Report

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

2009

J/11905

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2009

DR. ERNŐ KÁLLAI

Parliamentary Commissioner for the Rights of National and Ethnic Minorities

Budapest, 2010

The staff of the Office of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities in 2009:

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Introduction

You are holding a summary of events in 2009 focusing on minority aspects filtered through the cases of our office.

The continuously raising number of cases dealt with by the office since I took this position has been stabilized in the doubled order of magnitude of last year. Luckily, let us add quickly, since we would not be able to handle more cases on the customary high quality level with the present number of staff members and under the given technical conditions and financial situation. Also as a consequence of the aforementioned financial situation and contrary to our previous practice, this annual report can only be published in a moderate volume and number of copies. The analytical presentation of more than hundred cases and the complete versions of complex investigations are available on the annexed CD Rom for those interested in them.

It appears, however, that the institution of the ombudsman may be the very last solution for citizens of minority origins. In cases where no one else can assist them, when their alleged or real legal grievances are not listened to, the intervention of the ombudsman might be their last chance. For this reason the major part of our cases was initiated upon individual complaints. The distribution of cases among the thirteen minority communities still reflects their actual number in the society.

A slow internal restructurization can, however, be observed relating to the received complaints. Large, "spectacular" minority rights cases tend to be pushed into the background while educational and even more characteristically social cases reflecting the actual situation of the society are more and more numerous.

Within the educational sphere, in addition to the segregation phenomena concerning Roma people other minority communities are more and more frequently signalling unresolved problems relating to minority education. Problems are multiplying in this area according to our perception, therefore we have chosen minority education as the subject of one of our complex own initiative investigations for year 2010.

Social situation seems to be even more worrying. It could be still considered as "natural" that as a result of the financial crisis an increasing number of people find themselves in serious and impossible life situations, in the lack of employment. However, a worrying phenomenon appeared according to which

decision-makers on different political levels not simply recalled the notion of "guilty poverty" indicating an old tradition of political history, but are trying to "penalize" people in impossible life situations based on real programmes. Since an appropriate number of workplaces have not been available for a long time and state welfare payments can be financed in a decreasing dimension by reason of the economic crisis, political decision-makers are trying to demonstrate that the fact that someone is not working is the responsibility of the people concerned who are only "battening on" the society. Therefore, mainly unproductive redirection activities in some forms of public employment started to play a role of increasing importance trying to apparently handle the problem. The reality is that the inadequate education system is continuously producing the mass of people who are incapable of being integrated to the already narrow labour market. These measures, however, serve merely for punishing people excluded from the labour market supposing that this would result in a greater satisfaction in the society. This mentality is also present in the governmental politics but even more typical at the level of local settlements where a so-called "revolutionary legislation" gained its ground. Local self-governmental councils adopt decrees which contradict the whole legal system and usually the rationality as well, these legislators, however, are truly convinced on their own truth. As there has been no legality supervision of local decrees for a long time, namely since the closing down of public administration offices, certain local self-governments are tending to do what they wish to, thus endangering the rule of law by evoking the "nice" tradition of feudal anarchy.

Furthermore, we should not forget the fact that the phantom of an ethnic civil war visioned by many people came to a threatening and imminent proximity last year and tempers have not been moderated even today. The demand for ceasing the politically correct way of speech (attention, not to be confused with the unprincipled silence!) which otherwise hardly or might never have existed in Hungary, has practically turned into the denial of the respect of human dignity. After a long while, Hungary witnesses the re-appearance of political ideas discriminating human beings on the basis of race and attributing a racial base to crime wishing to solve social problems on racial basis. Political behaviours trivializing and ignoring these phenomena and those keeping frightening with them in the hope of political advantages also contributed to the spreading and social acceptance of these thoughts. Unfortunately, at this stage it is going to be difficult to close the ghost back to the bottle.

An ombudsman shall contribute to a more rational solution of the aforementioned problems by preparing professional materials and proposals. Two large-scale investigations have been therefore accomplished in 2009. One of

them summarizes the experiences on the operation of minority cultural institutions providing many proposals for progressing. The other one drafted ideas of paradigm change relating to the out-of-date practice of ethnic data management which often produces social dissatisfaction. It is regrettable that political decision-makers could not find time for the study and professional debate of these questions. Therefore, we are expecting from the succeeding Parliament the professional argumentation and – hopefully – realization of these recommendations – we considered as of particular importance –, which might critically influence the future of minority communities.

Chapter I

Investigation of the realization of minority cultural rights

The cultural rights of national and ethnic minorities in Hungary are stipulated by numerous international covenants and domestic laws. Nevertheless, the Republic of Hungary has to face the fact that minority communities are increasingly assimilating and the preservation and expansion of their culture is becoming therefore more and more difficult. The present legal environment and the existing institutional background may at the very most only slow down this assimilation and the loss of the till now preserved cultural heritage, they are not able, however, to stop this process. Basic restructuring of the present system of cultural task performance is necessary for reversing this unfavourable process.

Our previous inquiries made it obvious that beyond individual investigations a complex review of the cultural life of minority communities and the situation of cultural institutions performing tasks relating to these communities was necessary.

Our investigation completed between March and December 2009 affected seven areas. The situation of museum institutions, public libraries, institutions of cultural education and organizations of performing art fulfilling minority-related activities and tasks was analysed, as well as the legal regulation relating to their operation. We also investigated the procedural order of declaring a building as historic monument and those of setting up statues and memorials, as well as the state of the functioning and already closed cemeteries of minority communities. The question of the production and distribution of films produced in minority languages and those presenting the life and culture of minorities was also dealt with, together with the measures taken for the sake of archiving these kinds of motion pictures. It was also assessed if Hungary had fulfilled its obligations undertaken in bilateral and multilateral international conventions relating to minority cultural rights.

No such complex analysis has been made so far in the topic of minority cultural rights. By reason of its gap-filling nature the report has been drafted in a way that – beyond the disclosure of deficiencies – it gives an account on the achieved results, on the activities of well-functioning institutions and on organizations and initiatives deserving to be supported and followed as well.

As an annex to the investigation report our office also prepared a not-for-sale, free of charge publication with 16 minority music tracks for scientific and edu-

cational purposes. The main consideration of this selection was to illustrate how colourful the musical traditions of minority communities are and to demonstrate that these traditions still exist with the appearance of new musical trends besides the preservation of the existing ones. We also published as an annex to the investigation a part of our photo collection made on the architectural heritage, statues, memorials, cemeteries and public collections of minority communities. The addressed local self-governments and minority self-governments had also assisted us in our work since a part of this collection had been put at our disposal by them. By this annex of photographs we are also intending to call the attention of professionals of historic monuments to these cultural values.

The investigation report is more than 450 pages long; therefore we have the opportunity to present only our main observations on the subject.[1]

General observations

The investigation proved serious deficiencies in every area of minority culture deriving mainly from the deficiencies of legal regulation and state activity. For the redress thereof we have addressed to the Government and its ministries, as well as organizations contributing to the emergence of minority cultural rights with 35 legislative proposals and 78 recommendations.

We are hereby asking the competent committees of the Parliament of the Republic of Hungary, with special regard to the Committee of Human Rights, Minorities and Civil and Religion Affairs and the Committee of Cultural and Media Affairs to review the observations of the inquiry and to promote the realization of our legislative proposals.

Based on the experiences of our investigation we consider it important to establish a complex common cultural institution including library, cultural education, performing art and museum functions, which would host the public collections of all 13 minority communities. There is no need to mention that the realization of such an institution should not be based on the cutting down of the already existing and functioning minority cultural institutional system but should be established parallel to that system. The establishment of the House of Nationalities could be realized besides the futher development of the minority-related task performance of the present cultural institutional system.

Our recommendations for the necessary specification of the notion of minority cultural institution in Act LXXVI of 1993 on the Rights of National and Ethnic Minorities (Nektv.) concern several areas of investigation. According to our view

[1] The complete version of the investigation report is available on the enclosed CD Rom.

legislation ensuring the right of agreement for local and regional minority self-governments relating to local self-governmental decisions affecting the cultural rights of minorities represented by them would be also necessary, extending the right of agreement also to resolutions besides self-governmental decrees. We recommend the unambigouos definition of the co-decision rights of minority self-governments relating to minority cultural institutions, with special regard to the rules of mediation to be followed in case of legal debates with local self-governments.

Observations concerning museum institutions

Deficiencies in registering

For the time being there is no available complex national register providing precise data on the minority content of the museological institutional system.

Collections are not documented according to the rules prescribed by the law in many of the investigated institutions. In the majority of cases the reason of this is the lack of employees qualified for preparing the register of the collection. This deficiency, furthermore, also results in the inability to meet the operational requirements prescribed by law. The fact that the minority content of the collection is not appropriately signalled is also considered as a problem for the correction of which more emphasis should be laid in the course of preparing the documentation of collections.

According to Act CXL of 1997 on Museum Institutions, Public Library Supply and Cultural Education (Cultural Education Act) the register of operational permits of museum institutions is kept by the Ministry of Education and Culture. Beyond the legally compulsory register there exists a complex national register of a specific statistical character, namely the ISTAR system that has also been introduced by the Ministry of Education and Culture. This is a general data base of cultural educational institutions in Hungary including many detailed data beyond basic data, except for those relating to the minority contents of institutions. It would be practical to enlarge the scope of data appearing in this system with data relating to the minority-related content and activity of institutions.

The only theme-specific data base presently available to the public on the internet is the Unified Regional Information Data Base of Cultural Education (erikanet.hu) a register kept on the cultural educational institutions of Hungary, operated by the Hungarian Institute of Cultural Education. The data base is not complete for the time being, its data are continuously updated and completed.

Only institutions disposing of an operational permit belong to the circle of institutions to be registered on a compulsory level. Therefore many institutions without any operational permit are ousted from the horizon of the ministry even if they are fulfilling museum tasks. Experiences show that in many cases even county directorates can not precisely keep a record of each and every institution operating in their area and fulfilling museum functions. As a result, accurate information on every institution operating in Hungary and fulfilling museum tasks reach the ministerial level by no means.

At the moment, as a result of the lack of a complex national register it is impossible to prepare statistical analysis on the minority contents of museum institutions and to obtain reliable data on their operational circumstances in order to make a comparison. Consequently, we are facing difficulties in disclosing eventual problems and in estimating the demands and development opportunities of institutions.

Regulation of the scope of tasks and activities of museum institutions from a minority aspect

The respective chapter of the Cultural Education Act dealing with museum institutions does not mention the tasks relating to national and ethnic minorities living in Hungary. Only in the preamble of the Act and amongst its basic principles refers the legislator to the importance of preserving and promoting the cultural traditions of national and ethnic minorities.

With respect to the Nektv.'s definition, museum institutions whose primary task is the preservation and practice of minority culture and traditions shall be considered as minority cultural institutions. This notion shall be applied relating to museum institutions fulfilling minority- and ethnic-related tasks in a larger scale. For the time being nationality farm museums, collections, regional or thematic museums maintained by local self-governments, basis museums belonging to the directorates of museums maintained by county self-governments and independent or partly independent filials performing primarily minority activities can be classed within this circle.

The proportion of minority-related activities performed by national museums and the directorates of county museums does not reach the dimension according to which they could be considered as minority cultural institutions. In our view, it would be practical to lay down the minority-related tasks of these institutions by legislation.

We have to mention the present situation of basis museums too. These museums belong to the directorates of county museums, they differ from them,

however, in their status, their level of professional independence and in their classification. The definition of basis museums, the professional content of their activity and the professional standards of performing minority-related tasks would be important to be settled by the law as well.

The ideal situation would certainly be if minority self-governments would themselves establish and maintain museum institutions displaying the cultural values of their respective minority communities. However, considering the fact that the conditions of this can mostly be realized only by exhibition places and collections (farm museums) of public interests, the minority contents of museum institutions should be improved also on a general level. If minority contents appeared more frequently and significantly in the scope of activities of museum institutions, this would enforce the importance of minority-related duties. Consequently, and after having created the necessary financial and professional background, local and regional and national minority self-governments could take over in more and more cases the maintenance of institutions fulfilling significant minority-related activities.

Questions of financial sponsoring

In the course of the investigation the continuous decrease of resources serving for operational costs and the development of collections appeared in each case as a permanent problem irrespective of the professional classification, infrastructural conditions and number of visitors of the responding institutions.

In general, museum institutions are extremely underfinanced. The Parliament can provide less financial support for this purpose year by year and their own incomes are not sufficient. The deteriorating budgetary situation creates impossible situations concerning the state of buildings and collections as well. By reason of the lack of sponsoring scientific and cultural educational activities can be organized only occasionally while the extension of collections can not be planned at all (except for archaeology).

The replying heads of institutions unanimously agreed that in case of performing minority-related tasks, these tasks have to be separately sponsored by the "customer" as well. Target sponsoring should be provided for institutions performing minority-related tasks too. This sponsoring, however, can not substitute the operation of a sponsoring system meeting the requirements of the basic supply.

Alpha Programme and "Farm museums for the community" tender were mentioned in the letter of the Ministry of Education and Culture as possible

development-focused solutions for sponsoring difficulties. Several heads of the interviewed institutions agreed with this point of view underlining that this project is "the greatest and most successful undertaking since the establishment of the farm museum movement".

Institutions without operating permit, however, do hardly get any resources, having therefore no chance for development and cannot obtain the desired professional level. In the lack of appropriate feedback these institutions are wasting away together with the material and intellectual values handled by them.

The extent of support provided for museum institutions is only sufficient to provide for the conditions of operation; the further withdrawal of resources, however, jeopardises the integrity of the system. The amounts of money necessary for development can not be replaced from civil donations or business activities, museums therefore are trying to obtain new resources through another state channel, namely tenders. A relatively large number of tenders is available for museums, but they are often called for targets not meeting actual demands. Furthermore, small institutions usually get informed about tenders only at a later stage and even if they do so it is more difficult for them to find an appropriate one by reason of their material situation and special demands.

The situation is twofold from the minority rights perspective: more complex institutions have favourable conditions; however, in the lack of target sponsoring they can not spend on research of minority culture and on the collection of materials. The operational conditions of local institutions are also insecure; they do not have, however, concrete expectations for collection development, they would prefer spending on programme organization. Based on the aforementioned, it would be useful to link separate resources for the performance of minority-related duties in order to provide for the material background of a stable organizational operation and the professional, respectively the public service provider activity.

Operational permit

The Cultural Education Act prescribes strict stipulations relating to the operation of institutions. Institutions unable to fulfil these standards are not eligible for obtaining an operating permit.

For the time being the draft ministerial decree on the operational permit of museum institutions is under professional harmonizing. We consider it desirable to define professional standards in a more accurate manner and to make the system of requirements more transparent contributing to the increase

in professional standard. It is an open issue, however, what kind of funding should be provided to meet these demands and expectations. It is a possible fear that many institutions will not be able to meet these strict requirements in the lack of sufficient resources. Consequently, obtaining and keeping operating permits will be impossible, blocking at the same time the way from getting further resources.

Professional guarantees and the system of professional supervision

A significant result of the new regulation entered into force in 2009 is the establishment of a professional supervisory body independent of national museums. No major objection has been raised by national museums relating to the operation of this system. In large percentage of the inquired farm museums, however, no supervisory investigation has taken place yet. The problems of the professional supervisory system have been signalled most firmly by the directorates of county museums.

According to the Alliance of National Public Collections the modification of the decree would not contribute to a more efficient operation of the professional supervisory system. Moreover, as a result of the reorganization the number of inspectors having country-wide overlook on the given area would be cut in half.

Other institutions also signalled deficiencies in the operation of the professional supervisory system. According to these remarks, 800 museum institutions and 200 farm museums shall be regularly visited by the inspectors which can not be carried out neither from professional nor from financial respects.

Cultural education of minorities

For the time being, there exists no unified, accurate and up-to-date database on cultural educational institutions, including institutions performing minority-related tasks. The Ministry of Education and Culture and the Central Statistical Office publish different data, and different data are handled by the background institution of the Ministry of Education and Culture as well.

It would be practical therefore for the Ministry of Education and Culture to create a database, namely a register including data of all functioning institutions with special regard to institutions performing minority-related cultural educational tasks among others as a result of which the national and ethnic minority content would appear in a substantially more concrete way. In addition, concrete

minority-related tasks performed by the institutions would be inquired in details on the data sheet drafted by the ministry for the purpose of collecting data from institutions.

It would be important not only to prescribe obligatory data supply but to monitor its practical realization as well. The omission of the obligation is qualified as a contravention presently; while it is not penalized in the practice.

A minority cultural institution is a cultural institution with the primary task of preserving and exercising minority culture and traditions and the collective use of language. However, the Nektv. does not specify accurately what "primacy" means. In case of cultural institutions maintained by minority self-governments or organizations this problem of interpretation does not emerge. The question of defining an institution as minority cultural institution is real, however, on settlements where there is only one cultural educational institution. These kinds of institutions have to perform tasks affecting the entire population and have significant role relating to activities concerning minority communities as well. One institution, however, can have more primary tasks. If several obligatory activities are listed in the deed of foundation and no orders of sequence are prescribed, all these activities are qualified as primary tasks. Consequently, the preservation of universal and national culture and the preservation and succession of minority culture can also be primary goals of the same institution. Based on the aforementioned observations, we consider it necessary to specify the definition of minority cultural institution under the wording of Nektv.

A further problem is the question of professional supervision. None of the investigated institutions signalled to have gone through any professional supervisory inspection. The legislation does not define who can be an inspector in respect of minority cultural institutions and what kind of minority activities this inspector shall monitor. Neither is it agreed if a professional supervison shall take place with the participation of minority experts in case of minority institutions. Therefore the inclusion of the Nationality Council and the Roma Expert Council operating beside the Hungarian Institution of General Education and the Fine Arts Department should be considered, along with emphasising their professional expertise. (Naturally, the professional and financial conditions necessary for the operation of these councils should be therefore established.) It would be necessary to set up a body of experts being able to provide professional assistance, first of all in respect of institutions established and maintained by minority self-governments.

As a result of the 2005 amendment to the Minorities Act minority self-governments are entitled to establish and maintain cultural institutions, as well as to take over the performance of cultural educational tasks and the maintainer

rights of cultural institutions that had been established by other bodies. Fulfilling this task is being supported by the state to the extent defined by the annual Budget Act. However, institutions not maintained by minority self-governments signalled several times that their sponsoring is not resolved given the fact that an NGO is not allowed to receive any financial subsidy for institution maintenance. This is the case for example with the still operating Roma community houses. This form of sponsorship also comprises the problem on the one hand that national self-governments shall establish institutions after which institution maintenance subsidy can be claimed, their real activity, however, can be occasionally questioned. On the other hand institutions maintained by others than minority self-governments are not entitled to this form of sponsoring whereas they carry out high standard activities in the interest of the local community.

Library supply of minorities

The quality of the minority library system and library supply is difficult to judge in a completely correct and scientifically justified way due to the lack of necessary information and data. The fact that the quality can not be appraised is the result of three factors. First of all, the legal framework of the scope of duties to be performed by self-governments is not appropriately elaborated. The second factor originates in the deficiency of the official statistical data, while the third is the fact that the extent of practical use of minority collections is not measured in an adequate way.

Even if the task of mother-tongue library supply of national and ethnic minorities is fulfilled by the public libraries of local self-governments, local self-governments are entitled to proceed to their own discretion in this question given that the law does not contain any provisions for the obligation of surveying local demands for minority library supply.

No data referring to the objective assessment of demands had been found during our investigation, although reader satisfaction surveys would serve as excellent occasions for that. According to our consideration there is no data protection obstacle preventing that the minority origin of visitors and their demands and habits relating to nationality collections be asked on a voluntary basis and in a non-identifiable way in the course of measuring user habits in order to satisfy statistical purposes.

The rights of minority self-governments affected by these duties are not appropriately regulated either. The supply of national and ethnic minorities with mother-tongue literature is a minority public affair which shall be fulfilled by the

local self-government instead of the local minority self-government. The present regulations do not make it feasible in practice that minority self-governments concerned by these duties intervene into the major aspects of the functioning of those libraries maintained by local self-governments which perform minority-related tasks as well , namely with a right to agree/to give opinion.

Passing decrees is not obligatory relating to the operation of libraries, hence the Nektv. does ensure the right to agreement for minority self-governments only if the maintainer local self-government included the questions of library supply in its (occasional) decree on culture. According to the information provided by the Minister of Culture "Libraries maintained by self-governments always fulfil a wider range of duties than exclusively minority-related cultural tasks." Therefore the obligatory transfer of the library's maintenance rights for the national minority self-government never takes place in practice. Further deficiency of the Nektv. is its provision on the proceedings of the enforcement of opining/agreement rights requiring the contribution of nationality public educational experts designated by the National Minority Commission. In our view, public educational experts do not dispose of appropriate expertise in cultural issues.

The designation of minority-related duties of county libraries has lead to different interpretations in practice. We disapprove this based on the fact that county libraries are key participants of nationality library supply. The axiom that the demand for minority mother-tongue literature supply exists on county level was the starting point for the legislator who drafted therefore an unambigouos, however differently interpreted obligation for performing this task. The situation is different at the lower level of library supply, namely should the local self-government as maintainer consider that there exists no demand for minority documents, supplying these documents is not a formal obligation for it.

The other source of uncertainty is that public libraries do not publish data broken down by minorities on their nationality collections as they are not obliged to do so. Therefore the notions of foreign language and minority collections are usually mixed up. It is not clarified from a legal point of view what should be understood under "minority" documents. This question is also a practical one given that the correct thematization would be the basis of document search thus affecting to a great extent the categorization, the preparation of bibliographies and the placing of the documents on free shelves.

According to our view at least five types of documents can essentially be considered as minority documents:

a) any literature on the history, language, legal state, traditions and cultures of minorities in Hungary,
b) any textbooks prepared for domestic minority educational purposes,
c) any belles-lettres literature written by domestic authors of minority identity, provided that it is typically of a nationality character based on its subject, the presented atmosphere and its tone,
d) any professional and belles-lettres literature written on the mother-tongue of a domestic minority,
e) any literature dealing with the social, political and cultural life of the mother-country.

During our investigation we discovered that on the basic level of library supply system the minority-related collection of individual libraries consists of a few hundred copies. This number counts a few thousand copies on the middle level, not to forget about the fact that a significant part of nationality collections of county libraries are placed out as deposits. However, the update of collections is incredibely slow on both levels.

We have to face the fact that making familiar, lively and available the domestic languages of national and ethnic minorities has become by now a burning and vital public duty for saving cultures, that needs a separate strategy. We have to reckon with the fact that till the use of minority mother-tongues will not be a natural and massive part of community existence again in each and every area of social life, conscious and effective steps of public and general education promoting primarily the learning of these languages have to be taken. The presentation of real "high culture", the belles-lettres literature demonstrating the million nuances, tastes, flexibility and fineness of languages should be identified as an important but secondary duty of public libraries due to the fact that learnt linguistic nature is more and more determining the social reality of nationality languages. Minority books might not being sought for presently, partly due to the fact that the general level of language knowledge of the minority population is not sufficient for understanding "high literature" while the major part of minority collections consist of belles-lettres literature on each level of the library supply system.

Libraries are not schools, nor workplaces; consequently it is not compulsory to use their services and even less obligatory to be interested in certain themes. It seems obvious therefore that the cultural institutional system of the given settlements has to (should) draw attention to itself and its services with minority services amongst them. In our view, "cultural marketing" of libraries has to focus increasingly on visual and other, but by all means experience-oriented services

in order to be able to reach and address the new generation growing up in front of the computer.

The functioning of libraries as a meeting point has spectacularly increased in the last decade. Reviewing the programme offer of county and local public libraries it can be pointed out that these institutions assessed the importance of the value-orienting character of live and direct experiences. However, it would also be important to include more and more minority-related events in the cultural programme series of libraries. At the same time libraries are not expensive and can serve as an available shelter for the leisure animation of the disadvantaged or even endangered youngsters of the given settlement. By realizing successful programmes they may be transformed into "socialization workshops" where skill improvement and the transmission of convertible knowledge takes place and it is possible to acquire social skills in a sheltered and friendly environment, which had not been experienced in the family.

We are truly convinced that in the future public library supply must be sponsored by the state in a larger scale corresponding to its weight and significance.

It shall be supported that public library supply

- could provide a meeting floor of cultural education for people who are not speaking their mother-tongue any more, but are still conscious of their origin and wish to preserve their not-linguistic traditions,
- could provide the experience of mother-tongue literature for those few who are still speaking the given minority language,
- could enrich the documentation of the still available minority dialects by the collection of their grammar, their vocabulary and their literary works of iconic significance in a preservable format,
- could promote the successful language learning at schools for masses of students wishing to turn back to their linguistic minority culture, and through language their way back to minority identity could also be promoted,
- achieve that the members of the minority community least addressed by the public library supply till now, the Roma and the young Roma get closer to knowledge, then to school and professional results and hereby to social integration.

All forms of funding from public resources (normative, target and tender) shall be based on objective situation assessment and scientific analysis and monitoring instead of – well-intentioned but sometimes not established – presumptions.

The present system the minority book offering takes place in an incomplete way, carried out by a single act. Only one purchase per year can be reasonably

realized from the present central ministerial budget of 5 million forints. According to the general practice few copies are ordered from the Bulgarian, Greek, Armenian and Ukrainian documents of the native countries by county libraries. The supplier undertakes their import only for the quadruple of the original price and the National Foreign Language Library (OIK) has not found any supplier undertaking to obtain and import Ukrainian and Armenian books.

