OFFICE OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS
THE NATIONAL HUMAN RIGHTS INSTITUTION OF THE UNITED NATIONS
HUNGARY

SUMMARISING STUDY

on the (on-site) investigations of the commissioner for fundamental rights

concerning the operation of old people's homes

Budapest

31 March 2016

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Summarising Study

Introduction

The Office of the Commissioner for Fundamental Rights participates in the professional work group of the project dealing with the "Enforcement of the Human Rights of Individuals Receiving Elderly Care" (in short "Old Age Project"), initiated by the European Network of National Human Rights Institutions (ENNHRI), co-financed by the European Commission, as well as the two and a half year long project work, as a pilot member, representing Hungary.

Within the framework of the project, the colleagues of the ombudsman visited four old people's homes constituting focal institutions in the area of elderly care: Gondviselés Háza Old People's Home of the Hungarian Charity Service of the Order of Malta, operating in District I of the capital (hereinafter: HCSOM Old People's Home), Biatorbágy Gizella Home maintained by Boldog Gizella Foundation, representing care facilities in Central Hungary, "Fehér Akác" Jász-Nagykun-Szolnok County Old People's Home, representing care facilities in Eastern Hungary, and Vas County Old People's Social Institution Kőszeg Pensioners' Home, representing care facilities in Western Hungary.

The present report summarises the results, experiences and establishments of the on-site investigations and old people's home monitoring activities executed in the four above-listed institutions.

Graceful ageing

In connection with the protection of the rights of needy and defenceless people, using the Fundamental Law as its starting point, applying close to two decades' constitutional court practice, the ombudsman's task is to draft a logical and consistent system of arguments.

In addition to the socially centred approach, placing emphasis on a purely fundamental-right system of aspects, with the social aspects not to be ostracised by any means: within this sphere, it is the ombudsman's coordinating and sometimes mediating role that is put in the forefront.

A rule-of-law state, as an institutional order, and as the value constituted by the totality of behavioural patterns of cultural nature, based on social trust acceptable by the political community, is consistent with the ombudsman's role to make one conscious of the law.

Old age, as the status leading to neediness and a defenceless situation, is a uniquely East-European phenomenon. As the topic is not purely an issue of fundamental rights but primarily related to social sciences, our investigations and research sometimes try to span a much wider picture than what can at all be expected from the ombudsman's role. We can get a much clearer picture of this everyday social portrait in the light of interdisciplinary connections, therefore – diverging from the commissioner's strictly professional analysis – we would rather call attention to the fact that studies show that as early as in 10 years, every fourth Hungarian citizen will be over sixty, and the situation in Europe is no better either.

One of the elements of a general human evolutionary process is caring for the elderly, and establishing the harmony of policies and human rights serving the management of social tensions in a rule-of-law state. And why should we consider elderly people defenceless in today's Hungary? It is enough to just review the isolation of the market and the Hungarian pension system in the past decade.

Is the dignity of old people preserved

The most important buzz word of elderly affairs is social security even though the account of its fundamental law guarantees can be demanded only in the efforts made at the operation of the institutional system, while the state promotes securing old-age subsistence through the state pension system based on social solidarity and the system of other voluntary funds (Article XIX of the Fundamental Law).

However, subsistence is far from the total manifestation of social solidarity; if we examine only the sustainability and development of the so-called long-term care sector, we can find the European endeavours among public policies expressly within the framework of complex programmes.

Within elderly affairs, the coordination of provisions, the integration of health policy, quality assurance in long-term living-in institutions, and the harmonisation of the labour market and care infrastructures also require strategic thinking. The situation investigated by the ombudsman also reflects these needs, moreover, the program[1] is also ready. It is exactly the lack of a supporting approach that aggravates the Hungarian situation.[2]

The ombudsman can monitor the life of the elderly practically only through the institutions and living-in homes as the office does not do age-specific complaint management. However, through the anomalies of certain financial provisions, the social group that, well beyond retirement age, balances within a very narrow range of subsistence also becomes visible. We have carried out research in the area of the efforts made for the feasibility of elderly security, and we tried to present the international employment models of active old age. Due to the problems of ageing and care, the picture characterising 'elderly affairs' in present-day Hungary is rather varied and dark.

It is hard to give an exact answer even to the first question relevant from the aspect of fundamental rights: *who do we consider elderly?* According to the stance taken by WHO, one is young under the age of 30, older young or mature under the age of 45, middle-aged between 45 and 59, elderly under the age of 74, and old between 75 and 90, and finally, aged over that.[3] Defining the circle of old people is significant also because if we have to specify those entitled to heightened protection and preference, old people do not constitute an easily and simply definable homogeneous group.

Even by taking into account the age structure of the Hungarian population, drawing a strict age limit would probably be arbitrary and contingent. We should not overlook that a certain part of elderly people in Hungary are struggling with worsening medical and/or social, subsistence problems, moreover, might be left completely without family support, thus end up in a defenceless situation, needing state and institutional support not merely due to their age.

As a comparison: in the '60s, almost half of those between 60 and 64 were active wage-earners in Hungary; according to 1996 data, this figure did not reach even half a percent. Inactivity may be a sorry concomitant of the emergence of a more outlawed situation, living on the peripheries in a social-political sense. The approach that those who do not work are less valuable members of society might have severe consequences. It is to be emphasised that *the right to human dignity, as one of the basic pillars of thinking about fundamental rights, excludes all the arguments from the discourse that endeavour to classify some social group (including the members of the "group") on the basis of the value they represent, and their contribution to social costs*.

Population data

[1] Government Decision No. 1087/2010. (IV. 9.), National Elderly Affairs Strategy I, Action Plan 2010–2012

[2] See BORZA Beáta (ed.): *„Méltóképpen Időskorban" projekt.* ÁJOB Projektfüzetek 2011/2. Budapest: Országgyűlési Biztos Hivatala, 2011.

[3] Prof. Emeritus Dr. RISKÓ Tibor: Mit kell tudni az öregségről… In Idősgondozási kézikönyv, Geriáter Service Kiadó 12.

According to the data of the 2011 census, the population of Hungary is 9 million 982,000, of which 17% of the population is elderly, that is, over the age of 65. The decreasing number of children and the ageing population make the sustainability of education as well as social and health care more difficult. The most severe challenge is the sustainability of the pension system as the more numerous generation born in the 1950s is about to reach retirement age in the near future. At the same time, the drop in the number of people of active age means a narrowing labour potential and weaker provisional abilities. On 1 January 2012, the child – elderly ratio was 100 to close to 117, while a year before this was 115.

The regular and characteristically exclusive source of income for close to one third of the population is their *pension.* The number of pensioners has decreased repeatedly in recent years, with the percentage of pensioners on disability under the age limit dropping among them.

According to most recent international comparative data, Hungary spends 23.4% of its GDP on social protection expenses. The largest item of these expenses is constituted by pensions. Within the total amount of benefits, the proportion of monetary provisions has been increasing in Hungary since 2005 as opposed to the European Union, where this number is decreasing. Following the change of regime, the number of pensioners was the highest in 1999 (3 million 184,000), and has been decreasing since. In 2011, the number of those receiving pension and other provisions was 2 million 901,000. The number of old-age pensioners was 1 million 737,000, almost ten thousand more than the previous year.

The significant increase in the number of old-age pensioners was constituted by the introduction of preferential retirement for women reaching at least 40 years of service. While the number of disability pensioners reaching retirement age increased by 13 thousand in one year, as the result of the aggravation of legal regulations, the number of disability pensioners under retirement age dropped by 43 thousand in 2010 and by another 37 thousand in 2011.

Together with this, compared to the average of recent years, the number of newly established pensions was outstandingly high in 2011; as compared to 2010, there was a 37% increase. Within that, the number of new old-age pensions established – together with those taking early retirement – grew two and a half times, which was significantly influenced by preferential retirement secured for women on the basis of at least 40 years of service. However, due to the aggravation of the rules of disability retirement, the number of retirements established due to disability or for employment policy reasons dropped.

When state pension systems were introduced after the war, both retirement age and life expectancy was 65 years in most countries. As the result of the improvement of health care and favourable circumstances of life, the number of years spent in retirement has increased significantly – while far fewer children are born in the developed world and the coming generation is far less populous than that of the elderly. Calculations show that by 2040, the difference between the sexes will remain, while the average life expectancy of men in OECD member states at the age of 65 will increase to 83, while that of women to 87.[4] Experts all over the world recommend that continued employment (even with so-called patchwork commission, that is, necessary continued employment for lower pay) and/or the increase of retirement age be urged.

In Hungary, the expected number of years spent as a pensioner was 16.5 in 2010, which figure is growing every year. Within that, on average, women are pensioners for 18.2, while men for 14.1 years. Since the millennium, retirement age has been increasing everywhere; however, in most countries, with the exception of Denmark, the increase of retirement age does not follow the expected increase in life expectancy. The highest retirement age (68 years) is in the United Kingdom, followed by Germany and

[4] Hungarian Central Statistical Office 2011. J/7503. Source: KOVÁCS Erzsébet: A nyugdíjreform demográfiai korlátai. *Hitelintézeti Szemle,* 2010. 2. szám, 128–149.

Denmark with 67 years. In the Czech Republic, Greece, Hungary and Turkey retirement age is 65, which was introduced in Hungary gradually, closing with those born in 1956.[5]

According to experts, from the aspect of social challenges posed by ageing societies, the member states of the European Union can be classified in three groups. The first group is *Germany, Belgium, Holland, Sweden, Finland, France,* where the increasingly numerous elderly population can count on a high age, excellent health care, and a developed system of social services. The second group is the southern part of the continent: *Italy, Spain, Portugal*, where, as the result of a unique, multi-generation family model, expectations towards the system of social services are lower. The third group is that of newly acceded East-European member states that, in the solidarity-based, pay as you go type pension system, due to underfinanced health care, system of social services and less developed infrastructure, have a much lower life expectancy and can expect services of a much lower standard than those customary in western member states.

The situation of living-in institutions in elderly care

The professional opinion is uniform with regard to elderly affairs being a global issue that constantly brings up the increasingly significant role of communities (compare: the state) in the modern world. It is an aggravating question whether the method of approach rests on the deficiencies or the abilities, and also whether the national politics of old age can be interpreted in the loss or development model. Are there possibilities left in the strategy of "lifelong learning" rested on the sustainability of abilities for the ageing or the senior, is there national consensus in this issue, or is the politics of old age restricted merely to the area of institutional (compare with social) services. Are present-day families suitable for caring for an elderly relative, or is the "comfort" offered by living-in homes ideal? Does the social organiser help in social services if the elderly person requires only weekday (compare with basic) assistance?[6]

The programme of Hungarian politics of old age will be viable based on the harmony of the full spectrum of basic care, home care, social services and specialist medical care. Dozens of representatives of the profession talk about the inflating role of living-in home institutions, the fact that sometimes only decades-long professional commitment drives an institution, and that in most cases operating their last home or having it operated poses great difficulties for the elderly. Representatives of the social profession providing services for the elderly struggle with the functional disorders of multi-task, living-in institutions and the contradictions of the conditions of financing, the unclear borderlines of competencies, as well as the long-term problems of social and health care – "remedying" the symptoms of old-age dementia and Alzheimer – sometimes within an institution housing several hundred individuals.

