



Deprived and Vulnerable Groups in Hungary. The Contribution of the Ombudsman to the Protection of Nationalities and National Minorities

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Abstract. Helping vulnerable groups and fighting for their rights to achieve equal dignity and equal treatment is a core objective in states under the rule of law and of ombudsman institutions.

Vulnerability and deprivation can be defined in various ways by different states, international stakeholders and NGOs. According to a definition given by the European Commission in 2010, *vulnerable groups experience a higher risk of poverty and social exclusion than the general population. Ethnic minorities, migrants, disabled people*, vulnerable groups have always been at the core of the ombudsmen's work in Hungary since the beginning in 1995, and the new institutional organization of the Ombudsman's Office did not change this priority. According to the new Act, the *Commissioner for Fundamental Rights pays special attention to the protection of the rights of children, the rights of nationalities living in Hungary, the values determined as 'the interests of future generations' and the rights of the most vulnerable social groups in general. Members of vulnerable groups are at higher risk of being victims of structural or individual discrimination*; therefore, it is vital to provide effective mechanisms to counteract discrimination. Several international and European human rights conventions adopted by the United Nations or the Council of Europe stipulate the prohibition of discrimination according to single or multiple grounds. There are *some multiple vulnerable groups*, e.g. those who belong to different types of minorities (national or ethnic minorities, or even sexual minorities, etc.) or who are living with any kind of disability. The number of the *Roma* among those fallen behind, in desperate, hopeless situation, is high above this minority's share in the entire population. Some of the *Roma*, already pushed to the edge of society and subjected to prejudice, are unable to use the benefits offered, in principle, by the system of equal opportunities; their integration seems unrealistic, even though the amount of support allocated to the improvement of the situation of the *Roma* minority has been multiplied since the country's democratic transformation and the supporting system and the assistance programmes also have become more complex.

The Ombudsman considers it one of his tasks to draw the legislators' attention, through his ex officio investigations, to the fact that some of the legal norms from various branches of law, related to equal opportunity, do not have any or sufficient influence on the integration of groups with structurally impaired advocacy and enforcement capabilities, most of all on that of the Roma.

Rates of poverty among the ca. 12 million Roma/Travellers in Europe reach 10 times higher than a population as a whole. According to a 2011 EU survey, life expectancy for Roma in the EU is estimated to be approximately 10 years less than the majority population, and in some countries infant mortality rates are six times higher than average. These levels of poverty amongst the Roma also play a part in the various exploitations of Roma children, particularly woman and girls, who suffer poverty more than their male counterparts. In many cases, Roma are segregated regionally into isolated pockets in both urban and rural settings, and these communities are generally the most deprived. This study concentrates on the issue of school segregation of Roma children in Hungary based upon the ombudsman's investigation in 2012-2013. Roma families who are impoverished to this extent, struggle with daily life, children may stay at home instead of going to (pre)school to help with younger siblings, or parents may leave for extended periods. As well as being isolated as communities, these levels of poverty and social exclusion lead to the institutional exclusion of the Romani.

Keywords: Hungary, vulnerable groups, poverty, people with disabilities, ombudsman, constitutional courts

*"We suffer because we are vulnerable, and we need, above all else, institutions that will give us some degree of security"*¹

Introduction

Helping vulnerable groups and fighting for their rights to achieve equal dignity and equal treatment is a core objective in states under the rule of law and of ombudsman institutions.

Vulnerability and deprivation can be defined in various ways by different states, international stakeholders and NGOs. According to a definition given by the European Commission in 2010, *vulnerable groups experience a higher risk of poverty and social exclusion than the general population. Ethnic minorities, migrants, disabled people, the homeless, isolated elderly people, LGBT people and children all often face difficulties* that can lead to further social exclusion such as low levels of education and unemployment or underemployment, as well as discrimination. However, beside the groups mentioned above, any group can be

1 Bryan S. TURNER: *Vulnerability and Human Rights*. The Pennsylvania State U. P.: University Park, Penn. USA. 2006. 127.

considered vulnerable that is concerned by poverty and social exclusion to a higher ratio than other members of the population. Besides *structural deprivation*, there is also the phenomenon of *deprivation/vulnerability by situation*: for example, ill persons or people struck by natural disasters are in the position of vulnerability by situation. (The two categories of deprivation are interconnected in many senses: e.g., homeless people are at higher risk of suffering from serious illness.)

Vulnerable groups have always been at the core of ombudsmen's work in Hungary since the beginning in 1995, and the new institutional organization of the Ombudsman's Office did not change this priority. The *new constitution (Basic Law) and the new Ombudsman Act*, both adopted in 2011 by the Parliament and effective as of 2012, established the new institutional arrangement of the ombudsman institution in Hungary. In accordance with the Basic Law of Hungary, Act CXI of 2011 on the Commissioner for Fundamental Rights created a unified ombudsman system. The offices of the special ombudsmen (Parliamentary Commissioners for the Rights of National and Ethnic Minorities and for the Interests of Future Generations) were integrated into the office of the general ombudsman, whereas the institution of the Data Protection Commissioner was transformed into the National Authority for Data Protection and Freedom of Information.

According to Article 30 of the Basic Law, the Commissioner for Fundamental Rights is an organ comprising a single person who shall be nominated by the President of the Republic and elected by Parliament to carry out activities guaranteeing the protection of fundamental rights. As of 1 January 2012 – instead of the four independent ombudsman offices – a new, single ombudsman system was established, where the interests of national minorities and future generations are represented by deputy commissioners.