With its present staff (nationality advisors) the OIK is able to prepare reference lists for 10 language areas containing 50-100-150 titles. These are: Bulgarian, Greek, Roma, Croatian, Polish, German, Romanian, Serbian, Slovenian and Slovakian.

According to our viewpoint, the public library supply of small domestic minorities requires other kinds of solutions than those able to be provided by the present system designed for larger minority communities living on relatively identifiable areas. In particular, the practice of cross-bordered co-operation of individual libraries has to be examined in order to discover whether it could be expanded to other libraries and whether the collections of instiutions maintained by national self-governments and performing library tasks among others could be included in the public library supply.

The library supply of the Roma population in Hungary also requires a special approach. A real paradigm change is necessary in this respect. One of these aspects should be to promote and popularize the supply by library buses in order to solve library supply problems of the population living in small disadvantageous village regions.

We consider it as of a paramount importance that public libraries undertaking monitoring tasks could apply in the future for considerable funds for the purpose of regularly organizing free of charge reading camps, playful reading programmes and literary events, "literary playhouses" and competitions of reciting poetry and prose for Roma children. Funding is further necessary for the purchase of brochures, flyers and publicities in the written and electronic press to promote the success of the aforementioned events. In our view, any well-constructed series of actions serving for the presentation of library services in schools mostly attended by Roma children and pupils should be also supported from public funds.

The protection of architectural and funeral relics of minority communities

The protection of monuments

The notion of built relics of nationalities is not defined by law. As a result, the pieces of built heritage of minority communities are categorized under folk architecture mostly as dwelling houses or folk buildings. In this categorization the name of the minority community establishing the given building is usually disregarded. Since this practice has been shaped by professionals in the wider sense of the word, legislators including local self-governments deciding upon the placing of monuments under local protection, as well as bodies applying the law are also following this categorization. We consider it as a deficiency that the legal regulation is unsuitable for signalling the nationality respects of folk architecture.

The indication of the minority character of cultural heritage relating to the 13 minorities registered in Hungary shall be therefore ensured by legislation. Built relics characteristic of the given nationality shall be registered referring to this fact as well as in the course of their documentation and of the data supply thereof.

A list of experts has to be introduced for making available the contact details of the recognized experts of minority architecture. The training of skilled professionals should be resolved as well as the completion of syllabuses and training materials with factual knowledge materials on the built heritage of the 13 minorities registered in Hungary.

The funding of the protection of nationality architectural relics being mainly in private and self-governmental property has to be ensured as well. An information system has to be elaborated through which one could orient oneself on the resources available for this purpose up to the level of the value protection support of local self-governments. We consider it important that in the future the broader community could be informed about any monument protection and local value protection issue, as well as about knowledge gathered on professional meetings, thus providing access to information beyond expert circles also for proprietaries and users of these kinds of buildings or those wishing to initiate the preservation of a built relic.

A forum of sharing best practices has to be created along with finding the ways of the exchange of experiences. In co-operation with the actors of minority communities the possibilities for presenting the built heritage of minorities have to be broadened together with discovering educational methods that provide an

accurate picture on the architectural values of minorities based on local knowledge and registers completed by nationality data. It has to be arranged that these values are made public to the local and broader community, its members either belonging or not to minority groups, to nursery and school pupils, to proprietaries and neighbours, to researchers and all interested. All these people should have the opportunity to take steps to protect these values.

We do not consider it justified that while the Criminal Code qualifies as a crime the destruction and damaging of protected monuments and cultural relics by their proprietaries, the same act is not sanctioned in case of real estates under local protection. The factum of damaging cultural relics needs to be extended by the legislator also to privately owned real estates under local protection.

The status of minority cemeteries

Cemeteries – even if they are not falling under monumental or local protection – form part of our cultural heritage. For the time being there exists no register on significant minority cemeteries and tombs. This register is missing, given that cemeteries remind us to our historic past, and ancestors play a significant role in preserving and successing minority identity.

Therefore, a national survey should be made in order to disclose the accurate number of significant minority cemeteries in the country. This might be followed by the allocation of the financial framework necessary for saving at least the most endangered minority cemeteries and tombs.

Tombs in case of which there are no relatives being able to look after can be ceased after the expiration of the right to disposal. To avoid this situation the monument protection authority together with local self-governments has to pounder with an increased carefulness which tombs could be preserved by placing them under protection. It is also important that information and proposals on the basis of which tombs of deceased eminent members of minority communities can be declared as parts of the national cemetery reach the National Funeral and Memorial Committee.

In most settlements local self-governments are not able to perform even urgent tomb reconstruction works exclusively from their own budget due to their restricted financial means. The tardiness, however, results in the vanishing of further cemeteries and tombs. We consider it as an exemplary precedent that in 2002 the Government financially supported the maintainance of enterely closed Jewish cemeteries respecting religious rules and funeral considerations, the maintenance of closed Jewish cemeteries owned by not Jewish religious communities and the reconstruction of presently used Jewish cemeteries. The elabora-

tion of a similar programme would also be necessary for saving the cemeteries of minority communities.

It is considered as a deficiency in the relevant legal regulation that before emptying a cemetery the proprietary is not obliged to document the still existing tombs with the assistance of monument protection experts (museologists, ethnographists). This excavating work would be particularly important on settlements where the cemetery register is not complete or already missing and the names of the buried can not be identified. Costs should reasonably be born by those in the interest of whom the cemetery is vacated.

The violation of the cultural rights of minority communities may be generated by the legal regulation prescribing that the proprietary of the cemetery is entitled to sell tombstones after the expiration of a 6 months period provided that those disposing of the tombstone or their successors have not taken any measures to transport the given tombstone within the deadline prescribed for emptying. Consequently, irreplaceable values might be destroyed since old tombs are liquidated just for the very reason that there is no one who could be able to look after them.

The measures proposed by us might promote that the artistically or historically significant tombs and tombstones of still existing cemeteries could be preserved and succeeded for future generations. As for cemeteries and tombs which can not be preserved in their physical form, we consider it important to save at least a well-prepared documentation for the posterity which could be later made available for researchers and even a wider circle of interested people, for example on a CD Rom containing their photographs as well.

Setting up statues

According to the legal regulations in force the municipality of the concerned settlement – the assembly of the capital self-government in Budapest – decides on the placement, transfer and demolition of an arts work in public areas and on buildings owned by self-governments. There is not any legal regulation for the time being which would oblige local self-governments to obtain the agreement of minority self-governments for setting up statues relating to the history, traditions and self identification of minority communities. In our view, in case of these kinds of works, however, it should be expected from local governments to conciliate with the minority self-government concerned before its decisions in every question of merit.

In the last few years, there have been statues or memorials objected against by minority self-governments in several settlements. Some debates were resolved

due to the consent of the parties, in other cases no ideal solution could be found for the conflict. We consider it therefore necessary to extend the co-decision right of minority self-governments to the decision of setting up statues on public areas.

The role of minority performing art organisations in preserving identity

The Hungarian-language and minority theatrical art significantly influenced each other in the course of the 19th century. This organic development was interrupted following the 1st World War and even during the years of socialism, when minority communities were obliged to rebuild their own theatrical activities from the bases. Dramatic art of minorities has become rather divided recently: there exist institutions with university diploma-holder staff members, own buildings and several-ten-million-forint annual budgets, theatres on the border of profesionalism and companies functioning in the framework of amateur dramatisc as well.

The multicolourism of the theatre life of minorities, however, is hardly acknowledged by the professionals. The institution founded for the documentation of theatrical art, the National Museum and Institute of Theatre History has contacts only with few minority theatres and companies, the others are classified as amateurs in the lack of complex knowledge on their professional achievements. The disregard vis-à-vis minority theatres and companies is well demonstrated by the fact that minority companies are invited only exceptionally even for the out-of-competition programmes of the most recognized event of Hungarian theatrical art, the National Theatre Festival in Pécs.

The independent minority theatre festival, the ARCUSFEST creates the opportunity for most minority theatre artists to meet a wider public. Therefore it is unacceptable that the 2010 holding of this festival is in danger by reason of sponsoring difficulties.

It is obvious that minority theatres are in a disadvantaged situation in the course of the allocation of budgetary support compared to non-minority companies on similar professional quality level. Economic restraints affecting the whole theatre life might therefore even more thoroughly afflict minority companies. The elimination or at least the moderation of this unfavourable effect is expected therefore from bodies and institutions participating in the distribution of state support for cultural activities.

Minority orchestras, dance groups and choruses also play a significant role in the preservation and promotion of minority identity. Not only the cultural life of their own communities is served by their activities, but their performances are always very successful also on events and festivals attended by the members of the majority society.

Danse halls are special meeting points of minority and majority cultures. Their history is more than three decades old, although they have not been legally recognized yet. Since 2009 it is possible for them to more easily enforce – through a register kept by the House of Traditions – the copyright fee exemption relating to performing exclusively folk music.

Act XCIX of 2008 on Sponsoring and Specific Employment Rules of Organizations of Performing Art (Performing Art Act), which entered into force in 2009, introduced a new sponsoring system. From 2010 only those performing art organizations are entitled for central budgetary support which are operating as budgetary bodies or public utility organizations qualified by a separate law and registered for their request by the Performing Art Bureau. The introduction of the new sponsoring system – at least in the budgetary year of 2010 – is supposed to result in the significant withdrawal of rescources in case of nationality theatres registered on the basis of the Performing Art Act.

Minority ensembles – with one exception – were not able to meet the requirements stipulated by the Performing Art Act necessary for registering a music ensemble as an orchestra. In our view, the modification of the legal regulation is therefore necessary so that the activity minority ensembles and groups represent in the cultural life of minority communities and the whole society can become the subject of support, in line with its significance.

Minority film productions

The investigation justified that the situation of minority film productions is problematical in respect of their production, distribution and preservation as well.

It is a fundamental deficiency that legislation does not define the notion of minority film production. Although film productions in minority languages are handled from a sponsoring point of view equally as Hungarian-language productions, the lack of definition results in many practical difficulties. On the one hand the assessment and follow-up of the number and the support and archiving of these productions are made significantly difficult, on the other hand the existence and importance of minority film productions are not appropriately emphasised in the lack of a separate definition.

The missing definition of minority film productions is closely related to the fact that there exist no minority film-making workshops in Hungary or if they do, they are not known by the public. This is also a result of sponsoring problems which is proven by the fact that for the time being film-makers can prepare their works only in the minority editorial office of the Hungarian State Television where the necessary infrastructure is given.

The system of state support is of particular importance for film productions and more specifically for the production of films that concern only a given layer of society. Hence, it is not a realistic expectation in case of minority film productions that the financial background of the production should be created by film-makers exclusively through sponsorship. After reviewing the state support system, first of all we had to point out that the amount of budgetary resources to be used for minority film productions can not be accurately specified in the lack of the legal definition of minority film production. However, based on the information provided by the addressed bodies it can be established that only a small proportion of support is spent for these kinds of film productions. This situation is well demonstrated by the fact that neither Act II of 2004 on Motion Picture (Film Act) nor the Support Rules of the Hungarian Motion Picture Public Foundation (MMK) issued on the basis of the aforementioned act deals specifically with the aspects of minority film production.

Minority motion picture culture represents values that are significant for the whole society. It is expected therefore that the Film Act shall enumerate the traditions and cultures of minorities living in Hungary as values to be promoted amongst the terms concerning "cultural contents". This modification would also contribute to the inclusion of minority film productions in state supports.

Another problem is that completed minority film productions may reach the audience only by few channels. Cinemas and commercial television channels hardly broadcast any of these kinds of productions, and even if the Hungarian State Television strives for presenting minority film productions in its public service mission, the proportion and duration of these compared to the totality of broadcasted programmes is rather small.

National archives are serving for preserving film productions on a longer run, making them available for future generations. The National Audiovisual Archive (NAVA) provides direct internet-based access for the population to former broadcasted programmes of public service broadcasters and national earth-surface broadcaster television channels. This service is available through NAVA points on the terminals of certain cultural and educational institutions listed by the law. It would be practical if minority self-governments and other

minority institutions contributing to the cultural public service supply of their own communities could also be included in this institutional circle.

The preservation of not-broadcasted records created a daily problem in the Hungarian State Television in the last few years. The question of archivation has been, however, mainly resolved by the application of the new production technology. Apart from this, the so called "muster" records representing significant cultural values should be made widely available for researchers.

Cultural rights of minorities from the aspect of international obligations

The framework of self-obligations relating to the European Charter of Regional and Minority Languages – one of the most significant international covenant in the preservation and use of minority languages carrying cultural heritage – shall not derogate the provisions of the Minorities Act.

The preparation and publicity of the periodic report of the European Charter of Regional and Minority Languages is not based on fixed rules or steady practices. The summary and monitoring of expenses spent on minorities is mainly unresolved today, by reason of the unchanged (basis-oriented) planning and accounts structure of the state budget and the restrictive interpretation of ethnic data management.

For the domestic enforcement of the UNESCO Convention on the expression of multiculturalism it is necessary for the Minister of Education and Culture to establish as soon as possible an institution aiming at promoting co-ordination, monitoring execution and the possible support of the International Found.

National and ethnic minorities have to be involved in the domestic preparation of the periodic report on the development achieved relating to self-obligations included in Article 16 of the UN International Covenant on Economic, Social and Cultural Rights. For achieving this goal minority communities (national self-governments, public foundations, civil cultural organizations and minority-specialized university departments) should be provided the opportunity to give information and make observations in the course of the reporting period relating to the protection and practice of cultural rights and their promotion by state programmes. It is a governmental task to elaborate on a normative level the procedural order which contains the requirement that the recommendations made by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities in the reporting period relating to cultural rights shall also be considered.

Reviewing the self-obligations taken by the Republic of Hungary in bilateral and multilateral international agreements, it could be established that the execution and monitoring of these obligations are often delayed or completely missing. The activities of joint committees established for the promotion of relations between mother-countries and Hungary are of a low efficiency. The transparency of the operation of joint committees and the execution of proposals has to be ensured as a part of the protection of the cultural rights of minorities.

Chapter II

Paradigm change proposals on the area of ethnic data management

It was more than one decade ago that the former Data Protection and Minorities ombudsmen drafted in a joint position statement the requirements relating to data management concerning ethnic identity and its perception.[2]

However, minority and anti-discrimination legislation have gone through significant changes recently. Social relations have been restructured and the system of ethnic data management has been criticized many times by directly concerned minority communities and their members, as well as by professionals. Concerning the political rights of national and ethnic minorities the Consitutional Court established in its Resolution 45/2005 (XII. 14.) that false declarations relating to the belonging to minority communities endanger the application of minority rights. The 2008 report of the State Audit Office focused on the problem that the handling of target funding aiming to promote minority integration can not be monitored without ethnic data management. Minority law activists also criticize the present system of ethnic data management as a system hindering the action against discrimination of minorities while restricting the availability of data necessary for the identification of discrimination.

Therefore we considered it necessary together with dr András Jóri Data Protection Commissioner to take steps towards the review and reconsideration of ethnic data management rules. Our own initiative investigation on ethnic data management was launched in April 2009 in co-operation with the staff of the Data Protection Commissioner.

Method and target of the investigation

The investigation was carried out with the inclusion of many colleagues and was divided into several phases. As the prerequisite of a well-founded inquiry, first of all every related case of the two commissioners, as well as domestic and international legislation, the most significant domestic resources of the topic,

[2] Joint position statement of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the Parliamentary Commissioner for Data Protection and Freedom of Information relating to the problematics of the so-called „certificates of origin", 19 October, 1998.

international recommendations and literature had been reviewed.[3] The relevant resolutions of the Constitutional Court had also been examined. After the grounding and the clarification of the main questions of the inquiry our investigation was continued in three working groups co-operating closely with each other. One working group was responsible for drafting general, conceptual and principal matters while the other two were involved in the topics of justice and related media reporting, respectively the problems of child protection. In the course of the investigation regular consultations were held with the staff of the Data Protection Commissioner.

However, it was our fundamental concept that external experts would be involved only exceptionally in the investigation, for clarifying certain specific professional questions.[4] Further professional negotiations affecting essential elements are considered necessary following the preparation of the debate document, for its improvement and refinement.

Our proposals were elaborated with the intention to promote the uniform application of the law and the establishment of an appropriate legislative background in accordance with the contents of Constitutional Court Resolution 45/2005. (XII. 14.).

We are aware of the fact that this is a particularly sensitive topic being susceptible to evoke even grievances and fears based on historic reasons. Therefore, in the course of our recommendations we pay special attention to the immovable constitutional principle of equal dignity, the prohibition of torture, the constitutional requirements of the protection of sensitive data and the rights of national and ethnic minorities ensured by the Constitution and separate laws. In accordance with these, our recommendation does not aim the peremptory certification of origin, nor the creation of a local or central official register containing ethnic data.

The primary aim of the approximately 40 pages long paper is to promote the full realization of the principle of equality and of the individual and collective rights stipulated by the Constitution for national and ethnic minorities.

[3] This included the examination and analysis of more than 100 cases and almost 50 rescources.

[4] Professional assistance was provided for the drafting of the chapter on child protection by the Child and Youth Protection Department of the Ministry of Social and Labour Affairs and the Regional Child Protection Service of the Self-Government of Budapest Capital. We are also grateful to Fészek Association and Gólyahír Association for sharing with us their experiences, as well as to dr. László Majtényi for his detailed information.

Observations and proposals

Ethnic data management is a particularly complex and diversified topic. Institutions of legal protection are therefore permanently facing a paradox which can also be called the "Murphy's rule of racism"[5], namely that while the discriminator is always aware of who belongs to certain minorities, people responsible for redressing discrimination or elaborating origin-related programmes do not and can not obtain any data in this respect. A 2008 study of the State Audit Office on the investigation of the use of fundings targeting Roma minorities – which stirred up a great storm at the time of its publication – underlined that without identifying the target group of sponsoring and its members neither is it possible to elaborate and execute efficient measures, nor to monitor their efficiency and to transform strategies in line with the results of these monitoring mechanisms.

Numerous international documents and recommendations refer to the importance that states obtain the most possibly accurate data available on the number and social-economic status of minority groups living in their territories. The UN Committee on the Elimination of Racial Discrimination emphasised the significance of this data collection in five different recommendations, similarly to the contents of the General Recommendation Nr 4 of the European Committee against Racism and Intolerance of the Council of Europe (ECRI). In accordance with the report of the State Audit Office ECRI underlined in its 2008 country report on Hungary that ethnic data appropriate for the elaboration of targeted and adequate measures are still not available.

Besides the aforementioned international documents Hungarian social facts also indicate the necessity of data collection. Attacks against Roma families raising the suspicion of racist motivations have become more and more frequent recently. Another negative trend can also be noticed paralelly, namely the multiplication of media news identifying Roma minority with the notion of crime and criminality. In 2008, we also received complaints relating to a website on "kraut-criminality". On the area of child protection the minority origin and identity of minority children getting into the system also appear as an everlasting and unsolved problem.

Although the prohibition of registering ethnicity laid down by the legislation in force does not impede "selection" among children based on skin colour or origin, it creates an obstacle for adopted children to know their minority origin and traditions. The situation is also unresolved in the area of political rights: even following the 2005 modification of the Nektv. many complaints question-

[5] This expression has been introduced to the Hungarian literature by András László Pap.

ing the minority badinage, consequently the legitimacy of certain minority self-government representatives were received by our office.

Our proposals aim to provide constitutional, professionally correct and practically applicable solutions for the aforementioned dilemmas, offering alternatives to be applied in special areas such as the redress of discrimination, the adjudication of different supports, the practice of representative rights, the management of statistical data registered in criminal justice or in the course of censuses and the problems of child protection-related "origin-registers".

Who belongs to a given minority group?

Hungarian regulation in force is based on the principle of free declaration of identity. The Nektv. stipulates that *"the undertaking and expression of the belonging to some national and ethnic group or minority is the exclusive and unalienable right of the individual. No one can be obliged to make a declaration relating to their belonging to some minority group (…)."*[6] According to the amendment to the Nektv. in September 2005, however, separate laws and their executive statutory instruments may authorize the exercise of some minority rights under the condition of the declaration of the individual.[7] Furthermore, it is the right of citizens belonging to some minority group to *"assess in secrecy and anonymity their belonging to some minority on the occasion of the national census."*[8]

Article 3[9] of the Framework Convention for the Protection of National Minorities of the Council of Europe, respectively the report on the interpretation of the Framework Convention[10] emphasise that each and every individual belonging to some national minorities has the right to decide upon the undertaking or the denial of their belonging to the minority concerned. This right, however, does not include the right of anyone to peremptorily choose which minority group to belong to. According to the interpretation of the experts of the Council of Europe the subjective choice of the individual is inseparably linked to essential objective criteria determining the self-identification of the person concerned. Hungarian legislation in force, however, does not contain such criteria, therefore in the prac-

[6] Paragraph 1 Section 7 of Act LXXVII of 1993 (hereinafter: Nektv.)

[7] Paragraph 2 Section 7 of Nektv. introduced by Section 33 of Act CXIV of 2005

[8] Section 8 of Nektv.

[9] *Act XXXIV of 1999 on the promulgation of the Framework Convention for the Protection of National Minorities of the Council of Europe, Strasbourg, February 1, 1995. Article 3. Framework Convention for the Protection of National Minorities. Explanatory Report. http://conventions.coe.int/Treaty/en/Reports/Html/157.htm.*

[10] *Framework Convention for the Protection of National Minorities. Explanatory Report. Art. 3. http://conventions.coe.int/Treaty/en/Reports/Html/157.htm.*

tice the principle of free identity undertaking is replaced by free identity choice according to which anyone at anytime has to right to attribute some minority belongings to themselves by a mere declaration. Hence the substance of minority rights becomes plastic and incidental.

The application of rights laid down in the Constitution and the Nektv. is therefore hindered by the fact that the law in force does not specify precisely the definition of belonging to some minority. The constitutional principle of legal certainty and the prohibition of discrimination are also violated by the not unequivocal application of the law. [This standpoint is also confirmed by Constitutional Court Resolution 45/2005 (XII. 14.).]

Therefore, we consider it necessary to elaborate an objective system of guarantee criteria presuming real relations between the individual entitlements and their subjects in order to terminate improprieties relating to various constitutional rights: the principle of legal certainty, the prohibition of discrimination and the full realization of national and ethnic minority rights (laid down in Paragraph 1 Article 2, Article 70/A, respectively Article 68 of the Hungarian Constitution) and also in order to ensure the correspondence to the international obligations of the Republic of Hungary and to prevent future improprieties.

It is a basic question that under what kind of objective considerations can someone be regarded as the member of a minority community in certain life situations. Does a sole, uniform and unified system of criteria exist? Considering the diversity of life situations we recommend a differentiated solution instead of uniformization. We should distinguish between two types of situations. In case of victims of discrimination or racially motivated attacks, reasons which might have referred to the origin of the victim have to be primarily considered by those applying the law. In case of attacks against Roma families for instance, the place of residence of the family and the physical marks of family members, or their names might have served as decisive and motivating information for the perpetrator. The identity and conscious self-image of victims, however, is not relevant in this case, neither the extent to which they considered themselves as Hungarians or as members of Roma minority. However, if an employer is looking for a pedagogical assistant or a police officer especially with Roma origin, the declared, represented and lived identity should be considered by reason of the contents and character of the given task. The same applies to the right to vote on minority self-governmental elections where the de facto lived and real minority identity (for instance by the participation in the cultural life of the minority community) has priority. In case of programmes aiming to neutralize and equalize the social effects of discrimination, "inborn" features (e.g. surname, physical appearance) are coming to the forefront, as these might result in the disadvantaged

situation of the concerned in the area of education or labour, making them the subject of potential discrimination.

Considering the diversity of life situations we have drafted a total of four lists containing primary and secondary criteria. The first refers to the victims of discrimination and racist crimes, the second to the subjects of positive measures, the third to the practice of minority rights including financial advantages, while the fourth refers to the practice of the minorities' representative rights.

It is a well-founded question to specify who is entitled to judge the existence of the aforementioned criteria, namely which person or organization is responsible for making probable the belonging of a certain individual to some minority community in respect of certain legal relations. In case of discrimination and racist crimes proceeding authorities (e.g. police, public prosecutor's office, judiciary, and ombudsman) presume the origin of the injured party. The fact however, that we are offering criteria as helping tools for an appropriate deliberation would constitute a major change. In case of minority self-governmental elections an elected committee representing the given minority community would ponder criteria relating to the right to vote in the course of the compilation of the electoral register. In other cases the objective guarantee considerations are pondered in the recommendation of the local minority self-government in line with the principle of recognition by minority community. Up to now, recommendations have been issued regularly by minority self-governments in order to promote the participation of certain individuals in some programmes. These recommendations, however, have been prepared in a completely subjective way, based on criteria which could not be traced back afterwards. We wish to make this solution more traceable and comparable. In the sense of our proposal future recommendations of minority self-governments and civil organizations could be made based exclusively on previously provided criteria and would have to be supplied by an appropriate reasoning. We recommend therefore the drafting of a form on which criteria the applicant meets should be marked by the minority self-government together with a written reasoning. The denial of the recommendation would also be expressed on the filled out and reasoned recommendation form. In this procedure therefore the concerned minority community could decide as a main rule whether a given person is its member or not.

