



COMPREHENSIVE SUMMARY

of the
Report of the Hungarian Parliamentary Commissioner
for Future Generations

2010

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“Concerning the right to live (...) the state’s impartial institutional protection obligation does comprise human life in general (...) as well; and this does include the provision of essential conditions for future generations.”

Resolution 28/1994. (V.20.) of the Constitutional Court

I. INTRODUCTION

The Office of the Hungarian Parliamentary Commissioner for Future Generations (or Future Generations Ombudsman – FGO) operated successfully in its first two and half years. We have revealed and clarified many aspects of several environmental conflicts that have been pending for many years, even decades, in different ways to the specialized authorities tried before us, which did not (sometimes could not) do so. Although the ombudsmen have no authority jurisdiction, the revelation of multi faceted legal, technical reasons and the identification of solution possibilities of environmental conflicts, has in most cases helped the participating authorities, citizen groups and NGOs to handle the conflict properly.

Beyond solving individual environmental problems, we have also effectively contributed to the discussion of the general issues of environmental policy and environmental law: we made several dozens of legislative proposals, and we delivered lectures at more than a hundred conferences in Hungary and abroad. At the level of the European Union and the United Nations, people are working on introducing the institutional representation of future generations. In the course of this process FGO is often referred to as the world’s only institution operating for the time being that represents the future generations, and as the Hungarian legislation’s brave lead which should be followed.

I.1. THE HISTORICAL BACKGROUND

Based on the five-party agreement welded together by the NGO “Protect the Future” the amendment of the Act on Parliamentary Commissioners (Ombudsman Act) was adopted by the Parliament practically unanimously in November 2007 – hardly more than three years ago. More than half a year passed before the Parliament elected the new green ombudsman on the fourth nomination of Mr. László Sólyom, President of the Republic of Hungary. Another half a year was needed to establish the structure of the new office, to find its heads and staff. With this the year 2008 was finished, and the report on the short year was written only after 2009, together with the first whole year. So the present report on the year 2010 is the second such compilation in the lifespan of the new institution.

1.2. THE RESPONSIBILITIES OF THE INSTITUTION

The act that established the Office of the Parliamentary Commissioner for Future Generations can be considered as the reinforcement of the protection of the fundamental constitutional right concerning a healthy environment, due to the broadening of the ombudsmen's competence and jurisdictions. Given the two decades of experiences, especially in the development of environmental protection, a modern ombudsman model was created that is partly different from the former one and is well suited to the new challenges. Compared to the three other ombudsmen (Parliamentary Commissioner for Data Protection and Freedom of Information, Parliamentary Commissioner for Civil Rights and Parliamentary Commissioner for National and Ethnic Minority Rights) the new green commissioner was granted several new spheres of authority, which provides for a higher level of the protection. At the same time the regulation has also accomplished a shift of emphasis, inasmuch as it creates the possibility of general, system level measures, besides judging the individual complaints. Furthermore in the circle of the protection of primary rights it also covers the protection of sustainability and of the interests of future generations.

Even so, the Future Generations Ombudsman, similarly to the other ombudsmen, is intended primarily to investigate and solve individual complaints and cases. However to protect the present generation's right to a healthy environment and the interests of future generations on a high level, merely this definition of the role would not have been sufficient. Besides the reactive approach that examines only certain cases, and individual mistakes of the public administration; the establishment of a proactive attitude is also needed, which analyses the overall conditions, and generates solution proposal.

So this system-like approach originates precisely from the legal regulation concerning the Hungarian ombudsmen. According to this, the basic task of FGO, beyond judging the complaints, is to monitor the enforcement of legal provisions that promote environmental sustainability, to influence the local and national legislation, as well as to participate in the domestic enforcement of international conventions, and even in the Hungarian decision-making procedures related to the European Union.

Compared to the usual ombudsman rights it is interesting that the Hungarian Ombudsman Act provides for public administration law and civil litigation entitlement as well in the individual environmental conflicts. Moreover the FGO's mentioned spheres of authority spread out not only on the authorities, but on the range of different other organisations, and natural persons too, in order to enforce the mutual responsibility for future generations.

Besides our individual and general environmental law cases, we also lay a major emphasis on practicing our third function, the environmental policy activity, as it is of fundamental importance to understand the nature of environmental dangers threatening the present and future generations and to see the scientific efforts that seek for potential solutions to environmental conflicts.

I.3. PRACTICING THE OMBUDSMAN'S ROLES

Based on the statements above, we consider it to be the vocation of our office to reveal and analyse the system-level anomalies through the individual cases, and to propose solutions for them. To enforce the right to a healthy environment we have to prepare system-approach proposals for the legislators, while for those applying the law we have to elaborate recommendations at principle level.

We have already tried to strengthen this interdisciplinary, proactive, progressive approach when shaping the structure of FGO office. This is the first Hungarian ombudsman's office to employ a considerable number of non-legal experts, thus enforcing the attitude of protecting a primary right in the practice as well, and the requirement to comply simultaneously with the environmental law and the long-term sustainability aspects. We hope the aspects of clarification and network-building pervade our procedure in each case, as we try to find all the affected authorities and other organizations involved in a case to get to know their position and to process these positions through an "iterative" process. Therefore we usually send out our statements as drafts to those affected, and their remarks contribute to the more sound foundations of our views and measures.

If general problems and solutions take shape from similar individual cases, then we formulate universal proposals for both the legal practice and legislation to make them promote effectively the enforcement of the right to a healthy environment. Also in the framework of our environmental policy activity we follow the results of Hungarian and international research related to the alternatives of consumer society. Furthermore we carry out research ourselves, cooperating with domestic scientific institutions. Our project researching the local, small-scale practical solutions of sustainable development, and the one dealing with alternative socioeconomic indicators belong in this circle.

Finally with the help of our department of international law we keep track of the adequate adaptation and enforcement of EU and international provisions. It is also an important task to maintain relations with the international, respectively European Union environmental and primary right protection organizations, to exchange experiences mutually.

The versatile activities listed above contribute to forming and enforcing the system approach required by our founders. However we should not conceal the fact that many environmental experts would like to have a more active, more prominent FGO. This is an absolutely just claim, as due to our methodological approach described, most of the times we cannot, and in general we do not even want to react immediately to the emerging environmental issues with ready-made statements. The investigation method of our office is time-consuming, as wherever it is possible we strive for the comprehensive, profound exploration of the facts, and to discuss thoroughly our legal and professional recommendations with the stakeholders. Naturally in the cases, where there are plans in preparation or authority measures threatening immediate or irreversible consequences, we have to react within a short time period, and, as in the cases of smog alert or in spatial planning, we were able to do so.

II. THE PROSPECTS FOR FUTURE GENERATIONS

By today it is clear that our present lifestyle is not sustainable – the size of resource-reserves, their respective rate of renewal and reproduction cannot keep pace with the current ever increasing production and consumption demands. This leads to the depletion of resources, the deterioration of ecosystem services, launching a series of fatal social and economic processes.