According to the new Act, the *Commissioner for Fundamental Rights pays special attention to the protection of the rights of children, the rights of nationalities living in Hungary, the values determined as 'the interests of future generations' and the rights of the most vulnerable social groups in general.*

The new legislation has widened and made more important the ombudsman's competence in respect of safeguarding constitutionality. As of 1 January 2012, citizens may directly request legal remedy from the Constitutional Court only in case their individual rights have been encroached by the implementation of an anti-constitutional legal regulation or ruling of the court. In all other cases, they can submit *the Commissioner's* procedure to launch a petition; however, the Commissioner shall decide within his discretion, on the basis of his own investigation, and turn to the Constitutional Court on his own behalf.

The Ombudsman's Office also qualifies as a general human rights mechanism: in May 2011, it received the United Nations' *National Human Rights Institution* (hereinafter NHRI) "B-status" classification from the UN's International Coordinating Committee for National Human Rights Institutions (ICC). A major

success that is going to widen human rights activities of the ombudsman institution is the fact that on 12 January 2012 Hungary joined the Optional Protocol to the UN Convention against Torture (OPCAT) adopted in 1984. The Convention requires the establishment of independent bodies both on national and international levels, which execute regular visits in the detention institutions for verifying conditions therein. In Hungary, the Commissioner for Fundamental Rights will carry out the task as a national preventive mechanism from 1 January 2015 on.

As mentioned above, the new Ombudsman Act defines the *enhanced protection of the rights of persons belonging to the most vulnerable social groups* as an important priority. Ombudsmen have always paid special attention to the protection of the fundamental rights of persons who are not, or only partially able to protect their rights. Financial and economic difficulties affect the whole society adversely. They put pressure especially on persons belonging to the most vulnerable groups of society such as ethnic minorities, homeless people, disabled persons and elderly people. Since entering his office in 2008, the ombudsman has launched in a non-traditional, proactive way *several projects* which have particular focus on the examination of the situation and fundamental rights of the most vulnerable groups. Every year, he has examined topics which are especially important for the society and the enforcement of the rule of law and have a particular significance from the point of view of rights and freedoms. During this work, he has closely co-operated with NGO's and also with the academic sphere.

Urbanization and modernization produced forms of social exclusion and the dissolution of communal housing, what has led to the modern form of "homelessness". Disability, or disabilities were looked upon in many different ways, but the survival of the majority of the disabled was rather uncertain. Modern age has excluded and institutionalized them in the healthcare and social system, separating them from "normal" citizens. Old people were at the top of the traditional social hierarchy, but modernization devalued former experience, wisdom and authority. The nuclear family model resulted in the "elderly" being dumped into institutions of social care. In Hungary, there is a special situation because the remnants of the former communist welfare system and the new beginnings of a society based on market economy and private property coexist, thus determining the field of social and health care where the homeless, the disabled and the elderly have to suffer severe cuts caused by the economic and social problems of transition and of the recent economic and financial crisis. Case studies and investigations have shown, however, that we are very far from the desired service level concerning social and healthcare services. The Ombudsman's task has always been to remind government and public administration to fulfil their obligations taken on by agreeing to the European policies on vulnerable groups. Exclusion and rejection of people with special needs do not stop only at homelessness, disability and elderly age, but evolve further into gender-based and ethnic exclusion. The

Ombudsman's investigations within a series of "human dignity" projects have focused on a specific type of exclusion and danger of reduced rights, e.g. within the implementation process of human rights of special groups. The homeless, the disabled, the elderly and the patients were the subjects of the examinations in the Hungarian Ombudsman's Office between 2008 and 2011.

Poverty is a decisive and multiplying factor of vulnerability and deprivation. There are several definitions for poverty, varying by defining it as an absolute, as opposed to a relative quality, as a dynamic or static notion, and by looking for the reasons of poverty in the lack of ability versus the lack of instruments. However, in the European Union, more than 80 million people – meaning 8% of the population in the working age – are at risk of poverty. Combating poverty and social exclusion is therefore high on the EU agenda. A significant part of the Hungarian population qualifies as poor. According to data published in May 2013, the income poverty rate in Hungary was 14%. The comfort factor of homes shows a negative correlation with poverty, and so does the capacity to access services. Global economic and financial crises have worsened the phenomena of poverty such as financial and social deprivation, as well as physical and mental health issues.

In the European Union today, *20% of the children live at risk of poverty*. Poverty is a denial of children's rights and can prevent them from realising their full potential. Child poverty has a negative impact on the whole society, both in the present and in the future. Poverty is much more than material deprivation. Poverty can also mean poor quality health care, education, housing and environment. A children's rights perspective takes all these factors into account. It explores all the influences over a child's well-being, both inside and outside the family. We cannot make a decisive impact on child poverty without addressing children's rights. The UNICEF in its latest published report on deprivation says that *every 3. child is in need in Hungary*. According to the data of the National Social Inclusion Strategy, the child poverty rate is 21%, which means that ca. 380,000 children live at risk of poverty.

Homelessness and deprivation of housing are extreme forms of exclusion; unfortunately, these have become a more serious problem in recent times. Lack of fuel does not mean only deficiency in heating or cooling at home, but it also means a crucial lack of warm water, light and other everyday needs. Financial exclusion related to the lack of access to basic financial services and deeper indebtedness has become more dangerous because of the financial and economic crisis, which can hinder the possibilities to be employed, find a decent job, and it can easily lead to a hopeless deprivation, as a vicious circle. Official data show that in Hungary social services provide shelter for almost 11,000 homeless people; the officially authorized number of these places was 5,500 in Budapest and 5,200 in the provinces in December 2012.