Considering the diversity of life situations, we have consequently made proposals for considering different objective criteria for the specification of the belonging to some minority. At the same time we emphasised that the given minority community would be responsible for the deliberation of these criteria based exclusively on the free will and decision of the person concerned, also considering the given life situation. Neither local nor central registers, "lists"

would therefore be prepared on persons belonging to some minorities. (With the exception of the already existing electoral register.)

Statistical data and census

The pre-requisite of the elaboration of an effective and well-operating social and minority policy is to obtain a most possibly complex and comparable image on the number, geographical location and social-economic-demographic indexes of minority communities living on the country's territory. Census is a significant tool thereof, so the questions and the methodology it is based on are of major importance. The aim of censuses is to obtain data providing precise information in the appropriate break-down on the cultural-linguistic and social-territorial indexes, the integrated or segregated life of minority communities, on the diversity and over-generational character of identity and on disadvantages relating to minority life. Furthermore, as a principle, the definition of the individual elements of identity shall be based on a category-system that enables the declaration of multiple attachments, the complexity of origin-based/ethnic/national identity and the belonging to sub-groups within a given minority community. The voluntary character of answering questions relating to certain aspects and elements of ethnic identity during the census is still a priority. So is the high-level guarantee of the protection of sensitive data in the course of the interview and the data processing, which shall at the same time raise the willingness of subjects to reply to such sensitive queries.

In line with the recommendations of the European Conference of Statisticians relating to censuses to be held in the 2010s it would be also important to compare the minority image existing in the society with the minority image based on self-assessment. Many questions and dilemmas could be answered by this comparison, like the reasons of differences between self-classification and perception, social-economic characteristics and integration level of the "de facto" and "fictitious" Roma population, etc. Questions shall measure the origin of the individual and the origin percepted by externals (this is particularly important in case of the Roma minority) and the existing or accidentally lost cultural identity (language and participation in cultural life). This is a priority especially as census data may serve as starting points and correlation bases for further research and strategical planning

We have expressed our detailed viewpoint on the methodology and problematics of censuses several times in a written form and on meetings as well. We have signalled to the president of the Central Statistical Office that more effec-

tive and precise questions would be necessary in order to get some information on the features of minority communities. We have also argued for an external categorization made by the interrogators and proposed the drafting of a total of ten sub-questions in four parts. In the course of the foregoing negotiations no positive answers have been actually received.

II

Ethnic data in criminal justice

Police data management may be one of the most delicate questions of ethnic data management and an area where public opinion is mostly concerned. The necessity of data collection, however, is rather a theoretical question: international documents agree in the issue that data collection is an inevitable tool of the action against discrimination and of the elaboration of veritably efficient measures and programmes. Data collection seems indispensable also when considering Hungarian social reality. We have to face the fact that besides media news more and more frequently identifying the Roma minority with criminality, public personalities and even justice professionals are formulating these kinds of statements as well, so the myth of the "colour-blind" justice has crashed in reality. Criminal justice and media reporting on it regularly "manage ethnic data" moving on the border of legality and often even exceeding it. The principle of the prohibition of data collection and data register has been overwritten by the social practice and the notion of "Roma criminality" is used in the common talk without any control and apparently unstoppably.

However, some further questions need to be answered in relation to data collection. On which personal circle data shall be collected? On the accused, the victims, the subjects of identity checks, the composition of police staff or the victims of racist crimes? Statistical or individual data shall be necessary? How shall data be registered? By self-assessment, by external perception or by the combination of these?

It should be highlighted from our proposals that ethnic origin of the individual accused/perpetrator must not have any relevance; therefore only statistical data independent from the person of the individual perpetrator are necessary in this field. At the same time the necessity of these data is beyond dispute in the present social situation, since the tendency of giving an "ethnic image" to criminality has become stronger and stronger recently. This view declares the responsibility of certain groups and claims the "regulation" and punishment of their members or often even of the entire group. Statistical data collection reflecting reality is necessary therefore for stopping this tendency. According to

our proposal data collection would take place as the part of the court hearing, on the last hearing, following the proclamation of the verdict. At that point of the procedure the convict would voluntarily declare their ethnic origin in a closed envelope and would also have the opportunity to eventually deny the declaration on the form. The public prosecutor would paralelly provide an anonym form (not containing even the name of the convict) in a closed envelope declaring whether or not the convict could be classified as the member of a minority community according to his/her perception. Further data are necessary to be included in the form filled out by the public prosecutor, which are significant for statistical analysis – particularly the region, the type of crime, the statements of the prosecution and the imposed penalty. The two closed and pinned envelops would be forwarded by the judge to the statistical data processing body in an anonym way not allowing the disclosure of the convict.

Preparing statistics by the proposed method might make it possible to disclose reality behind beliefs and to elaborate complex strategies for handling real problems. The anglo-saxon example well illustrates that the primary condition of a realistic and effective strategy building is that reliable data be available which had been obtained in a transparent way and which are acceptable for everyone. At the same time the press could be also provided with appropriate statistical resources originating from authentic sources for the sake of veritably objective information of a general interest.

Amongst proposals relating to criminal justice, data management proposals concerning the origin of the victims of crimes shall be also stressed out. Data collection on the victims of racist crimes is suggested primarily. Data collection shall be needed in case of the victims of any other crimes only upon individual request. In case of victims of hate crimes (such as murder of racial motivation) individual data are necessary for establishing the statement of the facts. Besides these individual data statistical data are also necessary in order to follow-up social processes and to elaborate further state strategies based on these data. Therefore the registration of hate crimes is also necessary.

The phenomenon of the so called ethnic profiling is mentioned in several domestic and international studies. This means that in line with the "criminality myth" existing in the society the police while performing its persecution and crime prevention tasks often "selects" among persons in its horizon on the basis of their origin. According to experiences, this selection viewpoint, however, is not justified by efficiency considerations, so the efficiency of crime persecution is not increased by a more intensive control of people of minority origin. This phenomenon is particularly typical at identity checks, therefore we recommend the data collection to be extended also for those whose identity is checked. Fur-

thermore the efficiency of the practice of identity checks should be indicated as a separate criterion in the course of the analysis of statistical data.

Child protection

During our inquiry special emphasis was made on the topic of adoption. This is a particularly important area from child protection and minority law aspect as well, since children belonging to the Roma minority are over-represented in child protection according to researches. It is also a well-known fact that many multiply disadvantaged children, who are considered as Roma according to their visible physical marks, are waiting to be adopted. However, only a small proportion of parents waiting for adoption wishes or is willing to adopt these children. A register of origin would "legalize" the already existing practice that parents are "selecting" among children, therefore we object the ethnic data registration of children.

As a result of the present regulation, however, even children waiting for adoption are not allowed to be informed on their minority origin and can not decide on their relation with this origin of theirs. Besides the fact that their rights are impaired by this regulation, serious personality disorders and psychological problems might develop in case of these children according to the unanimous opinion of child protection professionals. The fact that adopted children are not aware of their own origin and are not prepared to potential discrimination by reason of their physical marks may also result in a crisis of identity. Consequently, if the adoptive parents are not aware of the background of the child, they can not prepare them to living their minority origin in the society.

In order to resolve these dilemmas, and agreeing with the previously raised proposal of the child protection professionals, we support the elaboration of a so called "Family legendarium" for the reconstruction of the past, the family history and the origin of children placed in child protection care. However, we raise objections to the independent registration of data of origin not serving the interests of the child. The target of establishing a "Family legendarium" is to document the past of the child contributing to the stability of their personality and the development of their positive self-image as well as promoting their social integration.

Recommendations and the “afterlife” of the report

It is apparent according to the aforementioned facts that the existing formally correct, apparently “colour-blind” approach can not be maintained in the future, since this attitude results in uncertainty and unpredictable practice on numerous fields of life, impairing constitutional and human rights of many people and communities. Our aim is to offer proposals for decision-makers which would promote the full realization of the principle of equality and of the individual and collective rights of national and ethnic minorities stipulated by the Constitution, together with the efficient use of public funds planned for this purpose in the interest of the entire society.

In line with the aforementioned observations a total of eight legislative proposals were drafted for the attention of the Minister of Justice, the Minister of Social and Labour Affairs and the Minister without portfolio responsible for the harmonization of social policy. By the closure of the manuscript of the annual report only the Minister of Social Policy has reacted to our proposals, signalling that taking into consideration the complexity of this question he wishes to formulate his viewpoint on the merits following a discussion with the other two ministers.

We consider it as a success that our proposals have generated debates and thinking in professional circles. We are convinced that resolving the problems drafted in the report is the pre-requisite of the elaboration of a veritably effective minority policy and that our proposals might serve as good starting points for resolving those. Therefore we are still dedicating the report to the attention of decision-makers.

Chapter III

Problems concerning minority autonomy

The present governmental cycle is shortly coming to its end; therefore we have the opportunity to summarize our experiences in a long retrospect. It can already be said that the 2005 modification of minority law had been preceded by a long preparatory period in the course of which ministries professionally responsibe for codification – with the co-ordination of the National and Ethnic Minorities Office – were continuously collating with national minority self-governments and the Minorities Commissioner. The aim was to elaborate a legal text which is able to promote the action against electoral abuses, to empower minority self-governments with real powers and to create more predictable operational conditions. However, the filed proposition of the law met these expectations only partly. While it legally reinforced the legal state of minority self governments and declared their equal level to local self-governments the proposition had not still induced any essential leap forward relating to the conditions of operation. At the same time electoral law provisions had been "overwritten" by political decision-makers shortly before the final voting for the sake of ensuring atwo-third majority voting needed for this legislation.

Thus the electoral reform reached its target only partly. It can be considered as an outcome that on settlements where the minority community demanded the establishment of their own self-government, elections could be successfully held. Therefore the fear that minority electors will not demand in a sufficient number their registration to the electoral register proved to be groundless.[11] It is a fact, however, that a great number of the members of minority communities did not attend the elections. If the preservation of identity and "survival" is important for minority communities more appropriate information campaign should be carried out in the future in order to promote an increased electoral activity for the sake of the highest possible legitimacy of minority self-governments.

The most considerable deficiency of the new legal regulation is the lack of a definition precising under which circumstances can the belonging of a given person to some minority community be judged. This also resulted in the fact that while in theory only members of minority communities were authorized to participate on the 2006 elections, by a formal declaration, practically anyone

[11] According to the legal regulation in force election had to be set on settlements where the number of minority electors included in the minority electoral register reached 30.

could ask for their inclusion in the minority electoral register. When comparing data obtained at the 2001 census to the minority electoral registers it seems probable that at least 6 percent of minority self-governments were elected on settlements where the given minority community is not even present.

The percentage of "fake minority" self-governments differs within individual minority communites. Disputes evoked by electoral abuses became steady, particularly among Romanians living in Hungary. This situation is well illustrated by the fact that in 2009 a Romanian self-government launched press correction proceedings against a Romanian newspaper published in Hungary that had connected the respective self-government with the phenomena of "etnobusiness". The controversial court decisions of first and second instance confirm our opinion that formulating a standpoint "as an outsider" in the question of the belonging to some minority community is extremely difficult. Minority communities therefore should be provided a wider role in the electoral procedure and more particularly in the listing of electoral register because of their guarantee character.

No legal steps can be taken to counter the operation of established "fake minority" self-governments. State subsidies shall be continued to be paid for these self-governments during the entire period of self-governmental cycle similarly to those minority self-governments which are representing real minority communities. They are even entitled to demand task-based subsidies in case they fulfil formal requirements. Therefore it would be a fundamental constitutional requirement that electoral rules prevent electoral abuses.[12]

Experiences concerning the performance of duties

The fundamental duty of minority self-governments is to represent a given minority community also including those not having participated in the electoral procedure, to promote the emergence of minority rights and to contribute to the direction of minority public affairs. The establishment of minority self-governments is therefore not a target for its own sake but an instrument to activities performed in the interest of a community.

Minority self-governments are interpreting their own scope of duty extremely broadly. In certain settlements the operation of minority self-governments is limited to holding their four meetings per year, to decide on their budget and to occasionally participate on events affecting the represented minority. A

[12] Our proposals are described in the chapter on data management.

significant part of minority self-governments, however, organises cultural programmes, follows with attention the situation of minority education and may even maintain own institutions. These bodies frequently undertake even duties overstepping the frames of cultural autonomy. Roma minority self-governments are more and more forced to contribute to resolving local social problems as well. However, the necessary legal authorization is missing for these duties and financial conditions are not provided either. Despite, we have been informed several times that Roma self-governments of certain settlements organise the collection and distribution of donations for those in need and in one City of Békés County the self-government even maintained a social institution of personal care. We wish to emphasise, however, that this kind of "duty extension" is characteristic not exclusively to Roma self-governments. As an example, the representatives of a German self-government of one district of Budapest informed us at the last public hearing that their self-government provides assistance for old people with reduced mobility who are no longer able to independently fulfil their official and private affairs. If they wish so, these people are shopped for and even chopped the firewood for and have it carried to their places.

In many cases duties wished to be voluntarily performed are not harmonized with the provisions of the Nektv. according to which minority self-governments are not allowed to take over scope of authorities relating to official and public services. Neither the amount of operational nor duty-based benefits of minority self-governments are allowed to be used for instance for distributing allowances based on necessity. These "duty extensions" are therefore unfamiliar to the system and often unnecessarily mislead bodies established for the preservation of identity.

It is a general problem that the right to representation of minority self-governments is often considered as formal on governmental and self-governmental levels as well. In many cases certain law proposals affecting minority rights are not even sent for opining to national minority self-governments or only by a very tight few-day replying deadline. We considered it particularly unacceptable when national minority self-governments had been left out at the very early stage from the consultation of the draft law on registering procedure. We have also asked therefore measures to be taken by the Ministry of Justice and Law Enforcement. From the 1st of January 2011 this act is going to regulate the marriage on minority languages and the register of minority languages and their indication in personal documents. In spite of this, even the Ministry of Justice, the governmental body primarily responsible for the professional quality of

governmental legislative preparation did not fulfil its obligation for consultation prescribed by the Nektv.[13]

We have similar experiences relating to legislation on local self-governmental level. It is also reprehensible based on the unambiguous legal regulation in this respect. Local self-governmental decrees affecting the minority population in the topics of local press, local tradition preservation, culture and collective language use shall only be passed by the municipality with the agreement of the minority self-government concerned. It also results from the provisions of the Nektv. that minority self-governments have the right to opine local governmental decrees in case of which the agreement of minority self-governments is not required but minority population is concerned in this capacity of theirs.

In spite of these legal regulations minority self-governments can hardly influence local legislation in the merits. Some local self-governments even dispute the provision that proposals affecting minority rights but not requiring agreement shall be sent to minority self-governments. The invitation of the president of the minority self-government as a spokesperson to the meetings of the representative body is considered as sufficient in their view. Other municipalities recognize the legal obligation of consultation, however, they don't deal on the merits with the minority self-government's proposals and do not take these into consideration.

The right to co-decision does not necessarily prevail in the case of decrees tied to agreement either. Representative bodies are aware of the fact that a significant part of minority self-governments will not launch any legal proceedings against unlawfully passed local statutory instruments, since on the one hand they can not undertake this legal proceeding, on the other hand they are afraid of openly opposing local self-governments by reason of their defenceless situation the question of which we are going to touch upon in connection with operational conditions as well.

The present practice is contrary not only to the provisions of the Nektv., but also to the obligations of the Republic of Hungary undertaken in many international conventions for ensuring the opportunity of participation for minority communities in cases affecting them. The Framework Convention for the Protection of National Minorities of the Council of Europe promulgated by Act XXXIV of 1999 is particularly significant.[14] The commentary of the Advisory Committee

[13] Paragraph 1 a) Section 38 of the Nektv. stipulates that the national self-government gives its opinion – with the exeption of local self-governmental decrees – on draft legislations concerning the represented minorities in this capacity of theirs; and on a the self-governmental decrees of counties and the capital if the given minority does not establish a regional minority self-government.

[14] In Article 15 of the Framework Convention the Republic of Hungary has undertaken to create for people belonging to national minorities requirements necessary for the participation in cultural, social and economic life, respectively public affairs, particularly those affecting them.

of the Framework Convention published in February 2008 points out that state parties shall pay special attention to the inclusion of people belonging to national minorities in decision-making procedures which are of a particular importance for them. Apart from this, minorities are also entitled to express their views in cases where they are not exclusively concerned but affected as the members of the entire society. The commentary to the Framework Convention also lays down that *"it is not sufficient if state parties ensure the participation of people belonging to national minorities only formally. It should also be ensured that their participation influences the decisions in the merits and that these should be common decisions, if possible"*. Legal frameworks necessary for fulfilling this requirement already exist in Hungary. The task of generally realizing these legal regulations in the daily practice is expected to be fulfilled by the following self-governmental cycle.

Operational difficulties of minority self-governments

Minority self-governments are in a special public law-situation. As for their legal status, they qualify as self-governments, while their operational circumstances are much worse than those of an NGO disposing of an own office. According to the legal regulation in force the way the operational conditions of the representative bodies of minority self-governments are ensured is considered by local self-governments. Hence, there exists no harmonized practice in this field. It also occurs that the right to use a separate office is provided for minority self-governments, the costs of which are entirely or partly beared by local self-governments. It is much more frequent, however, that minority self-governmental representatives are allowed to use a premise of the mayor's office only for the length of the meeting of their representative body.

Complaints relating to the placement of minority self-governments were also received by our office in 2009. In these cases our opportunities were restricted to requesting the fulfilment of legal obligations from the given local self-government. On settlements where individual departments dealing with certain types of official cases are operating in separate premises within the mayor's office we attempted to mediate in order to obtain a separate office premise for the minority self-government. This solution was also proposed if a premise of a public institution operating on the settlement could be offered for the use of the minority self-government without the disturbance of its original function (for instance library service or general educational activity). If such placing is not possible, the use of an appropriate office premise suitable for working purposes – heatable premise equipped with tables and chairs – should at least be provided for the necessary

period of the meetings of the minority self-government. In the lack of a separate premise in the mayor's office minority self-governments should also be provided as a minimum requirement, with a closable filing cabinet.

In our previous annual report we have already mentioned what consequences the ceasing of legality control might result in. We have also emphasised that settling debates relating to the use of premises would be even more difficult in the lack of this control. This prognosis of ours proved to be sound. It also occurred in 2009 that a minority self-government dissolved itself only because of the fact that its placing had not been resolved by the local self-government during several years and the fulfilment of legal obligations could not be promoted by the proceeding organs (Minorities Commissioner and Egual Treatment Authority), while the pending proceedings of the administrative authority were stopped.

For the time being, the two self-governments have to reach an agreement on the available operational conditions. Similarly to former occassions, in this year's report we still recommend the drafting of an executive decree being able to regulate the question of premise use in a differentiated way, adjusting to the possibilities of settlements and the duties performed by minority self-governments.

Failure of the modification of minority legislation

Several informal consultation fora have been established in this self-governmental cycle for reviewing minority law and preparing the amendment of the act. Codification works, however, have never been completed or have only resulted in conceptions. The Constitutional Court clearly stated in one of its resolutions that there exists no obligation for the time being prescribing that minority-related laws shall be passed or modified only with the agreement of minorities. In the practice, conciliation based on the right to opining may reach a consensus, which signifies an efficient co-operation but does not follow compulsorily from the Constitution.[15]

Nonetheless, the 2nd Minority Round Table established upon our initiative aimed to elaborate professional proposals bearing the unanimous support of the 13 national minority self-governments. It became clear even at the very beginning of the discussions that the standpoints of minority communities fundamentally differ in the questions of electoral law. However, consensus-based solutions were finally agreed on, based of which the elaboration of a legislative proposal could have been launched. Consensus has been reached for instance on the conception of parliamentary representation of minorities and several expert papers

[15] Constitutional Court Resolution 168/B/2006

have been drafted on the possible extension of the personal scope of the Nektv. and the procedural order of the inclusion into the electoral register. Neither the Government, nor parliamentary parties could, however, been "convinced" to express their opinion on these ideas.

Three working groups were also formed under the co-ordination of the Ministry responsible for minority affairs whose duty would have been to prepare the modification of minority law. The original target was to obtain the proposals of national minority self-governments and experts with the professional assistance of the staff members of ministries. Thus no previous direction had been designated for legislation as a result of which the preparation and discussion of mutually contradictory solutions often took place in the working groups. At the same time delegates did not dispose of unequivocal authorization for selecting among the raised alternatives. As we have already criticized it in our 2007 annual report, representatives of minority communities had been more and more forced in a situation where they were supposed to work out proposals in parallel with pondering the constitutionality and practical feasibility of these proposals. The working groups ended their consultations without having fulfilled their undertaken duties.

These events have lead to the recognition that the inclusion of political decision-makers is necessary paralelly to the expert-level preparation of the amendment of minority law. It is particularly true for the parliamentary representation of minorities, well illustrated by the fact that no attempts had been made for resolving the existing unconstitutionality manifested in omission in the nearly 10 years preceding the establishment of the 2nd Minority Round Table.

The demand for a solution which would enable the institutionalized participation of minority communities in the legislation process emerged as a temporary solution to be applied till the realization of their parliamentary representation. Compared to the original idea also supported by our office, the Forum of Hungarian National and Ethnic Minorities was established in May 2009 providing an informal, legally not regulated consultation between national minority self-governments, parliamentary parties and the Government.

The idea that the Parliament be committed to the legislation relating to the parliamentary representation of national and ethnic minorities emerged on the meetings of the Forum. However, the content of the proposal filed shows that the Parliament wishes restart the work from the very beginning even returning to the review of alternatives which had been unequivocally qualified as unconstitutional by former Constitutional Court resolutions. The intention of recommencement is also expressed by the fact that the Government would be given the opportunity to file the draft law till the end of 2012. This deadline in itself

already questions that minority communities would be able to prepare for the 2014 parliamentary elections, even if the law granting electoral law advantages for minorities would be finally adopted. The fundamental problem, in our view, is that if the consultation of already and many-times debated solution alternatives on expert level is recommenced in each and every parliamentary cycle, legislative preparation will never reach the phase of political decision-making. Should the Parliament decide on the drafting of the law on the electoral law advantages of minority communities, or even on the amendment of minority law, our office hereby offers its professional assistance in this work.

We cannot report on any improvement concerning the restitution of legality control either. In our 2008 annual report we qualified the ceasing of legality control over local self-governments and minority self-governments as a serious impropriety of minority law. We pointed out that the absence of fundamental right-related regulation is an unconstitutionality manifested in omission which has to be discontinued by the Parliament the soonest possible by designating an organ responsible for the duties of legality control.

The amendment of the law requires a two-third majority; therefore it is feasible only in case of some consensus between parliamentary factions. Therefore we requested the ministries concerned to promote the restitution of legality control over local self-governments and minority self-governments by the preparation and submission of a draft law and through initiating professional consultations. The Government agreed with our proposal; however, the submitted draft law was rejected by the Parliament in July 2009. For this reason one of the most pressing tasks waiting for the following self-governmental cycle is the solving of the legality control of the organization, functioning and decision-making procedure of local self-governments and minority self-governments.

Chapter IV

Questions concerning minority education

The character of education-related complaints has been unchanged for years. Two basic types of complaints exist. Submissions relating to minority education contained legal interpretation and legal enforcement problems concerning minority education-related rights of a minority community or a minority self-government were made also in year 2009. However, the enforcement of the right to Roma minority education as a problem concerning collective rights did not emerge (with one exception), as it was expected to happen based on the previous practice.

Similarly to the previous years, only "large" communities among national minorities addressed us with educational submissions. No Armenian, Ukrainian, Greek, Polish and Ruthenian minority education-related complaints were received, neither general complaints on the possible unlawful operation of public education. Naturally, the major part of petitions was received in relation with the highly institutionalized German and Slovakian nationality education. In these submissions our assistance was mainly asked for the enforcement of consultation and agreement rights of minority self-governments relating to co-operation in requesting minority education and the operation of institutions performing minority education, respectively the appointment of the directors of these institutions.

The problems of the collision between individual and collective minority rights, however, were articulated in a much sharper way, compared to previous years. It was a regular and fundamental question raised in several petitions whether parents who are obliged under no circumstances to give an account on their belonging to some national minority – in line with the general interpretation and application of the law, that is not supported by our office – can also request the organization of minority nursery and school education for their children even if the minority self-government expressly protests against it.

Submissions relating to Roma children are about individual legal violations (mistreatment, humiliation and tyrannization against them) and/or about their unlegal institutionalized segregation. Typically, Roma minority education is cited in these petitions not as a right wished to be enforced but as the instrument and form of unlawful segregation.

The common caracteristic of mistreatment- and humiliation-related complaints is the lack of information. Anonym and too generally worded complaints

are quite regular, but at the same time it is true that heads of institutions do not proceed thoroughly against their staff members in the investigation of complaints containing concrete data. According to our experiences it occurs frequently that the investigation launched on our request contains exclusively oral and not registered hearings. In order to avoid this practice and based on the presumption of an objective and unconcerned relationship, we addressed several times in the year 2009 persecution authorities asking for the investigation of school mistreatments as crimes. These investigations, however, all dragged on and were closed with the termination of persecution[16]. Therefore a new method has to be elaborated for the future investigation of similar complaints.

Since we have dealt with the presentation of segregation complaints affecting Roma pupils many times in many aspects, this time cases relating to nationality communities are dealt with in details in this annual report.

