma citizens was the highest. In 2018, the Deputy Commissioner dealt with the problems of the Roma community in

178 cases, which was almost the same number as in 2017 (176). The high number of cases, along with their content, indicates that many of the Roma citizens struggle with difficulties in livelihood and housing. The majority of these cases was correlated with the enforcement of the requirement of equal treatment in 2018 as well, or at least the complainants also referred to their Roma origins and/or discrimination in their submissions.

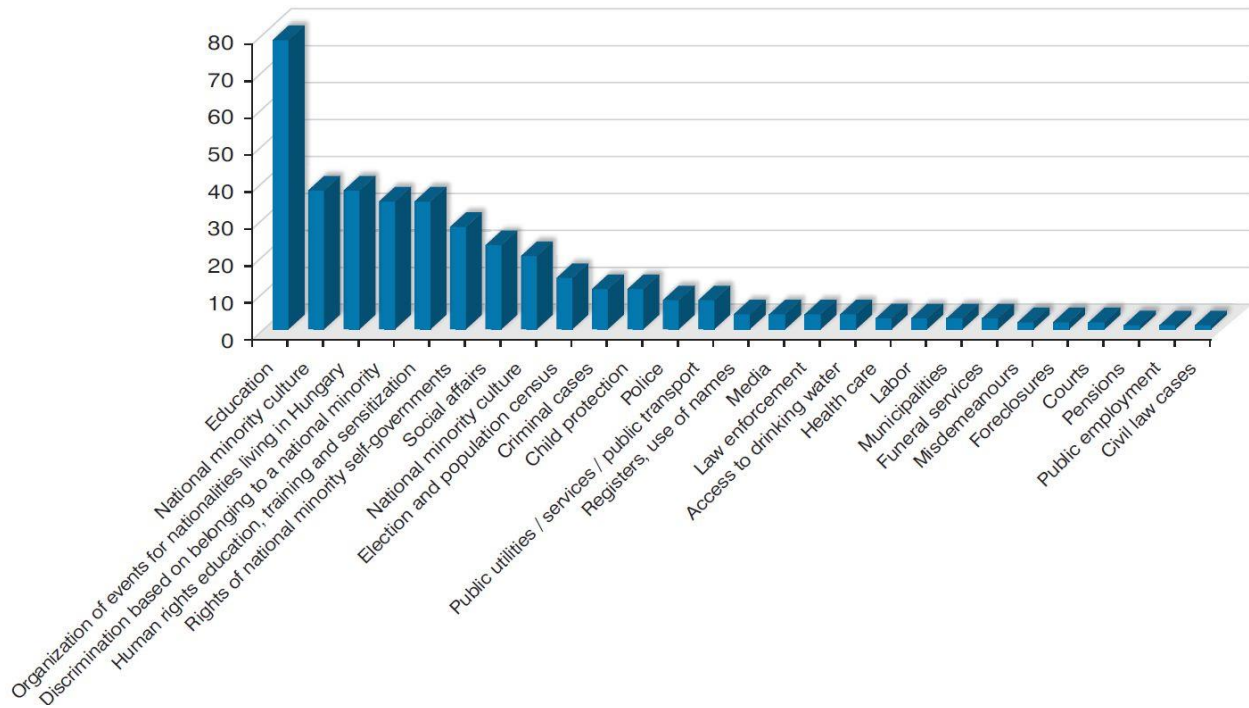
The number of cases affecting the other nationalities also grew. In 2018, the proportion of cases affecting German and Slovakian communities was high, the majority of these were about classic individual and community rights related to nationalities, national minority self-governments, or the nationality institutions maintained by the latter. The number of cases affecting several or all of the national minorities increased further.

What we are talking about here is complaints or nationality rights-related cases inquired into ex officio, which may have affected the lives of all, or at least several of the nationalities living in Hungary: for example, those related to nationality education, nationality cultural rights, the operation and funding of the national minority self-governments, or the comments on the relevant laws.

The categorization of national minority cases according to subjects gives an overview of the kind of petitions that the Deputy Commissioner received in 2018 and in what types of cases she launched an ex officio inquiry.