Members of vulnerable groups are at higher risk of being victims of structural or individual discrimination; therefore, it is vital to provide effective mechanisms to counteract discrimination. Several international and European human rights conventions adopted by the United Nations or the Council of Europe stipulate the prohibition of discrimination according to single or multiple grounds.

The *European Union today fights actively against all forms of discrimination* and for universal respect for human rights, promoting the spirit of the ECHR and, since 2009, fulfilling its duty based on the legally binding Charter of Fundamental Rights. Article 21 of the Charter states that “any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.”

The EU is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, as well as the rule of law. Hence, the EU must take all measures necessary to combat discrimination of all kinds: following a complex set of directives against gender discrimination, in 2000, two directives were adopted based on Article 13 of the Treaty of Amsterdam. Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin prohibits discrimination based on racial and ethnic origin in many sectors of activity such as employment, education, access to social protection and to health care, social advantages, access to goods and services, particularly housing. Directive 2000/78/EC established a general framework for equal treatment in employment and occupation, combating discrimination based on religion or belief, disability, age or sexual orientation.

In spite of all these instruments, discrimination is still frequent in the EU. According to the Eurobarometer Survey published in November 2012, *discrimination is considered to be common in the EU Member States*. The most widely perceived ground is “ethnic origin” (56%), followed by “disability” (46%), “sexual orientation” (46%) and gender identity (45%). According to the Special Eurobarometer Survey 317, forms of discrimination based on ethnic origin, age, disability and gender seem far more widespread in Hungary than in the rest of the European Union (the differences noted vary between 11 and 21 percentage points). On the other hand, according to the respondents in Hungary, discrimination based on religion or beliefs seem less frequent in our country.

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The number of the *Roma* among those fallen behind, in desperate, hopeless situation, is high above this minority’s share in the entire population. Some of the Roma, already pushed to the edge of society and subjected to prejudice, are unable to use the benefits offered, in principle, by the system of equal opportunities;

their integration seems unrealistic, even though the amount of support allocated to the improvement of the situation of the Roma minority has been multiplied since the country's democratic transformation and the supporting system and the assistance programmes also have become more complex.

The Ombudsman considers it one of his tasks to draw the legislators' attention, through his *ex officio* investigations, to the fact that some of the legal norms from various branches of law, related to equal opportunity, do not have any or sufficient influence on the integration of groups with structurally impaired advocacy and enforcement capabilities, most of all on that of the Roma.

Rates of poverty among the ca. 12 million Roma/Travellers in Europe reach 10 times higher than a population as a whole. According to a 2011 EU survey, life expectancy for Roma in the EU is estimated to be approximately 10 years less than the majority population, and in some countries infant mortality rates are six times higher than the average. These levels of poverty amongst Roma also play a part in the various exploitations of Roma children, particularly women and girls, who suffer poverty more than their male counterparts. In many cases, the Roma are segregated regionally into isolated pockets in both urban and rural settings, and these communities are generally the most deprived. Basic necessities are often lacking in such regions, incl. water, sanitation, electricity or heat. Poor road conditions and public transportation make it even harder to access employment opportunities, schools, social–health care services. Families, who are impoverished to this extent, struggle with daily life, children may stay at home instead of going to (pre)school to help with younger siblings, or parents may leave for extended periods. As well as being isolated as communities, these levels of poverty and social exclusion lead to the institutional exclusion of the Romani; moreover, in the last few years, the financial-economic crisis has made the already disadvantaged situation of many Roma.

In Hungary, according to the official data, the number of *people living with disabilities* in 2001 was 577,000, which covers 5.7% of the whole population. Experts estimate – illustrated by international surveys – that ca. 10% of the total population live with some kind of disability, so the valid number also has to be higher in our country, approx. 1 million people.

People (especially children) with disabilities and their families constantly experience barriers to the enjoyment of their fundamental rights and their inclusion in society. Their abilities are overlooked, their capacities are underestimated and their needs are given low priority. Yet, the barriers they face are more frequently the results of the environment in which they live rather than the result of their impairment.

However, Hungary was among the first countries who signed and ratified the UN Convention on the Rights of the People with Disabilities (CRPD), which brought a paradigm shift at national and international level in the field of *disability*

policies: the former paternalistic, medical perspective has been turned into a social model with respect for human rights; despite this welcomed development, there is more need to be done also in Hungary. The social model of disability acknowledges that obstacles to participation in society and its institutions reside in the environment rather than in the individual and that such barriers can and must be prevented, reduced and eliminated. Environmental obstacles come in many guises and are found at all levels of society. They are reflected in policies and regulations created by governments. Such obstacles may be physical, e.g. barriers in public buildings, transportation, recreational facilities and attitudinal – a widespread underestimation of the abilities and potential of children with disabilities creates a vicious cycle of under-expectation, under-achievement and low priority in the allocation of resources.

The *freedom of sexual orientation* is considered to be a special case of non-discrimination in modern discourses on fundamental rights. This issue has come to focus in the last few decades as a result of the increasing interest of NGOs and human right movements in the topic and as a result of some new issues on political and legal agendas around Europe such as the legalization of gay marriage or domestic partnerships and adoption.