Referring to the economic, social and/or environmental crises is accounted almost a commonplace, with problems appearing in the media, public policy documents and lectures. However searching for solutions that take into account the interrelations of these features rarely takes place. Providing for the future generations' right to a healthy environment is not only an issue of environmental law and environmental policy, but all of the fields that are affected and where the activities impact on the present and future state of the environment. Considering this the Future Generations Ombudsman (FGO) initiates research with projects that wish to review the problems and the probable chances on the systems' level; we look for the potential solutions together with the stakeholders, the affected actors. We try to catalyse the searching for and implementing solutions that are sustainable in the long term too, by sharing the information and promoting the professional relations through dialogue. We strive to apply the results, utilising the information revealed in the course of investigating individual complaints and drafting legislation proposals as well.

II.1. ECOSYSTEM, SOCIETY, ECONOMY

Today the whole of world politics is crucially determined by the faith in the paradigm of growth: the idea that together with economic growth the prosperity, quality of life of people also improves, which in turn means that the number one welfare indicator nowadays is the gross domestic product, GDP. The past few decades have demonstrated even in the most successful countries from the point of view of growth, that this presumption does not correspond to the facts, moreover the ever worsening symptoms of the ecological crisis remind

us also that the ever increasing exploitation of the planet's resources must not be continued any further.

The aim of our project dealing with alternative indicators is to promote, encourage the establishment and the application of complex statistical indexes that indicate realistically the levels of development and sustainability within the society, helping authorities to make well-informed decisions. In order to lay the foundations for these indicators we ordered two researches in the year 2010.

We commissioned the Institute of Ecology and Botany of the Hungarian Academy of Sciences to research the development of the ecological capital of Hungary over the past hundred and fifty years. The result of the research shows a worse picture than expected: summarizing the data we can see that Hungary has lost at least 60% of its natural capital in this period.

The other research was conducted by the Institute of Behavioural Sciences of the Semmelweis University. They compared certain main indicators of economic growth and social welfare in the past decades. According to this research, there is rather little interrelation that can be observed between these two; respectively important sets of indicators, for example trust among people has significantly decreased unfortunately in the recent years, during the period when economic growth was still tangible.

An important common lesson to be drawn from the sometimes surprising results of the two researches is the confirmation of our opinion that a great deal of extra information could be delivered for the decision-makers by regularly performing such examinations. These investigations could support decision-making on all levels in an easy to understand way and thus facilitate the decision processes.

This was one of the reasons why we started, and would like to continue to promote in the future as well, the dialogue between the state sector and the scientific communities. This initiative helps to create and apply as soon as possible the extended family of indicators that helps to interpret and implement on a system level the demand for sustainable development. This way we can finally precisely trace on the national level, as well as on the level of the individual measures the impact of decisions on the ecological and social system. For this purpose we continuously cooperate among others with the Central Statistical Office, the State Audit Office, several renowned research groups, and also with the international institutions interested in this topic.

II.2. CLIMATE, ENERGY

The sustainability of the essential conditions of future generations is influenced in the long term by all that happens today and in the near future on the field of climate protection and energy uses. The everyday activity and strategic decisions of the present generation within these two territories determine the experience for several decades, even centuries, both in global and regional-national terms.

The aim of our office is to examine the ongoing events and to promote rational decisions. On the subfields of our tasks related to climate change, energy-production and utilization, the greenhouse gas emission reduction target for 2050, and the determination of the strategy of transition, we have carried on with our work started earlier under the comprehensive title "Climate and Energy". Through the media and in an open letter, we called the attention of the decision-makers to the fact that the change needed to reach the aims of greenhouse gas emission reduction – which concerns the economic structure and the physical infrastructure as well – should take place in accordance with our commitments stemming from our membership in the European Union, as planned.

This year, besides emphasizing our global and long term obligations, we have kept the aspects of sustainability on the agenda for public attention by declaring our positions on cases of energy uses and climate protection; moreover we represented the future generations' interests for the decision-makers in this field too.

Two colleagues of the office participated in the climate summit meeting in Copenhagen. Based on their experiences we published the lessons that could be drawn and the important messages in the press.

We helped actively in the drafting of the Climate Act of the National Council for Sustainable Development, with two colleagues taking part in the preparation work, while the commissioner supported passing the Climate Act with his contribution at the plenary session of the Parliament.

Cooperating with other Hungarian researchers, one of our colleagues has published a study on the different timetables of emission reduction till 2050.

The FGO gave an expert opinion on a draft government order on the declaration of the public administration authority cases related to a major project of a bio-ethanol producing factory, as a case of special priority. Our office also participated in commenting on the draft government proposal titled "The Action Plan of Hungary on the Utilization of Renewable Energy".

II.3. CONSERVATION OF BIODIVERSITY

Biodiversity is the basis and support of human life. Through processes of key importance it is the very abundance of life that secures the food, clean air and drinking water essential to human life. Biodiversity is dangerously decreasing, but the efforts to stop and overturn this trend have failed so far. The UN declared 2010 the international year of biodiversity, to direct the world's attention this way also to the importance of conserving nature and to halt human activities that are causing destruction.

The analysis of the complaints received by the commissioner and the exchange of views with our partners in meetings confirms that it has been difficult to socially embed the main arguments about nature protection, and closely

related with this is the absence of political will and support. Despite the sensible symptoms and the obvious connections between the environmental and social crises, until now biodiversity has remained a marginal problem for the overwhelming majority of society.

The FGO participates in the political decision-making processes and we promote the related dialogues that have an effect on biodiversity and which influence the state of natural capital in the long term. During the year colleagues attended and delivered lectures at several events and conferences dealing with nature protection. The FGO undertook a promoter role in the domestic spreading of the concept of ecosystem services and in catalysing the expert co-operations needed to enforce it. Hence, as a pioneering initiative, we organized a professional conference to record and evaluate the full circle of goods and services provided by the Danube.

II.4. THE FUTURE OF THE DANUBE AND ITS REGION

The commissioner's investigation stated that the strictness of domestic regulation is not justified by international obligations, while the parameters determined in these provisions serve as reference for the very expensive, brutal interventions planned in the riverbed of the Danube, which cause ecological damages. For this reason, we prepared two statements. We issued the first one related to the transport development plans directed at improving the navigability of the Danube, pointing out that Hungary has undertaken legal obligations for stricter conditions in regard to the river-channel development than international expectations justify. We can therefore comply with the international requirements if we modify the Hungarian provision, adjusting it to the characteristics of the Hungarian section, so the riverbed-transforming interventions that cause serious ecological damages are not justified. Based on the researches ordered by FGO, the ombudsman has also stated that the necessary navigability parameters can be attained through well-planned and organized navigation, channel-setting.

The FGO organized a conference on the ecological services of the Danube to promote the UN initiative of the International Year of Biodiversity and simultaneously an exhibition with the title "This Gives You Life – Let's Think about the Danube". At the conference the representatives of different professional sectors systematically reviewed the ecosystem-services provided by the river, the goods of wildlife and habitats (clean water, building material, navigation route, place of excursion, flood plain vegetation, food etc.), which are used by humans directly or indirectly in their lifetime and therefore the condition of these goods does determine people's quality of life. Building on these conference presentations, our office prepared another draft statement on the conservation of ecological services and usufructuary possibilities. In this, the FGO stated that Hungary is interested in establishing a Danube Euroregion and in developing the international cooperation along the river. Our country, based on the best traditions of the EU, has to help actively the development

of cooperation among the peoples by the Danube, the cultural relations, the historical reconciliation and the realization of common economic aims.