Due to the change of the legal environment, before 1 January 2008, nursing (belonging to whatever type) could be executed by the nurses of the homes with responsibility and without extra costs. However, present legal regulations – that is, the admission possibility and basic care obligation in the case of nursing needs exceeding four hours – treat social care homes as health and not as social institutions. The problem causes a disorder of competencies if, due to his ageing, degradation or other illness, the person living in a social welfare home requires frequent special medical and nursing – that is, inpatient institutional – care, then, when the therapy is over – sometimes after a couple of days –is released to the home with the instruction that the nurses of the home can / are able to / are obligated to

[5] http://www.ksh.hu/docs/hun/xftp/idoszaki/mo/mo2011.pdf (last download: 12 June 2013)

[6] With dignity in old age" – in the paper read at the closing conference of the elderly affairs project of the commissioner of fundamental rights, on 14 October 2010. In BORZA Beáta (ed.): „*Méltóképpen Időskorban" projekt.* ÁJOB Projektfüzetek 2011/2. Budapest: Országgyűlési Biztos Hivatala, 2011. 24.

execute the special nursing services. This latter might naturally be true, however, old people's homes do not have either means or sufficient resources at disposal for this.

The professional discourse going on for years – the commissioner himself brought it up in connection with his elderly affairs project conducted in 2010 – has not led to consensus yet. However, it is characteristic that a great number of social welfare home nurses leave their profession or the living-in social welfare homes as neither the material, nor the professional circumstances are acceptable to them. The experience gathered by experts show that the attitude found during official audits reinforces the medical approach that, in many cases, is incompatible with the opinion of the social profession which defines a long-term, living-in home as the client's "home". All this is unjust towards the maintainers as well since it poses extra tasks and requirements without sufficient financing.

Thus current welfare policy manoeuvres on a difficult terrain, between European requirements and domestic possibilities. The possible solution would require a series of consultations in the welfare branch still between the leaders of the ministry and those affected, resulting in the creation of a calculable welfare policy, with a change in structure – including the change of attitudes.

According to the most recent data of HCSO, in Hungary, 52,750 inmates live in some living-in old people's home or care facility providing for the elderly. As compared to the residents of all the institutions offering specialised social services (institutions caring for the elderly, the homeless, disabled, psychiatric patients and addicts), this constitutes almost 60%.[7] The number of institutions operating in elder services is 697 – this constitutes non-profit, church, private and corporate enterprises as well as state homes. The highest average age is 79 years, the most populous age group is that of residents between 80 and 90, which is 40% of all residents. Thus the "task" is no smaller than to organise the worthy circumstances of the last years of a small town's worth of old people.

Launching the procedures, methodology

In the project brought into life and executed by the European Network of National Human Rights Institutions (ENNHRI), financed by the European Commission, dealing with the "Enforcement of the Human Rights of Individuals Receiving Elderly Care" (briefly: the "Elderly Affairs Project"), Hungary is represented by the Office of the Commissioner for Fundamental Rights. Hungary actively cooperates in the two and a half year long project work with a definite topic, as an experimental state, a pilot member, in which close to 20 countries participate starting from Serbia to Northern Ireland. The aim of the project is the European-level monitoring of elderly services, revealing experiences, problems and good practices, and within the framework of that, as the summary of the project work, the participants draft a common recommendation, a package of suggestions, also to be submitted to the European Commission. Active participation in the European project as a status "A" human rights institution is an undertaking of high prestige, while considering the individuals receiving care within elderly services, as a group of people in need, it is also a lawful obligation for the Hungarian ombudsman by virtue of the Ombudsman Act.

Ever since the establishment of the institution of the ombudsman, using all the means at their disposal – through on-site audits, ex officio investigations, and legislative initiatives – the commissioners for fundamental rights have made efforts to step up in the interest of the protection of *the fundamental rights* and equal dignity *of individuals who are defenceless due to their old age or their poor health emerging as the result thereof.*

[7] A szociális, gyermekjóléti és gyermekvédelmi szolgáltatások igénybevevői 2012. In *Szociális Füzetek.* Budapest: Nemzeti Rehabilitációs és Szociális Hivatal, 2013. 72.

For the state – be it a legislative or a jurisdictional body – providing for its citizens in need, taking responsible measures and operating the appropriate servicing institutions is not an elective task as the rule-of-law solution of the situation is based on the requirements of the norms of the different branches. It also comes from the ombudsman's practice that, in connection with services provided for elderly people, the "care" obligation of people in need can by no means be exhausted by securing the potential possibilities.

Under Point d) of Section 1(2) of the Ombudsman Act, in the course of his or her activities the ombudsman shall pay special attention, especially by conducting proceedings ex officio, to the protection of the rights of the most vulnerable social groups.

Based on the foregoing, as well as within the framework of the performance of the obligations undertaken in the project mentioned above, the commissioner launched a series of investigations constituted by four parts during the course of which, through visiting old people's homes of different types, the general picture of the Hungarian situation of living-in institutional elderly services and their characteristic features can be demonstrated.

Within the framework of this, the colleagues of the ombudsman visited *Gondviselés Háza Old People's Home of the Hungarian Charity Service of the Order of Malta*, operating in District I of the capital (hereinafter: HCSOM Old People's Home), as one of the focal institutions of elderly care in Budapest; *"Fehér Akác" Jász-Nagykun-Szolnok County Old People's Home*, representing care facilities in Eastern Hungary; *Biatorbágy Gizella Home maintained by Boldog Gizella Foundation*, representing care facilities in Central Hungary; and *Vas County Old People's Social Institution Kőszeg Pensioners' Home*, representing care facilities in Western Hungary. The present report summarises the results, experiences and establishments of the on-site investigations and old people's home monitoring activities executed in the four above-listed institutions.

Constitutional rights affected

- The requirement of legal security emerging from the principle of the rule-of-law state, and the right to fair proceedings [Paragraph (1) of Article B of the Fundamental Law: "*Hungary shall be an independent, democratic rule-of-law State."*];
- The right to life and human dignity [Article II of the Fundamental Law: *"Human dignity shall be inviolable. Every human being shall have the right to life and human dignity."*];
- Right to social security [Paragraphs (1) and (2) of Article XIX of the Fundamental Law: *"Hungary shall strive to provide social security to all of its citizens. Hungary shall implement social security for the persons referred to in Paragraph (1) and for other persons in need through a system of social institutions and measures."*]
- Right to physical and mental health [Paragraph (1) of Article XX of the Fundamental Law: *"Everyone shall have the right to physical and mental health."*]

Legal regulations applied

- The Fundamental Law of Hungary
- Act CXI of 2011, on the Commissioner for Fundamental Rights (the Ombudsman Act)
- Act III of 1993, on social governance and social benefits (Social Act)
- Ministry of Social and Family Affairs Regulation No. 1/2000. (I. 7.) on the professional tasks and operative conditions of social institutions providing personal care (MSFA Regulation)

Institutions examined and experiences

A) AJB-1448/2015. - Jászapáti Old People's Home

Within the framework of the series of county-level investigations, in the spring of 2015, I launched a comprehensive investigation aimed at mapping the institutional system of Jász-Nagykun-Szolnok County from the aspect of fundamental rights. Under Point d) of Section 1(2) of Act CXI of 2011, the Act on the Commissioner for Fundamental Rights (the Ombudsman Act), in the course of his or her activities the ombudsman shall pay special attention, especially by conducting proceedings ex officio, to the protection of the rights of the most vulnerable social groups. Based on this, within the framework of the present investigation, I endeavoured to review the operation of social and medical institutions, and service facilities of Jász-Nagykun-Szolnok County, therefore, my colleagues visited "Fehér Akác" Jász-Nagykun-Szolnok County Old People's Home, and, within the framework of an on-site investigation, requested information on its tasks and the circumstances of the operation of the institution.

Experiences of the on-site investigation

On 2 April 2015, within the framework of an on-site investigation, my colleagues visited "Fehér Akác" Jász-Nagykun-Szolnok County Old People's Home, located in Jászapáti. During the visit, the manager of the institution presented that the institution, under the maintenance of the Social and Child Protection Directorate at present, is to celebrate the 25th anniversary of its existence this year.

Until 2008, the home also functioned as a professional methodological institution in the Jász-Nagykun-Szolnok County network of social institutions – thus, for instance, it actively cooperated in the establishment of the farm caretaker system of the county and the region or the services to be used by those with disabilities or suffering from addictions – therefore, they still have very good contacts with the other institutions of the county with similar profiles as of today.

The institution moved to its present building in 2010, which was originally a secondary-school youth hostel, which was renovated and reorganised by taking into consideration the requirements of elderly care, thus, at the time of the commissioner's investigation, residents were receiving care at two bases: patients with dementia are placed in a ground-floor building accommodating 21 individuals, while elderly care is provided in a two-storey building, which is secured for 94 individuals at present. Being admitted to the home is preceded by preliminary care; there are approximately 50 individuals on the waiting list of the institution.

The average age of the inmates of the institution is 82.2; within the age structure of the residents, the proportion of those between 80 and 89 is the highest (67 individuals), but there are also 12 residents in the institution over the age of 90. Due to the high age of those receiving care, relatively many (78 individuals) suffer from more than three chronic illnesses, and even though they do not have a special geriatric nurse colleague, the general practitioner of the institution, as well as the psychiatric specialist doctor providing care within a contractual employment relationship fully provide for the preservation of the residents' health. If need be, for examinations, the residents are sent to the specialist clinic and hospital of nearby Jászberény, and Heténi Géza County Hospital in Szolnok, where they are taken by patient transportation vehicles or – especially in the case of residents with dementia – in the vehicle of the institution, accompanied by a nurse. According to the information received from the director, the institution maintains good contacts with the competent hospital; if a resident needs hospital treatment, they enquire about his condition several times a day and the manager of the institution also visits him during his hospital stay. Due to limitations in financing, no physical therapist or dietitian is employed in the institution, however, several of our colleagues have NTL mental hygiene assistant qualifications and the director has also completed the patient rights training of the National Patients' Rights, Recipients'

Rights, Children's Rights and Documentation Centre. In spite of the foregoing, four kinds of diet menus are offered at the 800-portion kitchen belonging to the institution, for those for whom this is prescribed by their attending physician; in addition to the five common meals they receive a day, residents can also supplement their diet in the kitchenette. The manager of the institution is committed towards heathy eating, therefore, in early 2015, within a residents' meeting, she informed the inmates about the changes and innovations in the institutional meals, which were received by the residents positively; at the same time, during major holidays, the institution makes efforts to bring joy to the elderly by offering traditional meals of the region.

In the institution, the administration of medicine takes place customised to the individual resident, on the basis of a personal list of medicine; the medicine boxes compiled for several days in advance, bearing the residents' names visibly, as well as the residents' personal medicine can be found in a separate room, locked up in a cabinet.