In Hungary, many promising developments tried to achieve equality in the last two decades, but LGBT people feel everyday discrimination, prejudice or even face sometimes hate speeches and violent attacks based on the ground of discrimination on sexual orientation. The Hungarian Academy of Sciences carried out a research on this topic in 2007, which found that $\frac{3}{4}$ of the people experienced already once at least any kind of negative discrimination. The Pride Marches are still controversial events in Budapest, however, the conditions (safety of the routes etc.) and the level of acceptance are improving – partly as a consequence of the Commissioner's continuous attention to the enforcement of freedom of peaceful assembly since 2008.

Since there is no separate/single parliamentary institution for the protection of the *rights of the children*, the Commissioner has operated during his mandate as an ombudsperson for children's rights. That was the reason for the Commissioner to launch the so-called Children's Rights project for his whole, six-year mandate in 2008, under which he designated a specific subject each year that he intended to focus on. *The special projects* were as follows: awareness-raising of the children about their rights in 2008; violence against and amongst children in 2009; children in care in 2010; right to health in 2011, child-friendly justice in 2012 and right to healthy environment (with special attention to deprived circumstances) in 2013. Today, the ombudsman defends the rights of the child not only on the basis given by the Child Protection Act, but, since 1st January 2012, also based on the new Ombudsman Act (Act CXI of 2011 on the Commissioner for Fundamental Rights), which prioritizes the defence of children's rights as the Ombudsman's main task. This

means that the Commissioner has become stronger and more effective in fulfilling this responsibility. The Ombudsman's activities related to children's rights are not limited only to the utilization of traditional means. He protects children's rights by a set of specific means adjusted to the enforcement of children's rights; therefore, in addition to dealing with individual complaints, he lays greater emphasis on legal protection of holistic outlook and of proactive nature: to activities enhancing consciousness about law and shaping public opinion, to ex officio launched and comprehensive investigations and to organizing mechanisms of co-operation. He is a member of the European Network of Ombudspersons for Children (ENOC), the Eurochild, and he is a national focal point of the Council of Europe since 2010.

The Ombudsman, in addition to considering his primary task to explore problems related to children's rights and the deprivations of those rights during the course of his investigations, to word recommendations for their remedy as well as to press for the elaboration of solutions, he also considers indispensable in the interest of efficient and broad realization of children's rights to establish direct contacts with the target groups of the project. For this purpose, he discusses experiences obtained during ombudsmen's investigations and his related findings, recommendations and initiatives with experts dealing with children in professional meetings, workshops and conferences, and initiates co-operation between children and civil and state professional organizations and experts dealing with the vindication and protection of children's rights. In addition, in proportion to his own resources he also takes up roles in the presentation of children's rights and opportunities of enforcing those rights, including the protection of rights by the Ombudsman.

Helping vulnerable groups has been the main principle of the ombudsman's activity since the very beginning. However, the "upside down pyramid" phenomenon shows that the most vulnerable people have the least possibilities to defend themselves; they cannot even articulate their problems by sending in a complaint.

The Ombudsmen, alongside the professional supporter social sphere, shall try to move this "pyramid" and highlight these serious problems for the wider public; otherwise, they will remain in invisibility and in shadow without the ability to formulate a complaint or even perceive the abuse of rights.

Going to the Constitutional Court in the interest of vulnerable groups

Prior to 01.01.2012, anyone without any legal interest could turn to the Constitutional Court to challenge a piece of legislation. Such a possibility was terminated as the Basic Law entered into force. The typical competence of the

Constitutional Court became the review of individual complaints instead of the abstract review of norms.

As a result of this alteration, the Ombudsman's competence to turn to the Constitutional Court for posterior law review has gained significant role. The experience of the first 18 months (from January 2012 until June 2013) shows that the Constitutional Court performs this competence upon the petition of the Commissioner for Fundamental Rights. Therefore, a large number of individuals, organs and social groups turn to the Commissioner to challenge the law they find unconstitutional at the Constitutional Court. In this competence, the Commissioner answers all submissions and he either launches a petition or states his reasons for not initiating the Court's procedure.

On the basis of the citizens' complaints, since the beginning of 2012, the Commissioner has examined all complaints, regardless if they were submitted by individuals or civil organizations or even by political entities. However, it is not the amount of petitions but the quality of the argumentation with which the society may help the constitutional corrections in the Constitutional Court proceedings. For this purpose, it is not the unconstrained use of the direct ex post review of norms that would be necessary – since comprehensive processing may not be expected from the jurist elite organisation doing the Constitutional Court proceedings –, but an organization is needed with a suitable screening function and which is experienced in handling civil complaints and has the appropriate level of constitutional law expertise such as the Ombudsman.

Such a solution is included in the Basic Law instead of the *actio popularis*. Although the new constitution established two more channels of much more of a political nature (namely the Government and one-fourth of the MP-s), they currently do not fulfil the function of forwarding civil complaints to the Constitutional Court. The head of government authorised by a two third supermajority is unlikely to be uncertain regarding at least the legislation by his own government and Parliament in order to resort to the Constitutional Court for the ex post review of the norms. For instance, this way, the international organizations' criticisms may be "tried" through the internal constitutional control institutions by the head of the government. This is much more likely in a divided coalition government, though; in this case, the coalition co-operation agreement may limit using this opportunity. Another channel is the one quarter of the representatives: this does not function under the current political division; however, in principle, this can be easily accomplished by two co-operating parties which may bring this way their voters' demands. This opportunity may arise with a changing parliamentary composition, in which the comprehensive critical attitude of the opposition is likely to appear in the submission of petitions. Therefore, the current situation after the *actio popularis*, placing the ombudsman to the front, may quickly transform. Until that time, basing on the very short

experience of the 18 months, neither the government nor the one quarter of the representatives is likely to challenge acts at the Constitutional Court.