We have to follow the quantity, quality and changing tendencies of the services provided along the Danube. As the Danube operates as a self-supporting system, it is necessary to minimise these interventions and it is especially important to prevent the amortization of natural capital. The ecological services have to be taken into account altogether, as maintaining the unity and dynamic balance of the system requires that we should not develop competing usufructuary ways at the expense of one another.

Based on the lectures of the meeting and on the investigations, the draft statement emphasised that the protection of the Danube demands urgent measures mainly on the following issues: the modification of navigation parameters, the realization of stream deposit management with a hydro-ecological approach, the prohibition of building in the flood-plain, and the extension of irrigation possibilities. To address these tasks it is also likely that the appropriate laws would need to be modified. In the case of a complex system, like a river and its environment, decisions can only be made exclusively based on multilateral conciliation and agreement, involving all the stakeholders and evaluating their opinions, about the possible transformation of the riverbed, its environment or utilization, as non-harmonized developments may cause further damage that cannot be easily treated.

In the international context, the draft statement noted the serious ecological damage caused by the Slovakian Gabčíkovo hydroelectric power plant which for 18 years has allowed only 15% of the Danube's water output to reach the Hungarian Szigetköz section of the river. The draft statement suggested that the Hungarian government should turn to the International Court of Justice in Hague, so that the country could get at least 40% of the water output in the old riverbed of the Danube, as proposed by the European Commission on the 22nd of December, 1993.

In the respect of trans-boundary pollutions, the statement suggests that the environmental strategy of the Danube Euroregion should cover the strict regulation concerning hazardous facilities. The European Commission should revise the possibility of prohibiting ore-preparation with cyanide. According to the Helsinki protocol of 2003, the polluting country should reimburse the damages caused by trans-boundary pollutions for the neighbouring country as well. In 2010, the FGO sent the draft for conciliation to the participants of the conference as well as to the state institutions affected. After collecting and processing the feedbacks the statement will be finalized.

II.5. ENVIRONMENT AND HEALTH

The right to a healthy environment is our primary right laid down in the constitution; however the list of death statistics have for a long time been topped by illnesses that originate in environmental conditions. It is clear also

from the major share of complaints received by our office that the majority of activities damaging the environment are directly detrimental to human health as well, with special regard to the developing organism of children. For this very reason, in our proposals written for the Semmelweis plan that advocates the subsequent reform of the health care system, we reminded the government that to rehabilitate public health care for the long term it would be essential to adopt the prevention-focused approach. This method should deal thoroughly not exclusively with the rational operation of hospitals, but with the basic questions of national health as well. Our suggestions are in harmony with the recommendations of the WHO's Children's Environment and Health Action Plan for Europe (CEHAPE). Among others we mentioned features that render the life of millions more difficult or shorter, including the issue of ambrosia, the problems of chemical safety, carcinogenic substances, in- and outdoor air quality. Besides it is important to remember that the investment in preventing illnesses may produce a financial return, perhaps not immediately, but to a rather significant extent as well as the costs of subsequent treatment will always prove more expensive than prevention would have been.

II.6. THE FUTURE ROLE AND PROSPECTS OF THE COMMON AGRICULTURAL POLICY

Of the specialized policies influencing biodiversity directly, from the aspect of the goods and services provided by nature, the depletion of soil- and water-reserves, respectively the decrease of biodiversity – or more precisely from the aspect of turning these processes back, the most influential determinant is the agricultural policy. Therefore we considered it important to send our opinion on the policy directions outlined by the European Commission, respectively on the future opportunities of the Common Agricultural Policy (CAP), and some alternative suggestions affecting the regulation and support system of agriculture for the period 2013–2020 to the minister of rural development. As despite of the reforms so far, the present agrarian practices still overexploit the available natural resources, while the number of people employed in the sector is decreasing, we have stated that from the respect of future generations the establishment of a CAP-approach which moves the agriculture of the EU towards sustainable farming should be set as a priority aim.

To reach the biodiversity aims the regulation and support system of agricultural production should also be created along the most comprehensively interpreted environmental, social and economic principles of sustainability, similar to other sectoral policies with a long-term perspective, taking into account the European Union's environmental policy undertakings and the professional principles of these. For this purpose we have formulated proposals to establish sustainable food production to develop the sustainable management of natural resources, in the food trade and food safety, as well as for aspects of agrarian support systems. Among others we emphasized the importance of producing healthy

food with high biological value, rich in nutrients; the need to transform distribution patterns, the consumption culture, and moreover the reduction of food transport. We have highlighted the priority of maintaining public goods and the necessity of saving and improving soil quality; furthermore besides evaluating the financial and administrative rules, the controlling and monitoring systems related to supports should be made suitable to track the realization of the community's aims connected to the environment and biodiversity.

II.7. RESEARCHING THE FUTURE IN THE PRESENT: SUSTAINABLE COMMUNITIES

It is literally of vital importance to search for practical solutions which make communities able to adapt to inevitable changes, and to promote their conservation and development. Will the actual communities be able to keep abreast of the destructive processes unfolding in the wildlife and in the natural environment as the consequences of human intervention? Will they be able to moderate and effectively prevent these trends?

Almost simultaneously with the establishment of the office we have launched the project titled "Pioneers of Sustainability". Within this framework, we have discussed at two conferences the results of field research commissioned by FGO carried out in four regions by the scientists of Eötvös Loránd Scientific University. As well as developing our knowledge by analysing the environmentally friendly farming experiences and community-building endeavours, our important aim with the programme was to create connections among the communities, promoting dialogues among the organisations and local people, experts, research institutions and furthermore the offices affected. The research has justified the notion that the chance of a shift to a landscape usage that is ecologically sustainable depends primarily on the condition of the communities. The structure and composition of village society influences the chances of sustainability to a greater extent than the state of economic, legal or natural environment. And the people participating in the "Pioneers of Sustainability" conference have expressed that the spread of environmentally friendly farming methods, the suitable, sustainable utilization of local natural resources would improve the population-keeping force of the regions affected, and would at the same time serve environmental aims too. The research also demonstrated that besides the communities' condition, the existing legal, state, economic incentives and institutional systems often do not support sustainable community development.

From all of this it can be seen that serving the interests of future generations and the ecological, social sustainability of Hungary demands us to dedicate serious attention to the future as well as to maintaining relations with the pilot sustainability experiments by formulating environmental law, environmental policy proposals and moreover to search for best practices, shaping the legal, sectoral policy frameworks of their development possibilities.

In the framework of the project in 2010 we have selected the critical points of breakthrough, where we can assist the realization of the strategic aims of sustainable rural development with actual actions (opening local markets for local products; securing the priority of healthy local food in school catering; safeguarding and re-spreading indigenous fruit tree types by local communities; conservation of domestic herb-treasure and support of herb-culture). We have identified the sample territories for the pilot experiment and we have started to network with the stakeholders and the people affected. Next year our research partners will carry out action research, the results and lessons of which will inform the drafting of new proposals and statements for the green ombudsman.