The access-free interior spaces of the institution are spacious, its walls are light and colourful; efforts are made to establish a familiar atmosphere. In the corridors, we can find anti-slip flooring and rails mounted on the walls. In the old people's home section, the residential rooms accommodate 4 residents, while in the dementia unit 3; at the same time, there is a double room on every floor, reserved for couples. Due to the floor space of the institution, one can bring in only a limited amount of personal furniture and belongings. The residents' beds range according to their health status and the kind of care they require, thus it is possible to request normal or elevated beds and, if need be, standard treatment beds can also be brought into the rooms, the internal transportation and movement of which can be executed with the help of the elevator of the institution. If a relative wants to stay beside a resident in severe or terminal condition, the possibility is provided in the residential room by applying a screen.

From among the residents of the institution, three are under guardianship (one person under fully exclusive guardianship); the institution maintains a good relationship with all the guardians. They also have good relations with the residents' relatives, thus for instance it is possible to establish the order of the payment of the reimbursement fee by taking into consideration the unique demands of the relative and the future resident, recorded in a bilateral agreement, from which the parties may flexibly diverge in the event of changes in their social or economic circumstances. No entry fee is charged.

The institution is not characterised by conflicts either between the residents or the colleagues; however, if such emerge, the director personally helps those involved to solve these. Parallel with my colleagues' visit, the institution was also visited by the patient rights representative, however, according to the director's report, the number of complaints related to the life of the home does not increase even during the representative's visit *due every quarter year*.

Regular joint cultural and entertainment opportunities are organised for the elderly, thus there is a separate common room on each floor, at the residents' disposal, where there are card and chess circles, handicraft sessions, etc. The residents also regularly visit the prayer room located in the building, where the local Catholic priest celebrates mass once a month, while the representatives of the Society of Camillian Families conduct prayer occasions; furthermore, every resident is provided the opportunity to practice his religion as requested, and, if this is endeavoured, his priest can also pay a visit in person.

In the dementia unit, three residents are housed in each of the tree-bedded rooms opening into a common corridor, in all the cases on a treatment bed. In the case of demented inmates, meals are provided in the spacious corridor in front of the rooms, for the residents who can be mobilised jointly, with the help of nurses.

During the investigation, the manager of the institution indicated that the lack of the solution of financing specialist treatments executed in living-in social welfare institutions still poses a problem.
Among their long-term goals, the director mentioned the replacement of doors and windows and the installation of the insulation of the building; furthermore, they also want to make the building completely

access free in the future, however, due to restricted tender opportunities, its exact deadline cannot be determined.

Establishments affecting the institution

During the on-site investigation held in the old people's home, the manager of the institution indicated that the lack of the solution of financing specialist treatment activities executed in living-in social welfare institutions still poses a problem. The commissioner for fundamental rights dealt with this issue in his report number AJB-537/2013. The 2013 investigation revealed that, according to the experiences of supervisory activities conducted in social institutions, the patients suffer from "multimorbidity" given that a condition to admission to old people's homes is the existence of a need for care exceeding 4 hours a day. *Due to the 4-hour care need, defined as the condition to old people's home services, the number of elderly residents requiring full care has increased significantly.* For this reason, the institutions are forced to carry out quasi "home special care" in the homes; however, this is not the designation of this form of care among others because this form of care is to replace in-patient medical institutional care, while under legal regulations, no inmate can live in a living-in social institution who requires long-term inpatient institutional placement.

Until 31 December 2007, homes had to provide for *"necessary care"*, which expression did not differentiate between basic and special care, thus the institutions were able to satisfy their obligations according to the legal regulation, they were able to perform both kinds of care. From 1 January 2008, the MSFA Regulation was modified, and *necessary basic care* is to be provided, *with the exception of the special care activities (home special care) defined in the Ministry of Welfare Regulation*[8]. Thus the special care activity is not a compulsory task any more, just a possibility for the homes; if the home also endeavours to execute special care activities, since 1 January 2008 it needs a special operative license for that as special care is considered healthcare activity. However, legislators did not provide plus financing for the extra expenses incurred during the licensing procedure and in connection with meeting the requirements of legal regulations.

It is true that, with regard to special care, the institutions regularly provide healthcare service activities, for which – according to the observation of the health care authority – they do not have the operative license. The separate operative license contains elements of warranty that secure the general professional conditions and level of healthcare services – regardless of the service providers' legal standing and the coverage of the services.

In his report mentioned above, the commissioner for fundamental rights established that the fact alone that special care conducted by social institutions can be executed in possession of a separate license cannot be considered problematic as it is also in the interest of institutional inmates that they use the healthcare services at the highest possible professional level, in a secure manner, under continuous professional control. It is clear that in case the institutions want to perform their tasks, the appropriate care of the residents, they cannot avoid executing special care activities, even if that is not their compulsory task. According to the experiences of investigation number AJB-537/2013., for instance, financed healthcare service providers and inpatient institutions do not have sufficient information with regard to the personal and material conditions of old people's homes, that is, residents of what care need they can release back to the homes. Thus it often occurs that the resident is released back home soon after the intervention has been performed, instead of being sent to a competent medical institution with a chronic department for the continuation of the therapy commenced, or for rehabilitation. Thus the cost of the continuation of the therapy commenced, the early, post-operative care of patients undergoing surgery will in part be charged to the resident in question, and in part to the social institution. For instance,

[8] Ministry of Welfare Regulation No. 20/1996. (VII. 26.), on home special care activities

residents suffering different hip fractures are released back to their home a couple of days after their surgery, with the motion therapist defined in the staff norm specified in Appendix 2 of the MSFA Regulation only mentioned as recommended.

However, the situation emerging renders the situation of social service providers impossible as, at the level of legal regulations, they have the possibility to lawfully perform special care in possession of an operative license, however, in lieu of related financing, using their own resources, they are still ill able to satisfy the licensing procedure, and the legal regulatory requirements of often special care.

Based on the experiences of the on-site investigation and the documents studied, it can be established that the home operates in harmony with legal regulatory requirements, the elderly are visibly in good physical and mental condition, fit for their age, and their environment is in order.

Consequently, the commissioner established that "Fehér Akác" Jász-Nagykun-Szolnok County Old People's Home operates according to legal regulatory and professional requirements, the on-site investigation did not observe any improprieties related to fundamental rights in connection with its operation, and as a result initiating ombudsman's measure is not justified.

B) AJB-496/2016. – HCSOM Old People's Home

During this investigation, I requested the leadership of the institution to submit the rules and regulations of the institution, their organisational and operational rules, as well as the other internal regulations related to operation, in advance. After the documents have been reviewed, my colleagues carried out an on-site investigation in Gondviselés Háza Old People's Home of the Hungarian Charity Service of the Order of Malta (HCSOM).

Experiences of the on-site investigation

The on-site investigation took place on 15 December 2015, in Gondviselés Háza Old People's Home, located in District I of Budapest, which is maintained by the Hungarian Charity Service of the Order of Malta (hereinafter: HCSOM).

During the visit, the director related that the institution, accommodating 76 residents at the moment, has been operating since 2000 with a national sphere of authority, accepting elderly people in need of care from the capital as well as other settlements of the country. There are primarily sick elderly living in the institution, unable to provide for themselves but not requiring hospital care; their care and nursing is assisted by nurses on permanent duty, general practitioner, psychologist and psychiatric specialists, and physical therapist. In addition to attentive care, great emphasis is put on mental hygiene care and activities, the preservation of abilities and skills given that the institution also accepts patients with dementia for whom, however, the home does not reserve a separate dementia unit. A convalescent, partly self-supporting, patients' and so-called male departments offer placement for applicants coming in with different care needs.

The profile of the institution is constituted by caring for low-income elderly; at the time of our visit, there were 19 men and 57 women living in the home. Following the submission of their application, the future residents of the home can count on a short preliminary care period, which, however, during the winter period, due to the higher number of applications, increases, however, in the case of emergency, elderly individuals in need can be placed with urgency. The establishment of the amount of *personal reimbursement fee* to be paid by the residents is done on a case by case basis, in an income-proportionate manner, which usually means 80% of the income of the person in question. The institution secures the

basic medicine and personal hygiene items for the residents of the home, and if need be, they also provide appropriate clothing for the elderly moving in.

About half of the residents have dementia, and there are 10 individuals under guardianship affecting their competence, therefore, their care and treatment requires great attention on behalf of the nursing staff at a daily level as well in spite of the fact that the operation of the institution is permanently helped by several *voluntary colleagues*, or university or secondary technical school students doing their internship in the institution. The volunteers' activity is significant especially in the activities of the residents and the realisation of the free-time programmes organised for them but they also offer great help for the staff as well when, for instance, a resident is to be accompanied for a medical examination.

Instead of the 2.5 mental hygiene colleagues required, at present, the institution employs 1.5; filling the vacant status has been underway since January 2016. At present, the home operates with 12 nurses (social care providers), the head nurse has a degree in nursing.

In the institution, great emphasis is put on securing individual and group free-time activities for patients who are still convalescent and those who are unable to provide for themselves: group and individual physical therapy, handicrafts activities, listening to music, literary circle, and religious events allowing for one to practice his religion are available for those interested. The rules of the institution allow the residents to receive their visitors according to a flexible timetable, and there are no practical obstacles to go on longer holidays or leave as requested even though, due to the residents' age and heath, this is not a characteristic demand.

In the case of the elderly people housed in the institution, not only needs related to care are surveyed upon admission but the institution is more and more frequently faced with individuals applying for accommodation having a large debt, their income being encumbered by regular deductions due to some financial institution claim signed over for forcible collection earlier, thus they have very little available spending money. It is also for this reason that they strive to make the management of the inmates' affairs related to medical exemption smooth.

According to the relation of the manager of the institution, *managing the affairs, handling the income and expenses of demented inmates who are not under guardianship but have lost their discretion* poses a serious problem. The manager of the institution indicated as a problem that inmates diagnosed with dementia – especially residents suffering from serious dementia – are in a practical sense unable to manage their daily affairs, however, with respect to the fact that they are not under guardianship affecting their competence, they are regarded able to perform, which fact may lead to practical problems or might hinder the management of their affairs. As these individuals are not under guardianship, their signed authorisation is needed during the management of their different affairs; however, in many cases the residents in question are unable even to sign their names, but often they cannot interpret or understand the contents of the document they sign.

In connection with the rules on money management, the manager of the institution also presented that they are in a difficult situation when establishing the institutional money management rules as legal regulations do not provide guidance with regard to what the money management regulations are to contain. Section 61(3) of the MSFA Regulation only prescribes that provisions on the management of cash, the individuals entitled to management, and the method of using and accounting for the money are to be specified in the money management regulations.