SYNERGIES OF NATIONAL AND INTERNATIONAL PROTECTION OF MINORITIES LIVING IN HUNGARY

Types and topics of the individual complaints, petitions and inquiries launched ex officio in 2018



The topics of the year 2018 were mostly similar to those of the previous year. The case type related to discrimination on account of nationality remained, which category includes cases that could also be listed in the category of social issues or problems related to utility providers, among others, in the case of which the suspicion of the official action or procedure's violating the requirement of equal treatment based on belonging to a national minority clearly emerged and this was investigated into by the Deputy Commissioner. In this category, there were mostly petitions filed by Roma citizens and the cases related to social issues, child protection, housing, as well as criminal law primarily also affected the citizens of Roma origins.

We described the cases that concern the general, individual and community nationality rights in narrower categories in 2018 (e.g. registers and use of names), so it could be understood in detail what specific cases are concerned. The majority of these complaints did not concern complainants of Roma origins but they were cases that affected the members or representatives of the other nationality communities, or they were ones monitored or investigated into on an ex officio basis.

Cases related to education: Similarly to the previous years, in 2018, the number of cases related to education was the highest in the field of the rights of national minorities. In 2018, continuing the traditions of the previous years, the Deputy Commissioner for the Rights of

National Minorities ordered that several significant questions defining the situation of nationality education be paid special attention to. The highest number of reports came in connection with the problem of teacher training for national minorities, that of the lack of national minority teachers, as well as the inappropriate contents and quality of national minority textbooks. There were several cases that drew attention to the operational difficulties and other problems of primary schools providing national minority education.

One of the reports prepared in 2018 disclosed the deficiencies related to the exercising of the right of consent of the national minority self-governments in defining the district borders for the entrance exams to schools. It was also this year that the investigation into preventing the fulfilment of the requirement of compulsory education and the approval of the system of home schooling was completed. In the report, what was primarily examined was the prevention of the enrolment of schoolable children in primary school, i.e. the enforcement of their right to education, and also, the violations of the law and procedural errors committed in the procedure of declaring a child a home-schooled student.

Community cases related to national minority self-governments and cultural rights: Similarly to the previous years, 2018 also saw the influx of submissions and oral reports to the Deputy Commissioner which concerned the operational and funding difficulties of the national minority self-governments. The task-based support provided to the national minority self-governments was subjected to strong criticism in 2018 as well, so the Deputy Commissioner continues to pay special attention to the questions of the relevant statutory regulations and judicial practices. During the county visits, the Deputy Commissioner always held coordination talks with the heads of the national minority self-governments and organizations, as well as cultural and educational institutions operating in the visited county. During the professional consultations, a high number of such problems which arose in connection with the exercising of national minority self-government and cultural rights surfaced in 2018 too. The Deputy Commissioner prepared as many as four policy statements on the cultural and community rights of nationalities in 2018:

1. On the role of nationality communities in the development of the local and regional economy and tourism based on the example of the Slovenian Model Farm (No. 1/2018);
2. On the practice concerning the national minority contents of national value collection (No. 2/2018);

3. The assertion of the cultural autonomy of national minorities in the field of public broadcasting (No. 3/2018);
4. The assertion of the cultural autonomy of national minorities in Hungarian cinematography and film production (No. 4/2018).

Individual nationality rights case related to the use of names: On the occasion of the professional discussions and county visits that took place in 2018, there were several reports and individual complaints in connection with the use and registry of names, and the issuance of identity cards in the language of a national minority. Based on these, an ex officio investigation was launched in order to assess the issues related to the enforcement of the right to using national minority names and to thoroughly and comprehensively explore and review the judicial practices, rights enforcement and regulations in this field of law. Cases related to discrimination related to belonging to a national minority: The enforcement of the requirement of equal treatment was investigated into by the Deputy Commissioner specifically in each case in the period under review. In some cases, the fact of discrimination was not established, in lack of a comparable person or group, or in lack of causal relationships. However, in some other cases, the fact of discrimination was established, where the problems that had been brought up were subsequently partially or fully settled as a result of the investigation.