The right to agreement: matters of principle and legal application

Restricting the autonomy of local self-governments in governing local public matters, the Nektv. provides the right to agreement and the right to consultation for local minority self-governments in many issues. The appointment of the heads of minority educational institutions is a repetitive point of collision and source of conflict between the two self-governments. We consider the collision of interests relating to obtaining these posts as one of the basic reasons of this conflict.

The nursery and the school are often the biggest institutions of a settlement obtaining at the same time the highest local budget and employing the most employees. The leader of the nursery and the school director are therefore of a paramount importance in influencing local public matters partly by reason of the size of their governed institutions. Moreover, the personality of leaders is also important by the obvious reason that through the definition of the institutional profile and the influence of the fortune of youngsters at obligatory school-age, they may have a fundamental influence on the future of the whole settlement.

Besides, we should not forget about the fact that (particulary on small settlements) the circle of local pedagogues and the intelligentsia of the local political elit is mostly the same. It can be often experienced that pegadogues are over-

[16] It was a particularly astonishing case when after the hearing of witnesses the Public Prosecutor's Office closed the persecution with the reasoning that the assault can not be established, since although the injured 11 year-old student suffered provable injuries healable in 8 days, the intention of the perpetrator had not been proved.

represented in the representative body of the local self-governments while nursery or school directors are practicing employment rights over them. Not rarely the mayors themselves are also pedagogues.

To give an example, the cancellation of a nursery building project was brought up as a serious minority law problem against a new local self-governmental representative body established after an interim election. The complaint pointed out that the realization of the competed and obtained tender-based nursery building had been made impossible intentionally by the prolongation of public purchase proceedings by the new self-governmental body. As a result, the launching of Slovakian and German minority nursery education planned by the decisions of the former local self-governmental representative body of different composition was also put in danger. The complaint could be rejected only after an investigation in the merits.

It is obvious that by creating the rights of agreement the legislator wished to achieve that minority self-governments could not be ignored in any essential questions they are not competent to decide in although the cultural autonomy of the represented community is concerned. Its indispensable condition is that local citizens in majority and minority clarify their common interests through meaningful dialogues. Other reason of the intensification (and prolongation) of debates relating to the appointment of the heads of minority institutions is the deficiency of legal regulation.

The Nektv. and Act LXXIX of 1993 on Public Education (Kotv.) stipulate the fundamental procedural rules of debate resolution relating to the exercise of the right to agreement between local and local minority self-governments, also including the establishment of a nine-member committee partly independent from the parties, destined for closing the procedure of consultation. However, these rules are not of great assistance, if minority self-governments insist on their own candidates seeming to be suitable according to formal rules. It is even more important that the nine-member committee does not have any "power" over the local self-government in the course of the entire consultation procedure even if it supports a candidate not fulfilling formal requirements.

Section 47/A of Nektv. in line with Paragraph 6 Section 84 of Kotv. stipulates a 30-day deadline for the exercice of the right to agreement which shall be once extended with another 30 days for the request of the minority self-government excersising the right to agreement. If the consent of the minority self-government is not given and the consultation between the interested parties has no results in further 15 days either, a nine-member committee shall be established. Further 3-3 members are delegated to the committee by the minority self-government

interested in obtaining the right to agreement, respectively the National Minority Commission (OKB). The decision substitutes the consent.

The nine-member committee is a legal solution originally established for the resolution of lengthy debates resulting in crisis situations and endangering the continuous operation of public educational institutions. The original intention of the legislator was that the committee shall close the debate with a legally binding decision with the participation of the interested parties, but finally independently from them by also involving external experts constituting the pointer of the scale.[17] According to the provision in effect, however, the decision of the nine-member committee resolves and closes the procedure relating to the right to agreement only in the case if minority self-governments exercise their rights by misusing the law or in other "defective" ways. Thus the regulation in force empowers the nine-member committee with decisive authority only "unilaterally", with respect to one party interested in the debate.

If the committee does not substitute the consent of the minority self-government considering that it fulfils legislative requirements, the debate between the two self-governments is discontinued for the future only if one of the parties voluntarily supports the nursery or school director candidate of the other party by his or her own will. In other words, if the nine-member committee does not substitute the consent of the minority self government it does not mean that the local self-government exercising the power of appointment is obliged to appoint the candidate supported by the minority self-government as head of institution. Hence, in the course of a decision-making procedure of personal consideration the conducted competition procedure may be declared as unsuccessful even if several candidates met the formal requirements of the given competition.[18]

If the consent of the minority self-government is not substituted by the nine-member committee, in the lack of obtaining consent the local self-government is not entitled to appoint its own candidate as director, it is entitled, however, to announce a new competition referring to the "failure" of the competition procedure. In such a case the local self-government exercising the power of appointment is entitled to entrust with leading tasks a public servant of the public educational institution disposing of the appropriate features. This assignment for performing the duties relating to the management of a public educational

[17] Act LXI of 2003 modified Act LXXIX of 1993 on Public Education. In the reasoning of the amendment the interpretation commented on Section 70 mentions decisive power.

[18] Governmental Decree 138/1992 (X. 8.) on the amendment of Act XXXIII of 1992 on Public Employees defines only in an exemplary way the notion of unsuccessful competition, which does not really orient those applying the law.

institution can be given for a temporary period, a maximum of one year, also without announcing an open competition.[19]

In these cases the question of the misuse of law can always be raised, since the requirement of the purposeful practice of law and the prohibition of the misuse of law is a general principle the whole legal system.[20] According to the legal interpretation of the Constitutional Court the source of the purposeful practice of the law according to Paragraph 1 Section 2 of the Constitution: The Republic of Hungary is an independent and democtaric state under the rule of law.

The requirement of the purposeful practice of law is also declared and even interpreted by Paragraph 7 Section 11 of the Kotv.[21] Based on this provision it is a clearly unlawful practice if the local self-government declares the competition procedure announced for the recruitment of the vacant post of director unsuccessful on the exclusive purpose of evading, restraining and impairing the rights to agreement of the minority self-government.

The realization of the rights to agreement concerning the appointment of the director was hindered in a concrete case by the OKB itself and its president when having forced the local self-government to an obviously unlawful decision refusing the appointment of educational experts.

In a given case competitions for the post of the director of a general educational center (ÁMK) had been announced three times by the institution maintainer self-govenmental association (hereinafter: local self-government). No candidates meeting the requirements had applied for the first time; therefore the establishment of the ÁMK serving for institutional merger had to be postponed for a year. A sole candidate had applied in the course of the second competition procedure the application of whom was accepted by the local self-government. However, the German minority self-government concerned did not agree with the appointment of the candidate. After the failure of consultations between the parties the nine-member committee including experts delegated by the OKB assembled and approved the decision of the minority self-government. Thus the second competition procedure was also closed without any results. Four valid applications

[19] Paragraph 16 of Section 5 of Governmental Decree 138/1992 (X. 8.)

[20] The requirement of the purposeful practice of law was elaborated by legal scientiscts and praticioners of civil law primarily in relation with the principle of the prohibition of the misuse of law. Based on these civil law regulations it became a general principle penetrating the entire legal system the main point of which is that the practice of entitlements shall not be directed towards a target inconsistent with the purpose of the law and the practice of subjective rights can expect legal protection and recognition only if those entitlements are practiced according to their functions and purposes.

[21] The excercice of law shall not be regarded as purposeful if it is directed towards or results in the violation of rights ensured by this Act, the Act on Vocational Training, respectively the executive statutory instruments thereof, in the restriction of interest enforcement opportunities, in the suppression of expression and in the restriction of the right to orientation.

had been filed in the course of the third competition procedure that were also opined by a public educational expert who considered two candidates suitable for the post of the director. During the tender procedure conciliation proceedings were conducted between the two self-governments without coming to an agreement. Then the mayor requested the OKB to delegate new expert members to the nine-member committee.

The president of the committee informed the mayor that he considered inconceivable to be able to conduct a new competition with such a short deadline. In his view, the seriousness of consultations with experts would be questioned by convening again the nine-member committee in the same topic in such a short period. Moreover, the delegation of experts for consultation involves financial obligation from the part of the party inviting the experts which fees were not settled by the local self-government in the course of the previous procedure. It was also referred to that the local self-government made stipulations as regards the person of experts as well. After all, no experts were delegated.

This reply was interpreted by the local self-government in a way that the OKB did not wish to deal with the case in the merits and the local self-government appointed as director a candidate not supported by the local minority self-government and the appointment of whom was still not approved by the minority self-government.

According to our standpoint neither the president of the OKB nor the OKB itself are entitled to qualify the procedure on the right to agreement. Particularly, they are not entitled to formulate any pre-assumptions. Besides, the delegation of experts can not be made by the OKB on condition of the payment of the fees of experts having contributed in the previous consultation procedure. (Especially as the contract inducing fee payment is not concluded with the OKB, but between the local self-government and the respective expert.) According to the regulations in force the OKB is by no means entitled to ponder on the possibility of appointing or not the appropriate educational experts to the nine-member committee: on the request of the local self-government the OKB has to make a decision in the merits on the delegation of educational experts.

Several fundamental questions can be raised relating to the concrete case:

- What is the deadline for the OKB for taking its decision? The OKB is not qualified as an authority, therefore Act CXL of 2004 on the General Rules of Administrative Proceedings and Services (Ket.) including provisions on procedural deadlines is not applied in its case.
- What shall be done if – based on the lessons learnt from former consultation procedures e.g. by reason of the non-payment of previous expert fees or any other reasons – there is not any expert who would be willing to un-

dertake to work in the nine-member committee? (The "delegation" of the expert by the OKB obviously means an "appointment". This, however, does not appear expressis verbis in the regulations on the one hand, on the other hand the delegation of the expert is the result of a consultation between the OKB and the expert according to the evolved practice.)

- How shall the OKB proceed if the delegation of experts is requested in a way that certain experts or groups of experts (e.g. group of experts in the given county) are in advance opposed by reasons of presumed partiality?
- In the lack of any prohibitory regulation is the OKB entitled to delegate the same expert to contribute to the closure of a new consultation debate between the same parties, relating to the appointment of the director of the same instiution? How shall the OKB proceed if one (or both) of the parties is against it?
- What shall be done if based on the new competition the nine-member committee should decide on the same candidates, the same applications and the debate on agreement of the same parties? May it be considered as appropriate or a formal authorization would still be necessary (no such rule exist for the time being) for the OKB to avoid the delegation of an expert? Or should experts be definitely delegated taking into consideration that the same applicant may draft a paper differing from the previous one and changes may have also occurred in his or her professional capacity and the documentation justifying that in the time between the two competitions?
- If several consultation procedures between the two self-governments concerned failed and several procedures took place relating to the appointment of the head of the same institution, how many times the nine-member committee has to be convened? In the lack of any restrictions in the regulation in force and for the sake of preserving the prestige of the OKB and its designated experts and even more by reason of the interest of the continuous operation of public educational institutions should it be necessary to consider empowering the nine-member committee with a real decisive power binding both parties?
- Or should the judiciary be designated for closing the consultation and appointment procedure if the conducted proceedings are declared as "unsuccessful" by the local self-government following the decision of the nine-member committee and if the new conciliation between the two self-governments following the announcement of the new competition also failed?

In our view, new legislation should be passed for answering these questions for the sake of legal certainty and the unambiguous orientation of those applying the law.

Legislative deficiencies and inaccuracies could also be noticed relating to the legal regulation of minority self-governmental rights enforceable in the course of the appointment of the directors of minority institutions not maintained by the state or by self-governments.

Paragraph 2 Section 28 of the Nektv. ensures the right to agreement during the election of the director only as regards to public educational institutions qualified as minority institutions and maintained by the local self-government.[22]

Concerning the election of the director of a foundation school participating in national or ethnic minority education Paragraph 3 Section 102 of Kotv. applies even if the given institution (as in the case of Gandhi Grammar School affected by several complaints) otherwise qualifies as a minority one. In the lack of the right to agreement and depending on the maintainer, this provision empowers the local or territorial minority self-government with the right to consultation in several fundamental questions relating to the operation of the institution participating in national or ethnic minority education and training, also as regards the election of its leader.

Three problems of principle can be raised:

1. Binding the right to consultation to the territorial level of the maintainer in the case of an institution maintained by a public foundation can not be interpreted. Therefore, in our view, Points 20, 27 and 45 of Paragraph 1 Section 121 of Kotv. have to be considered as well.[23]
2. The national minority self-government is not specified as a body possibly entitled to the right to consultation by Paragraph 3 Section 102 of the Kotv., not even in the case when the institution concerned performs its duties on a national level.

[22] Paragraph 6 Section 121 of Kotv. interprets the notion of minority institution linked to three simultaneously existing conditions. A public educational institution is qualified as minority institution if its deed of foundation contains the performance of national and ethnic minority-related tasks and these duties are actually fulfilled by the public educational institution in question. Furthermore, if in case of nurseries, schools and colleges at least twenty-five per cents of the students participated in national and ethnic minority nursery education and national and ethnic minority school education.

[23] Paragraph 1 Section 121 of Kotv.: „20. performing district duties: a public educational institution performs district duties if in a five-year average at least fifty-one per cents of those making use of its services are living outside the borders of the seat settlement also including those living in the outskirts of the settlement. It also applies to multi-purpose institutions if one of its institutional unit meets this requirement."

3. What can the judiciary and the public prosecutor's office do in case of an election terminated by the appointment of a director if the decision-making body had not asked for the opinion of the minority self-government?

According to the regulations in force if an institution not maintained by the state or self-governments performs local duties, the local, if it performs district, regional or national duties the territorial minority self-government is entitled (or would have been entitled in the concrete case) to the right to consultation in the course of the election of the director. Thus, concerning the election of the leader of a public educational institution maintained by a public foundation and participating in minority education or qualified especially as minority institution, the Kotv., surprisingly enough, does not even provide the right to consultation for the national minority self-government concerned.

The "regulational logic" of the Act relating to the rights to consultation and agreement seems to be crushed at this point. Since the decision-making of the (institution maintaining) local self-government also affects minority education and training, it is "loaded" with the co-decision right of the local, territorial or national minority self-governments concerned in significant questions affecting minority education. As a rule, the national minority self-government may be considered as affected provided that the institution performs regional or national duties.

The national minority self-government has a right to consultation in some cases when there is no local minority self-government, or in other cases besides the right to agreement of local or territorial self-governments.[24] It is entitled to opine, however, on its own right the development plan of the given county or the capital, and has a right to agreement when defining the admission district of institutions performing regional or national duties. Likewise, the consent of the national minority self-government has to be obtained for the establishment and cessation of institutions maintained by local self-governments and performing territorial or national duties also including minority education and training. The consent of the national minority self-government is also necessary for the modification of the scope of activities of the institution, the establishment of its name and the determination and modification of its budget, as well as for the appraisal of the professional work of the institution, the approval of the statutes of organization and operation, the approval of its educational, pedagogical and pedagogical-general educational programmes and institutional quality management programme together with the appraisal of their execution. Moreover, if the institution operating under the maintenance of the local self-government

[24] Paragraph 4 Section 85 and Paragraph 12 Section 88 of Kotv.

and performing territorial or national duties qualifies as a minority institution, the national minority self-government has the right to agreement also before the assignment of the leader and the termination thereof.[25]

Consequently, national minority self-governments should be empowered with the right to consultation also in case of institutions not maintained by self-governments but performing territorial or national duties in minority education and training.

In a case concerning the election of the director of Gandhi Grammar School we explained that – after the clarification of the local/dictrict-territorial-national duty performance, in other words the base for legal actions – the local or territorial Roma minority self-governments are entitled to contest with a legal action the decision by reason of the omission of asking their opinion.[26]

The "result" of an occasional court proceeding for the establishment of invalidity and the content of the court decision can not be preliminarily predicted. However, it is evident on the one hand that there is an error in procedural law which does not bind the resolution of the decision-maker in the merits, on the other hand the establishment of invalidity "does not affect the bona fide aquired and exercised rights" according to Paragraph 13 Section 84 of Kotv. In our view, based on the aforementioned, an appointed director can not be removed from position even if the court established the invalidity of his or her election referring to the lack of consultation with the minority self-government.

At the same time the Public Prosecutor's Office is entitled to file a protest in its competence of legality control to the decision-making body against employment-related individual decisions violating the law in a period of three years following the decision-making, even if bona fide acquired and exercised rights are violated by this.[27] [As the two acts, the Kotv. and Act V of 1972 on the Public Prosecutor's Office of the Republic of Hungary (Ütv.) are not in a hierarchical relation, their obvious contradiction can not be resolved by legal interpretation in our view.]

[25] Paragraph 1 Section 88, Paragraph 4 Section 90 and Paragraph 12 Section 102 of Kotv.

[26] The legal interpretation is complicated in case of institutions of multi-purpose, since „in an institution of multi-purpose […] the participation in the performance of national and ethnic minority-related tasks shall be examined by institutional units and member institutions. If the institutional unit or the member institution meets the requirements set up in this paragraph for minority institutions, as regards to the institutional unit or member institution participating in the fulfilment of national and ethnic minority-related tasks, the minority self-government is entitled to all the rights to be exercised as regards to public educational institutions contributing to the performance of national ad ethnic minority-related tasks based on the provisions of this Act." [2nd and 3rd phrase of Paragraph 6 Section 121 of Kotv.]

[27] According to Paragraph 1 Section 13 and Paragraphs 1 and 3 Section 14 of Act V of 1972 on the Public Prosecutor's Office of the Republic of Hungary

While the decision-making body itself is obliged to examine the public prosecutor's protest, if no supervisory organ exist, as it is the case for instance with the curatorium of foundations, we are getting back to the opportunity of legal action for the establishment of invalidity in case of the rejection of the public prosecutor's protest [Paragraph 3 Section 15 of the Ütv.].

Some data protection aspects of the right to initiate minority education

Minority rights and the right to minority education as a part of it is a peculiar right the entitled and beneficiary of which is the minority community and the individuals belonging to the given minority.

It results in legal violation if this right is not provided for those entitled by the obligee (mainly the local self-government). It also causes legal violation if people or groups outside the circle of the entitled exercise the right to initiate minority education provided by the Nektv. and other laws. Furthermore, it violates the law if minority education is used only formally and/or for the unlawful purpose of segregation and/or lower level education of a given group. At the same time, organizing minority education for those who haven't requested it also violates the law. Both types of cases have been investigated by our office.

The mapping of demands for minority education is – such as the sizing up of persons entitled to minority education – therefore one of the key questions of minority education.

The legislator designated the freedom of identity undertaking as the basis of exercising minority rights. However, in the lack of de facto legal guarantees, as we have underlined several times, a wide area of "free choice of identity" and the misuse of law is opened. The Nektv. defines exclusively the notion of minority community and objective criteria can be found only in relation to national and ethnic minority communities. The law does not contain any reference to the fact whether requirements concerning communities can be enforced against individuals and if they can, in which way.

Many provisions of the Nektv. define the same right, with certain logical differences, as an individual and a collective right as well. Thus, it is for instance an individual right that parents are entitled to freely chose day-nursery and school for their children. Parents "are entitled to choose nursery, school and college according to their own national and ethnic belonging […] based on the right to the free choice of nursery and school educational institution."[28] It is a collective

[28] Paragraph 1 Section 13 of Kotv.

right that upon request of the parents of eight children the local self-government is obliged to provide the conditions of minority education. It is a collective right that minority self-governments representing minority communities have to be involved in surveying these demands.

Based on this right is the minority self-government entitled to restrict or veto the emergence of the demands of parents for minority education referring to the fact that there exists no minority community on the location of task performance? The answer is no according to the legal regulation in force.[29] Without the initiative of the minority self-government concerned and without its contribution to the survey of demands, even despite its expressed denial, parents are entitled to request the organization of minority education. In case of the existence of appropriate parental declarations it is only a secondary question which minority self-government could have been qualified as an "interested" party with a right to contribution in the survey.

Due to institutional mergers it has been a permanent problem to establish which minority self-government is entitled to exercise the rights relating to minority education and traning. The legal regulation in force, however, already settles this question. *„In an institution of multi-purpose, or if the public educational institution has member institutions, the participation in the performance of national and ethnic minority-related tasks shall be examined by institutional units and member institutions. If the institutional unit or the member institution meets the requirements set up in this paragraph for minority institutions, as regards to the institutional unit or member institution participating in the fulfilment of national and ethnic minority-related tasks, the minority self-government is entitled to all the rights to be exercised as regards to public educational institutions contributing to the performance of national ad ethnic minority-related tasks based on the provisions of this Act."*[30]

This provision offers solutions for situations when two minority self-governments are operating on the settlement of the seat institution, respectively the settlement of the member institution. At the same time it does not contain a "one in the lack of the other" type provision. If no minority self-government with co-decision rights exists concerning the member institution, this right is not transferred to the minority self-government of the seat settlement in the lack of an explicit authorization of the law.

Based on its right to contribute in the survey of demands the minority self-government is entitled to participate in propagating the advantages of minority education and training and in the objective presentation of the (really existing)

[29] The same applies if the local self-government makes in a resolution upon the future launching of minority education, but the parents do not require this education. The lawful organization of minority education can not be realized in this case.

[30] Last phrase of Paragraph 6 Section 121 of Kotv.

extra burdens, as well as in giving information on the circle of persons legally entitled to minority education. It is not entitled, however, to manage data registered in the course of the survey of demands. On the grounds of its obligation to survey of demands, local self-governments shall co-operate with minority self-governments and inform the parents concerned on their right to initiate minority education and training and the contents thereof – in an objective way. Deception, persuasion and dissuasion qualify as unlawful.

A deceptive survey of demands was carried out when the notary of a settlement obliged the parents of every student to declare by which reason they demand German minority education for their children, namely based on the fact that they are German or the wish that their children be familiarized themselves with the language and culture of Germans in Hungary even if they are not German. Most parents referred to the second option. Those, however, referring to this option do not belong officially to the German minority community according to the self-government and consequently are not entitled to request minority education. In the proceedings of the local notary the petitioner found it also injurious that parents had been supposed to be asked on their German origin in every year, not only on the occasion of the enrolment of their children to the first class.

It is indeed unlawful if parents demand minority education referring to a national and ethnic affiliation different from theirs. However, the subsequent supervision of this is not ensured by the law. Surveying demands and collecting parental declarations is necessary only on the occasion of the first registration of their children to nurseries and schools, because leaving an already started pedagogical programme based on a subjective intention is not possible as a rule, except for the fact if the objective conditions of teaching and learning change. Consequently, if parents were not asked to make declarations regarding minority education on the occasion of the enrolment of their children in nurseries and schools, they could not be asked to make such a declaration later.

Can the entitlement to minority education be investigated?

Data referring to the belonging to national and ethnic minorities are sensitive data according to Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest. These data can only be managed if the person concerned gave their consent or data management is prescribed by the law.

The undertaking and the declaration of the belonging to a given minority is the exclusive and inalienable right of the individual according to the Nektv. No one can be obliged to declare their belonging to a minority. Law or executive statutory instrument shall eventually bind the exercise of some minority right to the declaration of the individual.

The Nektv. prescribes provisions including special privileges protecting the identity of minority communities and their members, aiming to promote that the entitled of these rights can preserve their minority identity and that their equality in exercising fundamental rights be also ensured.

Emotional-cognitive relations of individuals as well as their identity are untouchable by others, including the state itself. The expression of personal identity, however, may also conflict with the right of others to belong to a minority, to participate in minority education and to benefit from other privileges, by exclusion and the restriction of opportunities. Furthermore, this right may collide with the extensive initiative-agreement-consultation rights of minority self-governments relating to minority education.

It is the right of parents to choose the form of education for their children according to their own national and ethnic belonging, by means of a voluntary declaration. This brings us to the meaningful question whether parents are obliged or not to declare their minority origins on the occasion of announcing their demand for minority education.

The Kotv. does not define the concrete content of the declaration of parents, but stipulates that parents (and children) are the adressees of the right to choose minority education based on their belonging to a minority and pupils are entitled to participate in minority education exclusively on the request and declaration of their parents. According to our consideration of the aforementioned, the law provides this minority right on condition of the declaration of origin. In another approach, since minority education and training means exercising this right based on the voluntary choice of parents with minority origin and realises a supplementary right excluding other people of non-minority origin, consequently the voluntary declaration including the request for minority education has to include a direct or indirect but unambiguous element referring to the entitlement for demand of the parents.

The director is responsible for the lawful operation of the institution. The institution maintainer self-government and the director is responsible for informing the parents in detail who is entitled to choose minority education, for pointing out the difference between the aim of minority education and foreign language teaching and for providing information on the most important rules of data management. If following a correct description on the right to request

minority education and its content parents make a declaration on the same form, this declaration justifies the legality of the demand even without any direct reference to origin and identity.

A direct declaration on origin is necessary if the aforementioned "informed consent" does not appear undoubtedly from the declaration of the parents and in other preferential cases regulated by the law. Since without a declaration of origin giving preferences over others based on origin could not be interpreted.