The inmates' average age is 79 years for women and approximately 69 for men. A relatively high percentage of them suffer from several chronic illnesses; according to the experience of the manager of

the institution – as well as following the modification of the Social Act[9] – as far as their health in concerned, the elderly arrive in the home in increasingly worse health condition every year. Though they do not have a geriatric specialist nurse colleague, the general practitioner of the institution, as well as the psychiatric specialist doctor providing care in a contractual employment relationship fully provide for the preservation of the residents' health. The so-called 24-hour Medical Centre of the Hungarian Charity Service of the Order of Malta operates at the same address as the institution thus in a potential emergency situation the residents can get immediate medical attention; if need be, the residents are transported to the clinic of District I (Maros utca) and Szent János Hospital for further examinations, for which they are transported by patient transportation vehicles. According to the information of the director, the institution has a good relationship with the competent hospital; if a resident needs hospital treatment, they enquire about his condition and visit him during his hospital stay.

The institution does not have an independent kitchen; the residents are provided for from the kitchen operating in the Páty institution of HCSOM, securing diet meals for those for whom this is prescribed by their attending physician; in addition to the five common meals they receive a day, residents can also supplement their diet in the kitchenette. The manager of the institution is committed to heathy eating; however, during our visit, several residents complained about the unknown dishes they were served, as well as the insufficient temperature of the hot dishes they were offered, and the fact that they would like dishes and raw materials following the requirements of diet meals more closely. The kitchen started to operate recently, thus improvement in the quality of the meals, and changes following old people's home provisions more are expected from January 2016, during the course of which full-circle diet meals will indeed be provided.

In the institution, the administration of medicine takes place customised to the individual resident, on the basis of a personal list of medicine; the medicine boxes compiled for several days in advance, bearing the residents' names visibly, as well as the residents' personal medicine can be found in a separate room, locked up in a cabinet.

The interior spaces of the institution – due to the protected monument nature of the building – are not spacious, but if possible, of light colour, and efforts are made to establish a familiar atmosphere. The building is not completely access-free but the flooring in the corridors is anti-slip. The residential rooms have 2-3-4 beds and there is also a (single) sick-room reserved in case any of the residents needs to be separated during his treatment. Due to the floor space of the institution, one can bring in only a limited amount of personal furniture and belongings. The residents' beds range according to their health status and the kind of care they require, thus it is possible to request normal or elevated beds and, if need be, standard treatment beds (so-called hospital beds) can also be brought into the rooms.

Due to the protected monument nature of the building, several residential rooms open from one another. This arrangement allows rather little room for intimacy, posing the suspicion of the violation of the residents' rights to privacy, and also giving this part of the building a somewhat "hospital character", which is rather unfortunate as the institution functions as the inmates' home.

The institution is not characterised by conflicts either between the residents or the colleagues; however, if such emerge, the director personally helps those involved to solve these. There is also a complaint box at the residents' disposal, through which they can communicate their observations to the manager of the institution. Furthermore, every quarter year, the institution is also visited by the patient rights representative, however, according to the director's report, the number of complaints related to the life of the home does not increase even during the representative's visit. There is practically no interest

[9] Section 68/A(3) of the Social Act: "Old people's home services can be rendered in case care need exceeding 4 hours per day or care need based on some other circumstances defined by law can be established".

representation forum operating in the home – in spite of the directions of the regulations – although, according to the presentation of the manager of the institution, the high number of demented residents do not even realise the significance of that; furthermore, the residents and their relatives can and do turn to him with all their problems, the door of his office is always open.

The manager of the institution presented as a problem making daily care activities more difficult that they do not always receive dishes taking into account the residents' age, dietary habits and dietary needs, from the external kitchen providing for the meals of the residents, thus not only abiding by the new and more modern dietary requirements but on occasion keeping the diets prescribed for the residents also requires extra attention on behalf of the colleagues of the institution.

In addition to the "usual" work executed in old people's homes, a task requiring assuring solution is the regulation of any economic money-movement or account management related activity in connection with the money management of demented inmates living in the institution, when an authorising signature is needed to order some payment or to execute some money management task from the resident who is unable to write due to his dementia but is not under guardianship.

Establishments affecting the institution

In connection with *deposited money management* and *the inmates' money management,* in harmony with the directions of earlier ombudsman's report No. OBH-2454/1998., I find it important to note that until the court finally places them under guardianship affecting their competence, the patients are considered capable, they can make independent decisions in their affairs, which is also true for the management of their financial affairs.

However, we have to emphasise that even the individual restricted in his ability to act can make a valid legal statement in any matter with regard to which his ability to act was not restricted, with view to the fact that, under Section 2:22(2) of Act V of 2013, the Civil Code, contracts of minor importance that are generally concluded in large numbers and do not require special consideration and that have been concluded and performed directly by incompetent adults shall not be considered null and void on the grounds of incompetence. In case the severely demented elderly resident who is not under guardianship finds it temporarily difficult to manage his affairs – characteristically while disposing over his income or other amounts of money – the manager of the home has to keep in mind the protective function of the institution of guardianship, as well as the possibilities of initiating placement under guardianship proceedings. Thus institutional money management is without misgivings only if it does not endanger the patients' fundamental right to property.

Under Sections 21(2) and 45(3) of the MSFA Regulation, within the framework of meals, a hot meal is to be served at least once a day, as the main meal. If the medical condition of the person receiving the meal justifies this, upon the general practitioner's recommendation – with the exception of the communal kitchen – dietary meals are to be provided for the person receiving care. According to the relation of the manager of the institution, at present, dietary meals are not fully secured in the institution in practice. As the reason for the present situation he indicated that the kitchen from where food is transported to the institution was founded recently, and after it started to operate it took some time to establish operation in harmony with the legal requirements and expectations of living-in institutional meals.

Even though it is mentioned in the rules and regulations, according to the relation of the manager of the institution – partly also because of the high number of demented inmates unable to provide for themselves – there is practically no interest representation forum operating in the institution. According to him, conflicts are not characteristic, if somebody has some complaint or problem, he can see the manager in person, at any time, be it a resident or a relative; according to his presentation, the residents and relatives do use this opportunity.

In connection with this, it is important to note that the interest representation forum is a body destined to promote the enforcement of the rights and interests of those in an institutional legal relationship with long-term living-in institutions, which operates according to the terms and procedures specified in its regulations. Among their members are inmates, and their relatives/legal representatives, the employees of the institution, as the well the party maintaining the institution. Among others, its task is to provide a preliminary opinion on the documents prepared by the manager of the institution, related to the inmates and the internal life of the institution, namely, the professional programme, the annual work plan, the rules and regulations, the information bulletins prepared for the inmates, but, if it observes signs of violations of law related to the operation of the institution, it may also initiate towards the maintainer, as well as other authorities and bodies with jurisdiction and competence, that certain measures be taken.[10]

Consequently, from the aspect of the enforcement of inmates' rights, it is a body of guaranteed significance the lack of which is not filled completely by the possibility of negotiating in person with the manager of the institution. In spite of this, during the on-site investigation, my colleagues experienced that the inmates showed trust towards the manager of the institution and his colleagues.

Based on the experiences of the on-site investigation, as well as the documents put at my disposal, the commissioner has established that Gondviselés Háza Old People's Home of the Hungarian Charity Service of the Order of Malta makes efforts to enforce inmates' rights as well as legal and professional requirements completely; at the same time, the lack of high-quality diet meals carry the danger of the emergence of problems in connection with the patients' right to social security, the lack of an interest representation forum in connection with the requirement of legal security emerging from constitutionality, the shortcomings emerging from the nature of the building in connection with the residents' rights to human dignity,.

In the interest of the avoidance of the fundamental rights related problems established taking place in the future, as well as the achievement of lawful operation, under Section 32(1) of the Ombudsman Act, the commissioner *assigned* the manager of the institution of Gondviselés Háza Old People's Home of the Hungarian Charity Service of the Order of Malta to pay increased attention to the dietary requirements concerning the inmates' meals to be abided by, to make efforts that all the employees of the institution get acquainted with and abide by the rules related to the money management of demented residents during their work, and that patients' rights – also including the residents' rights to privacy – be fully abided by during the operation of the institution.

C) AJB-692/2016. – Biatorbágy Old People's Home

The institution maintained by Boldog Gizella Foundation, which started its operation 15 years ago, in 2001, has an operative license for an indefinite period of time. The building of the institution was built specifically for the purposes of an old people's home. Gizella Home is a social institution with a mixed profile; in addition to providing living-in social institutional services, it also offers day care for elderly, demented and disabled individuals, as well as social meals, home help and assistance service.

Experiences of the on-site investigation

My colleagues visited Gizella Home, located in Biatorbágy, on 26 January 2016, within the framework of an on-site investigation.

[10] Section 99 of the Social Act

The home houses 113 residents, of whom over 40 have dementia. The home also offers temporary housing for 23 individuals (old people's care facility) in need. The average age of the residents is between 85 and 87 years, 90% of them are women. During the investigation there were two inmates under guardianship affecting competence. In connection with the high number of inmates with dementia, the manager of the institution referred to the tendency that the home takes in the elderly with increasingly worse health, as a result of which, in the interest of the ever more complete satisfaction of medical needs, due to the strengthening of the "hospital character", it has become necessary to restrict the circle of belongings to be admitted to the institution, mostly that of beds. At present, they can secure the admission of smaller personal belongings. The institution endeavours to put emphasis on the residents to feel at home in the institution. The manager of the institution also mentioned that the individuals who would like to use the day services of the institution from their homes located at greater distances incur significant travel costs, thus it would be a significant step forward if the demented patients could use the services of the assistance service lawfully, in a financed manner.

The institutional reimbursement fee of the home is HUF 149,200, in the dementia unit it is HUF 166,370. Most of the inmates pay a fee defined by legal regulations, that is, 80% of their income as their personal reimbursement fee. In the case of several inmates, relatives undertake to supplement the amount of personal reimbursement fee to reach the amount of institutional reimbursement fee, however, according to the relation of the manager of the institution, more and more frequently, the relative subsequently ends up in a situation – for instance by losing his workplace – that he cannot pay the reimbursement fee equalling the institutional reimbursement fee. The residents collect their pension in person, and handle their money themselves.

The manager of the institution related that as a civil player in the Central Hungary region, they have practically no grant opportunities, they manage their finances from the 1% donations and perhaps next of kin donations of a larger amount (characteristically following the death of an inmate).

The home is located on a larger sized plot, which allows for the further extension of the building. It has two parts, the "yellow house" and the "green house". Inmates with severe dementia live in this latter part, under close and continuous supervision; inmates with dementia of mild and medium severity are placed in the "yellow house", integrated with the other inmates. The institution has three floors (ground floor, 1st floor, 2nd floor), it is light, the walls are colourful and the rooms are spacious. The building is completely access-free, covered with anti-slip linoleum, the rooms have vinyl doors and windows and laminated parquet flooring. Most of the rooms have two beds, but there are also some with three beds, as well as an apartment with 2x2 beds and a common bathroom. Otherwise, every room has an independent bathroom, which was built so one can turn around in it sitting in a wheelchair. Every room has a terrace. The residential rooms meet the requirements set by the MSFA Regulation.[11] During our visit, the inmates' rooms and closets were in order, the elderly people were clean, well-kept, in physical status fit for their age. Personal nurses take care of the inmates. One personal nurse is responsible for 8-15 inmates. The "individual care-treatment plan" of the inmates living there is posted on the inside of the residential room doors, with the personal nurse indicated, informing the relatives and making the work of the nursing staff easier. It is also possible to accommodate couples in the home, even though there are no married couples or common-law partners living in the institution at the moment. The rooms are equipped with a nurse alarm, which is activated at the reception indicating the alarm with both sound and light.