The Ombudsman's petition has a different nature compared to the one of the political parties. Political entities are likely to launch petitions to serve their political aims, for the implementation of the political values they represent. On the other hand, translating the general political criticisms into the language of the Constitutional Court does not belong to the ombudsman's task. The ombudsman, within his or her competence, focuses on partial questions, single issues. The petitions do not challenge the legal institutions but their partial aspects, for example, the types of pension, but not the whole of the pension system, certain anomalies of the education system, but not the foundations of the education system.

It also needs mentioning that the Fourth Amendment to the Basic Law authorised the president of the Curia and the Supreme Prosecutor to request ex post review of laws. However, they have not taken this opportunity yet.

The legal base of the Ombudsman's competence to launch a petition is stipulated in the Basic Law itself. The detailed regulations can be found in the Ombudsman Act and the Act on the Constitutional Court. Besides, the Ombudsman stipulated the most basic aspects of such an enquiry and pointed out that the Commissioner paid close attention to the most vulnerable groups also in this competence.

The Commissioner's right to launch a petition has a subsidiary nature. If someone had already turned to the Constitutional Court with an individual complaint, then the Commissioner's petition for abstract review would have had no function. The Commissioner practises his right to turn to the Court mostly if the circumstances of the individual implementation of a right are missing.

The Commissioner is entitled to challenge all pieces of legislation, while the Constitutional Court's competence to review financial issues is restricted. The Commissioner can ask the Court to conduct a posterior law review or to review whether a law is contrary to international treaties. Yet, (s)he cannot request the abstract interpretation of the Court in a specific constitutional issue.

As of 1 January 2012, not every citizen has the *actio popularis* at his/her disposal for initiating the abstract ex post review of norms. The eighteen-month-long experience is that those initiatives are able to provide basis for the ombudsman's petitions to the Constitutional Court, in which the professional legal expertise had played an important part from the beginning. The mass of the "lay" complaints means in itself an important confirming and guiding feedback; however, no directly constructive or critical fundamental law arguments are derived from them (though such arguments can be formulated through experts' deductions). The colloquial problem interpretation may be of a symptomatic value; however, it requires further professional elaboration.

Secondly, we focus on the issues in which the Commissioner launched petitions for the sake of the most vulnerable groups. In this part of the essay, we summarise

the Commissioner's statements on issues concerning homelessness, minorities, social allowances and subventions, measures against minors, the pension system and health care. Since 2007, the parliamentary commissioner for citizens' rights, depending on the result of the examinations, turned to the Constitutional Court 3–5 times annually. Since the beginning of 2012, the Commissioner turned only four times to the Constitutional Court *ex officio* for ex post review of norms on the basis of the “old” ombudsman's competence to submit a petition. On the other hand, the Commissioner launched nearly 30 petitions within the first one and half year of the Basic Law.

To set an example, among the petitions, the review of the *Act on Elimination of Early Retirement Schemes, Early Pensions and Service Dues* needs mentioning. According to the Act, the allowances established earlier are continued to be paid under another legal title, as so-called early retirement allowances, e.g. transitional miners' allowance or, in the case of the armed forces, as service allowance. In the petition, the Commissioner requested the annulment of certain provisions of the Act. The reason for this is that the Act stipulates the reduction of the monthly amount of certain allowances (e.g. early retirement allowance to Members of the Parliament or service allowance) by the amount of the personal income tax, when the provisions of the Act stipulating to burden the nominal amount of old age pensions with public dues, i.e. deductions, are in breach of a requirement deriving from the rule of law. The Act defines the suspension of the service allowance as an automatic, “supplementary punishment-like” legal consequence to certain crimes. Since it comes from the Basic Law that the state may not arbitrarily use the instruments system of penal law, the Commissioner also initiated the annulment of these provisions.

By virtue of the Act, old age pension shall be terminated if the person entitled engages in, in lay terms, “black work” (undeclared gainful activity). The Act links two unrelated issues: the payment of the old age pension-type allowance to the entitled and his/her failure to comply with the obligation to pay tax on the income from such undeclared work. Therefore, this provision is also in breach of the requirements of the rule of law.

Having analysed all the petitions and the hundreds of complaints, one can state that the group of petitioners is rather diverse, ranging from university professors, self-governments of nationalities, members of the European Parliament to private citizens. In the course of submitting petitions based on the complaints on file and other related requests (establishment of default, proposition of provisional measures), several substantial issues and dilemmas have emerged that we have to refrain from introducing here due to size considerations.

We used the way to the Constitutional Court to defend the vulnerable as well as the strategy of investigations, structured toward their interests.

National and ethnic minorities: restriction of rights or acknowledgement of realities?

According to the data of the census of 2011, the number of the Hungarian national minorities is more than half a million; however, real data are estimated to show at least twice of this number. Consequently, regulation of national minority rights may directly affect approximately 10% of the Hungarian population.