III. RIGHT TO A HEALTHY ENVIRONMENT

The cases belonging to our sphere of authority almost always touch upon several environmental fields and issues, so we often reveal in one statement anomalies equally impacting on the territory of for example public participation, spatial planning, protection against noise and water protection. Therefore one of the most important messages emanating from our activity is that environmental issues cannot be interpreted in isolation by themselves, recognizing and analysing the system-level connections is essential. In this respect one must not rely only on environmental law, but developing environmental political strategic way of thinking should also be part of our activities.

III.1. PROPOSALS TO THE NEW CONSTITUTION

In 2010 the most important public law process in Hungary was the start of the drafting of the constitution. In several documents our office has expressed detailed proposals related to the potential and to the planned regulation. As a result of the research, preparation work started in August 2010, in order to promote the protection of the primary right and to facilitate the creation of the constitution text, in February 2011 we organized an international conference with eminent foreign and Hungarian lecturers to review the potential regulation of the right to a healthy environment and of the interest of future generations.

Exploring many studies dealing with domestic constitutional law, including international comparative environmental law, we have found that in the sixty recent constitutions, passed in the world since the Stockholm conference of 1972, the critical mass of regulation elements concerning the environment have been created. To this were added as motivating forces the messages from the various organs of the UN and the EU, national governments, and independent university research groups, about the approaching, even partly already present environment disasters. Based on all this we think the time has come to outline the system of constitutional rights linked with healthy environment. This would

be an enormous contribution from Hungary's side to the development of this legal field. The elements of the system are mainly the rights and obligations stemming from the subjective rights and the state tasks, as well as linked with the healthy environment, which secure the protection of both present and future generations. The new fundamental law, passed in April 2011, has practically adopted this approach and contains all the elements of the system presented.

The protection of future generations' interests, respectively declaring the sustainable development's system of requirements in the constitution is in our view essential. Besides it is justified to regulate the clash of primary right to a healthy environment with other primary rights, by stating the priority of the right to life, to a healthy environment, as well as to prioritise the interests of future generations. The declaration of the most important requirements and principles (principle of non-regression; integration; prevention; precaution; "polluter pays", as well as the principle of public participation), and the determination of basic definition units, the nation (the flow and collective of present and future generations), and the national wealth (the fundamental requirements providing for the essential conditions of present and future generations, like healthy drinking water, the soil and the genetic diversity) would complete the system of regulation. After all the discussions, the new constitution contains only one of the principles (the "polluter pays" principle), but together with this it regulates exhaustively the protection of natural resources for the sake of present and future generations.

The right to a healthy environment provides for the protection of long-term interests and the protection of natural bases of life, as opposed to the short-term aims. On the institutional level, this careful approach can be enforced exclusively by securing public law independence and self-reliance. The right to a healthy environment is a specific primary right, therefore the ombudsman's protection has to be specific too. It requires special tools, organisation, a defined sphere of authority, a specific approach and working practices, expertise and measures, that should not be melted into another type of general primary right protection organization. It would be a serious logical and political contradiction, if along with strengthening the constitutional provisions, the level of institutional protection were to be reduced. With the independent institute of representation, Hungary is pioneering in the international community, setting an example for other states. There is a very keen international interest in the institution of the Future Generations Ombudsman (FGO), as more and more countries in Europe and all over the world consider similar solutions too.

The green ombudsman, officially named as Parliamentary Commissioner for Future Generations is specified as a deputy of the sole general ombudsman in the new constitution; however deputies are also elected directly by the Parliament with a majority of 2/3. This provides for the necessary legitimacy to work independently. The detailed rules concerning the ombudsman system and the FGO will be passed by the Parliament during 2011.

III.2. THE PROTECTION OF AIR QUALITY

The air quality of Hungary significantly improved in the 1990s, mainly as a consequence of the economic changes and the shift of industrial structure the emission of harmful substances was reduced. However, based on the past years' experiences it has become a more and more serious problem that while the fixed spot sources of industry and service already demonstrate a lower concentration of emissions, the air pollution stemming from traffic started to grow remarkably. The greater number of cars and the regular traffic jams have a rather major impact on the cities' air quality. According to expert opinions, 80% of the pollution is caused by the emission from motor vehicles. The extent of emissions originating from public heating can only be estimated, nevertheless due to the use of outdated heating installations and the varying composition of fuels burnt, the degree of total emission is high.

Of the two aspects of air pollution, the damaging and the disturbing effect, in relation of the latter one many unsolved problems have been raised in our legal practice. The legal definition of odour is a rather difficult task for both the legislator and the authorities, so we carried out a detailed analysis on the topic. We tried to refute the dominant approach of the authorities, which denied the ascertainability of causing odour as an illegal attitude in the cases where the users of the environment emit specifically determined, measurable substances with limit values. This approach leaves without legal consequences environmental pollutions that – although within health limit – do make the life of a community permanently more difficult. We have argued our position successfully in a trial at the Supreme Court and also in the course of revising the air protection regulation, our arguments were accepted in both fora.

We have received many complaints because of the reorganization of traffic in the districts of the capital and in countryside cities. In the course of this measure, as a consequence of relieving certain streets or quarters, the traffic of the neighbouring areas has increased. An equally characteristic problem is the transport-related air pollution of bypass roads. The intensive development of the conurbation increases the traffic of the capital, and thus its air pollution as the people moving out commute to Budapest. The transit heavy traffic passing across the country is also a determining factor.

In these cases we drafted our statements consequently enforcing the "polluter pays" principle. We suggested that the constructor or the maintainer of the specific road – inasmuch as no solution can be found that does not cause serious injury of interests for some community – should a) choose the version involving the least injury, and b) compensate completely the members of the local community injured.

Of our cases of air pollution we find those ones especially serious where children are forced to bear permanently the health impacts. It is especially dangerous if the developing young people are exposed to continuous noise and air pollution. In a case related to a school and kindergarten in District 15 of Budapest, our ex officio investigation revealed that on the basis of

the local municipality's resolution, the institution is to be moved to another building. The district municipality did not examine the consequences of this reorganization. According to our position it is unacceptable if as a consequence of a decision the children move to premises, where complying with the health limit values cannot be guaranteed on the whole territory. So we returned to the municipality with the recommendation to seek an opportunity of moving the kindergarten and we reminded them of the need to undertake regular monitoring of air quality and to inform the children's parents. Furthermore we submitted a legislative proposal to the minister of rural development and to the minister of national resources. We suggested that before starting the operation of public education institutions, or before a reorganization resulting in the change of premises, a complex authorisation procedure should be carried out. Moreover the law should render the consideration of the results compulsory. The case generated serious media and local political reaction – this increases the chance of changes.

III.3. PROTECTION AGAINST NOISE

In order to fulfil the institutional protection requirement stemming from the right to a healthy environment, the state should pass a regulation for the protection against noise and vibration as well, which enshrines the protection level reached and contains legal institutions based on prevention.