[11] Section 41(4) of MSFA Regulation: A living-in institution is suitable for the performance of care tasks if
a) there is at least six square metres per inmate in the residential rooms,
b) and at least one bathtub or shower per ten inmates, and one toilet per sex, and continuous heating and hot water supply is secured.

The building is surrounded by an orderly courtyard; in front of the dementia unit, specifically for the elderly living with dementia, who tend to wander off, a soft, "walkway" with flexible surface, returning to itself, has been established, where demented inmates with increased demand for moving around can walk in safety.

The clinic is located very close to the institution, thus transportation to specialist examinations – by using the assistance service – can be executed easily. Those living in the settlement were able to keep their general practitioner, while the general practitioner of the home is continuously accessible; a psychiatric specialist visits the institution every second week and as need be. The manager of the institution and the head nurse referred to the fact that medical institutions demonstrate an approach according to which, "if the patient comes from a social institution, he is surely dehydrated", which, in most cases, lacks foundation. They make effort to cooperate with medical institutions and as the home has a license entitling it to perform special care activities, they try to use hospital services only in really justified cases, and, if the condition of the old person allows that, to bring him back from the hospital to the home as early as possible. Their experience is that hospital treatments weaken the elderly both mentally and physically, and in most cases their inmates are discharged from the medical institution in very poor condition. The residents' medicine can be found in boxes assigned to their names, placed in a locked cabinet. The medicine nurse sets out the inmates' whole week's medicine every week, on a personalised medicine tray manufactured specifically for this purpose, designated for the part of day and day of the week. The residents cannot keep medicine on themselves; the administration of medicine takes place according to the doses indicated, with the nurse's supervision/help.

As far as inmates applying for admission are concerned, the head nurse always carries out preliminary care in person; according to her relation, only 2-3% of the inmates come from their own homes; in most cases the elderly arrive in the institution from hospital. When finding placement for the inmates, they try to make sure that those sharing a room or placed next to each other potentially have a similar background, and have a good time in the company of their roommate. There are conflicts which come mostly from friction caused by everyday cohabitation; recently, there was a major conflict between the residents, which they were able to remedy by moving some to another room. The leadership of the institution puts the emphasis on the prevention of conflicts and their immediate management, thus preventing the emergence of a major crisis. There is an interest representative forum operating in the home, at each session of which minutes are prepared; there is also a complaint box at the reception.

The institution is at disposal of the personal conditions required by legal regulations and the special training percentage required from specialist employees; however, it is increasingly more difficult to find qualified labour force (nurses with medical qualifications). Most of the colleagues participating in care have medical qualifications, a smaller percentage are social care providers - nurses. In the interest of the performance of quality work, attention is paid to the further training of the nursing staff, be it their schooling or the organisation of internal trainings. There is a physical therapist available in the home. The home offers several services for a fee, it is possible to use the services of a hairdresser, pedicurist, manicurist, masseuse, as well as different holistic treatment providers.

The institution has its own kitchen, which provides the inmates with five meals a day (breakfast, mid-day snack, lunch, afternoon snack, supper), and different diet meals. The residents follow an individual diet, with a table posted in the dining room indicating the dishes the individual residents dislike and which they do not consume; the institution pays attention to providing the elderly with meals in line with their needs. In addition to this, the staff receives one hot meal a day, free of charge.

The institutions puts special emphasis on the maintenance and development of the still existing skills of elderly inmates, therefore, it offers various programmes and activities: in different clubs, one can listen to music, use music therapy, try different dance activities (e.g. seated dance, "demented

dance"), gymnastics, handicrafts, and watch films; furthermore, there is also a therapy dog visiting the institution. The home regularly welcomes the performances of schools and kindergartens in the area, and different artists. Due to the ever worsening medical condition of the inmates, there has not been any demand to go on excursions recently; instead, colourful programmes are brought to the institution. The home also has its own chapel. The institution operates a self-help group for the relatives of demented residents, within the framework of which the relatives of inmates with dementia may meet their companions in distress, they can support each other, can share their experiences and can acquire useful information in connection with the care of demented patients.
The relatives may visit the inmates without any limitation, they can be received in the residential rooms, the winter garden, the dining room, and, if the weather is good, in the courtyard. In the case of a resident in terminal status, the family member can also spend the whole night with his loved one.

Establishments affecting the institution

Based on the experience of the on-site investigation and the documents reviewed, it can be established that the home is at disposal of the material and personal conditions and regulations specified in the Social Act and the MSFA Regulation. They make efforts to customize both material conditions and meals, as well as the programmes bringing colour to the residents' life to meet the needs and tastes of the elderly, paying special attention to the development of their still existing skills. All this poses continuous and increasing challenges to social institutions as, under Section 68/A(3) of the Social Act, old people's home services can be rendered in case care need exceeding 4 hours per day or care need based on some other circumstances defined by law can be established. It is the unanimous opinion of the social profession that the medical condition of individuals whose care need exceeds 4 hours per day is already so deteriorated that a social institution can function as the inmates' home and not a quasi medical institution only at the cost of serious efforts, thus seriously decreasing the residents' sense of comfort. Taking all this into account, the leadership of Gizella Home visibly pays great attention to the elderly individuals to feel at home in the institution.

However, I find it important to note that the data related to the medical condition of the inmates constitute sensitive data. The preamble of Act XLVII of 1997, on the handling of medical and other related personal data, medical data are confidential. Personal data shall be managed only in cases and to the extent necessary for the achievement of lawful goals. In the institution, the weekly "individual care-treatment plan" of the inmates living there is posted on the inside of the residential room doors, with the personal nurse indicated. According to the information received, among other reasons, posting was needed because it often occurred that the relatives enquired how the elderly, demented inmates were doing, and what activities they participated in, etc.

However, inmates suffering from dementia – due to their gradual mental degradation – often do not answer the questions truthfully, for instance, they say that they have not had a bath this week, or that there is nobody looking after them, as a result of which the relatives may – without foundation – file a complaint with the leadership of the institution. Thus the "individual care-treatment plan" posted also serves the purposes of informing the relatives, and also makes the work of the nursing staff easier. According to the documents at my disposal, the individualised care plans posted on the inside of the residential room doors contain, on the one hand, the inmate's daily schedule, as well as the care tasks and medical activities.

The document also contains what diet the inmate is following, how often his diaper needs to be changed, whether it is necessary to check his personal hygiene, what medical examinations are necessary. These sensitive data are continuously accessible both to the residents and all the visitors, that is, any visitor may get an almost full picture of the medical condition of the individual inmates. Under Section 94/E(5) of the Social Act, " the person receiving care is entitled to the protection of his personal data, as

well as confidentiality related to his private life. During the acquisition procedure, special attention must be paid to only authorised people to have access to the data of the person requiring care. *Furthermore, the manager of the institution is obligated to secure that during placement in the institution, other inmates or unauthorised individuals cannot learn about information in connection with the inmate's medical condition, personal circumstances, revenue circumstances, with special respect to the fact of the social neediness of the person receiving care".*

The stance of the commissioner for fundamental rights is that posting the daily schedule, which contains only the times of meals and activities, does not constitute the violation of inmates' rights, *however, the practice that, by indicating the concrete care tasks and medical activities in connection with the inmates' medical condition, allows access also for unauthorised individuals to sensitive data, carries the danger of the occurrence of improprieties related to the inmates' right to equal human dignity.* In the interest of remedying this situation and the future prevention of the occurrence of this impropriety, under Section 32(1) of the Ombudsman Act, he assigned the manager of Gizella Home to guarantee that no unauthorised individuals have access to the inmates' personal data related to their medical condition and care needs, and restrict the information entitled "Individual care-treatment plan" posted to the indication of the daily schedule.

D) AJB-1202/2016. – Kőszeg Old People's Home

A relative of one of the residents of Vas County Old People's Social Institution Kőszeg Pensioners' Home sent his submission to the Office of the Commissioner for Fundamental Rights requesting anonymity, filing a complaint about the operation of the institution. Among others, the complainant criticised the quality of the meals, the way the patients were treated, and the circumstances of care. With view to the fact that the suspicion of the violation of the inmates' fundamental rights emerged in connection with the submission, under Act CXI of 2011, on the commissioner for fundamental rights (the Ombudsman Act), I ordered an investigation within the framework of which, also with view to the monitoring activity executed as part of the project activity, I also conducted an on-site investigation. In addition to that, in the interest of the successful completion of the investigation, in connection with the case, I sought out and requested Vas County Government Office Guardianship and Judicial Head Department to investigate the contents of the complaint.

Experiences of the on-site investigation

My colleagues visited Vas County Old People's Social Institution Kőszeg Pensioners' Home on 1 March 2016.

The old people's home operates as one of the branches of Vas County Old People's Social Institution, in Munkácsy Mihály u. 15. Szám, at an easily accessible location. Originally, the building functioned as a resident nursery; at present, its pure profile is to offer old people's home services to 36 residents housed on two floors. Of the 36 inmates, there are 11 men and 24 women at present; the inmates' average age is rather high, close to 90 years. The institution receives elderly people from Vas County, but the inmates arrive mostly from Kőszeg and the surrounding settlements, and they are placed in the institution from their homes following preliminary care, or from medical institutions. The institution does not accept inmates with dementia or psychiatric diagnosis. There is a waiting list as, in spite of the high average age, the number of deaths is low. According to the information received from the manager of the institution, there are 9 nurse-care giver and 4 technical employees (cleaning, kitchen help) working in the home, their professional qualification is 100%. According to the information received, there are hardly any young candidates applying to the vacant position.

There are 4 inmates under partially restrictive and 4 under fully restrictive guardianship living in the home. According to the information received, the institution has established a good relationship with both the guardians (whether they are relatives or official guardians), and the relatives. The guardians regularly visit the persons under their guardianship, and conflicts with the relatives are not characteristic either. The reimbursement fee of the home is HUF 83,200, and the residents rarely have reimbursement fee in arrears; if that happens, they always settle the debt by the end of the year.

Meals are brought to the home from the kitchen of Vas County Old People's Social Institution Kálvária square base (Kőszeg). Depending on the residents' requests, they receive 5-6 meals a day (breakfast, mid-day snack, lunch, afternoon snack, supper, and a supplementary meal for those with diabetes), according to 5 types of diet menus. Lunch is always some hot food, and there is hot supper 3 times a week, too. Efforts are made to compile a varied menu. Food is transported from the ground floor to the serving room and dining room on the first floor with the help of a dumb waiter.