Apart from the Roma community, Hungarian national minorities cannot be considered a deprived group on the basis of social, labour market or health care conditions. In the case of these national minorities, the special minority rights are not affirmative actions, but they serve to facilitate the preservation of their identity, culture and traditions. The use of mother tongue and the local and national representation are exceptions; in these fields, the minority rights are to countervail the real disadvantages owing to the proportion within the population.

The Act on Ethnic Minorities passed in 1993 set out the definition of the national and ethnic minority. Nevertheless, it was not obvious how this definition could be applied to the individuals belonging to a given community. Therefore, instead of the free choice of identity, even completely arbitrary choice of identity prevailed, which led to many abuses.

The basis of distinguishing the national and ethnic minorities was whether the given ethnicity has a fatherland or not. By the entry into force of the Basic Law on 1 January 2012, this was changed to the unified definition of national minority, which better expresses the complete right to equality.

Hungarian legal rules enable only exceptionally, in full compliance with the data protection rules, to voluntarily register belonging to a nationality. Therefore, the legislator intends to use population statistics in order to assess the number of a given nationality without individual identification of members of the community in the settlements. Considering the data collected by census has the objective not to avoid that certain national minority rights are exercised in such settlements where members of the given community do not live.

Anonymous confession of belonging to a nationality on the occasion of a census is a right and not an obligation for those who belong to the concerned community. In numerous settlements, essentially less number of people declared their national identity than it was realistically expected, while in certain big towns and in the metropolitan districts a significantly greater number of people did so. Consequently, the Commissioner for Fundamental Rights holds the use of the data collected by census controversial for the election of national minority self-governments and for determining the amount of their state subsidy.

In Hungary, after World War II, the process of preserving national minority languages was interrupted. Generations have grown up without learning the

language of their community or just learned it at basic level. Legislation broadly ensures the use of nationality languages; however, in practice, the priority of the Hungarian language prevails.

In the administrative proceedings, people belonging to a national minority may also submit their petition in their mother tongue and may request the translation of the decisions. Translation costs incurred in the course of the use of national minority languages are on the authorities.

The inquiry has pointed out that the demand for the use of national minority languages arises only in very few proceedings. On the one hand, the reason for this is that the majority of those belonging to a national minority can express themselves better using the Hungarian language than in the language of their community. On the other hand, there are not any colleagues working for the authorities, whose language skills would enable them to proceed in national minority languages. Local self-governments and government offices hardly have forms in national minority languages, not even in those settlements where significant national minority population lives. I, as the Commissioner for Fundamental Rights (2012-13), have made several proposals in order to propagate the use of nationality mother tongue.

Hungarian national minorities may elect their own self-governments. For almost 20 years, however, national minority self-governments may also be founded where members of the represented community do not live at all or just in a very small number. In 2011, the legislator built in a number of safeguards in the legislation on the elections of nationality self-governments. However, they have not remedied the problems that arose earlier. Anyone having a vote in the election of local government deputies and mayors and who confesses that he or she belongs to a national minority, may apply for being registered in the electoral registry. As a consequence of the extension of the personal scope of the Act on Nationalities, adult citizens with a Hungarian address of the member states of the European Union and also adult persons recognized as refugees, immigrants or persons established may also be entitled. The new rules will be applied for the first time in the election of 2014, thus it cannot be foreseen how those will work in practice. Predictably, the new regulation will not prevent the abuse of the right to establish a national minority self-government.

Because of their number, Hungarian national minorities are unable to obtain a mandate in the election of local self-governments in the majority of the settlements. In the last years, certain candidates could have obtained a mandate by fewer votes for a settlement and for a minority than the deputies elected in compliance with the general rules. However, this had led to abuses in a number of cases; therefore, this opportunity was terminated by the amendment of the Act in 2005. The Act on Nationalities reintroduced preferential mandate; however, the conditions are so strict that it is unlikely to win such a mandate, even in the settlements with significant nationality population.

Hungarian nationality politics have delayed passing the Act on the representation of national and ethnic minorities in the Parliament for two decades. Representation of national minorities was set out in the Constitution. On the contrary, participation of national minorities in the work of the Parliament is ensured in the Basic Law. The new electoral legislation enables the list of nationalities to obtain mandates by fewer votes as well. Those who request to be registered as nationality electorates may only support the candidate of the list of national minority and cannot vote on a party list. Consequently, it is questionable if the lists of national minorities may be able to reach the number of votes required for the mandate of a deputy. In the absence of this, a few spokespersons with consultation rights may be elected here and there.

By passing the Basic Law, the regulation of the national minority rights has taken a new direction. The laws adopted in the last two years primarily do not extend the catalogue of national minority rights, but they intend to ensure the conditions for better implementation. Certain new elements of the regulation, such as the introduction of the Parliamentary and local governmental preferential mandate, have given answer to questions having been unsolved for long time. However, the applied legal solutions only partly comply with the expectations of the nationality communities and the earlier undertakings of the political decision-makers.

Hungary's Population by Nationality (On the basis of the 2011 census)

	2001	2011
Hungarian	9,416,045	8,314,029
Bulgarian	1,358	3,556
Roma	189,984	308,957
Greek	2,509	3,916
Croatian	15,597	23,561
Polish	2,962	5,730
German	62,105	131,951
Armenian	620	3,293
Romanian	7,995	26,345
Ruthenian	1,098	3,323
Serbian	3,816	7,210
Slovakian	17,693	29,647
Slovenian	3,025	2,385
Ukrainian	5,070	5,633
Arab	1,396	4,537
Chinese	2,275	6,154
Russian	2,341	6,170

	2001	2011
Vietnamese	958	3,019
Other	36,472	28,068
Refused to answer / no data	570,537	1,455,883
Altogether	10,343,856	10,373,367
Population	10,198,315	9,937,628

Source: Hungarian Central Statistical Office, www.ksh.hu

What can the ombudsman do against school segregation?