Based on the lessons of individual cases, our office has launched a comprehensive examination in order to be able to formulate guidelines for the legal practice and legislative proposals for the revision of the regulation. In the framework of the examination we carried out thematic consultations with several environmental inspectorates, the chief inspectorate and the ministry. Our aim was to get to know and to process the good practices developed during the course of public administration procedures and the major problems of legal practice emerged in the procedures of environmental authorities. To discuss the issues of protection against noise in a broad professional circle, we organized a conference on the 6th of October, 2010 with the participation of the authorities, municipalities and professional organizations. We have summarized the result of our comprehensive examination in a draft statement outlining our proposals concerning the reform of the regulation of protection against noise. The draft was circulated in a broad circle for harmonization in order to guarantee to the maximum extent the sound professional foundations of the complex legislative proposal which is to be submitted finally to the government.

Of the individual "noisy" cases handled by FGO perhaps the one of Hungaroring was the most remarkable. In the case of the car and motor race circuit, hosting international car races as well, the client complained that the various events, test-races, practice sessions with extremely high noise levels have become everyday features. The noise effects caused render the lives of the inhabitants in the neighbourhood impossible, with the noise burden limit exceeded by a significant level. In 2006 the inspectorate obliged the operator to undertake

an environmental audit. The documentation submitted by the operator did not cover the presentation of all the activities from the aspects of protection against noise and vibration. The material did not contain solution proposals, nor action plans needed to achieve the reduction of noise. However the documentation was suitable to justify the overshoot of noise burden limit values, but the environmental inspectorate did not take measures. We have stated that the environmental inspectorate exempted two races illegally from the limit values and did not take resolute measures to reduce the noise for years. Consequently the right to a healthy environment was violated, therefore we have initiated a supervision procedure at the Ministry of Rural Development. This case was also significantly covered by the press and as a reaction the operator of the extremely popular race circuit launched a media campaign. The central message of this campaign stressed that if Hungaroring was to observe all the environmental provisions, it would have to be closed. As far as we are concerned, we can agree with this conclusion...

III.4. TRAFFIC

In the past two decades the Hungarian traffic sector tried to catch up with the developed industrial countries: the road traffic and transport, the number of cars, the quantity of kilometres, the density of motorway network, as well as the air traffic has dynamically increased. In the meantime the ratio and standard of public transport has significantly worsened, the railways got in a disadvantaged situation and the water transportation was also pushed into the background without reason against road transport.

The difficulty of reducing pollution caused by traffic lies mainly in the fact that substantial improvement cannot be imagined without changing the society's traffic behaviour and customs. The right to a healthy environment assumes the common responsibility borne for the environment, the obligation of conserving the natural and built environment. Therefore to enforce everybody's right to a healthy environment, everybody needs an environmentally conscious attitude.

The complaints received by our office cannot be investigated or handled merely with the tools of the regulation available for the protection against noise or air quality protection. The genuine solution can be expected only from the sustainable traffic organization and closely related to this from the change of consumer customs. This raises the indispensability of common responsibility within an environmentally conscious lifestyle. We have examined the regulation of noise sources from traffic and of bulk transportation operations related to major projects. Furthermore the spatial planning and urban planning activities play a very important role in stopping the generation of further traffic and transportation claims.

Among others we have received a complaint related to the section of the road no.4, passing by Debrecen, which would serve to relieve the city from transit

traffic. The clients complained especially about the designation of the track, the irregularities of environmental and the traffic authority licensing procedures. Due to the new section increased noise, vibration and air pollution could be expected. We have stated that the construction of the road involves risks linked to forestry, nature conservation, water quality protection and noise protection. According to our position the most important question is if the road is needed at all, and if so, keeping in mind the principles of sustainable development, how the interests of wronged people can be taken into consideration. The bypass section could lead to a quick solution by damaging the environment and health of a few dozen families for the sake of protecting thousands of inhabitants. In such cases everything should be done to reduce the damages and to compensate them for any losses. We have launched a general investigation in the field of urban traffic and we are looking for the options that can be of help for the municipalities.

III.5. MUNICIPAL SPATIAL PLANNING

This field has a high priority in the work of FGO; and as is clear from the great number of complaints related to municipal spatial planning, the Hungarian environmental NGOs and local communities perceive it too that to eliminate the detrimental environmental effects of certain human activities or facilities the most effective solution is to prevent the undesired impacts and changes already in the phase of planning. Related to this, the environmental principle of prevention and the requirement to improve (at least to maintain) the condition of the environment should be enforced in municipal spatial planning.

In the course of our examinations we paid special attention to revealing the complex effects of the developments planned, which extend over the city limits and to analysing the small-regional, conurbation features. We have stated that several times the municipalities had no consideration for the environmental problems of the actual settlement's wider surroundings, the development possibilities of settlement-groups (conurbations). Based on the conclusions of our statements several amendments are expected in the details of the Act on the Spatial Plan of Budapest Conurbation.

We have tried to implement the principle of prevention in our own work as well by formulating our opinions and statements, wherever it is possible, before the real environmental conflicts are developed. An opportunity of extraordinary importance is offered for this by the Ombudsman Act, as it provides for a right to comment initially on the drafts in the municipal spatial planning procedures. Therefore we have the possibility to remind the municipalities even before they make a decision to make the environmental aspects prevail and to see the anomalies of the resolution to be passed. Besides the unquestionable environmental and sustainability advantages, this possibility is explicitly favourable for the municipalities as well. Namely by considering our proposals they can change their plans and avoid the sometimes very serious consequences of an

unlawful decision (e.g. the claims against the municipality for compensation of damages). Our intervention at the right time has in several cases resulted in situations where the municipality affected, after accepting our arguments, did not create the orders and resolutions planned or did not enforce them, eventually passed them with the adequate modifications.

Unfortunately there were many occasions when the petitioners turned to our office only after the municipal spatial planning decision had been passed and entered into force. In such cases the commissioner can have less influence on the actual state of the environment, as the legal tools at our disposal are limited. It is especially difficult to act, when individual authority licenses were already issued as well based on the spatial planning tools accepted.

In 2010 one of our most important cases was the planned golf-course project in Páty, a small town, west of Budapest. In our investigation we concluded that the prevailing laws would not have made the implementation of this project possible. New premises for buildings must not be designated within 200 meters measured from the administrative city limits. As a result, the local regulation had been modified to list the total given region as "to be built in" contrary to the provisions of the Spatial Plan of Budapest Conurbation, and the prescribed minimal ratio of green areas was not complied with either. Nevertheless, based on the statement of the FGO, the body of representatives of Páty has decided not to let the controversial orders enter into force.

III.6. NATURE CONSERVATION

In our examinations we have analysed primarily the rules and the enforcement of EU and Hungarian provisions concerning Natura 2000 sites. Although the Natura 2000 sites are of European Community significance and even though any damage may result in a procedure of breach of duty, we have still revealed authority omissions and unjustified decisions in our investigations. For example, we have investigated the Central Europe Rally race, the municipal spatial planning procedure of Pilisszenterkez, and the barren fields of Budaörs. The precautionary principle and the application of EU law obviously represent a difficulty for the legal practice.

The protection of natural values is hindered by the fee to be paid for the procedures of registry of title deeds, the level of which cannot be afforded by the authorities and municipalities affected. We have also pointed out the importance of inner city green areas, trees and tree-groups in several cases.

The track of the Central Europe Rally (the so-called Hungarian Dakar) touched Natura 2000 areas and therefore on the basis of a complaint we examined the authorization circumstances. According to the license of the inspectorate, complying with given provisions the habitats cannot be damaged, the race causes no injury. The inspectorate and the national park affected have stated that the specifications of the license were not observed in course of the race.