Cases related to social living conditions: The submissions related to social living conditions were almost exclusively handed in by Roma families and persons living in extreme poverty. In their majority, they ask for support due to their housing problems, the lack of social benefits and support, as well as their difficulties of employment. When no impropriety regarding fundamental rights or the suspicion of discrimination emerges in relation to the complaints concerning social living conditions, the Deputy Commissioner primarily has the opportunity to get informed and ask the affected municipalities and authorities for help, with special regard to the best interests of the vulnerable families and children.

The Commissioner for Fundamental Rights and the Deputy Commissioner for the Rights of National Minorities have no competence to provide financial support to the disadvantaged citizens in need. However, it is important that in the case of complaints that are similar to those above, which are primarily related to difficulties in livelihood, the citizen concerned should be provided detailed information on the available social benefits and services, as well as those

authorities, institutions and foundations from which direct and personal support could be provided to the disadvantaged clients.

Cases related to health care and public services: In 2018, several complaints in which the procedures conducted by utility providers or health care service providers were complained of were submitted to the Deputy Commissioner. Among others, such petitions related to health care services can be deemed typical in which the complainant of Roma origins complained that although he had a valid social security card, he was refused at the patient reception desk of the outpatient clinic late in the afternoon, as the doctor could not see any more patients. From the internal investigation, the general director of the outpatient clinic concluded that the patient receptionist checked the data, she did not refuse the reception of the patient, however, she informed the complainant of the probably long waiting time and on that it may happen, with regard to the high number of patients who had already had appointments, that he would not be seen to by the doctor by the end of the consultation hours and she also made it clear which hospital offered emergency medical services at that time of the day. From the available documents, the Deputy Commissioner could not clearly establish any improprieties related to fundamental rights.

In 2018, an ex officio investigation was launched into the practice of making out invoices during public passenger transportation services. An excursion for Roma children was organized by a foundation as part of their performing public tasks, however, the company MÁV-Start Zrt refused to make out an invoice for them, quoting that pursuant to the effective laws, no invoice on discounted student tickets may be produced for the foundation. A joint report was prepared about this case, in which the Commissioner for Fundamental Rights and the Deputy Commissioner for the Rights of National Minorities established that the social policy-based fare reduction, which was introduced in order to offset the income missed by the service provider due to the travel discounts provided by the state when regular public passenger transportation services are used, can exclusively be claimed by the transportation provider for natural persons. An exception to this rule is provided by a provision according to which in the case of an institution maintained by the education district centre, it is the education centre, in other cases, it is the institution or its maintainer that can use a travel discount for a child, a student or a resident who is in a legal relationship with an educational institution or a children's care home. The above-mentioned institutions are entitled to request an invoice of the reduced fare of their students in connection with the performance of their

public tasks, while the transportation providers become entitled to claim the fare discount meant to compensate for this based on social policy considerations. The exceptions do not include the non-profit organizations that perform public tasks related to education and child protection. With regard to this, the Commissioner for Fundamental Rights and the Deputy Commissioner for the Rights of National Minorities established that the exclusion of non-profit organizations that perform public tasks related to education and child protection from the exceptions results in unjustified discrimination, so the deliberations of the legislator are not in compliance with the constitutionality standard and this brings about an impropriety with regard to the requirement of equal treatment set out in Article XV of the Fundamental Law of Hungary. In order to remedy this impropriety, the Commissioner and the Deputy Commissioner requested the Minister of Innovation and Technology to consider the extension of the list of exceptions and the amendment of the related laws, with a view for the non-profit organizations involved in the performance of educational and child protection public tasks to be allowed to use these travel discounts lawfully as well.

Criminal cases and misdemeanours: The cases concerning the criminal procedure, law enforcement and police actions did not increase in 2018. In such criminal cases, the complainants, in their capacity as the accused party or the victim, typically complained of their court judgments, pre-trial detentions, the rejection of their reports, or the termination of criminal investigations. The Deputy Commissioner informed the complainants of their rights in the criminal procedure, as well as the available legal remedies in detail in each case.