The residents are not allowed to keep medicine on them; their medicine can be found in boxes with the names indicated on them, in the nurses' room, in a locked cabinet. The contracted general practitioner visits the institution once a week, but the home also has a contract with a psychiatrist and a rehabilitation specialist. The home does not have a license for special care, thus if medical treatment becomes necessary (e.g. hooking up the IV), residents are taken to Szombathely Markusovszky Hospital by patient transportation vehicle. According to the information we received, cooperation with the hospital is not without problems; in harmony with the reports of other social institutions, there is condescending attitude and negative prejudice experienced on behalf of health care towards the social service system and patients arriving from the social service system. The general experience is that patients often return to the home from the hospital in much worse condition, even suffering from some infection contracted there, unkempt. The institution is visited by a surgeon every month, among others, he also prescribes the anti-decubitus matrasses for the inmates.

The building of the home has two floors, it is partly access-free, in need of renovation. There is no elevator in the building. Plumbing units have been modernised recently. Among the residential rooms, several have five beds; the residential rooms are rather crowded. Every room has a sink, a TV, a fridge and a larger wardrobe for the clothes, however, my colleagues saw very few other pieces of furniture, wall shelves. There are several residential rooms that open from another room, just like the large terrace of the institution – where residents living on that floor can get fresh air in good weather – which is accessible only through a double residential room. There is no "intimacy" room or – other than the dining room – rooms for common programmes and activities. Furthermore, there is no sick-room; in the event of a contagious disease, one of the residential rooms in use is designated as quarantine. The interior courtyard of the institution has a concrete surface, with a rather bleak atmosphere; according to the information received, hopefully its renovation will take place in the near future. There is a grassy back garden as well, which, however, is unused. There is a nurse alarm in every room, which is activated at the reception indicating the alarm with both sound and light. In addition to this, the courtyard, the dining room and certain parts of the corridor can be monitored from the nurses' room through camera.

Various free-time activities bring colour to the residents' daily schedule[12], it is possible, for instance, to relax, to participate in group gymnastics, reading-out and card games. These programmes

[12]The residents' daily schedule varies according to the following: there is compulsory bathing every second day. Residents to be bathed are woken up at 6 in the morning; bathing lasts until 7:30-7:45; breakfast is served from 8, in two rounds. Only bedridden residents on the first floor or residents who are less mobile need help from the nurses to eat their meals; residents on the ground floor eat on their own. Breakfast lasts until 10; following that, bathing and cleaning-up is continued. The mid-day snack starts at 10, which lasts roughly until 10:45. Then the staff performs its administrative obligations, and the arrangement of the residents' environment is continued. Lunch starts at noon and lasts till 13:00, which is followed by the midday cleaning-up. The change of shifts and hand-over of the department is at 14:00, the afternoon shift starts with the

are organised in the first-floor dining room also serving the purposes of community events; this room also allows for practising one's religion and, in addition to the residential rooms, inmates can also receive their visitors here. A curative masseuse visits the institution once a week. The institution makes effort to make the residents' life more colourful by organising programmes within and outside its walls; they have a good relationship with the local library, SOS Children's Village, different choirs, who visit the institution regularly. On request, bus excursions are organised for the elderly. Birthdays, national and religious holidays are celebrated, the institution also organises carnival and grape-harvest feasts, for which they provide live music.

There is a Residents' Meeting and an Interest Representation Forum operating in the home; this latter meets twice a year; the patients' rights representative has office hours in the institution once a month.

Establishments affecting the institution

The home is at disposal of the regulations required by legal regulations, among them the Regulation on Restrictive Measures. Under Section 94/G(3) of the Social Act, the manager of the institution is obligated to inform the legal representative and the patients' rights representative about the restriction *within forty eight hours*.

The regulation put at my disposal does not contain this direction of warranty significance, however, its significance cannot be debated: the person competent to protect the interest and rights of the inmate in a defenceless situation is to find out about this severe restriction of fundamental rights as early as possible, and be able to secure the lawfulness of the proceedings by tracking that and keeping the criteria of necessity-proportionality in mind. The regulations of the institution direct that if the restrictive measure is ordered by the lead nurse, the doctor is to be informed about this without delay, however, it is not recorded that the doctor has to authorise the order of the restrictive measure of the patient manifesting endangering or directly endangering conduct within 2 hours. In lieu of this, the restriction is to be terminated without delay [Section 192(3) of the Health Act].

The deficiency of the regulation carries the danger of the emergence of improprieties related to the requirement of legal security. Accordingly, I recommend that the Regulation of Restrictive Measures be completed with the above directions.

Both the official audits and the ombudsman's on-site investigation was closed with the establishment that the institution does not fully meet the material and personal requirements set in legal regulations. At the time of the investigation, according to the directions of the MSFA Regulation, the institution was 1 nurse-caregiver and 0.5 mental hygiene worker short to satisfy the requirements of legal regulations.

Under Section 42(1) of the MSFA Regulation, the maximum number of residents to be placed in a living-in institution residential room is four. More than four individuals can be placed in one residential room only in exceptionally justified cases, or in the event of a demand for placement with urgency, with view to the restrictions established in Section 92/K(5) of the Social Act. According to the investigation, the institution has several residential rooms with five beds, which, as a result, are overcrowded. Several of the residential rooms open from each other. This arrangement allows very little privacy for the residents, for their independent, intimate life, which is problematic from the aspect of a graceful conduct

change of linens and setting out the clothes. The inmates' clothes are provided with their names, however, a lot of clothes are donated to the home, thus, if necessary, residents in need can get from these clothes, and then use the clothes received as their own, provided with their names. The afternoon snack comes around 3 or 3:30; when that is finished, the staff start preparing supper. Evening cleaning-up and getting ready to go to bed starts at 19:00. During the night, there is one nurse on duty, her task is to set out the medicine for the following day.

of life, with view to the fact that the institution functions as the real home of the inmates, for some of them as long as 15 years.

Under Sections 41§(2)*d-f)* of the MSFA Regulation, in living-in institutions, a room is to be established for the purposes of time spent together in line with the nature of the institution, common activities (e.g. day room, library, activity room, chapel, prayer-room), as well as for mental treatment, and the purposes of medical care (e.g. doctor's room, sick-room), of at least twenty square metres per care unit. According to the experiences of the investigation, other than the dining room, there is no room in the home fit for activities and spending time together; furthermore, the institution does not have a sick-room or an intimacy room. The building is access-free only in part, there is no elevator in the two-floor building, thus the old inmates are forced to use the stairs, while the mobilisation of wheel-chaired or bed-ridden residents is rather difficult to execute.

It can be established from the experiences of the on-site investigation that the institution performs the care-treatment activity at a high professional level, paying great attention to the inmates' personal hygiene and supervising their medical and mental condition. Though the injuries worded in the complaint submitted did not prove to be substantial, *the material and personal shortcomings of the institution – primarily the residential rooms that are overcrowded and/or open from each other, and the lack of access-free spaces – cause problems in connection with the inmates' rights to human dignity, as well as physical and mental health.*

In the interest of remedying the problems revealed in connection with fundamental rights, as well as their future prevention, the commissioner for fundamental rights *requested* the manager of the Vas County Affiliate of the Social and Child Protection Head Directorate, as the maintainer, and the manager of the institution Vas County Old People's Social Institution Kőszeg Pensioners' Home to make sure that the institution meet the personal requirements set by legal regulations, and examine the possibility of the establishment of accommodation circumstances suitable for the requirements of legal regulations, and fit for the age-related characteristics of the elderly, their medical and motor condition; at the same time, to secure that the Regulation on Restrictive Measures be completed according to the legal regulations in effect.

In addition to the foregoing, in connection with the circumstances of social care related to the fundamental rights revealed, the commissioner called the attention of the *minister of human resources* to the necessity of the establishment of the promotion system of experts working in living-in social institutions at the earliest possible time, as well as the consideration of the establishments of the report No. AJB-4579/2012., with regard to the avoidance of a crisis threatening elderly care.

(Common) establishments of the examinations

I. With regard to sphere of authority

The tasks and sphere of authority of the Commissioner for Fundamental Rights, as well as the investigative powers necessary to fulfil these, can be found in the Ombudsman Act. Under Section 18(1) of the Ombudsman Act, anyone may turn to the Commissioner for Fundamental Rights, if in his or her judgement the activity or omission of an authority, more specifically, an organ performing public services, infringes a fundamental right of the person submitting the petition or presents an imminent danger thereto (hereinafter referred to together as 'impropriety'), provided that this person has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or that no legal remedy is available to him or her. Under Section 18(2)*a)*, regardless of their form of organisation, organs performing state or local government tasks and/or participating in the performance thereof are organs performing public services.

The ombudsman's practice establishes that institutions offering social care and especially institutions offering elderly care constitute *organs performing public services*, to which the ombudsman's powers for inquiry – under the rules of the Ombudsman Act covering sphere of authority – clearly extend.

Section 18(4) of the Ombudsman Act records that, the Commissioner for Fundamental Rights may conduct *ex officio* proceedings in order to have such improprieties terminated as are related to fundamental rights and which have arisen in the course of the activities of the authorities. Ex officio proceedings may be aimed at conducting an inquiry into improprieties affecting not precisely identifiable larger groups of natural persons or at conducting a comprehensive inquiry into the enforcement of a fundamental right. In the present cases, the conditions of ordering an ex officio investigation prevailed given that the situation of elderly care, its potential operative problems or shortcomings may cause the infringement of the fundamental rights, more specifically the right to life and human dignity, of a not precisely identifiable larger group.

II. With regard to constitutional fundamental rights and basic principles

While uncovering the system of connections behind a particular social problem, the Commissioner for Fundamental Rights fulfils its mandate in an autonomous, objective and neutral manner, exclusively by listing and comparing arguments based on fundamental rights.

Since the establishment of the ombudsman's institution, the commissioner has leaned on the theoretical establishments of the Constitutional Court made in connection with basic rule-of-law guarantees and the contents of fundamental rights, in a consistent manner, using them as directives, and – according to the special features of the ombudsman's legal protection – he has also applied certain fundamental right tests meant to judge the constitutionality of the restriction of fundamental rights.

With the Fundamental Law of Hungary and the Ombudsman Act having come into effect, as the Commissioner for Fundamental Rights, he still follows the above practice, thus until the Constitutional Court establishes different stances, the establishments of the body so far are still guiding during the proceedings. In CC Decision No. 22/2012. (V. 11.), the Constitutional Court pointed out that "*on the other hand, when the contents of the provisions of the previous Constitution and of the Fundamental Law are the same, the reasoning is required for not taking into account the legal principles presented in the former decisions of the Constitutional Court, and not in the case of applying them.*" At the same time, in CC Decision No. 13/2013. (VI. 17.), the Constitutional Court emphasised that, in the case of the legal

provisions examined in the decision in question, it proceeds on the basis of the Fourth Amendment of the Fundamental Law concerning the applicability of the directions of earlier constitutional court decisions. In connection with this, the body stated with a theoretical emphasis that "*by indicating the constitutional court decision not in effect any more as a source, by presenting the contents or the text in the extent necessary for the decision of the essential constitutional issue emerging in the case in question, the Constitutional Court may refer to or quote the arguments and legal principles elaborated in its previous decisions. As both the reasoning and the constitutional law source have to be cognizable and verifiable to all in a democratic rule of law; the requirement of legal security is that the consideration of the decision be transparent and trackable. Public argument is the raison d'être of the reasoning of the decision. The Constitutional Court will decide the applicability of the arguments used in the earlier decisions on a case-by-case basis, in the context of the concrete case."*

In harmony with the above precept of theoretical significance, the wording of the system of arguments of the investigative establishments of the commissioner for fundamental rights, during the interpretation of the individual fundamental rights and constitutional principles – until the preparation of the guidance of the constitutional court directing otherwise – by also taking into consideration the changes of the text of the constitution, as well as the identicalness in contents or context, the commissioner for fundamental rights continues to consider the arguments, principles and legal connections of the Constitutional Court established in the reasoning of its decisions passed before the Fundamental Law came into force.