There is currently no social consensus either on “diagnosis” or “therapy” regarding the problematic issue of the coexistence of Hungarian gypsies and non-gypsies. Nevertheless, it is generally agreed that for the Hungarian population of gypsy descent, in general, education and knowledge may give a real chance for integration, advancement prospect that may be sensed systematically and already in the medium term.

Considering the significant social integration weight of public education generally agreed, using the Ombudsman’s case law as well, a brief overview is given on the causes underlying school segregation, state of interests, the characteristic practice of segregation and the enforcement of the legal regulation of integration/segregation.

From the perspective of the social context of the subject, it should be highlighted that, due to the advanced assimilation pronounced and the living language, the cultural, traditional differences associated with the Roma nationality existence can be demonstrated only in the case of a small part of the Gypsies, but the problems arising from the different social status and prejudice affect almost all the Gypsies.

From the perspective of the “Gypsy question”, the number of Gypsies is of special significance because – according to the study of the Publicus Institute in 2012, based on the survey in 2008 –, “the majority considers Gypsies as a source of danger that merely by the increase in their number endangers the security of the society”. Indeed, the size of the Roma population is growing and their age composition shows an essentially younger population than that of the non-gypsy population.

The regional concentration of this social class is significant in the poorest regions of the country. Certain research has shown that the employment rate of the gypsy population is extremely low (it hardly reaches 20%), while the 10% employment rate of Roma women is downright catastrophic. In Hungary, Roma die on average 10 years earlier than non-Roma.

Prejudice has already been significant in the 90s; however, by today, it has “gained” a new quality since these prejudices are represented by a political party in the Parliament.

The proportion of the unemployed of gypsy descent is so high because their level of qualification is low. The reason for which they cannot obtain higher qualifications is that, in the absence of employment, the social status of gypsy families remains low, while in Hungary school performance is basically determined by the financial situation (and closely related other situations) of the family. All this makes the problem characterized by the logic of unemployment/qualification/social status turning into one another insoluble.

Schools, where the number/proportion of disadvantaged students is high, are demonstrably known to perform worse than others under current conditions in all respects (competence, entry to higher education, etc.). The majority of parents connect the increase of the number of gypsy students with the fall of the performance of school performance, independently of the eventual disadvantaged situation of gypsy students.

On this basis, it is almost inevitable that frustrated, discontented parents of the Hungarian mainstream society afraid of come-down tend to choose a school where the disadvantaged/gypsy student rate is low, bearing in mind the career chances of their children.

Before the schools had been put in state maintenance, if the municipality maintained several schools, its interest was that a significant proportion of gypsy student go to one or two schools, “removing the burden” of other schools. The decreasing number of students creates a strong competition among schools. Schools want to “stay alive” by increasing the number/quality of pedagogic services, using better advertisement and/or serving the segregation demands of parents. Sections, lessons in rated groups, integration classes (creating opportunities) are organised in order to solve segregation by an internal rating system, keeping up the appearance of objectivity. Eventually, this goal is served by the organisation of gypsy minority education as well.

Research has shown that a cumulatively disadvantaged student is Roma with a 50% probability, and statistics have shown that out of 100 Roma students approximately 75% are multiply disadvantaged.

According to the results of a scientific research led by Gábor Kertesi and Gábor Kézdi, the lower performance rates of gypsy students have no “ethno-specific” reasons; the differences are related to the disadvantaged situation and the segregation based on the disadvantaged situation and/or prejudice based on ethnicity. (Kertesi – Kézdi 2005) It has been shown in this study that parents, schools and the maintainers, as we have seen, may be interested in the creation or maintenance of segregation for several reasons. Against this informal unity of interest, there is no sufficiently efficient control mechanism.

Experiences of the ombudsman's project 'With communication for equal dignity – inclusive speech versus hate speech'

Hate speech and verbal exclusion affect by definition all vulnerable groups, amongst them especially Roma, people living with any kind of disabilities, homeless persons, migrants, religious minorities and LGBT persons. According to the recent Eurobarometer survey, discrimination is still considered to be common in the EU Member States. The three most widely perceived grounds are "ethnic origin" (56%), "disability" (46%) and "sexual orientation" (46%). Similar tendencies prevail in Hungary; however, age discrimination is perceived as the most common ground for discrimination (75%), followed by discrimination based on ethnic origin (70%) and disability (54%). There is no unified data collection about the number of hate crimes in Europe; however, victimisation research indicates that migrants and other ethnic minorities (such as Roma) and LGBT persons are at risk to be victims of verbal or physical abuse and hate crimes. According to a research conducted by the Fundamental Rights Agency of the EU (FRA), in Hungary, in 2008, 19% of Roma respondents were attacked based on their ethnic origin.

Prejudice and hate crimes are connected to each other in multiple ways: biased thoughts form prejudiced words and discriminatory actions may be a legitimisation and/or an emotional preparation for violent, criminal acts. The complex connection between these phenomena is demonstrated by Gordon Allport's famous scale of prejudice, according to which there are five stages of prejudice: (1) antilocution, (2) avoidance, (3) discrimination, (4) physical attack and (5) extermination.