The inspectorate launched a nature conservation compensation procedure and inflicted a fine on the client. In our statement we have concluded that the unlawful issue of the license injured the right to a healthy environment. The subsequent fines do not compensate for this, at the most these carry an important message regarding the future for anyone using the environment. The inspectorate did not accept our conclusions.

III.7. PROTECTION OF WATERS

The protection of aquifers is also an issue fundamentally affecting the essential conditions of future generations. We have pointed out the increased responsibility of the state on this field in two major cases, in our statement issued on the subject of improving the navigability of Danube and on the subject of the planned reorganization of public water utilities. The water reserves can be managed in the spirit of the requirement of sustainability; only along long-term plans and strategies, any other activity or short term interest threatening this should be excluded. In our statements on the case of Páty and on the case of Pilisszentkereszt we have emphasized that the protection of waters should be considered in course of making municipal spatial planning decisions too. We have declared in several statements that the state is bound to provide for the exclusion of endangering aquifers and for this purpose we made a legislative proposal.

With our investigation we promoted the need for deeper consideration, the reduction of the extent of interventions affecting the navigability of Danube and also noted that the state holding company has given up on its intention to reorganize the public water utilities.

III.8. PUBLIC PARTICIPATION

In the field of public participation we have examined primarily the access to justice and the effectiveness of participation in decision-making (the provision of clients' rights).

Perhaps the most important issue of 2010 was to define the notion of environmental case. We have dealt with this question on an individual case based on a specific petition, as well as at the Supreme Court's request where we could explain our opinion on the legal unity procedure conducted by the Supreme Court. Thus we could contribute to settling the environmental law dispute around the notion of the environmental case; moreover we helped to ensure that the legal practice developed a unified legal interpretation concerning this issue. It should be noted that the legal unity resolution of the Supreme Court represented an opinion that takes the aspects of authority procedure into account and is based on procedural law arguments, rather than one simply considering the remarks of the FGO.

Following the Aarhus Convention, proceeding on the basis of a complaint, we requested the Minister of Environment to create the conditions to continue, after a long interval, the operation of the joint ministerial-NGO working committee that followed the execution of the convention in Hungary, with especial regard to the fact that our next national report should have been submitted in 2010. We were also involved in preparing the national report; our amendments have been incorporated in the report by the ministry. We wished to contribute to the strengthening of public participation also by assuming an active role in the work of a sub-committee, the task of which was to evaluate the experiences of the enforcement of the Aarhus Convention in cases related to nuclear energy.

In several cases we have dealt with the provision of clients' rights in the construction and especially road construction authority procedures, but we touched on this issue in an answer given to a petition objecting to the odour-impact related to the operation of a commercial establishment as well. We have to mention also that besides the legal practice we have dealt with legislative initiatives which were endangering the clients' legal status. These legislative plans suggested a shift in our public administration procedural law, which would have excluded the NGOs' option of legal remedy, if the organization given had not participated in the case from the beginning. In fact this would have eliminated the practice of one of the most important NGO activities, the so-called watchdog function, as these citizens' groups have no resource to follow thousands of cases from the beginning, just for the sake of having the opportunity to exercise the right to legal remedy in the few instances where the authority resolution injures the environmental interests. The opinion of the FGO was sent to the parliamentary decision-making bodies, together with the considerable indignation of the NGOs, resulted in the withdrawal of the motion.

Perhaps the most controversial field of environmental law is the provision for the citizens' and the NGOs' participation in decision-making. The experience of our investigations is often that long-lasting legal debates and serious damages can be expected precisely in the procedures, where the population was not properly involved, or their interests were not intended to be taken into consideration in advance. Where the affected parties carry out adequate negotiations in due time, keeping in mind each other's interests, even the general population accepts the changes more easily.

We have experienced in the cases affecting a wide circle of the population as well, that the authorities exclude from the authorization procedure the population that is forced to tolerate the consequences. Therefore in our statements related to clients' legal status, furthermore in the legal unity procedure conducted by the Supreme Court, we analysed in detail the significance of public participation, the Hungarian and international regulation and the desired directions of the development of legislation.

III.9. PARTICIPATION IN SHAPING THE LEGAL REGULATION

Our individual and general investigations did emphatically include the analysis of the legal regulation serving as the cases' background, thus our statements are many times accompanied by legislation proposals too. Besides a number of other topics we have indicated the necessity of modifying laws for example equally to properly operate public water utilities (and to protect the drinking water reserves this way), to conserve the genome wealth, to develop the Danube's navigability in a sustainable way, to protect the population against noise, to safeguard the protection level of our natural values. Furthermore, to enforce environmental interests we were involved in revising for example the regulation on waste management, on air protection and on the capital's conurbation. We have requested the Constitutional Court for a subsequent supervision related to the municipal spatial planning tools of Páty and Dunakeszi, as well as to the legal regulation of cultural festivals.

III.10. ASSERTION OF CLAIMS OF PUBLIC INTEREST

The provisions on the Parliamentary Commissioner for Future Generations were created by the Parliament in 2007 through the amendment of the Ombudsman Act. The legal regulation has been passed with a new approach, according to the international and domestic development of legislation. Based on the advanced concept of primary right protection, the amendment has established a wider and more progressive sphere of authority for the green ombudsman than other commissioners have. Such a new circle of activity is the assertion of claims of public interest, which is indispensable to protect the primary right to a healthy environment on a high level. The start of court procedures, especially the passing of the court resolution in a case can be an obstacle for the investigation of the other three Hungarian ombudsmen. On the other hand the Parliamentary Commissioner for Future Generations may launch civil and administrative lawsuits as well, and may participate as an intervening party in such cases initiated by others.

The essence of the assertion of claims of public interest is that the protection of the environment in the widest sense should also be guaranteed, as although it is a value to be preserved, but it cannot represent itself. So this competence can be qualified as the institutional protection accomplishment of protecting primary rights. It creates the opportunity, even leaving us with the responsibility to represent certain legal issues and interests that determine fundamentally the enforcement of the right to a healthy environment, even at the Supreme Court.

The authorities' legal practice, the operation of public administration, is fundamentally influenced by the judicial practice. Therefore the activity of the ombudsman cannot be effective enough if it covers only the public

administration, but cannot influence the judicial statutory interpretation with its professional opinion. The other ombudsman's activities (individual and general investigations, legal and environmental science researches, professional co-operations) guarantee the experience and knowledge to an extent that allows the FGO to conceptually influence the environmental administrative and civil law practice. The representation of abstract, principle level protection and the way of thinking provides an opportunity to judge the individual cases in a way that rests on deeper theoretical foundations and takes into account further intersectoral, environmental policy and environmental scientific correlations as well. Also in the field of enforcing international and EU law, the commissioner has a particular sphere of authority, where his task is especially to promote the application of EU law in Hungary. This has obviously been of an extraordinary significance not only in regard to the operation of public administration, but also in regard to judicial practice, as certainly, for the time being, this is absolutely not a routine task yet for the domestic legal experts.