1. Under Paragraph (1) of Article B) of the Fundamental Law, Hungary shall be an independent, *democratic rule-of-law state*. Based on the earlier, unbroken practice of the Constitutional Court, an indispensable element of this rule-of-law state quality is *legal security*. And as the Constitutional Court pointed out in its Constitutional Court Decision No. 30/2012. (VI. 27.), Paragraph (1) of Article B) of the Fundamental Law and Section 2(1) of the Constitution declare the rule-of-law state clause identically, thus the constitutional court practice established so far can be considered relevant during the investigation.

A precept often quoted by the Constitutional Court is that legal security makes it the obligation of the state – and primarily that of the legislator – to secure that the entirety of the law, its partial areas and the individual legal regulations are clear, understandable, and, as far as their operation is concerned, calculable and foreseeable for the addressees of the norm. Legal security requires not only the unambiguity of the individual norms but the calculability of the operation of the individual legal institutions. A requirement coming from the principle of the rule-of-law state is that public power and public administration are subordinate to law: bodies with public powers perform their activities *in the order of operation established by law,* in a manner cognizable and calculable to citizens, *within* regulated *confines*. Furthermore, it cannot be disregarded that *calculability – including uniform jurisdiction – and securing procedural guarantees is closely connected with the protection of individual fundamental civil rights and freedom rights*, postulating each other mutually.

2. Under Article II of the Fundamental Law, human dignity shall be inviolable; every human being shall have the right *to life and human dignity.* In connection with the right to human dignity, the previously guiding constitutional court practice, which still constitutes a reference point after the Fundamental Law has come into effect, calls our attention to the fact that dignity is a quality that automatically comes with human life, which is indivisible and unrestrictable, and thus is equal for all humans. The Constitutional Court argued several times that the abstract constitutional measure of the minimum of the right to social care is the right to life and human dignity. The state performs its constitutional obligation if it organises and operates the social support system. The only limitation is that it cannot, even temporarily cause the lack of provisions or circumstances unworthy of humans, either by

area or social group. *For the protection of the right to human life and dignity,* defined as the constitutional basic requirement of the subsistence minimum, the state is obligated to provide for the conditions of human existence. Accordingly, in the case of elderly people, the state's provisional obligation extends to the establishment of a suitable institutional provisional system and securing access to institutions offering professional services accessible to all.

The protection of privacy is related to other fundamental rights, thus most closely to the right to human dignity; moreover, according to the stance of the Constitutional Court, it is one of its elements (Constitutional Court Decision No. 1115/B/1995.).

3. Paragraph (1) of Article XIX of the Fundamental Law directs about the establishment of the right to social security, with the word "strive" being used; Hungary shall strive to provide *social security* to all of its citizens. Every Hungarian citizen shall be entitled to assistance in the case of maternity, illness, disability, handicap, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by an Act. Hungary shall implement social security for the individuals under Paragraph (1) and for other persons in need through a system of social institutions and measures.

The Constitutional Court presented in several of its decisions that the right to social security is not a fundamental right but an obligation undertaken by the state which the state satisfies if, for the provision of social security, it organises and operates *social security* and other systems of social support. It is to be noted that the application of Paragraph (1) of Article 12 of the European Social Charter is obligatory with regard to Hungary, that is, to secure the actual practice of the right to social security, the individual states undertake the obligation to establish or maintain their social security system.

In connection with the right to social security, the Constitutional Court established that, in addition to the establishment of appropriate institutions, the enforcement of social rights takes place on the basis of the enforcement of civic rights related to their use, which are to be defined by legislation.[13] The Constitutional Court completed this stance by adding that the right to social security contains securing a subsistence minimum to be provided by the state through the entirety of social services, which is indispensable for the realisation of the right to human dignity.[14] Based on earlier Constitutional Court practice, the only constitutional requirement is that the social security and social institutional system realise the entitlement with regard to the provisions necessary for subsistence. It is clear that, with the obligation to secure a subsistence minimum, unbroken Constitutional Court practice established a clear connection between the enforcement of the right to human dignity and social security, and in my opinion, this significant, theoretical link can also be demonstrated on the basis of the Fundamental Law.

In connection with the foregoing, it is important to call attention to the fact that Paragraph (1) of Article XX of the Fundamental Law directs that Hungary shall strive to secure that *the right to social security is respected* and access to public services is provided for all. Of the new constitutional obligations undertaken by the state, set out in an itemised manner – in harmony with the earlier practice of the Constitutional Court – a more pronounced role can be deduced in connection with the protection and care of the elderly.

4. Under Paragraphs (1) and (2) of Article XX of the Fundamental Law, everyone shall have the right to *physical and mental health*, and Hungary shall promote the effective application of this right by an agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision, by supporting sports and regular physical exercise, as well as by ensuring the protection of the environment.

In harmony with the definition of the WHO Constitution – in its Decision No. 43/2005. (XI. 14.) - the Constitutional Court considers the expression physical and mental health a physical and mental state

[13] CC Decision No. 28/1994. (V. 20.)
[14] Decision No. 32/1998. (VI. 25.)

that "allows the possibly longest life in society free from physical and mental problems". However, the right to health has wider implications than covering only the right to medical care, thus it also includes the constitutional protection of measures and circumstances that contribute to the individual to actually live the possibly longest life in society, free from physical and mental problems. The Constitutional Court interpreted the directions of the earlier Constitution in connection with the right to the highest possible level of physical and mental health on several occasions. In its decision No. 54/1996. (XI. 30.), the body established that Section 70/D of the earlier Constitution "entitles one not only to using the medical services related to patient care, specified by law, but also includes claim for state measures aimed at the establishment and preservation of human health that are connected with education and information about a healthy way of life, state-organised physical training, labour safety, the protection of nature, public sanitation, the protection of the environment, and a high number of health-protection services serving the prevention of illnesses".

III. Establishments and conclusions of monitoring in old people's homes

Social rights are ramifying and point beyond the directions of the Fundamental Law; among others, they are set out in international treaties, for instance, in the International Covenant on Economic, Social and Cultural Rights, adopted in 1966, in which the countries undertake to grant the rights listed therein either immediately or gradually. In addition to this, it is also specified in the European Social Charter, published in Hungary with Act C of 1999, what social rights the countries that are parties to the covenant are to grant. Part of this is the right to social and medical assistance, the right to participation in social welfare services, and the right of the family to social, legal and economic protection.

Beyond and under the Fundamental Law, there are several other legal regulations directing about social rights. In addition to the establishment of the appropriate institutions, supposing the activity of the state, the enforcement of social rights takes place through the definition of civic rights related to their use, in laws.[15]

Act III of 1993, on Social Governance and Social Benefits (Social Act), which, in the spirit of the establishment and preservation of social security, defines the forms and organisations of the individual social provisions secured by the state, the conditions of the entitlement to social provisions, as well as the guarantees of their validity. In addition to the provisions regulated in this act, using their own resources, the local self-governments may also establish other provisions."[16]

Old people are in need of protection by law, moreover they need extra help to use jurisdiction, the same as they need a railing to climb the stairs, furthermore, for them it is even better if there is an elevator and they do not have to hold on to anything. In Hungary, such an organisation based on public consensus, helping public policy, was the Elderly Affairs Council,[17] which, as the helper of the Government, operating in an interdisciplinary manner, by integrating the outstanding representatives of different areas of science, politicians, ministry clerks and representatives, as well as the civil organisations of the elderly, helped prepare the Elderly Affairs Strategy,[18] which received all the possible assistance from professional, political and civil organisations.

[15]CC Decision No. 28/1994. (V. 20.)

[16] Sári János – Somody Bernadette Alapjogok Alkotmánytan III. 261. o. Osiris Kiadó, 2008

[17] The Elderly Affairs Council is a consultative body working in conjunction with the Government, providing opinion and suggestions, and coordinating in a certain circle of tasks. [See: Government Decree No. 1138/2002. (VIII. 9.) on the Operation of the Elderly Affairs Council and the issues related to its operation.] The Council stopped operating in late May 2010.

[18] Parliamentary Decision No. 81/2009. (X. 2.), on the National Elderly Affairs Strategy, on the basis of which the Action Plan, 2010–2012, on the execution of the politics of old age, was created.

The strategy of elderly affairs in Hungary is based on the principle of active old age, striving to secure institutional help for the elderly that allows for their active participation in the life of society in all respects. It secures their autonomy, increases their security in material issues and public order. The Elderly Affairs Strategy was built on a thorough baseline study, and defined the negative processes against which it endeavours to step up.

1) Material and personal conditions

As far as the material conditions of care are concerned, the ombudsman's colleagues found a rather mixed picture during their visits in the different institutions. The condition of the buildings, the level of renovation and access-free status varies. These differences emerge characteristically from the age of the buildings in question and their originally different designation; however, failing to remedy the more outstanding deficiencies is unacceptable in the long run. Such severe problems are posed by the lack of a passenger lift in a multi-level building, that of a quarantine room, sick-room or a separate visitors' room, or communal space. Under the prevailing MSFA Regulation[19], living-in institutions must have a room designated for medical treatment (e.g. doctor's room, sick-room). The institutions investigated satisfied this, however, sometimes these rooms are also used for purposes other than their original function (e.g. as an office, or to isolate inmates who cannot get along), which practice, in the commissioner's opinion, causes improprieties related to the highest level of the right to physical and mental health.

Nurse alarm systems, signalling alarms and security camera systems all operate in the homes visited. On average, residents are housed in 2–4 bed rooms; however, unfortunately several places have expressly crowded (even window-less) rooms with a higher number of residents; the residents are allowed to take in smaller pieces of furniture and personal belongings in all the institutions. Under Section 5(3)*d)* of the MSFA Regulation, the rules and regulations are to contain the circle of personal belongings that are allowed to be taken in to the institution.

The percentage of the *special qualifications* of the employees in the institutions visited was in line with the legal regulations; however, according to the institution leaders' unanimous opinion, the staff is ageing, overburdened, and is not recognised either financially or morally. Thus it is obvious that smooth, high-quality institutional care is greatly aggravated by the outstanding number leaving the profession in the social sector, immigration and the almost total lack of "replacement" and career-starters.

During his investigations affecting living-in institutions, the commissioner for fundamental rights monitors primarily the enforcement of the fundamental rights of the residents, inmates, patients, especially through their defenceless situation caused by institutional existence. However, the general life and labour circumstances of the specialist employees in daily contact with the inmates are always to be covered given that fluctuation, exhaustion caused by burnout and the daily workload is characteristically high in this area, however, the quality assurance of institutional care depends on the specialists to a significant degree.