Nektv. and Kotv. also contain provisions providing preferences for those belonging to some minority. Paragraph 1 Section 48 of Nektv. on giving preferences: *"Minority nursery and school educational institutions can only be used by those not belonging to the minority concerned if the institution in question has unfilled vacancies following the fulfilment of the demands of the given minority. Admission (registration) shall take place on the grounds of previously published rules."* Paragraphs 6 and 8 Section 82 of Kotv. on giving preferences: *"Multiply disadvantaged children and pupils must be given preferences in admissions by nurseries and primary schools providing obligatory admission. This preference does not affect national and ethnic minority education and does not have precedence over preferences due to pupils of minority origin.*

Pupils of minority origin have to be provided therefore preference over those not belonging to the given minority and in a wider context also over multiply disadvantaged children in the course of admission procedures of institutions qualified as minority educational institutions.

According to our standpoint data referring to the belonging to some minority can be legally managed based on the voluntary consent of parents even if it is not particularly specified by the Kotv. among the data of children and pupils to be registered, since data *"necessary for the judgement and justification of the entitlement to advantages provided by the law"* are registered by the educational institution. *For this purpose manageable data are those referring to the entitled person and their right to preferences.*

Further requirement of legal data management is no more than an obligation to specify the institutional order of data management and data forwarding in a data management regulation or if the drafting of such a statute is not prescribed, in a data management regulation annexed to the organizational and operational rules of the public educational institution. As a voluntary data providing takes place in such a case, parents have to be informed on the voluntary character of data providing.

Summarizing the aforementioned:

1. the right to demand minority education is a general supplementary right of parents of minority origin aiming at preserving identity,
2. the resolution of concrete preferential situations regulated by the law would not be possible without a declaration of origin,
3. in case of voluntary data supply the institution is also entitled to register sensitive personal data referring to the belonging of some national and ethnic minorities.

Chapter V

Specific aspects of the ombudsman's practice relating to social security

Economic crisis – deepening poverty – hopeless complainants

In the chapter on social security our starting point is the frequently emphasised observation according to which in 2009 the economic crisis influenced unfavourably Hungarian society and poverty further deepened as a result of the weakening financial stability. The rapid report of the Central Statistical Office (KSH)[31] having dealt with the presentation of economy and society between January and November 2009 also confirms this statement deduced from our own practical experiences.

According to the data of the Central Statistical Office the global recession caused by the economic crisis reached the lowest point in the first half of 2009. The favourable change in international environment in the second half of the year could only be perceived in traces in the performance of Hungarian economy. Many indexes are still negative and sometimes even more unfavourable. The number of employees has been reduced with 118 thousand, being thus 3% lower than in the same period of the previous year. The number of employees was only 3 million 757 thousand in September-November 2009 and the employment rate has been reduced to 55,6% from 57,1% in 2009.[32] At the same time the number of the unemployed has increased to 445 thousand exceeding the numbers of the previous year with 116 thousand, namely 35%. The unemployment rate has increased to 10,6% from 7,8% during one year. Two other indexes would be worth to mention from KSH data which well reflect the economic and social problems of year 2009. Consumer prices have also increased besides the deterioration of employment indexes, exceeding the level of the previous year with 5,6% in December 2009, while the real income has decreased with 2,4% compared to those of the previous year.

[31] Central Statistical Office. *The KSH reports. Economy and society, 2009/11.* http://portal.ksh.hu/pls/ksh/docs/hun/xftp/gyor/jel/jel20911.pdf.

[32] The Central Statistical Office interprets the number of employees and unemployed for the age-group 15-64.

The 2009 data of Eurobarometer survey[33] on poverty and social exclusion also reflect increasing poverty. More than 80% of Europeans estimate that poverty grew in their respective countries during the last three years. This was also influenced by the present economic crisis the complex effect of which still cannot be perceived. Unemployment and wages not sufficient for living are mainly mentioned amongst social causes of poverty, followed by insufficient social supplies and pensions and high housing fees. Deficiencies in educational and vocational training, lack of skills, "inherited poverty" and dependency are mainly named as personal causes of poverty.

In 2009 the consequences of increasing poverty also appeared in the complaints received by our office. As a result of permanent deep poverty some complainants have been afraid of homelessness, eviction and famine. These are people who have not been able to break out for years from their marginalized situation due to permanent unemployment and/or inherited poverty spanning over generations. Complaints were also received from families the members of which have been recently excluded from the labour market and legally organized occasional labour. These "new poor" are hopeless and disappointed citizens feeling that all their efforts have been fruitless as they were unable to avoid the trap of poverty. These circumstances have been further aggravated by the sociological fact that economic crisis situations usually entail decreasing social solidarity towards excluded people, weakening social cohesion at the same time.

Due to their reducing material sources and their indebtedness, local self-governments – that are responsible for the professional realization of social and child welfare basic supplies and housing management – have more and more lost their means and tools. For compensating this phenomenon, local self-governments have initiated several times "order-oriented" local social policy measures emphasising the merit/absence of merit of those in need. They did not wish to face the fact that the danger directly threatening the life of citizens occasionally excluded from social supplies and condemned as meritless has to be averted by the local self-government being aware of these problems. According to Constitutional Court Resolution 42/2000 (XI. 8.) *"supplies provided in the framework of social institutional system have to represent a minimum level sufficient for the realization of the right to human dignity".* The constitutional measure of minimum supply is considered therefore as the realization of the right to human dignity. The Constitution and the interpreting Constitutional Court resolutions, however, do not define more precisely the amount of social benefits of "appropriate extent".

[33] Eurobarometer Survey. *On poverty and exclusion, 2009.* http://www.2010againstpoverty.eu/extranet/Eurobarometre_091216_HU.pdf.

This shall be settled from case to case pondering the existing circumstances. The provision of Act III of 1993 on Social Administration and Welfare Benefits (Social Act) prescribing an obligation for local self-governments to take measures in situations endangering life or physical integrity can not be, however, ignored. Paragraph 1 Section 7 of the Social Act prescribes that *"local self-governments, irrespective of their scope of authority and competence, are obliged to provide temporary benefits, meals and housing for those in need if the lack of this support would jeopardize the life or physical integrity of these people"*.

Consequently it is not astonishing that complainants often signalled to our office that they had been left alone with their problems and their hopeless life situations. They have turned to us with confidence asking for our assistance often as a last opportunity also as a result of the fact that complainants are familiar with the activity of our office knowing that efficient problem handling is considered as one of the priorities of our office besides the protection of minority rights and the promotion of equal treatment.

Also last year, complaints relating to the fundamental right to social security were received almost exclusively from citizens belonging to the Roma minority. It is significant, however, that similarly to 2008; our office has been addressed by complainants of non minority origin asking for assistance in improving their insupportable life situations in the lack of other specific co-operating authorities and institutions.

In most cases our office does not have any authority to conduct detailed investigation in social cases, although the suspicion of discrimination and particularly indirect discrimination has been raised more and more frequently relating to various self-governmental decisions. According to complainants of Roma origin authorities and bodies concerned in social and housing cases often deal them in a malicious and refusing manner. The lack of detailed information can be tracked, however, the different consideration and treatment of clients can usually not be investigated in the lack of comparable data, and no discrimination can therefore be established.

The phenomenon of "institutional discrimination"[34] has to be taken into account also in the framework of the social and child protection institutional sys-

[34] The notion of institutional discrimination first appeared in the anglo-saxon legal literature in 1999 in connection with an investigation carried out in the case of the murder of a young black man (the so called Stephen Lawrence case), which pointed out that racism often lies in the operation and internal structure of organizations instead of individual behaviours. Sir William McPherson of Cluny: *The Stephen Lawrence Inquiry. Report of an inquiry. (Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty) February 1999* – www.archive.official-documents.co.uk.

tem, already mentioned in our last year annual report. This notion refers to unequal treatment deeply rooted in the daily practice of institutions and appearing in a nearly undetectable way in their proceedings, against clients of Roma origin for instance, although discrimination under the Act on Equal Treatment and Promotion of Equal Opportunities can not be actually established.

It is difficult to reveal institutional discrimination in individual cases as it is originated in the entire operation and structure of the institution. Institutional discrimination is not necessarily rooted in consciously discriminative proceedings or thinking, but in an institutional operation and culture not taking into consideration the situation and aspects of those members of the society who are lacking efficient abilities for enforcing their interests. The above characteristics of institutional operation are inseparably interwoven with the preconceptions of the majority society and the local tensions caused by the disadvantages afflicting the Roma population. In addition, the lack of means of institutions may also intensify institutional discrimination. Due to these very characteristics, the "tracking" of institutional discrimination is a rather difficult task, but if it is resolved, the process can be stopped and reversed by a proper co-operation.

In the followings, three most important problem areas relating to social security affecting complainants in 2009 are specified and presented.

Housing problems and accumulating debts and dues for public utility services

One of the consequences of the economic crisis already perceivable in year 2009 was the further deterioration of housing circumstances of disadvantaged people. This problem severely affected Roma families living in deep poverty as well. Therefore in 2009, similarly to previous years, many complaints amongst social cases received by our office were related to housing problems. These complaints can be typically divided into two groups. Some people addressed us being afraid of the possible loss of their flats as a result of their accumulating public utility dues and/or increasing credit debts by reason of their aggravating life situations. Others requested our assistance when not being able to resolve their housing problems through their own efforts.

Although we did not dispose of the scope of authority to launch an investigation in certain cases, we considered it important that complainants be informed in details in each case on what possibilities they have in order to settle their

housing problems. During the handling of these housing complaints we have also carried out a sort of advisory and mediatory activity.

In case of complaints relating to credit debts it was a typical repetitive element that petitioners had lost their job in the preceding year(s) and became unable to further perform the payment of instalments.

Act IV of 2009 on Direct State Guarantee relating to Loans for Residential Purposes has been passed for the sake of reducing the burdens of debtors in need with loans for residential purpose. The promulgated law has been applied by financial service providers dealing with crediting from 28 July 2009. In order to dull the effects of economic crisis the target of this legislation was to moderate the burdens of natural persons struggling with instalment payment problems by reasons beyond their control.

However, the analysis of certain experts showed that taking advantage of the bridge-loan provided with state guarantee had been possible only under rather strict conditions, providing therefore assistance only to a small group of those in trouble. So the law has been modified on several points in order to widen the circle of users, making the application conditions more favourable from 9 December 2009 than it was before. Experiences however show that the use of this form of support is still restricted to few people; primarily those who have not split off definitively and have not became permanently marginalized.

Analysing the petitions submitted in 2009 relating to housing problems a new form of support has to be mentioned as well. The new crisis handling programme of the Government has been criticized by complainants with credit fee debts and unpaid public utility dues as well. On the grounds of Government Decree 136/2009 (VI. 24.) on the Promotion of People in Crisis Situation families who got into difficult situations by reason of the crisis were entitled to receive a single non-refundable allowance. The decree has been modified several times, lately by Government Decree 9/2010 (I. 28.).

The allowance amounting to at least 20 000 forints and at most 50 000 forints (100 000 forints in cases of special appreciation) may be requested by adults not benefiting from pensions who are in desperate situation by reason of the economic crisis. From 15 November 2009 the programme has been supplemented with a new legal title within which a support in kind amounting to 50 000 forints may also be requested by those not having any pipe-based (electricity or gas) energy source for heating in their households. It is an important condition that the per capita monthly income in the family of the claimant can not exceed the net amount of minimum wage, namely 57 815 forints in 2009. No support can be provided for those benefiting from temporary allowances amounting to

more than 15 thousand forints in the course of 12 months preceding the submission of their claim, those having a pending procedure for the establishment of temporary allowances till the judgement of their claim or those who have not submitted any application for the establishment of temporary allowances within 90 days preceding the submission of their claim for the establishment of crisis support.

It was signalled in several cases that although the petitioner had been de facto in a crisis situation and could have benefited from the allowance based on their income conditions, the submitted application could not succeed by reason of an excluding condition of the law, like the payment of temporary benefits exceeding 15 000 forints per year.

Forms of support introduced in 2009 (act on direct state guarantee and government decree on the promotion of people in crisis situation) aimed to assist people having found themselves in crisis situation as a result of non-predictable events linked to the economic crisis. These specific forms of support have probably been introduced aiming to prevent the dropping of people becoming unemployed as a result of the economic crisis. The target of the crisis decree was not to establish a complex form of support, but to provide a single assistance to the chosen layer of society. However, new support forms affecting the "sinking middle layer" provide no assistance for families that are the greatest losers of the economic crisis.

The circumstances of permanently unemployed and of those living under the poverty line have also significantly declined as a result of the crisis. In case of permanently disadvantaged citizens struggling with accumulating debts and unpaid public utility dues, the existing low social benefits (such as the aforementioned temporary allowance, etc.) and child protection allowances are only temporarily, for a short term helpful.

In relation with housing problems only one new form of supply is worth to be stressed. This form of supply, namely the institution of the protected consumer primarily aimed to reach the most disadvantaged people. Special protection is granted in the area of energy supply for those living in the most difficult financial circumstances in order to protect their housing. Based on the regulations of the European Union the institution of the so-called "protected consumers" has been introduced since 1 January 2008 in the area of electric power supply and since 1 April 2009 relating to gas supply. Citizens in need may request their registration as protected consumers at the public utility service providers. Consumers included in this register are entitled among others to request payment in details, delayed payment and for providing them a pre-payment meter, the

so called "card meter". The registration has to be requested by the consumers while attaching the documents justifying their social situation.[35]

Relating to the practical application of the institution of the protected consumer the lack of information of citizens has to be underlined as a main problem. The concerned do not know and do not use this form of support in the lack of appropriate and comprehensible information. In some cases they ask for assistance only at a later stage when the accumulation of unpaid public utility dues has already resulted in an irreversible process which may even lead to the loss of their homes. For the sake of the efficient handling of this problem we have requested the co-operation of local self-governments and their institutions several times asking them to promote the application of this form of support by giving information and drafting petitions, in consultation with the public utility service providers if necessary.

We often received submissions in which petitioners complained about the fact that there are not any available rented flats of self-governmental property or substitute flats of appropriate quality on the given settlement. The problem is more and more severe, since the number of people unable to resolve their housing problems on their own is increasing. At the same time the proportion of flats in self-governmental property is stagnating or even decreasing in the lack of appropriate resources for their renewal and maintenance. In many cases self-governments are only able to "resolve" economically the problem of their run down flats by selling them. Consequently the chance of those in need for "shelter" further decreases, which process may result in the split of the society into two parts on the long run.

It is beyond dispute that self-governments are entitled to dispose over their properties independently under the conditions stipulated by the law. We do not have any competence to review the decisions of self-governments relating to housing. In individual cases we are allowed to disclose the regulation deficiencies of the housing distribution system infringing occasionally the principle of equal treatment and we usually try to mediate between local self-governments and families in need in order to achieve that less informed clients with inefficient capacity for enforcing their interests could participate with equal prospects at the announced housing tenders.

[35] According to the law, people qualified as consumers socially in need are those, together with persons living in the same household, who receive old-age pensions, who are entitled to active-age supply and had a share in house maintaining allowance, nursing aid, regular child protection allowance and home founding support during three years from the establishment of the benefits; or who are foster parents or professional foster parents raising children under temporary or permanent care in their own household. [Section 30 of Governmental Decree 273/2007 (X.19.) and Section 56 of Governmental Decree 19/2009 (I. 30.).]

Housing problems can be handled efficiently only on a local level with the active participation and contribution of the citizens concerned. However, competent bodies quite often do not provide any appropriate orientation for citizens in need and local institutions and bodies supplying public utility services do not comply with their duties of signalisation and co-operation either. Without these factors there is no real chance to resolve the problems relating to housing conditions. Moreover, the financial basis of ensuring housing conditions has also to be provided. This can be realized most efficiently by getting back to the legal labour market and providing steady employment.

Employment and public employment

In the introductory part of this chapter we have already stressed – based on the data provided by the Central Statistical Office – that unemployment has radically increased in Hungary in 2009. This phenomenon has a particularly strong effect on people with lower qualifications being generally in a disadvantaged situation on the labour market. Following the termination of their employment and in the lack of new job opportunities their living could be only ensured by social allowances and public employment. Considering that the introduction of the "Road to work" Programme in 2009 resulted in the transformation of the system of public employment, we consider it justified to handle this topic in this annual report separately as well.

In the framework of the "Road to work" Programme the support system of people in active age has been modified from 1 January 2009. The transformation aimed to realize that those able to work based on their age, health conditions and other circumstances could work and earn wages, if possible, instead of receiving regular social benefits. The support of people in active age has been transformed in a way that those not being able to work by reason of sustaining a health loss or are over 55, respectively those not being able to ensure the daytime institutional supply of children under 14, are still entitled to regular social benefits. First of all work opportunities wished to be ensured for people in active age not belonging to this circle. If, however, they are not able to work by some reason out of their personal responsibility, they become entitled to a so called "availability support", the sum of which amounted to 28 500 forints per month in 2009.

The practical realization of the "Road to work" Programme and the related legal modifications could be observed on the grounds of the experiences of individual complaints received and on-spot investigations performed by our office. We do not have, however, available information sufficient for the complex as-

sessment of the execution of the programme. At the same time some theoretical problems have clearly taken shape in the light of individual cases.

The organization of public employment became the duty of local self-governments. Self-governments, however, are unable to provide appropriate public employment opportunities for all residents in active age, causing tensions on local level. On the occasion of our county visits complainants of Roma origin found the organizational deficiencies of public employment injurious mainly by two aspects.

One problem affected the duration of public employment. Several petitioners complained about the fact that self-governments had employed Roma residents for a shorter period than non-Roma residents. The minimum public employment period designated by the Social Act had been considered in some cases by self-governments as the maximum employment period of those participating in public employment. People entitled to availability support were thus employed for a total daily period of six hours for only 90 days.[36]

The other problematic point was the quality and social gains of the work performed in the framework of public employment. The possible activities to be performed in the framework of public employment according to the law and the actually organized works were not always in line. It was also difficult to organize appropriate productive public employment for low-educated people. In certain, mainly rarely populated settlements few intelligent and valuable public works could be found, that were mainly restricted to communal and settlement maintaining tasks. It also happened to be criticized by complainants that Roma and non-Roma people had been assigned to different kinds of works. Non-Roma were also employed in the mayor's office and the public institutions of the self-government as for example cleaners, while Roma women and men with the same qualification were only employed at external works, primarily for fulfilling communal or agricultural tasks.

Minority self-government presidents of several settlements complained about the fact that local self-governments had not consulted minority self-governments when drafting their public employment plans, even if this plan significantly concerned the local Roma community as well. This demand, otherwise, had also been signalled by our office to the competent ministry on the occasion of the opining the "Road to work" Programme.

The regulation has been modified by 1 January 2010. As a result of this amendment the draft of the public employment plan shall be also sent by the mayor for

[36] Paragraph 4 Section 36 of Act III of 1993 on Social Administration and Welfare Benefits: „Labour relation with definite duration shall be established for public employment with at least 6-hour daily working time and working period of ninety working days per year."

preliminary opining to the minority self-government of the concerned settlement or in case of the association of self-governments to the person designated in the association agreement.

Before the further development of the programme we consider it important that the Government of the Republic of Hungary shall make a complex research analysis covering the whole country on the grounds of which the efficiency and expediency of the "Road to work" Programme could be judged. As far as we know, one study has been prepared so far on behalf of the Government on the results of the monitoring of the programme, formulating the emerged problems in a quite critical way.[37] It was also underlined among the proposals of this research that data collection extending to the demographical and sociological characteristics of target groups would be necessary together with the elaboration of a monitoring mechanism so that the success and efficiency of the realization of the "Road to work" Programme in year 2009 could actually be assessed.

In the 2008 annual report our opinion on the "Road to work" Programme was presented in details. We then underlined that in our view the various forms of public employment do not qualify as real alternatives to social welfare benefits, since public employment offers only temporary and low-income employment opportunities and not long-term solutions.

The aforementioned research got to the same conclusion. According to one of its most important conclusions: *"public employment permanently closes the people concerned to the circle of welfare benefits-public employment and therefore to the trap of poverty and does not offer a way to the primary labour market for the unqualified, permanently unemployed Roma people being in the most desperate situation"*.[38]

The research also dealt with the question how decision-makers of settlements estimate the transformed supply system of adults in active age. Interviewed decision-makers did not find public employment efficient from financial-sponsoring aspect. This was so partly because of its high budgetary demands on the one hand and the quantity of tasks to perform and the low value of work performed on the other hand. The new supply system of adults in active age, however, was welcomed primarily by reason of its disciplinary, "work accustoming" character.

[37] *Results of the effect examination of the „Way to work" Programme. Research summary.* Complied by: Monika Mária Váradi, Hungarian Academy of Sciences, Department of Regional Development Researches, Budapest, December 2009. (The inquiry was carried out for the request of the Monitoring Committee of the „Better life for children!" National Strategic Programme on behalf of the Chancellary.)

[38] *Results of the effect examination of the „Way to work" Programme. Research summary.* Complied by: Monika Mária Váradi, Hungarian Academy of Sciences, Department of Regional Development Researches, Budapest, December 2009, page 27. (The inquiry was carried out for the request of the Monitoring Committee of the „Better life for children!" National Strategic Programme on behalf of the Chancellary.)

Social card

A surprising initiative has to be mentioned, namely the introduction of a social card in a few settlements and local attempts at introducing such a card.

The creation of the social card fits well in the row of measures wishing to resolve social tensions and conflicts and deepening inequalities in Hungary by the enregiment of poor people, Roma citizens amongst them.

Our office does not analyse is details the problematics of the social card, given that the Parliamentary Commissioner for Civil Rights has examined this question and his report on this topic is supposed to be completed following the closure of the manuscript of this annual report. It is unequivocal; however, that the present introduction of the social card is unconstitutional since no self-government decree shall collide with a statutory instrument on a higher level. Local regulations on the social card are, however, contrary to the provisions stipulated by the Social Act. The social card may further raise several constitutional scruples; it is worth therefore to consider that it might restrict the right to self-determination of natural persons, infringe the right to human dignity and the fundamental right to social security of the citizens concerned as well as the free economic competition.

Arguments relating to the justification of the introduction of a social card include "oddities" similar to those in 2008 when a self-governmental initiative wished to bind the payment of regular social welfare benefits to the performance of public employment. Also at that time it became clear that the statement according to which local self-governments can not "force" otherwise the beneficiaries of social welfare payments to work does not correspond to the reality, since according to the then effective statutory instruments the payment of welfare benefits could be withdrawn even before the introduction of the "Road to work" programme if the beneficiaries of regular social welfare benefits did not accept the appropriate workplace offered to them.

Neither is it true that social allowances can only be paid in money for the time being. Social supplies provided in kind still exist besides financial allowances according to the law in force. The Social Act for instance specifies as supplies in kind the public funeral, the public health care, the right to health care services, debt management services and energy use subsidy. Besides, certain financial subsidies depending on social need may also be provided entirely or partly in the form of social supply in kind. Housing maintenance allowance, temporary benefits, funeral benefits and regular social welfare benefits may be provided also in kind. A part of the latter supply specified by the law shall be provided in kind only if children under child protection live in the family in question. The

legal institution of child protection makes it possible that the caretaker of the family influence, if necessary, the economic customs of the family in the interest of the minors and assist parents through co-operation to economize with their incomes in a more reasonable way. The procedural rules of providing regular social welfare benefits in kind and the forms of these benefits are regulated in local self-governmental decrees in a way that according to the law 20% of the established regular social welfare benefit can be provided in kind per child under protection, and at most a total 60% of it.

Besides a formal legal infringement introduction of the social card in this economic situation and in this way can be dangerous also by strengthening the merits-based approach relying on subjective value judgements. The introduction of such a card may lead to the uniform presentation of the beneficiaries of social welfare as "work-shy parasites living on the money of taxpayers". Researchers are raising thought-provoking questions when saying that the present situation might have developed since the leaders of the society had not replied effectively to increasing unemployment, aggravating social inequalities and social problems spreading as a result of the economic crisis. Taking professional and systematic measures against poverty can not be substituted by a verbal fight against the poor.

The living-on of this approach can also be revealed in the amendment of the Social Act for instance, as from 15 November 2009 only one person per family shall be entitled at the same time to the supply of those in active age. Two persons of one family shall be entitled at the same time to the supply of those in active age only if one of them meets the criteria of the availability allowance, while the other those of the regular social welfare benefit. Prior to this amendment several members of a family could be entitled to availability allowance and could be employed in the cadre of public employment. This modification of the above regulation results in the decrease of revenues in the case of the adult members of big families living together in one household, with particular regard to provincial families excluded from employment.

Chapter VI

Characteristics of law enforcement cases

„I would like to get an apology from the police. Following this I intend to close the case on my part."[39] The above wish could also serve as a motto for the investigation of our law enforcement (police, penal) cases, since this excerpt discloses a lot about the difficulties of redressing these sorts of injuries. A demand is expressed according to which complainants do not primarily wish to punish the guilty but wish to channel the tensions caused by their humiliation and damaged self-respect by submitting their petition for objective investigation. The institution of the ombudsman provides a tool for citizens so that the behaviour of an "official" can be investigated by an independent and impartial body, the ombudsman.

In year 2009 one of the characteristics of submissions concerning the measures and proceedings of law enforcement bodies, as well as recommendations issued for their reddress is that they can not be handled separately either from the status of the entire public administration or the present taut situation of the society. Most complainants are no longer embedded in the social impregnation influenced by normal rational arguments, but they are stigmatized as a result of deep poverty, discrimination and repetitive police conflicts, often addressing us with their cases at the judiciary stage. In this situation it is more and more difficult to reddress individual cases with the assistance of legal, administrative, mediative and goodwill tools of an ombudsman. As a result of the schematic reaction of overburdened law enforcement bodies to complaints and in the atmosphere of social intolerance and scapegoat creation it is particularly difficult to proceed in an efficient way providing at the same time satisfaction to petitioners.