The essential question of combating acts of hate is the goal the legislator realistically sets: may legislation aim to combat negative attitudes behind words and acts of hate, or should its goals be restricted at combating actual actions and words of discrimination? In different periods of time, within different social contexts, a different answer was given to this dilemma. Anyhow, legal prohibition of hate speech should – if applied consistently – result in the confinement of such phenomena. However, consistent and effective application of legal prohibition requires sensitizing and educating actual and potential legal practitioners.

The most effective way to combat hate speech is in any case to decrease its acceptance in the society: if the majority of society despises intolerant words, hate speech will get neither attention nor sympathy at the marketplace of opinions. Therefore, it is of essential importance to increase tolerance and understanding of vulnerable groups in the society. The 2013 project of the Commissioner '*With communication for equal dignity – inclusive speech versus hate speech*' aims to

map views and actions of stakeholders at different fields of life such as public education, higher education, media, criminal justice system, European funds and programs, local NGOs, churches and minority self-governments on the promotion of an inclusive society. The ombudsman investigated on the views of nearly a hundred stakeholders in the above fields in order to get a picture of the integrative capacity of society.

Hate speech has always been an issue of the ombudsmen's work: the previous ombudsmen responsible for minority rights made proposals to modify the criminal code, whereas ombudsmen have conducted several investigations in cases of hate speech. Our study aims to give a context of the ombudsmen's activities in this field by showing the way to the present approach, which gradually shifts the emphasis from legal prohibition to the mapping of proactive, preventive measures. In the study, the authors – colleagues of the ombudsman who all have actively participated in the project-work – sum up the most important findings of the recent project, complementing them with their subjective views on some findings.

On 29 April 2013, I as the Commissioner for Fundamental Rights launched a thematic workshop on hate speech. I emphasized the importance of the theme that should be examined and dealt closely by every participant of the society. I urged the change of mentality and attitude towards the question, as the prevention should be in the centre of attention and not the sanction and penalization of the convicts. A tolerant society should be developed with members having an appropriate political behaviour. Therefore, education receives a special attention and importance on this field. Within the framework of the project and investigations, the colleagues of my Office have contacted several relevant authorities for receiving information on their actions and plans regarding the prevention of hate speech and the promotion of tolerance. The results of my investigation were depressing: the state authorities have failed to comply sufficiently. The goal should be the creation of a democratic society with participants with adequate political culture, for which the state organs should support every initiative of the civil society.

The leader of the project, Ms Katalin Szajbély, in her basic paper, reminded the unsuccessful attempts of the former ombudsman being responsible for minority issues: when Dr. Jenő Kaltenbach drafted the legal provision on the issue of hate speech, or when Dr. Ernő Kállai proposed an amendment to the act on equal treatment to regulate the question. In 2012, I launched a project touching upon the issue of “Losers of the crisis - In the captivity of paragraph”, which had a segment that examined the strengthening prejudices and discrimination in the context of financial and economic crisis. From social-psychological aspects, the colleagues of the ombudsman investigated relevant cases; furthermore, they had contacted the civil society and examined the specialised literature to propose a comprehensive report on the issue during this summer. (Szajbély 2013)

About tolerance in education and its obstacles, a large amount of work has been done within the social sciences. Speaking about education and tolerance, deficiencies can be explained by problems related to the quality of the teaching–learning process: by pedagogical methodology used by the teachers, by the way how in-class interactions and conflict situations are managed (usually it is only between teacher and student, student-student communication is prohibited many times in the classroom), the education and the expectations of teachers. Our work added to the literature on the subject that high-quality training programs on anti-discrimination have to be launched for teachers. Ethnic segregation is still a common phenomenon in the Hungarian education system. We concluded that good practices are useful; however, their successful implementation requires a shift in mentality and paradigm.

Mr. Zoltán Fleck, professor at the Faculty of Law at the ELTE University of Budapest, has made investigations to give here a short summary on how law students are influenced by prejudice in Hungary. In order to avoid and prevent this kind of attitude, good practices should be implemented at first place in the educational system and the pedagogical mentality. Evidently, changes of cultural attitude and paradigms are also necessary to fight stereotypes and prejudice. According to Mr. Fleck, in countries of unstable cultural ideologies, norms and institutions have an outstanding role in consolidating the moral and ethical rules of society. (Fleck-Krémer-Navratil-Uszkiewicz 2012)

Based on research samples from online and print news providers and from the programs of commercial and state-funded television, one third of all coverage on gypsies is related to criminality. Insinuating and indirect messages are often revealed in the media. Materials that promote prejudice and stereotypes about Roma are widespread. There are very few reports that show real Roma culture. Another phenomenon is that in the past 15 years or so degrading speech concerning Roma people has become increasingly accepted both in politics and in public forums. Accordingly, state officials and public figures have a greater responsibility in forming public opinion.

Our investigations as well as the mainstream social sciences in Hungary concluded that the presentations underlined two common goals: preventing discrimination and the urging need of raising cultural awareness. The social and cultural instruments and education have an important role in promoting tolerance, but legal instruments are essential to prevent racism and discrimination. These are the findings of our recent projects on ethnic, especially Roma minorities, and on the LGBT people. We carried out a system of investigations on other vulnerable groups: poor people, children in need, homeless people, old age people, disabled grand groups, patients' rights, etc., which we are unable to present due to the limits of our paper.

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