In our present series of investigations, we also covered the most vital, potential changes affecting the workers, increasing the quality of the work – care. Among these, independent of wages, further training is significant as the lack of well-qualified specialist is an ever pressing issue, which is in connection with the ever higher number of older experts about to retire. In connection with this, it is also

[19] MSFA Regulation 1/2000. (I. 7.), on the professional tasks and operative conditions of social institutions providing personal care.

important to rethink the expert replacement strategy of the social care system with regard to living-in institutions.

The key to the operation of the individual institutions is characteristically the dedication of experts, the devoted work of those executing the care of old, defenceless individuals for decades. Consequently, due to the deficiency of the material and personal conditions to be found in the institutions, the ombudsman's establishments made in connection with the enforcement of the fundamental rights of the inmates are often inevitable. With view to this, in connection with the social care circumstances related to the fundamental rights revealed, the ombudsman called the attention of the *minister of human resources* to the necessity of the establishment of the promotion system of the experts working in living-in social institutions by the earliest possible deadline, furthermore, to the reconsideration of the establishments of the earlier report analysing the situation of the social profession (No. AJB-4579/2012.), with view to the avoidance of the social crisis endangering elderly care.

2) The circumstances, tools and methodology of care

a. Characteristics of the conditions of care

The Commissioner's colleagues examined the *circumstances of services and care offered by the homes*. Meals in the institutions are provided according to the minimums established by legal regulations, with three main meals served every day. There have been some negative examples of the failure to take special needs (diabetes, pulpy, etc.) into account; it is positive that there was one home where the inmates can participate in drawing up the menu. In all the institutions, walking patients eat their meals in the dining room, bedridden residents in their rooms.

The inmates wear their own clothes in all the places but if need be, the homes supplement their wardrobes. Clothes and linens are laundered by the institutions, in certain cases the residents themselves can also use the washing machines on demand. Residents who are able to look after themselves independently clean up alone, those who are not able to look after themselves are cleaned up and bathed by nurses.

The presence of a doctor, the accessibility of a doctor on duty or specialist consultation is provided for in the institutions. However, the order of medical examinations poses a problem, partly due to the lack of a quarantine room, and also because there was a home where, even though there was a doctor's room, examinations still took place in the residential rooms, in front of the other residents. Necessary intimacy is not or not always secured, which poses the direct danger of the occurrence of improprieties related to the inmates' human dignity. Securing the administration of medicine is sufficient, however, the institutional practice with regard to the provision of medical aids and the bearing of costs thereof is not uniform, which, according to the commissioner's establishments, causes improprieties related to the requirement of legal security deduced from the principle of the rule of law.

In general, we can say that the homes strive to make the life of the institution more colourful through programmes and different activities, in which they are also trying to get outside guests involved (excursions, inviting school groups, readers' club, etc.). The circumstances to practice religion are also secured in the institutions visited.

The investigation revealed no improprieties affecting fundamental rights with regard to *value and property protection* in any of the institutions. The homes keep records of the assets and valuables received, and also issue acknowledgements of receipt.

The procedure followed in the event of death is executed in the homes in harmony with legal regulations; relatives are notified, an inventory is drawn up of the belongings, and a tribute of respect is paid to the memory of the deceased.

With one exception, there is some interest representative forum operating in the institutions visited, with the inmates, employees, the maintainer and the relatives represented in them. In addition to these, residents' meetings are held regularly, and the accessibility of the patient rights representative is also posted on the notice boards.

Based on the on-site experiences summarised above, it can be established on the whole that caring for the elderly has really been put on the back burner; institutions fulfilling this task operate from a tight, stagnant or decreasing budget. According to their unanimous information, the grant opportunities announced in the interest of the higher level services of inmates requiring increased attention, receiving care in living-in institutions have become scarce, while the number and age of elderly people in need of institutional care is increasing, while their medical and mental condition is deteriorating.

b. Social versus medical – competencies

A condition to being accepted in an old people's home depends on neediness; under the Social Act, since 2008, the care need of the person applying for care is to be examined: according to Section 68/A(3) of the Social Act in effect at the time of the on-site investigation, "old people's home care can be offered on the basis of an expert opinion certifying care needs exceeding 4 hours a day or based on other circumstances defined by separate legal regulations".

As the result of demographic changes, the increase of life expectancy and changes in legal regulations, the elderly enter living-in institutions in increasingly poorer states of care. While earlier homes had to provide "care as needed" – which expression did not differentiate between basic and special care – the institutions were able to satisfy their obligations according to the legal regulation, being able to execute both types of care. Since 1 January 2008, "*basic care* as needed" is to be provided, and the homes can execute *special care* activities only in possession of a special license as special care already constitutes a medical activity. However, legislators did not provide plus financing for the extra expenses incurred during the licensing procedure and in connection with the performance of the requirements of legal regulations.

In his earlier report, the commissioner for fundamental rights established that the fact alone that special care conducted by social institutions can be executed in possession of a special licence, cannot be considered problematic as it is also in the interest of the inmates of the institution to use the medical services at the highest possible professional level, with safety, under continuous professional control. If the institutions would like to fulfil their tasks, and offer the inmates appropriate care, executing special care activities cannot be avoided even if that is not their obligatory task As, also due to their old age, the inmates suffer from multiple diseases characteristically, which often requires medical special care activities as well (e.g. hooking up the IV).

The present status, however, makes the situation of social service providers impossible. Though at the level of legal regulations they have the opportunity to execute special care lawfully in possession of an operative license, in lieu of the related financing, using their own resources, they still find it difficult to satisfy the licencing procedure, and the legal requirements of the often special care.

It would be important that the social and medical care systems do not operate parallelly but, supporting each other, they be aware of each other's bordering areas and operate under penetrability.

c. Meeting special needs

In the homes where former *homeless individuals* also receive care, the management related that these inmates often find it hard to fit into the residential community. The often years long homeless existence frequently comes with the distortion of personality and the loss of social competencies of a degree that aggravates peaceful cohabitation, and makes satisfying the rules and regulations hard for them. The

adequate management of conflicts emerging from "incompatibilities" requires serious professional preparedness on behalf of the staff.

It happens that *couples or married spouses* move to the homes together, or partnerships are established during institutional habitation. In these cases, the leaders of the institutions make effort that the couples – if they would like so – get a common room and there is an intimate room at their disposal. This latter condition is not satisfied in all the homes investigated.

The main rule is that applicants with *psychiatric conditions or suffering from addictions* cannot be admitted to old people's homes; their care is to be provided within the framework of another institution. Under the basic rule, some of the homes do not even receive inmates with psychiatric or *dementia* diagnosis as their care requires a higher level of preparedness which not every home can realise within the constraints of a social institution. With the introduction of the care need, however, it is clear that the elderly enter these homes in increasingly poorer conditions, and the percentage of demented inmates also shows an increasing tendency in the institutions.

d. Money and property managements vs guardian system (the legal statements of competent demented residents)

In connection with *deposited money management* and *the residents' money management, as well as the validity of their legal statements*, it is important to emphasise that until the court finally places them under guardianship affecting the ability to act with effect, the patients are considered competent, they can make independent decisions in their affairs, which is also true for the management of their financial affairs.

However, we have to emphasise that even the individual restricted in his ability to act can make a valid legal statement in any matter with regard to which his ability to act was not restricted, with view to the fact that, under Section 2:22(2) of Act V of 2013, the Civil Code, contracts of minor importance that are generally concluded in large numbers and do not require special consideration and that have been concluded and performed directly by incompetent adults shall not be considered null and void on the grounds of incompetence.

In case the severely demented elderly resident who is not under guardianship finds it temporarily difficult to manage his affairs – characteristically while disposing over his income or other amounts of money/property – the manager of the home has to keep in mind the protective function of the institution of guardianship, as well as the possibilities of initiating placement under guardianship proceedings. Thus institutional money management is without misgivings only if it does not endanger the patients' fundamental right to property. The significance of the problem is further increased by the insistence of the elderly on their independence, and the difficulties posed by negotiating with the relatives.

IV. Summary

It became clear already during earlier ombudsman investigations and research, and seems to be confirmed by present, European-level project work as well, that the challenges of social cohabitation cannot be solved purely with legal means – especially only legal regulation –in the area of elderly affairs. It also became obvious that participating in active social life, or even simpler everyday activities, is often an unbelievably difficult task for elderly people.

Several aspects of the increase of the role undertaken and the intervention executed by the state (higher or at least tendentiously increasing grants, more and better, more specific public services from the area of health care to the social area) is an economic-political question, depending basically on the load-bearing capacity of the prevailing national economy. Instead of increasing or maintaining the standard of living, only the definition and provision of a minimum level of defence belongs to the circle of the protection of fundamental rights interpreted in a narrow sense. The social way of thinking and

change of attitudes based on the acquisition of facts and the recognition of problems is not a money matter, at the same time, it can at least be initiated through legal means.

On the one hand, it is a basic aspect that – unlike, for instance, children's rights – "elderly rights", as a separate, independent fundamental law category does not exist (yet): old people are entitled to exactly the same fundamental rights as anybody else. On the other hand, it is exactly through their defenceless situation, as Thomas Hammarberg, earlier commissioner for human rights put in one of his stances: "their vulnerability", the obstacles in the enforcement and practice of rights, that a level of state protection higher than usual (see institution protection obligations), and the promotion of equal opportunities is needed in their case.

As in the case of individuals living with disabilities, in the interest of the protection of equal dignity and social security, long-term and clear programmes are needed in case of the elderly. It makes one wonder, however, that, in addition to the mostly financial-economic issues, such as the question of pensions, the actual access of old people to legal protection, and the services they are provided based on civic rights, is a less central topic.

The present European elderly affairs project provides a genuine and substantial opportunity for comparison, mutual exchange of information and experience, and primarily for drafting a common message. Its goal is not to declare that it would be necessary to secure unique and separate fundamental rights for the elderly, or that every problem could be solved merely with the increase of welfare services and transfers. However, even the achievement of the goal that the actual practise of the "already existing" fundamental rights of the elderly is guaranteed would pose a recognizably high number of (common) tasks.

Trying to defend a certain standard of living as a fundamental right is not the right direction: as securing this is the most sensitive area from an economic aspect. *The increasing and consistent level of legal protection, in which the enforcement of the individual and special aspects of elderly people is also manifested with emphasis,* in the long run may, as a result, yield the increase of the individual standard of living.

Our intention is that the work invested in the project, the experience acquired, analysed briefly and introduced, together with the background of legal regulations in effect may provide a good, mouldable starting point for the *foundation of an "elderly-friendly" fundamental right attitude in official operation, while securing public services, moreover, in the public sphere as well – even towards the drafting and realisation of uniform European problem-solving opportunities*. We are convinced that through the circumspect and early remedy of the improprieties outlined, and consistently calling up the contents of the right to equal dignity and the other entitlements affected in our investigative reports, even more serious changes in attitude can be achieved in elderly affairs.