According to Géza Finszter the grounds of a successful law enforcement activity is a law-abiding society ready to co-operate with the police on the one hand and policemen representing moral values on the other hand. Policemen who could enforce in the majority of cases the will of the authority through consensus and without coercion due to their adequacy to community values.[40] If, however, both conditions are missing, as it can be observed recently, the occurrence of a

[39] Ildikó Ritter cites from the submission of a complainant in her research report titled *Confidential issue.* Research report titled *Research in the issue of citizens' complaints against police measures in year 2005,* Hungarian Helsinki Committee, Budapest, 2008, p. 7

[40] Géza Finszter: *The theory of law enforcement.* Budapest, 2003, KJK Kerszöv, p. 83

future conflict may be projected, since we can only talk about an inpersonal and legal police operation lacking any moral base and inciting resistance within society. Under these kinds of circumstances the potential realization of reprisal and despotism increases in the course of exercising police force, while the behaviour of both parties is steeped in emotions and tempers, giving rise to an attitude that sanctioning and punishment can not be placed in charge of the justice system. In such a situation burdened with value crisis the culture of the organization may make the extremely young acting police staff believe that they are the incarnations of the demand for criminal justice in the society. Therefore, when receiving worrying signals on legal violations and other improprieties committed by policemen we also have to consider the social-psychological medium in which acting policemen shall legally and professionally proceed meeting at the same time community expectations.

Redressing fundamental legal improprieties relating to law enforcement measures is significantly aggravated by the fact that the posterior reconstruction of happenings is rather difficult. The starting point of our investigations might be that policemen (or other bodies or law enforcement authorities) represent the possibility of exercising legitimate violence in the course of their actions as this is the principle and symbolic function of law enforcement beside their watcher presence and information gathering activities. Policemen are apparently distinguished by other officials working in "civil" public administration by the application of coercive devices such as arms, batons, handcuffs, etc. Law enforcement compulsion is considered as constitutionally founded if *"the force is lawful, since applied under severe rules; if it is professional, since specialists professionally trained for the use of these technologies are responsible for applying coercive measures; and if it is performed as a duty, which means that those applying coercive measures are not guided by individual revenge or sadist inclinations, but by legal obligations (legal service relationships) and ethic principles (professional ethics) undertaken with public service."*[41]

Police measures, these special actions of law enforcement also include the direct possibility for applying coercion. One of the difficulties of the investigation of our petitions is caused by the fact that in case of police measures – unlike in other public administration actions – the expression of the authority's will and the obligation for its execution are coinciding, the various stages of the procedure are therefore "condensed". The lack of formal proof and formal resolution together with its well-founded reasoning necessarily implies the lack of the possibility for regular legal remedies in the traditional sense of the word,

[41] Géza Finszter: *The theory of law enforcement.* Budapest, 2003, KJK Kerszöv, p. 137

since the measure has already been executed at the time when the "remedy" would take place.

Other characteristic of police measures is that during their application authority and client get into a direct and personal relationship with each other in the course of which one of the actors is committed to the other with a practically unconditional and immediate obedience. "Power relations" between the two parties on the location of police measures are strikingly unequal from power and law-knowledge aspects as well. In order to avoid conflict and the application of coercive measures at the latest stage, a lot depends on the so called culture of action, namely the convincing power of the action of policemen, the way of their communication and the clean and unequivocal character of their behaviour and message. Even a lawful measure may loose its aim and meaning in the lack of appropriate information, namely if policemen do not inform properly the person concerned about facts and suspicion causes that have justified the executed measures. The same refers to the situation when persons under police measures are ab ovo handled as suspected in an aggressive, rude or simply ill-mannered way. In such cases irritation and frustration may quite rapidly accelerate on both sides and verbal insults can quite easily result in assaults, transforming a simple identity check into arrest in irons and criminal reporting by reason of violence against officials on one side and some official crimes on the other side.

„According to the amendment of the Police Act entered into force on the 1st of January 2008 acting policemen have been made obliged to previously communicate the aim of their measures taken. Therefore it is important to make policemen understand that fully respecting this provision could significantly improve the general opinion on the police, given that if someone is previously aware of the reason why police measures are taken against them, they are less stressed and do more easily accept the necessity of their identity checking even if no unlawful behaviour has been attested by them."[42] The third characteristic closely related to the aforementioned is that the documentation of police measures is prepared posteriorly in the form of a police report (instead of minutes). Moreover, the recording or other type of documentation (image and audio record) of on-spot happenings are not under the control of an impartial body or person but performed by the authority squarely interested in the outcome of the proceedings. Citizens, however, are legally allowed to record with technical devices what happened in the course of police actions provided that

[42] *Strictly controlled documents. On the efficiency and ethnic aspect of the Hungarian practice of identity checks.* Research report of the Hungarian Helsinki Committee, Budapest, 2008, p. 62

police proceedings are not hindered by this activity.[43] However, we have not received any proofs submitted by complainants documenting criticized police measures in our previous police cases.

The lack of documentation of measures and their following investigations causes therefore serious difficulties. In the cases received by our office we hardly notice complex disclosure of facts by commanders and well-documented investigations relating to the lawfulness, expediency and professional grounding of police measures. Our complex police investigation of 2008 disclosed many structural problems (law enforcement trainings and extension trainings, filtering severely preconceptive behaviours, control of commanders, ameliorating life and work conditions of police staff, etc.), that have been worsening in the meantime thus endangering the efficiency of our present proceedings as well. Complainants reporting on regular discrimination coming from authorities for instance have also appeared among petitioners complaining about police mistreatment, saying that policemen "dumped on them" because of their Roma origin.

In many cases we wished to be informed how thoroughly the conflict between clients and acting policemen had been examined, under which circumstances the facts had been revealed and how the reason and proportionality of applying coercion had been established. Quite rarely have we experienced, however, real sanctioning, or by any chance steps taken towards training, transformation of the commander's work, improvement of monitoring mechanisms or other changes able to prevent the future occurrence of improprieties.

[43] According to Position Statement Nr 120/2008 (X. 21.) of the Independent Law Enforcement Complaint Body „Complaints relating to the recording of police measures are qualified as repetitive cases in the practice of the Body. The Body expressed its standpoint that on the grounds of Constitutional Court Resolution 54/2000 (XII. 18.) it is an increased public interest that ocassional police infringements could be documented. The practice of the Data Protection Commissioner is similar (case 1824/P/2007-3); based on Paragraph 4 Section 19 of Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest he underlined that the police is obliged to register on a retrievable way all measures taken by staff members and provide information on the name of acting policemen for request if they could not be identified on the spot. Moreover, Section 20 of the Act on Police stipulates that in the course of measures taken policemen are identified by their uniform and their identification badge on it or (as it was the case in the aforementioned complaint) by their service card and identification badge. Considering the aforementioned, the Body found that the documentation of police measures is not violating the law in itself, it can not be prohibited by policemen and can not serve as a basis for furher actions to be taken. If the photos taken violate personality rights according to the consideration of the policemen concerned, they (in private) are certainly entitled to use the means of personality legal protection, which can not serve, however, as a base for police measures, particularly compulsory measures. The situation is different if it is documented in a way which hinders police measures. In such cases the notice for ceasing the documentation might be justified and in case of the denial of this notice taking further police measures may even considered."

The forth characteristic is the opportunity for extensive discretion provided for policemen in action. This element makes the legal appraisal of an impropriety more complicated. Considering that the twenty-two working days available for the officials of the "civil" public administration for taking decisions in merits are not applicable to the actions of policemen, who on the spot are obliged to estimate in a strictly defined timeframe the justified character of the measures to be taken, the volume of the danger, the chances of non-violent intervention and the potential consequences of applying coercion. The realistic estimation of risks and the most adequate reaction to them is a natural professional requirement expected from the part of policemen. Following the estimation of potential danger risk-assessment and the relating decision can certainly not be arbitrary and the intervention can never serve repressive and punishment purposes; its function is to liquidate dangers deriving from otherwise unavoidable unlawful status and to provide immediate assistance for all in trouble. Coercion can be used only to the necessary extent after every violence-free opportunities had already been exhausted. When applying coercive measures the minimum extent of coercion shall be strived for, the application of which can not result in a bigger drawback than the danger wished to be averted by these measures. The application of coercion can only be maintained while the danger actually exists.

However, in vain are the requirements of the rule of law regarding the necessity and proportionality of police measures given and well-known, if the organizational culture or individual preconceptions consider the entire external environment of the organization as untrustworthy, deviant or even as an enemy.[44] The possessor of law enforcement power, however, is easily inclined to walk in this trap since the advantage of prejudice is to simplify conflict situations. According to such simplified, stereotypical attitudes, "outsiders are suspicious" but "it is even more suspicious if some are visibly more defenceless and unprotected than others or bear any distinctive characteristics differing from their environment and considered as negative".

To prove empirically the above statement it is sufficient to read the research report of the Hungarian Helsinki Committee published in 2008 based on their 6-month examination of the identity checking practice of the police on the area of three police headquarters (Budapest, Kaposvár, Szeged) in the light of a total number of 36 939 identity checks. It reads that *"In the research period 22% of the*

[44] „It can be indeed stated that the traditional police approach is inclined to regard the whole society with suspicion, qualifying therefore everyone as incompetent in its own tasks." Géza Finszter: *The theory of law enforcement.* Budapest, 2003, KJK Kerszöv, p. 255

total number of people whose identity had been checked by the police was identified as Roma by the acting policemen, in contrast to the 75% proportion of people defined by policemen as »white«."[45]

It is also well known that public opinion and sometimes even the law enforcement profession is divided regarding the assessment of police intervention. Certain human rights activists are inclined to consider violent police actions as the "deviant" manifestations of political power beyond qualifying them as unlawful and unprofessional. However, representatives of police bodies and public power often fail to develop self-reflections (and undertake these at the public) in certain individual complaints. We also perceive this two faced-adjudication which might refer on the police side (as also referred to by the motto of our chapter) to the lack of self-criticism, "the defence of their staff" and the emergence of the rule of silence in some of these cases.

The person of the "injured" represents the fifth characteristic: to a significant part our complainants are low-educated citizens of Roma origin in difficult financial situation disposing of hardly any knowledge of law, whatsmore not being able to afford to hire lawyers. The number of the so called complex complaints is increasing. In these cases our clients both complain about the way of proceedings (measures) and question the trespass brought up against them. For instance, pre-trial detention under judicial authority and the preceding custody, the circumstances of detention and the suspicion of crime (offence) are attacked at the same time. The regulation on the scope of authority of ombudsmen excluding justice bodies from the notion of "authorities" examinable by our office can naturally not be interpreted by a great number of complainants as they are suffering from all injuries at the same time.

Complaints relating to the proceedings and decisions of the judiciary presuming "ethnic discrimination" or "only" ungroundedness have been received by our office year by year in an unchanged number, being about pre-trial detention and resolutions judging in merits offences or crimes. Not only has the lack of our scope of competence has to be explained in these cases, but we also need to point out that we are not legally entitled to perform lawyer's defence tasks in a pending judicial procedure. In the lack of our investigative powers it should be considered whether in these cases complainants without lawyers or legal representatives should be provided with the ombudsman's advice for being able to use it in further proceedings as a sort of "legal expertise", if based on available documents the ombudsman found that the decision or treatment constituted an obviously improper situation.

[45] *Strictly controlled documents.* i. m. p. 31

It has also to be noted that the multitude of the by now evolved state and civil legal defence fora system (victim protection, network of anti-discrimination lawyers, free legal aid, legal defence activities of civil organizations, sytem of assigned defenders in criminal cases, Equal Treatment Authority, etc.) has not achieved the expected effect as the multitude of complaints shows that distressed and uninformed clients without legal knowledge fail to receive any assistance. Since too many fora exist and each of them is specialized to one particular branch of the law and specific types of cases, quite often none of them takes efforts to clearly explain the procedural opportunities available for clients. Also by reason of this deficiency, our evolved practice includes the sending of informative and orientating letters to complainants in cases when we have no competence in order to promote the future legal protection of the complainant. This informative letter also includes the mailing list of legal protection organizations operating closest to the place of residence of the given complainant.

Similarly to the multitude of the fora system, Paragraph 2 Section 48 of the Criminal Procedure Act also causes "optical illusion" for clients according to which the judiciary, the Public Prosecutor and the investigative authority assign a defender even if the defence is not obligatory, but the charged requests the assignment of a defender referring to his or her incapacity in arranging appropriate defence due to insufficient income conditions. This sort of legal defence creating a subjective right based on financial necessities could be applied for a wider range of clients. . It is obvious, however, that defenders are not prepared for the practical realization of this regulation for the time being. Today *"the charged in need have substancially less chances to receive de facto efficient legal protection. In the lack of institutional guarantees it depends only on the commitment and morality of the given advocates whether they are willing to fulfil the defence of insolvent clients on the same quality level as well-to-do protégés in spite of their low remuneration fees and the existing legal and practical barriers hindering efficient legal protection."*[46]

The lack of personal character is a general feature of our law enforcement complaints. Only a fragment of complainants addresses to our office. It is a new tendency, however, that a higher number of complainants have contacted by phone the officer in charge of their cases within our office compaired to previous years, regularly inquiring about the state of their cases, asking for legal orientation and complementing their original petitions from time to time with latest "developments".

[46] *In the shadow of suspicion. Critical analysis on the emergence of the right to effective defence.* Budapest, 2009, Hungarian Helsinki Committee, p. 80

The number of petitions received in the form of e-mails has been increasing, including the so called complaints of the "majority" population. In these petitions some people (especially following the events of Tatárszentgyörgy) strongly object to the "accusation" of anti-Roma or racist behaviours on behalf of the majority society, saying that based on their everyday experiences it is the majority which might be considered as defenceless from public security and crime persecution aspects. In these cases we could easily establish in three lines the lack of our competence, though, we regularly attempt to convince our clients based on detailed criminological and criminalistical arguments that the so called „Gipsy criminality" is nothing else than a part of the hate speech also supported by certain political powers: a phantom category giving rise to ethnic hatred.

By reason of – structural kinds of – difficulties originating in the legal nature of law enforcement procedures the difficulty of disclosing improprieties caused in situations of police actions are nearly encoded. Let's take a glance for a moment at the efficiency of complaint procedures conducted within police bodies. Ildikó Ritter underlines in her above referred study that 92,8% of complaints against policemen had been rejected by the head of police organ on first instance, while in 87,5% of the submitted appeals the police organ proceeding on the second instance had approved the resolution of first instance.[47] In one-fourth of the rejections the grounds of the reasoning was that the controversy between the confessions of the complainant and the policemen concerned could not be resolved, while witnesses were heared in a total 2,4% of the cases and no other means of proof were actually made use of.

How is the "regular" course of our proceedings carried out? The legal grounds of the proceedings, measures and decisions and the necessity and proportionality of the application of coercive measures are examined usually on the basis of written complaints, as well as the tone and atmosphere of the given action. At the same time it is preliminarily assessed if the ethnic affiliation of the complainant could have had a role in the police intervention which had been found injurious by the petitioner. If the "preliminary" inquiry has grounded the suspicion of impropriety our office addresses to the head of the police body concerned requesting the documentation of the procedure (measures) in question and occassionally interviews the performer of the criticized measures. The position statement in the merits is therefore often formed on the grounds of documents and position statements provided by the criticized body. As a result, the paradoxal

[47] Ildikó Ritter: *Confidential issue.* Research report titled *Research in the issue of citizens' complaints against police measures in year 2005,* Hungarian Helsinki Committee, Budapest, 2008, p. 752

situation of "examining with the examined" can not actually be overstepped. In addition, police reports documenting the given measures – and qualified by the competent commander as lawful and professional – constitute the major part of files, given that minutes are recorded only if criminal, offence or other administrative procedures are to be launched in the given case.

In the light of the aforementioned analysis it can not be considered as accidental that our successful arrangements mainly include cases where policemen were not in acting situation but produced well-documented (therefore undeniable) decisions affecting the fundamental rights of complainants, proceeded as investigative authority, took resolutions in offence cases and issued directives. It can be said that if the suspicion of ungroundedness, erroneous qualification or the violation of competency and procedural rules arises in these criminal, offence and administrative cases we regularly address the Public Prosecutor's Office for redressing the legal violation in question. A will for co-operation, the acceptance of our formulated legal approach and fast actions taken by public prosecutors have usually been the practice in these cases.

We have successfully initiated the public prosecutor's protest as regards for example final offence resolutions which had not been grounded or had been built on wrong qualification. In the case of the shop-lifting of a village mayor we considered the decision of the Public Prosecutor ceasing police investigation ungrounded and examined it with the supervisory Public Prosecutor's organ as a result of which police investigation has newly been ordered. We made a successful recommendation to the chief of a county police headquarters in a case where the internal directive of the police headquarters (regarding the provision on handcuffs use within the measures relating to the secure execution of escort within the building) had been found improper regarding the constitutional right to personal freedom, since the provision made handcuffs use in case of escorting within the building obligatory without providing any opportunity for pondering.

We asked for the opinion of the Chief Public Prosecutor in two issues concerning the application of law affecting the facts of the crime of incitement against community. Based on a concrete petition our office reported the well-founded suspicion of the crime of incitement against community by reason of hate contents of a music band on a certain website against Roma and Jews. The Public Prosecutor's Office – not having been able to reveal the identity of the perpetrator – terminated the persecution with the reasoning that the persecution authority had attempted to identify the user, which effort later proved to be unsuccessful. We found it inacceptable that the persecution authority had not made any steps for removing the contents realizing the above crime from the website, while the

obviously hate-rising "song lyrics" realizing the crime of incitement against community were still publicly available on the given website. The question of omission committed by the investigating authority is also raised by the fact that the procedure was exclusively restricted to the internet-based appearance of the given contents and the relating criminal law responsibility, while the possibly infringing and crime-realizing public activity of the given music band, namely the circle of their audience, the frequency of their concerts and the types of their lyrics performed on these, were not even considered to be examined.

In the other case hate-notices appeared on a giant poster with the claim „gas chamber for Gypsies". According to the statement of the deputy head of the County Public Prosecutor's Office "the notice is too general and is directed not towards a specific person but a group", therefore it does not realize the crime of incitement against community. Contrary to this approach we emphasised that such an approach can be deduced neither from the facts of the law nor the interpretations of the Constitutional Court. The Chief Public Prosecutor agreed with us in both cases and took steps for the elimination of legal infringements accordingly.

Despite the difficulties described above we wish to summarize our recommendations as follows for the sake of reducing and preventing improprieties committed by the police:

a) As for the legal regulation, the legal base of police measures stipulated by the law could be further restricted and concretized: target definitions of the identity checking such as "crime persecution", "crime prevention" and "the protection of public order and public security" (Section 29 of the Police Act) for instance can be considered excessively illimited. Why could the citizen under identity checking not be informed on the fact that an armed robbery happened in the environs an hour before the checking and that is the reason why each passer-by is necessary to be identified in the given area? It could be a solution that in such cases a written reasoning including the concrete legal ground of police measures and the possible legal remedies as well be handed to persons under police actions. This solution might make it more difficult for the police to conduct identity checks based exclusively on skin colour, clothing or car brands.[48]
b) Regular communication between local minority communities and local police bodies would enable police leaders to be informed in the first place on improper cases or practices. It would also be important that police leaders – through a designated contact person for instance – explain prima-

[48] *Strictly controlled documents. On the efficiency and ethnic aspect of the Hungarian practice of identity checks.* Budapest, 2008, p. 60

rily to minority leaders the professional background and justification of professional measures. The tension reducing effect of the president of the Roma minority self-government being in a daily contact with the Chief of the City Police Headquarters could also be experienced by our office in concrete cases. Our complex police investigation also revealed that the co-operation between police and minority self-governments had to be placed on new grounds. Regular and local-level information exchange should be an organic part of this co-operation instead of the mainly protocollar "contractual" co-operation taken up to county level.

c) In our aforementioned investigation we have written on and made respective recommendations on the necessity of anti-discrimination training, its possible contents and differentiation according to service branches and functions.

d) At this point we only touch upon the question when referring to the controversial character of police "performance assessment " and agree with the standpoint of the Helsinki Committee stating that this should also be renewed for the sake of reducing the improper practice of police measures. The situation is that even today the quantity of executed police measures serves as one of the bases for the assessment of public security force. *"In the present system the performance of a police organ can be even outstanding in the national statistics while citizens can be rather dissatisfied with the work of the very same body."*[49] So instead of the principle "the more you are taking measures the better you are" principle, new procedures should be "invented" for measuring the efficiency of police actions and of course for acknowledging them. It should be laid down for instance, whether the identity check is followed or not by some further actions or procedures (warrant, arrest, suspicion of crime, offence procedure, security arrangements, etc.)

e) It has already been mentioned how many difficulties are caused by the lack of appropriate documentation of police actions and following investigations. It would be important therefore to record the measures taken on the spot (by image and audio record) and to raise awareness and publicly communicate the fact that citizens are also entitled to record the details of a police action provided that police proceedings are not hindered by this activity.

f) By reason of the high number of complaints and considering our present staff headcount we do not have the opportunity to continuously keep an eye on the practice of police actions. The investigation of the Helsinki Com-

[49] *Strictly controlled documents. On the efficiency and ethnic aspect of the Hungarian practice of identity checks.* Budapest, 2008, p. 63

mittee, however, unambiguously confirmed the positive effects of civil participation. We are talking about a mutual learning process, the meeting of cultures, values, speaking manners and mutual preconceptions where both parties acquire a whale of information on each other. A reflex has to be evolved in the daily practice according to which internal controls of the commandant or external monitoring may take place at any time during the procedure, both followed by severe and consistent potential sanctions. So, it should simply not be "worth" it therefore to discriminate, at least by reason of the high probability of being caught.

Chapter VII

External relations of the Minorities Commissioner

Besides the submissions received in year 2009 by the Parliamentary Commissioner for the Rights of National and Ethnic Minorities the number of invitations for domestic and international events, conferences, discussions and consultations has increased significantly as well. Around half-thousand requests and invitations were received last year mainly from minority or local self-governments, administrative authorities, governmental bodies, educational and cultural institutions, civil and international organizations, respectively foreign and domestic non-governmental bodies. It was impossible to accept each of these numerous requests, our staff, however, represented the ombudsman in many cases on certain events and the ombudsman sent written complimentaries and undertook the role of patronage many times.

In the course of 2009 eight ambassadors, two foreign ombudsmen, seven international delegations and the heads of several international organizations were received in our office and our staff members spoke on fifteen conferences. Three times had the commissioner handed over prizes and patronated many events.

During our activities special attention is being paid to make the institution of the ombudsman even more accessible for more and more citizens. For achieving this target we had organized county visits three times in 2009 with the participation of nearly all staff members. We also paid several visits to other provincial locations. These meetings increased the number of petitions received by the Office and the knowledge on the ombudsman institution as well.

Our relations with the national network of the "Houses of Opportunities" were also deepened in 2009 based on our 2008 agreement concluded with the Ministry of Social and Labour Affairs. In the frame of this agreement the possibility for registering complaints under the scope of authority of the Minorities Commissioner in the offices of the House of Opportunities had also been opened. With their assistance the opportunity of a more efficient and faster assistance in proximity of their domiciles for the members of minority communities has been opened. Nearly forty petitions were received by our office through the House of Opportunities Network last year. We were glad to notice that the House of Opportunities Network employs an increasing number of Roma colleagues in its offices to whom local Roma clients are addressing with higher confidence.

Mentioning that the main weapon of an ombudsman is publicity seems already a cliché. We turned to the press several times in order to inform the public opinion through press releases or press conferences in certain significant cases.

Since scientific and educational activity is a defining part of the commissioner's career, he often and willingly accepted invitations for university lectures and attended scientific conferences. Promoting the professional training and scientific and educational activities of the staff members, a workshop of experts of the highest standard on minority legislation has been established in our Office. Deriving from our activity, significant knowledge has been gathered relating to domestic minority law and the prohibition of discrimination. Besides our investigations the promotion of the dissemination of this legal knowledge by lectures and participation in higher education is considered as of an utmost importance. The ombudsman and several members of the staff are teaching regularly in various institutions of higher education.

In 2008 the Parliamentary Commissioner for the Rights of National and Ethnic Minorities established a Prize for the memory of the pioneering sociologue, István Kemény. A young researcher with significant achievements in Hungarian minority research was acknowledged with this Prize for the first time in 2009. Also through this acknowledgement we wish to promote the scientific activities of researchers in minority issues.

The Parliamentary Commissioner for the Rights of National and Ethnic Minorities signed a co-operation agreement with the State Administration Training Institute of the Faculty of Public Administration at the Budapest Corvinus University. In accordance with the aforementioned agreement the Institute involves the ombudsman and his staff in the professional work of its specialized training course titled "Equal opportunities and administration of minority protection", by co-operating in its development.

According to our agreement concluded with the Law Institute of the Hungarian Academy of Sciences last year, a jointly organized conference took place in 2009 titled "Actual problems of taking steps against xenophobia and intolerance". The observations relating to our inquiry on ethnic data collection and the recommendations drafted jointly with the Data Protection Commissioner were also presented on this conference.