The ombudsman's litigation activity is at the same time the assertion of claims of public interest. It is not treating individual injuries of interest, not supporting a party or group that is unable or is less able to protect itself (although such specificities obviously play a role in selecting the cases), not influencing individual conflicts, legal disputes of minor significance. The representation of public interest has to be provided in the single cases. The FGO's participation is justified in lawsuits, where questions of theoretical significance emerge and the protection of such priority interests has to be assisted, which fundamentally determine the general enforcement of the primary right itself. Considering all this it is of extraordinary importance that the Ombudsman Act provides for the opportunity of participating in administrative lawsuits as well, not merely that of intervening in civil lawsuits.

Already in the first two years of the operation of our office we have taken part in several lawsuits, where the right to a healthy environment required special protection. In all these procedures theoretical legal issues emerged, the judicial interpretation and decision-making of which determines basically the development of legal practice. We expressed our position in regard of the application of EU law; the best available techniques; the extent of exploration of the facts; the practical enforcement of public participation; the legal classification of bogs; and the definition of the notion of odour. Simultaneously our intervention was justified by priority environmental policy interests, such as the safeguarding of aquifers, protected natural values, world heritage sites and the health of the population in general.

Our office receives several requests to intervene in lawsuits and we judge these taking the things above into account. So far the commissioner has intervened in four administrative and one civil lawsuit, and once we requested to repeal an administrative resolution as a party in a lawsuit. With our actions we helped the population of Pécs, and of the valley of the River Sajó to win their case; furthermore we contributed to conducting a new procedure in order to protect the marsh of Dunakeszi. The Supreme Court has passed its judgment on the

issue of the NATO–radar on the hill Tubes with an argument that was identical in many respects with our official position.

In certain fields of environmental law, our involvement in the court procedure was justified most of the times by the examination of general questions; system faults of legal practice; and in regard to legal interpretations, which can be concluded from the individual complaints received. Our office often faced conflicts, when the environmental interests became entangled in irreconcilable contrast with each other. This is how the general environmental interest attached to the utilization of hazardous waste conflicted with the right of the people, who live in the vicinity of the facility performing this waste processing activity, to clean, odourless air. We took part in a litigation procedure, the subject of which was to resolve the conflict between the absolute compliance with the international defence obligations of Hungary and the access to healthy drinking water. In another procedure, the economic interests of the investor and of the municipality adopting the project contrasted with the protection of nature reserves. In these cases we thought our task was to formulate general statements on the primary law level.

III.11. THE COMMON HERITAGE OF MANKIND AND THE SPECIAL PROTECTION OF NATIONAL WEALTH

The national genome richness, the cultural heritage and the drinking water treasure, as parts of the national wealth, require the state to assume increased responsibility. All these things are national strategic issues that influence fundamentally the essential conditions and environment for the present and future generations. We have drafted a few fundamental requirements for managing these values in our related statements. The experiences of our examinations served as the basis for formulating the claim that in the new constitution the foundations of protecting national wealth should also be determined and enshrined.

Our investigations represented help to save the domestic fruit genome, and in general to raise the increased government attention needed to conserve the genetic wealth, to protect the world heritage of Tokaj and to operate without further disturbance the public water utilities on a professional basis.

Our experiences have led us to recognize that it is essential to make our environmental values and natural resources constitute part of the national wealth. Therefore in our proposals drafted at the request of the Special Constitution Preparation Committee and later on of the Committee on Sustainable Development of the Parliament, we took the stand to settle the issue of national wealth in the new constitution. We consider it necessary that the legislature should determine the circle of wealth elements belonging to the collection of the national wealth and, in course of this, special attention should be paid to the environmental values providing for the essential conditions of future generations. This is why it is important to declare in the new constitution that

the state is obliged to manage in a highly responsible way the national wealth comprising of our environmental values of strategic importance. Therefore we suggested specifying that "the state is bound to manage the national wealth securing the interests of future generations". In our opinion, by acting in this way it can be guaranteed that the state can be free to dispose of the elements of its property, which need to be negotiated to perform the state duties, in such a way that this does not violate the interests of present and future generations. However the protection of property elements of strategic importance should be secured through legislative guarantees.

The protection, respectively the destruction of the environment is realized through the attitude, awareness and consciousness of individuals. Inasmuch as the conservation of environmental values, especially the commitment to clean air, drinking water, soil, biodiversity is a common interest, so therefore it is a common responsibility too. This is why we suggested, beyond the items mentioned above, that following the formulation of the right to a healthy environment and closely related to this, the new constitution should contain a specific provision declaring that protecting the environment is the duty of everybody. Formulating this obligation in the constitution represents the acknowledgement of individual and joint responsibility assumed for the future, by which the whole society is imbued. Furthermore it expresses that the right to a healthy environment is not only a license either, but it evidently implies the obligation of conserving the environment as well. These proposals were accepted by those drafting the constitution and therefore the heritage protection elements, suggested by the FGO, have been incorporated in the new constitution of Hungary.

III.12. THE INVESTIGATION OF THE RED SLUDGE DISASTER

The red sludge disaster of Kolontár, a village in mid-western Hungary, requires special attention in many respects. It throws a light on the extraordinary significance of the environmental principles, especially those of prevention, precaution and "polluter pays". The catastrophe made it obvious that environmental protection is a field pervading the complete system of legal regulation, it cannot be interpreted in any narrow sense. The disaster requires that limited mindset views and interpretations should be replaced by the complex provision for the protection of environmental interests and by shaping the sectors of construction, water conservancy, land use, mining, disaster prevention and so on, according to environmental sensibility and views. Both in the legal regulation and in the authorities' legal practice the solutions resulting in the higher level protection of the environment should be enforced. In our first statement on the case we pointed out that it was also the lack of this attitude that led to the disaster, with the construction authorization and supervision issues investigated by our office so far, none of the sectors were striving after establishing their competence and performing their duties completely in the past decade.

IV. STRATEGIC COMMUNICATION

The use of the notion of strategic communication refers to the endeavour of our office to utilize the various communication channels in a consciously planned way, allowing them to strengthen each other. Through this we would like to ensure that the following primary messages reach the target: the representation of future generations' right to a healthy environment means not only complying with the prevailing law and order of the given territory, but its supervision, constant development as well. Reflected in the scientific results about the environmental, social, and economic systems and their interrelations, we should reconsider again and again what legal and other instruments would help to secure this primary right in the community, institutional and individual decisions.

IV.1. DOMESTIC RELATIONS, EVENTS

Ever since our foundation we have considered our basic task the systematic exploration of the environmental problems of the Hungarian society, the clarification of reasons and solution possibilities. Therefore we are in constant connection, with actual exchanges of information with the most important actors of the society, the NGOs, churches, professional and scientific institutions, the representatives of the economy, as well as with the political, governmental decision-making and administrative organs.