Our participation on trainings relating to tolerance, anti-racism and anti-discrimination is particularly important among all educational and informational activities. We attended various fora, discussions and trainings held for the members of minority self-governments. During spring we presented five lectures on minority fora organized in small regions of Tolna County by the House of Opportunities of Szekszárd.

Furthermore, we consider it important that more and more students of higher education interested in minority rights could familiarize themselves with the activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities. Students of domestic universities had therefore spent their professional practice in our office two times in 2009 and informative lectures for foreign students had also been presented by our Office.

The frequent participation of the commissioner on cultural events – mainly those linked with minority culture – shall not be explained exclusively by his personal interest. He wishes to emphasise by his attendance that culture forms a bridge between different social groups and majority and minority communities. The Office of the Minorities Commissioner considers as a priority to promote programmes and initiatives relating to the preservation of the cultural values of minorities and a more complete emergence of minority cultural rights also by participating on these events. This message was meant to be emphasised also by the most exhaustive ex officio inquiry of 2009 aiming to investigate the emergence of minority cultural rights. The assimilation of minority communities must be stopped since besides loosing their languages the promotion and extension of their cultures is going to be more and more difficult as well.

There exist many civil and social organizations, associations, foundations and legal aid offices in Hungary complementing and assisting the ombudsman's work. It is beyond doubt that a strong civil society characteristic of the old democratic states has not been developed in Hungary yet, for the establishment of which the strengthening and wider recognition of civil organizations is necessary; since these organizations are playing a key role in the strengthening of democracy. In 2008, co-operation agreements were signed with several civil organizations according to which we are co-operating in the organization of professional conferences and anti-discrimination and human rights trainings, in common researches and the publications thereof and also in inviting each other to professional events. A particular attention is paid to the notices and invitations of organizations and legal aid offices participating in the enforcement of minority rights. On the occasion of several common programmes we co-operated with the European Roma Rights Center, the Director General of which was also received in our Office.

We attended an anti-discrimination programme in Békéscsaba titled "Ethical code as a signalling system", jointly organized by the Kurt Lewin Foundation and the Foundation for Special Education.

Notices referring to certain occasions are also received regularly from the Chances for Disadvantaged Children Foundation. Among others, we partici-

pated as lecturers and trainers on their two-day anti-discrimination training organized for the experts of the Educational Office.

We accepted several times the invitation of the Hungarian Helsinki Committee as well. We participated on their professional conference organized jointly with the Budapest Bar Chamber on the assigned lawyer system, as well as a professional Round Table discussion between civil organizations and the National Police Headquarters.

We also have regular professional contacts with the National and Ethnic Minorities Legal Aid Office which celebrated the fifteenth anniversary of its establishment this year. The celebration was held under the auspices of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities.

We participate every year in the Civil Island Programme of the Island (Sziget) Festival. Also in 2009, interested visitors were informed by our staff on the activity of the Parliamentary Commissioner for the Rights of National and Ethnic Minorities and the situation of minorities in Hungary.

Country tours are considered as priorities among domestic programmes during which the ombudsman and his staff pay several-day visits to certain counties of the country. Establishing more active and direct contacts with each minority community living in Hungary was indicated as one of the first tasks by the Parliamentary Commissioner following his election. One of its main tools is the several day long county visit of the ombudsman and his staff preceded by a thorough preparation. Minority communities of the given counties and the complaints of citizens belonging to that minority are in the focus of our investigation during these visits. In the course of 2009 Somogy, Fejér and Szabolcs-Szatmár-Bereg counties were visited.

On the occasion of county tours, knowing the economic indexes, social and cultural characteristics and demographic data of the given county, we are inquiring on the spot about the situation of the inhabitant ethnic and national minorities, the relationship between majority-minority, the relations between local self-governments and minority self-governments and the functioning of ethnic cultural and educational institutions. On these occasions, with the assistance of public administration offices we hold a forum for the presidents of all of the county's minority self-governments and consult the heads of civil organizations and minority cultural and educational institutions. Together with our colleagues we are trying to reach the greatest possible number of settlements of the given county for the sake of an efficient personal registration of complaints. Occasionally the ombudsman himself also meets complainants in person.

The external relations of the Parliamentary Commissioner for the Rights of

National and Ethnic Minorities are expected to be further improved and widened in the future. Although budgetary restrictions make the promotion of our domestic and international relations considerably difficult, we are doing our utmost in order to be able to accept more domestic and international invitations, and thus further increase the awareness on the institution of the Minorities Ombudsman.

International relations in 2009

Activity as the member of the Equinet Network

Equinet is the European network of institutions working for the establishment of equal treatment aiming to strengthen co-operation and to facilitate exchange of information among its members. One of the primary targets of the organization is to provide an equal level of protection for the victims of discrimination through a consistent application of the anti-discrimination regulations of the European Union. In order to fulfil this task Equinet offers the opportunity for dialogue and exchange of information with EU institutions and among its members as well. For the time being 36 institutions of 29 countries are held together by the Network.

Five of our colleagues actively participated in two trainings and a professional conference organized by Equinet. We also took part in the activity of its working group responsible for the promotion of equality.

In May 2009 one of our colleagues participated on a professional meeting organized jointly by the Fundamental Rights Agency of the European Union and Equinet the aim of which was to discuss the ways of possible co-operation between the two organizations. The meeting was successful as the two organizations agreed in the forms of their future co-operation. (In the cadre of this co-operation, as an Equinet member, our Office had also received the draft working plan of the Fundamental Rights Agency for year 2010 on which we expressed our opinion.)

In April 2009 two of our colleagues participated in the professional training of Equinet in Dublin. The theme of the meeting was the insurance of access to justice for disadvantaged social groups. In the course of the training organizations dealing with the promotion of equal opportunities presented how and by which methods they are striving to provide the necessary information and assistance for the members of the target groups. We were also provided the opportunity to share experiences and ideas relating to concrete cases during the workshops.

In September 2009 two of our colleagues represented the Office on the Equinet training held in Lisbon. The subject of the training was the practical application of the anti-discrimination legislation of the European Union in the form of a simulated trial. The training had three aims of primary importance. Firstly, raising awareness on the EU regulation relating to equal treatment. Secondly, better information concerning the case law of the European Court of Justice on the area of goods and services. Thirdly, obtaining and respectively sharing experiences in structuring and solving certain concrete cases.

Written exchange of information with the network has also taken place and we also completed several questionnaires for the request of Equinet and its members.

International activities of the Minorities Commissioner and his staff

The international interest in our work has significantly increased in year 2009. The Minorities Commissioner received in his Office several ambassadors and representatives of international organizations. Ombudsmen of other countries also contacted us initiating mutual exchanges of experience. We were contacted several times relating to the violent crimes and murders committed against Roma families in the course of 2009. Our standpoint on the evolved social situation was sought.

We continued to regularly publish articles on our most significant case-law in the *European Ombudsmen Newsletter,* the professional revue of European ombudsmen.

The ombudsman and his staff participated in several international events, conferences and meetings.

A detailed chronological overview of international relations is referred to in the followings.

January

26. Ernő Kállai delivered a speech on the opening of the Roma Holocaust Exhibition held on the Hungarian UN Representation in New York, then attended the UN Holocaust Commemoration.

February

16. Andrzej Mirga, the Senior Adviser on Roma and Sinti Issues of the Organization for Security and Co-operation in Europe (OSCE) was received by the Minorities Ombudsman.

23. Ernő Kállai Minorities Ombudsman had a meeting with dr. Bernard La-Fayette civil rights activist, the director of the American Center for Non-violence and Peace Studies. In the course of their meeting the ombudsman outlined the present situation and problems of the Roma minority in Hungary.

March

11. The representatives of the European Forum of Roma and Travellers paid a visit in our Office and were received by Boglárka László and Katalin Szajbély.

17. Ernő Kállai received the staff members of the Embassies of Denmark, Finland and Norway.

31. Judit Tóth, Orsolya Szabó and Ágnes Weinbrenner informed the colleagues of the Moldovian ombudsman on the activity of our Office.

April

8. Ernő Kállai issued a communiqué on the occasion of the International Roma Day.

27–29. Diána Nagy and Ágnes Weinbrenner participated in the Equinet professional training held in Dublin.

May

12. Judit Tóth received the students of the Webster University of Geneva and informed them about our activity.

12–13. Katalin Szajbély represented our Office on the professional conference jointly organized by the Fundamental Rights Agency of the European Union and the Equinet aiming to discuss the possibilities of the co-operation between the two organizations.

June

9. Ágnes Weinbrenner and Noémi Kutassy-Nagy attended an ODIHIR conference held in the topic of „hate crime".

9–12. Ernő Kállai, Boglárka László and Katalin Szajbély attended the IXth World Conference of the International Ombudsman Istitute in Stockholm.

16. Ernő Kállai received Ermir Dobjani Albanian ombudsman.

17. The ombudsman accepted the invitation of Greg Dorey, Ambassador of the United Kingdom to Budapest and attended the reception held on the occasion of the birthday of Her Majesty Queen Elizabeth the Second.

30. Ernő Kállai met Dorothee Janetzke-Wenzel, German Ambassador.

August

26. Ernő Kállai received Mr Mangasi Sihombing, Indonesian Ambassador to Hungary. The situation of human rights and minority rights in their respective countries were discussed during their meeting which was concluded with the intention of further co-operation.

September

16. The Minorities Commissioner received in his office Robert Kushen, the Director General of the European Roma Rights Center (ERRC).

25. Ernő Kállai attended the Round Table discussion *"Speak Out against Discrimination! Media in focus!"* organized by the Information and Documentation Centre of the Council of Europe on the occasion of the European Day of Languages.

28–29. Nikolett Dóczé and Noémi Kutassy-Nagy attended the professional training of Equinet held in Lisbon.

29. The Committee of National and Ethnic Minorities of the Polish Sejm paid a visit to Ernő Kállai.

29. Ernő Kállai received Pierre Guimond, Ambassador of Canada to Hungary.

29. Darja Bavdaz-Kuret, Ambassador of Slovenia to Hungary paid an introductory visit to Ernő Kállai.

October

13. Ernő Kállai opened the discussion *„The role of EU funds in promoting Roma integration"* held in Budapest and organized by the Directorate-General for Employment, Social Affairs and Equal Opportunities of the European Commission.

13. Thomas Hammarberg, Council of Europe Human Rights Commissioner paid a visit to Ernő Kállai during his three-day visit in Hungary. Through his Hungarian visit the Commissioner wished to gain personal impressions on racism and intolerance afflicting minority groups. In his press release Commissioner Hammarberg expressed his serious anxiety concerning the increase of extremist, intolerant and racist manifestations in Hungary.

27. Ernő Kállai received Romani Rose, the president of the Central Council of German Sinti and Roma and his colleagues. On the occasion of their meeting actual problems of the Hungarian Roma minority, their evoking reasons and the future perspectives of their solution were discussed. At the end of the discussion president Romani Rose expressed his worry relating to increasing intolerant views in the Hungarian society.

November

10. Johanna Suurpaa Finnish Minorities Ombudsman paid a visit in our Office. Our staff contributed to the organization of her visit and accompanied her and her colleagues on their further programmes.

16. Orsolya Szabó and Katalin Szajbély attended the Hungarian Round Table discussion of the European Committee against Racism and Intolerance of the Council of Europe (ECRI). The content of the fourth country report of ECRI on Hungary was discussed by the invited civil and governmental experts in the course of the meeting.

19. Katalin Szajbély gave a lecture on the functioning of our Office to the scholarship students of the German Bundestag.

20. Judit Tóth received dr. Raushan C. Nauryzbayeva, the president of the Open Society Institute of Almata (Kazakhstan) and had a professional discussion on anti-discrimination regulations and the role of ombudsmen.

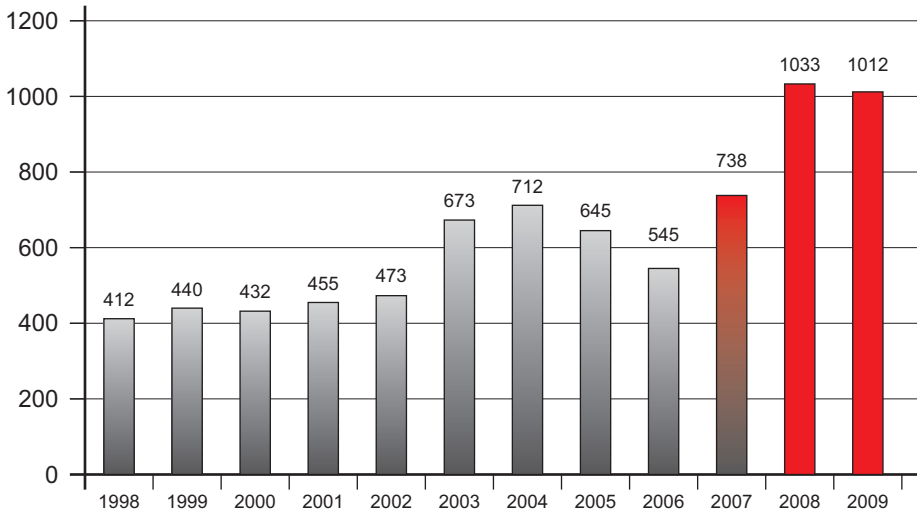
December

9. The staff members of the Embassy of the Kingdom of the Netherlands visited our Office, the operation of which was presented by Katalin Szajbély and Boglárka László to the delegation.

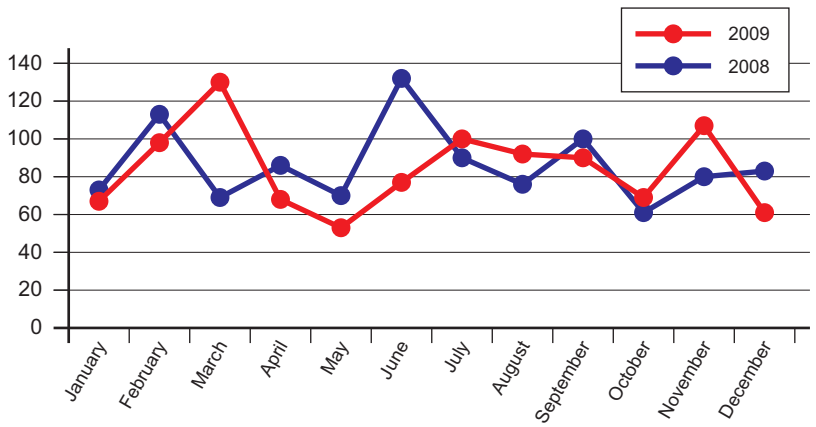
9. Ernő Kállai received the delegation of the Advisory Committee of the Framework Convention for the Protection of National Minorities of the Council of Europe visiting Hungary for monitoring the implementation of the Framework Convention for the Protection of National Minorities.

Statistics 2009

Number of Cases between 1998–2009 per Year

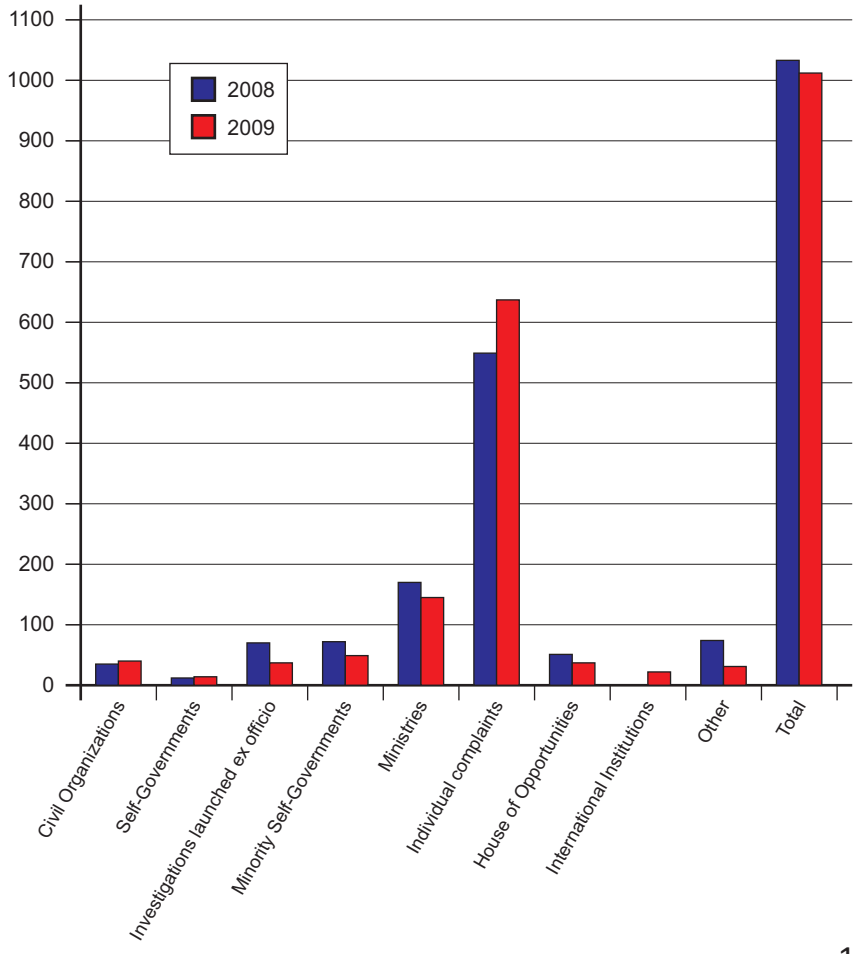


Number of Cases in 2008–2009 per Month

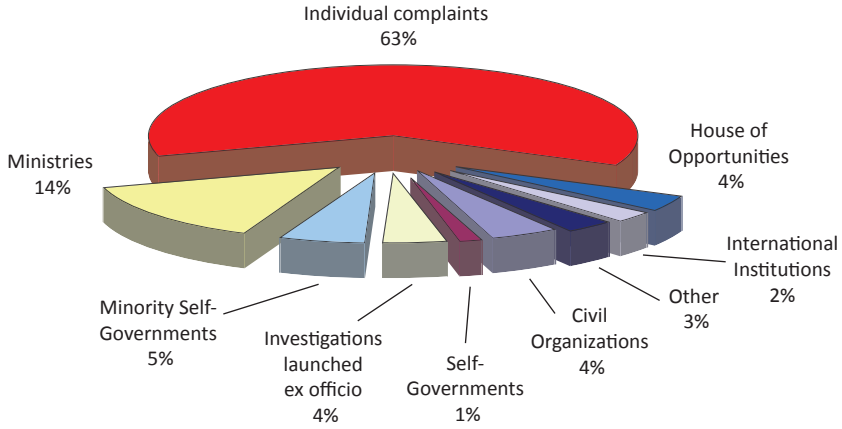


Distribution of Cases according to Complainants, 2008–2009

Complainant	2008	2009
Civil Organizations	35	40
Self-Governments	12	14
Investigations launched ex officio	70	37
Minority Self-Governments	72	49
Ministries	170	145
Individual complaints	549	637
House of Opportunities	51	37
International Institutions		22
Other	74	31
Total	**1033**	**1012**

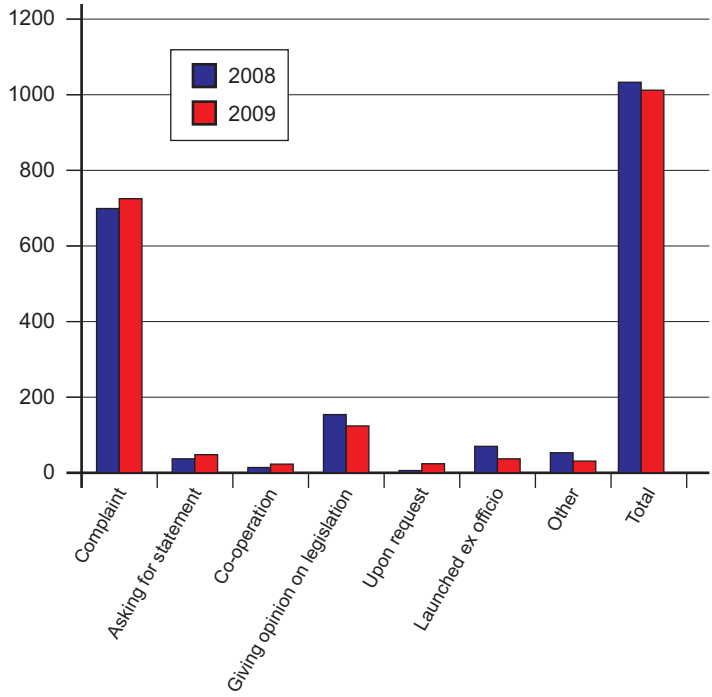


Distribution of Cases according to Complainants in 2009

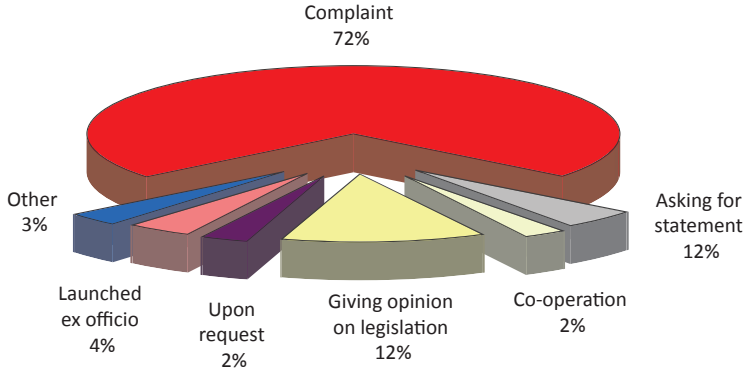


Distribution of Cases according to their Type, 2008–2009

Type of Submission	**2008**	**2009**
Complaint	699	725
Asking for statement	37	48
Co-operation	14	23
Giving opinion on legislation	154	124
Upon request	6	24
Launched ex officio	70	37
Other	53	31
Total	**1033**	**1012**



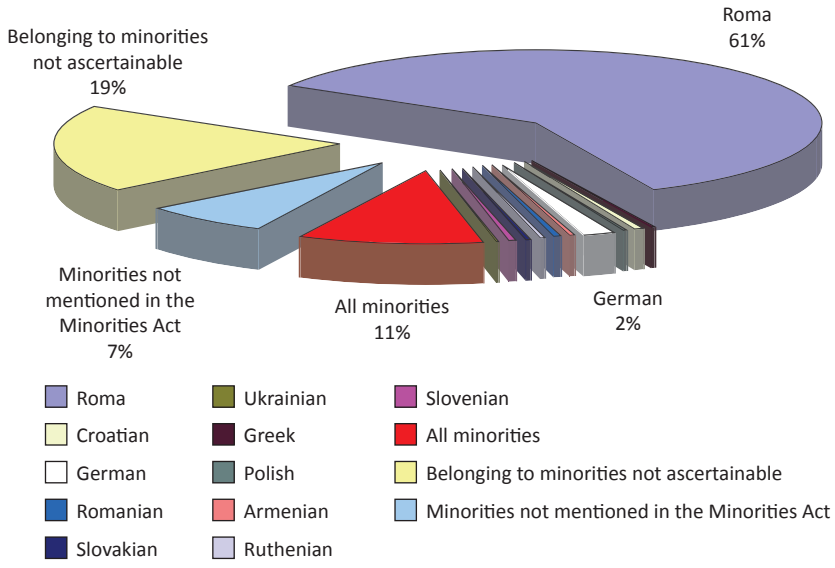
Distribution of Cases according to their Type in 2009



Distribution of Cases according to Minorities concerned between 2007–2009

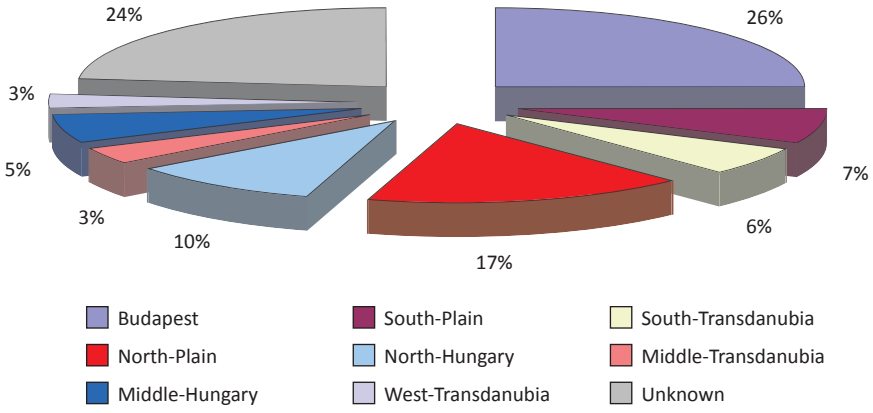
Minority concerned	2007	2008	2009
Bulgarian	3	1	0
Roma	376	501	603
Greek	2	2	1
Croatian	2	2	5
Polish	1	3	2
German	17	25	17
Armenian	3	2	1
Romanian	8	6	3
Ruthenian	2	1	3
Slovakian	5	8	2
Slovenian	0	1	3
Serbian	0	6	0
Ukrainian	0	1	1
All minorities	42	114	107
Minorities not mentioned in the Minorities Act	277	162	72
Belonging to minorities not ascertainable	0	198	192
Total	**738**	**1033**	**1012**

Distribution of Cases according to Minorities concerned in 2009



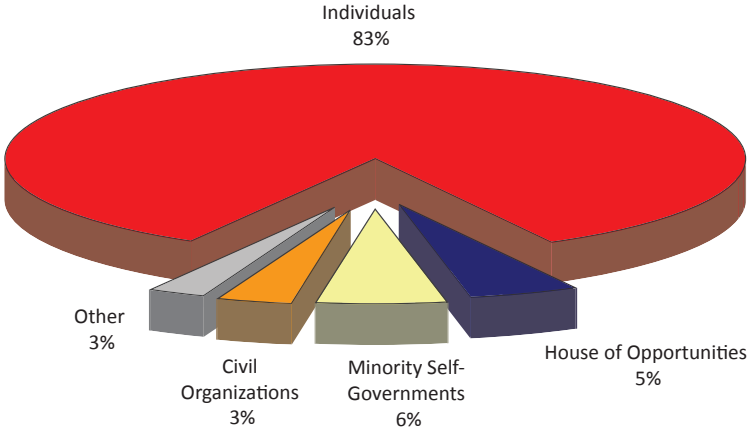
Distribution of Cases according to Regions in 2009

Region	ügyszám	%
Budapest	259	25,59%
South-Plain	70	6,92%
South-Transdanubia	57	5,63%
North-Plain	168	16,60%
North-Hungary	101	9,98%
Middle-Transdanubia	35	3,46%
Middle-Hungary	55	5,43%
West-Transdanubia	29	2,87%
Unknown	238	23,52%
Total	**1012**	**100%**

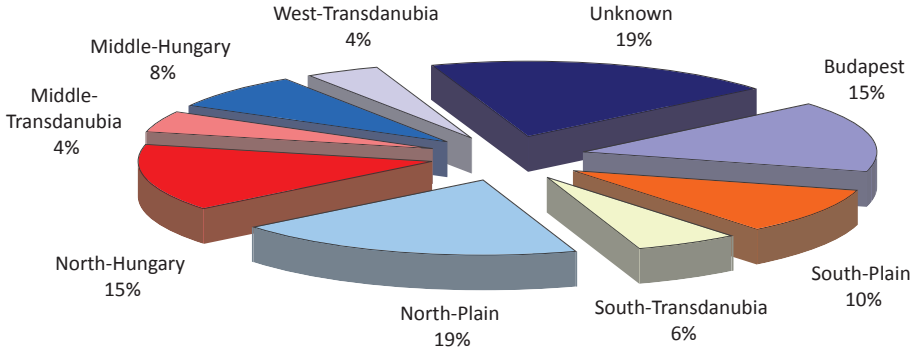


Distribution of Cases according to Petitioners in 2009

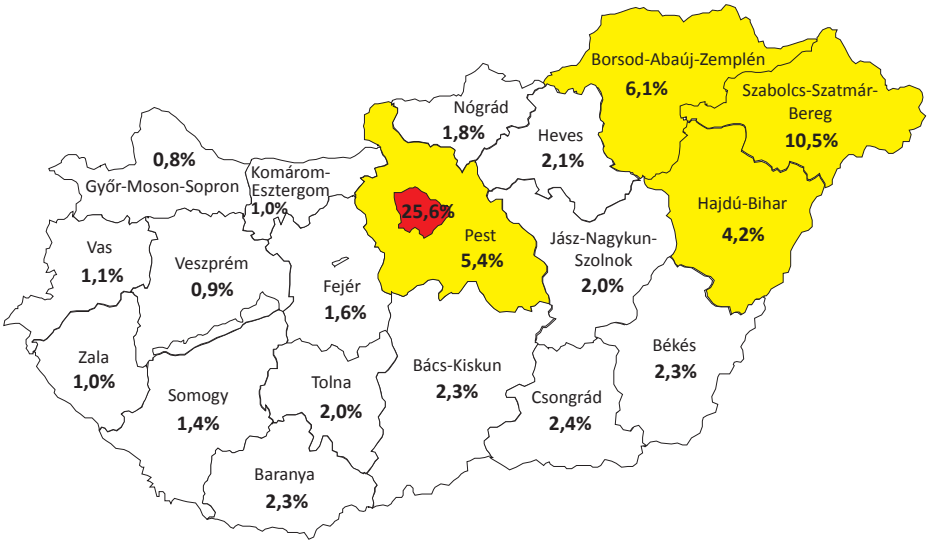
Petitioner	
Individuals	608
House of Opportunities	34
Minority Self-Governments	41
Civil Organizations	23
Other	19
Total	**725**



Distribution of Individual Complaints according to Regions in 2009

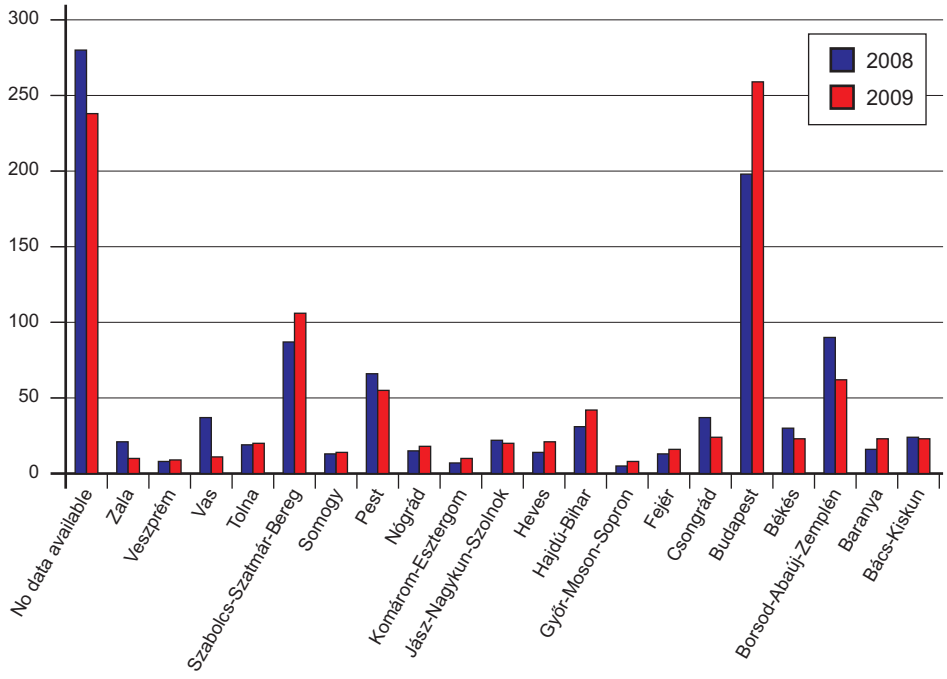


Distribution of Cases according to Counties in 2009*



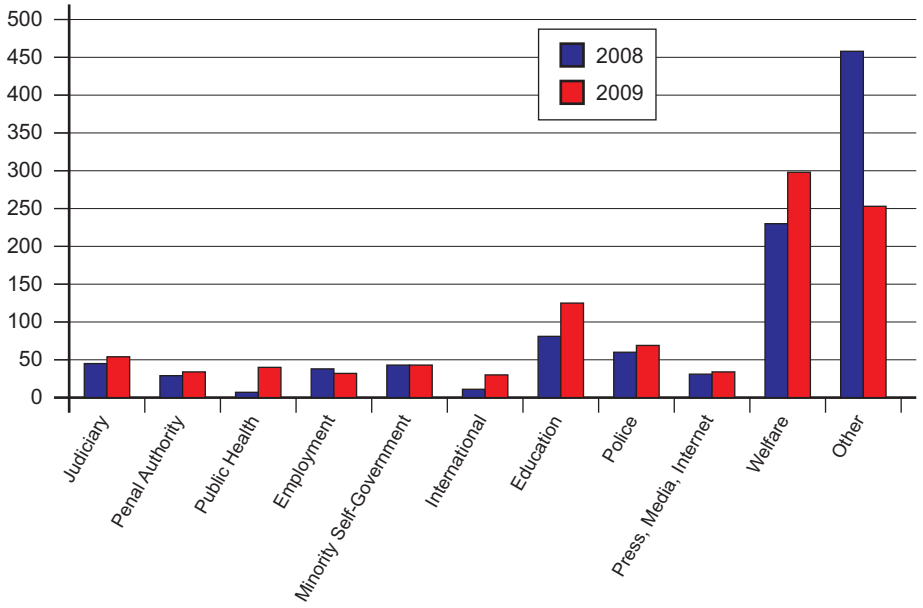
* In 23,5% of the cases the address of the petitioner was unknown since these complaints had been received electronically.

Distribution of Cases according to Counties between 2008–2009



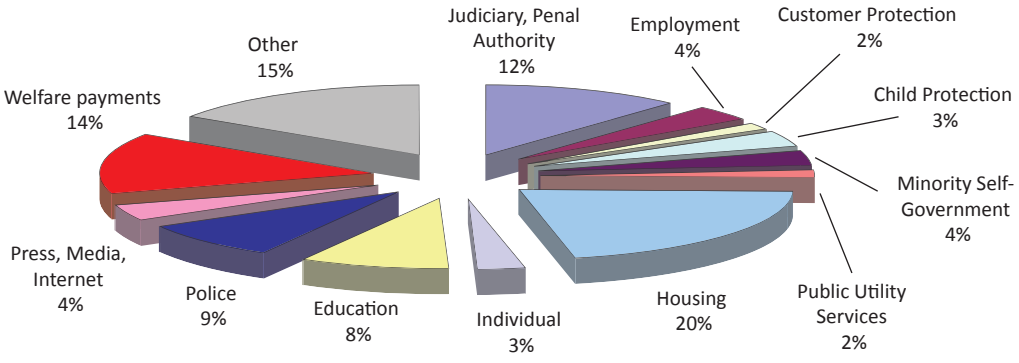
Distribution of Cases according to their Subject, 2008–2009

	2008	2009
Judiciary	45	54
Penal Authority	29	34
Public Health	7	40
Employment	38	32
Minority Self-Government	43	43
International	11	30
Education	81	125
Police	60	69
Press, Media, Internet	31	34
Welfare	230	298
Other	458	253
Total	**1033**	**1012**



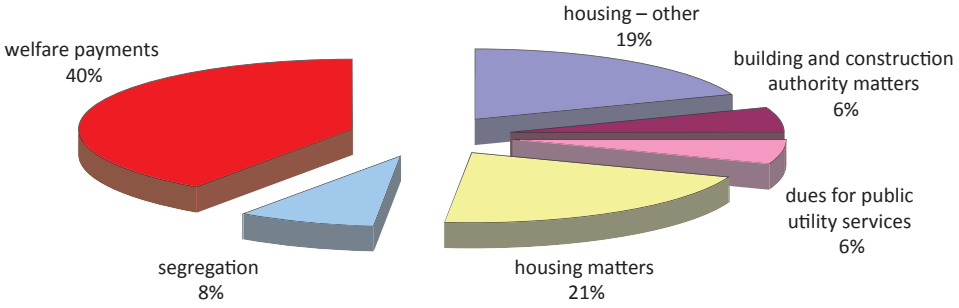
Distribution of Cases according to their Subject in 2009

	Number of Cases
Judiciary, Penal Authority	85
Employment	26
Customer Protection	11
Child Protection	25
Minority Self-Government	26
Public Utility Services	13
Housing	153
Individual	20
Education	61
Police	63
Press, Media, Internet	27
Welfare payments	103
Other	112
Total	**725**



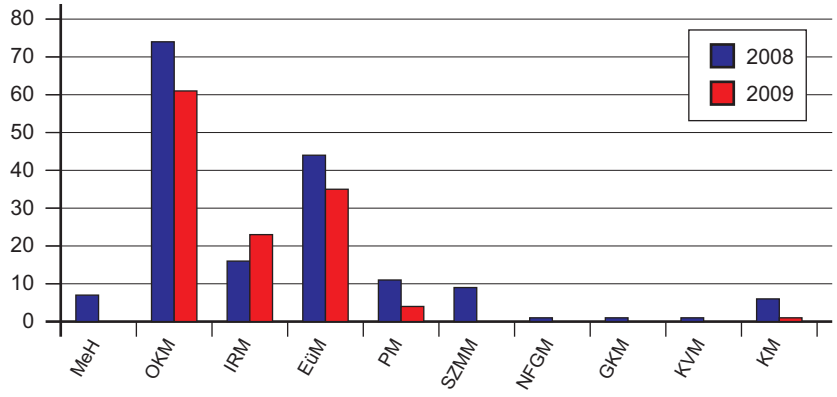
Distribution of Social Affairs according to their Subject in 2009

	Number of Cases
housing – other	48
building and construction authority matters	15
dues for public utility services	15
housing matters	54
segregation	21
welfare payments	103
Total	**256**



Giving Opinion on Legislation according to Cases from Ministries between 2008–2009

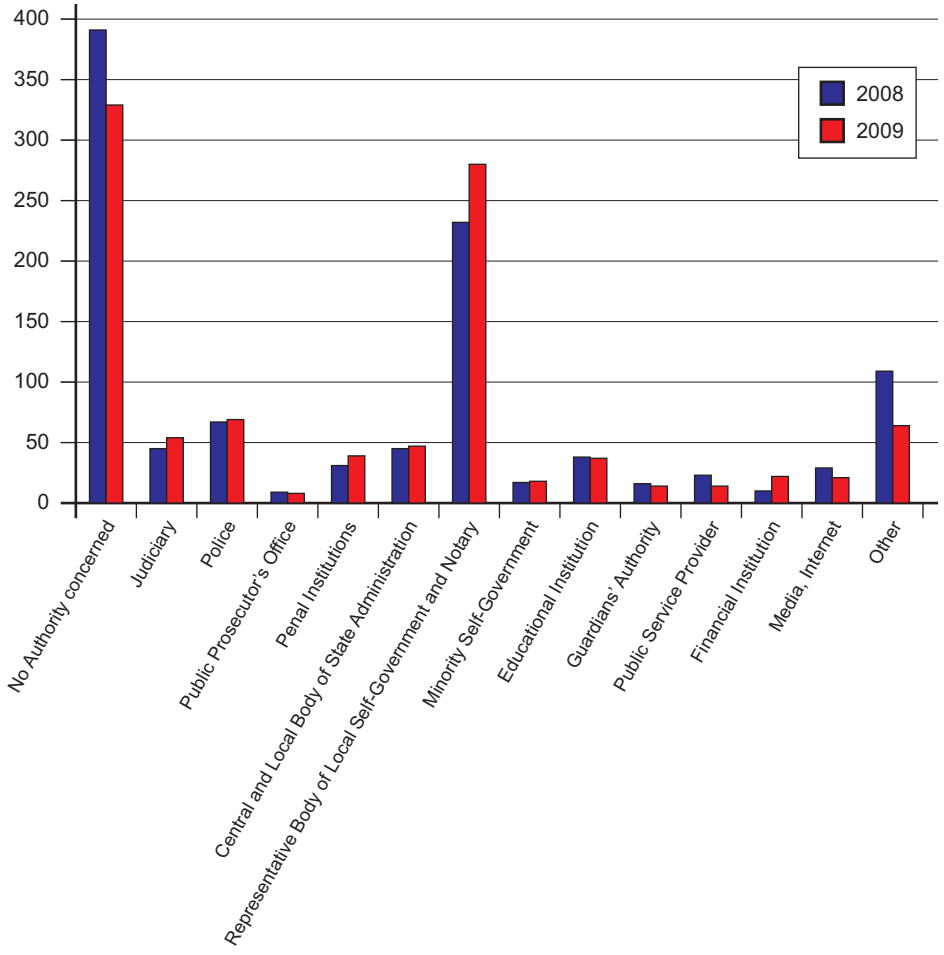
Ministry	**2008**	**2009**
Chancellary (MeH)	7	
Ministry of Education and Culture (OKM)	74	61
Ministry of Justice and Law Enforcement (IRM)	16	23
Ministry of Health (EüM)	44	35
Ministry of Financial Affairs (PM)	11	4
Ministry of Social and Labour Affairs (SZMM)	9	
Ministry of National Development and Economy (NFGM)	1	
Ministry of Economy and Traffic (GKM)	1	
Ministry of Environmental Protection and Water Affairs (KVM)	1	
Ministry of Foreign Affairs (KM)	6	1
Total	**170**	**124**



Bodies concerned*

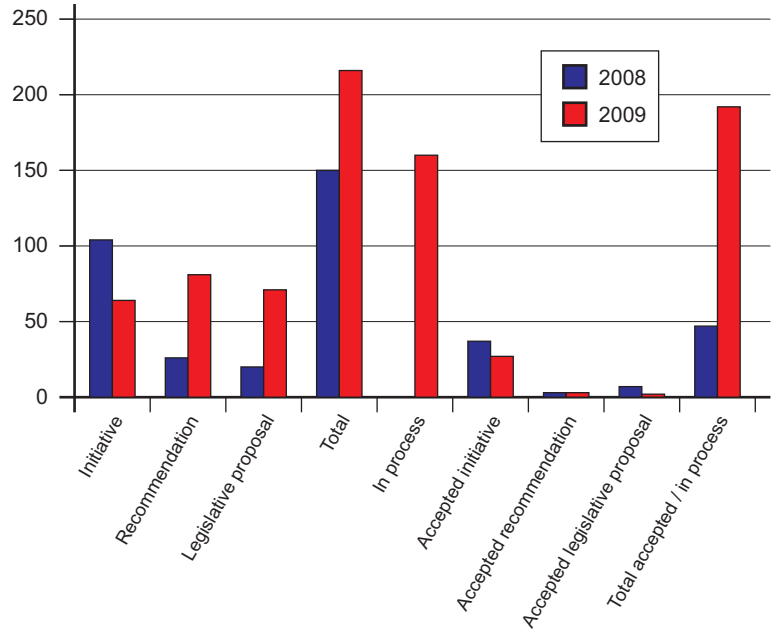
	2008	2009
No Authority concerned	391	329
Judiciary	45	54
Police	67	69
Public Prosecutor's Office	9	8
Penal Institution	31	39
Central and Local Body of State Administration	45	47
Representative Body of Local Self-Government and Notary	232	280
Minority Self-Government	17	18
Educational Institution	38	37
Guardians' Authority	16	14
Public Service Provider	23	14
Financial Institution	10	22
Media, Internet	29	21
Other	109	64
Total	**1062**	**1016**

*A given case may concern more than one body.

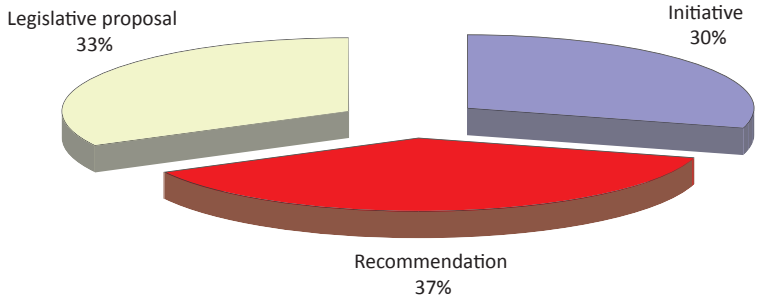


Total Number of Initiatives, Recommendations and Legislative Proposals between 2008–2009

	2008	2009
Initiative	104	**64**
Recommendation	26	**81**
Legislative proposal	20	**71**
Total	**150**	**216**
In process		**160**
Accepted initiative	37	**27**
Accepted recommendation	3	**3**
Accepted legislative proposal	7	**2**
Total accepted / in process	**47**	**192**



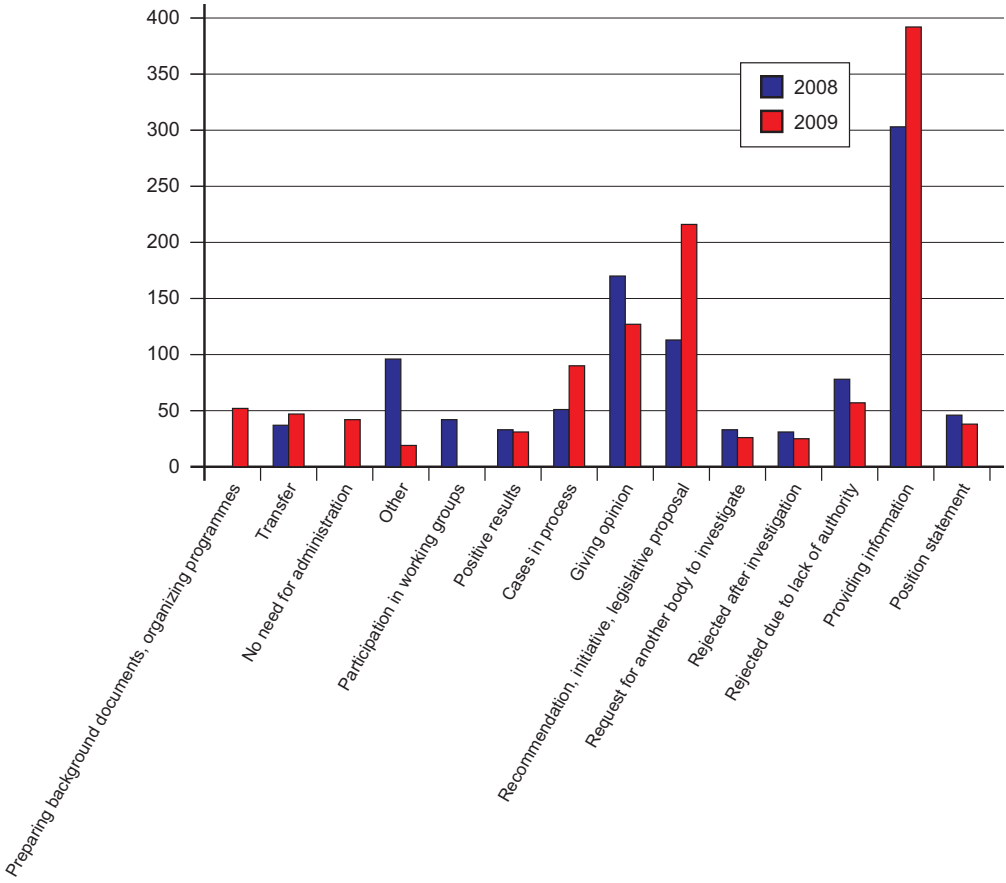
Total Number of Initiatives, Recommendations and Legislative Proposals in 2009



Measures taken on the Basis of our Investigations, 2008–2009*

	2008	2009
Position statement	46	38
Providing information	303	392
Rejected due to lack of authority	78	57
Rejected after investigation	31	25
Request for another body to investigate	33	26
Recommendation, initiative, legislative proposal	113	216
Giving opinion	170	127
Cases in process	51	90
Positive results	33	31
Participation in working groups	42	0
Other	96	19
No need for administration	0	42
Transfer	37	47
Preparing background documents, organizing programmes	0	52
Total	**1033**	**1162**

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


400
350
300
250
200
150
100
50
0
2008
2009
Preparing background documents, organizing programmes
Transfer
No need for administration
Other
Participation in working groups
Positive results
Cases in process
Giving opinion
Recommendation, initiative, legislative proposal
Request for another body to investigate
Rejected after investigation
Rejected due to lack of authority
Providing information
Position statement

List of relevant legislation

Legislation referred to in the Report and their abbreviations

Act XX of 1949 on the Constitution of the Republic of Hungary	Constitution
Act LIX of 1993 on the Parliamentary Commissioner for Civil Rights (Ombudsman Act)	(Obtv.)
Act LXXVII of 1993 on the Rights of National and Ethnic Minorities (Minorities Act)	(Nektv.)
Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities	(Ebktv.)
Act IV of 1959 on Civil Code	(Ptk.)
Act IV of 1978 on Criminal Code	(Btk.)
Act XIX of 1998 on Code of Criminal Procedure	(Be.)
Act XXXIV of 1994 on Police	(Rtv.)
Act LXV of 1990 on Local Self-Governments	(Ötv.)
Act CXL of 2004 on the General Rules of Administrative Proceedings and Services	(Ket.)
Act LXIII of 1992 on the Protection of Personal Data and the Publicity of Data of Public Interest	(Avtv.)
Act LXXIX of 1993 on Public Education	(Kotv.)
Act III of 1993 on Social Administration and Welfare Benefits	(Szoctv.)
Act XXXI of 1997 on Children's Protection and Guardianship Affairs	(Gyvtv.)
Act LXXVIII of 1993 on Certain Rules relating to the Rental of Residential Properties and Premises and the Alienation Thereof	(Lt.)

Act IV of 2009 on Direct State Guarantee relating to Loans for Residential Purpose

Act CXL of 1997 on Museum Institutions, Public Library Supply and General Education

Act II of 2004 on Motion Picture

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

Act XLIII of 1999 on Cemeteries and Burying

Act XL of 1999 on the Promulgation of the European Charter of Regional or Minority Languages

9/1976 Legislative Decree on the Promulgation of the International Covenant for Economic, Social and Cultural Rights accepted on 16 December 1966 by the XXIst session of the General Assembly of the United Nations

Government Decree 136/2009 (VI. 24.) on the Promotion of People in Crisis Situation

ISSN 1416-9711

Publisher: Office of the Parliamentary Commissioners
1051 Budapest, Nádor utca 22.
Telephone: 36-1-475-7149 • Fax: 36-1-269-3542
e-mail: info@kisebbsegiombudsman.hu
Responsible editor: Dr. Ernő Kállai
Translated by: Dr. Laura Góg
Cover design: Zsófia Kempfner
Prepress: Kebok
Printing: Akaprint Nyomda
Accountable leader: Freier László