In Hungary ombudsmen are parliamentary organs, so it is natural that the maintenance of the relationship with the Parliament is the most important for them. The official form of this is to prepare and submit the commissioners' annual reports. The Parliamentary Committee on Sustainable Development issued a favourable judgement about the Future Generations Ombudsman's (FGO's) first report on 2008–2009, while in 2010 we maintained a continuous working relationship, prepared studies for the committee and participated in their meetings when discussing cases of priority. We were permanently invited to the sessions of the National Council for Sustainable Development, the environmental policy

consultative body of the Parliament, which consists of politicians and leading representatives of the economy, the sciences, the churches, the municipalities and the NGOs; and we established and operated together with the council the Social Awareness Working Committee. Of the governmental bodies our strong relationship with the Ministry of Rural Development, that is responsible for environmental protection and agrarian environment, is the most natural. Nevertheless we had several successful negotiations with the department responsible for education and for the conservation of world heritage. The colleagues of our office regularly participated at the sessions of the trilateral (science, economy, NGOs), 22-members governmental consultation body, the National Environmental Council.

Beyond the organs of the Parliament, non-governmental organizations serve as a point of comparison for the FGO, they are our most important partners and even the establishment of our office can be linked to a NGO initiative. We organize two meetings a year with the environmental organisations, where we discuss our work schedule and our annual report with them. We also attended several events organized by them, and we were partners with the NGOs in creating such meetings. In 2010, the FGO's relation with the various Hungarian universities and research institutions has become even more vital than in the previous years. Many institutions cooperated in our projects, common events were also organized including research and our colleagues were teaching at universities. We tried to strengthen further our working relationship with the courts, the attorney's departments, the law enforcement organs and the churches through trainings and conferences.

On our programmes we had more than a thousand guests in 2010. This year the Parliamentary Commissioner for Future Generations undertook the patronage of ten events, mainly ones trying to promote energy saving, decrease the emission of carbon-dioxide and to develop environmental awareness in consumption habits.

IV.2. EDUCATION, AWARENESS RAISING, MEDIA-COMMUNICATION

In the field of education, awareness raising, media-communication we have assigned a double task for ourselves. On the one hand, in the field of education and communication we contribute to incorporating the attitudinal and knowledge conditions to support the shift towards sustainability. On the other hand we consciously disseminate these messages to demonstrate our results, to raise public awareness and interest in the problems revealed and to improve the environmental consciousness of the society. We consider it important to develop the system-level knowledge underpinning the future-oriented thinking; furthermore this strengthens the debating culture and the basis for responsible participation as well. To this end we make proposals in the processes of regulating educational communication and of creating strategy

on both Hungarian and European levels. Furthermore we conduct a professional dialogue with the dominant actors within education and communication, and in several cases we undertake cooperation, patronage in meetings, participate in programmes, furthermore we ourselves organize such events and teach in higher education institutions.

The FGO's active participation in almost a hundred-fifty events in 2010 provided us the opportunity to make the processes threatening our environment and the essential conditions worthy of humans to be realized, discussed and moreover to expound in dialogues our opinions affecting many stakeholders. The other important message is that the networking and the iterative working practices applied by the FGO may be fruitful in understanding and solving the environmental conflicts. In 2010 our office organized, on its own initiative, seven major conferences, seminars and in addition two meetings with NGOs. Furthermore, together with other organizations, almost a dozen professional events were scheduled. We have discussed, among other issues, the results of our air quality protection and noise prevention examinations with the experts concerned. We also invited the people dealing with the Danube's various ecological services to a roundtable discussion. Organized individually or in partnership we provided opportunity to start or continue dialogue with prominent lecturers with international reputations, whose work we consider of high significance not only for the domestic profession of environmental protection and environmental education, but for the whole of Hungarian science.

To the concept of the Act on Public and Higher Education, issued for social debate, we drafted a proposal in order to consolidate the task of strengthening environmental consciousness on the level of legal regulation; our proposal was taken into account. We participated in the expert group established to elaborate the UNECE Teacher Competencies for Education for Sustainable Development professional material.

The most generally known tool of communication is the media, through which we presented information on our major statements and examinations requiring immediate intervention, with the help of press conferences, press breakfasts and press releases. The commissioner and his colleagues are more and more often interviewed by the press on environmental legal or environmental policy questions.

IV.3. YOU MUST BE THE CHANGE...

... you want to see in the world – sounds the well-known quote of Mahatma Gandhi. We are convinced that every institution, including the FGO as well, sets an example for all the partners and clients through its operation. The equipment and operation of our office take into account the environmental aspects, which we even try to keep continuously on the agenda for the decision-makers so that in the course of the planned renovation of our building, environmentally friendly construction, insulation, heating etc. solutions should be applied. As

with its communication tools listed above, our office would like to contribute to the environmental conscious decision-making that feels responsibility for the future, to the spread of system-thinking and to the development of cooperation culture –so it is important that we apply these ideas in our own operation as well. To this end we pay special attention to the professional development of our colleagues, to form the common understanding and shared language, and this is why we occasionally organize “brown bag” lunches, joint programmes with other organizations. We invite our colleagues or external researchers to lecture at these meetings. Furthermore we do encourage co-operation and common projects across our departments. In the case of such a young, unique institution that serves as an example for others, the continuous self-evaluation, the external-internal sharing of experiences is not only the guarantee of good operation but a social duty as well.

Almost one third of our staff of 34 was invited to join the new government, when it was formed in the middle of 2010. The majority of the colleagues leaving our office were hired by the newly established or transformed institutions, mainly in leading positions (one deputy state secretary, one ministerial commissioner, three heads of cabinet and several department heads were appointed from our ex-colleagues). The transformation of this extent provided an opportunity, even forcing us to evaluate our operation so far, to learn from the results and deficiencies and to formulate together the steps of further development. Based on our experiences of two years we reconsidered, made the structure more sophisticated, re-examined the leaders’ decision levels, and the motivation system.

Our credibility is confirmed also by the procurements policy, demonstrated in the environmentally friendly equipment of the offices and the organization of our events with a similar approach. We try to convey this attitude and we initiated its enforcement throughout the building where we are located.

IV.4. WHAT HAVE WE LEARNED IN 2010?

With a metaphor taken from the world of physics, our results referred to above characterize our kinetic energy: having a given weight and a given speed these are the impacts we could reach. But what about our potential energy, what will we be capable of in the future? Our domestic and international professional fame and recognition have without doubt increased significantly in 2010, though now the FGO is not reckoned as a novelty any more as it has taken its place in the institutional system.

Nevertheless from the favourable reception of our statements and from the changes achieved through them, we can draw the conclusion as well that gathering the facts, exploring them, and their comprehensive analysis does have a significant practical impact. The individual elements of the system combine and strengthen each other, the convincing force of system-like approach derives from this. We try to increase this with interdisciplinary research conducted

together with many partners, like the ones we have carried out in the case of the Danube, the protection of air quality and the prevention of noise and in several other cases. Besides improving the standard and impact of our statements, this cooperation has enlarged the knowledge and methodological experience at the disposal of our office, not mentioning the wide network of professional relationships that is confirmed by the successful statements too. Trust is nothing else but the experience of successful common activities, and on this basis we can say – and we really feel so – that after several hundred encounters we do trust the scientific and civil professional workshops, with which we conducted mutual co-operations in recent years. We would also conclude from their feedback that we can be sure that they feel the same way about us.

One can learn a lot from single cases too. However the experiences gained from the several hundreds of cases processed by our office combine again and again into a systematic understanding. The cases of the nuclear cemetery of Bábaapáti and the red sludge disaster of Kolontár, but equally the “Hungarian Dakar”, the Hungaroring and the Red Bull Air Race have something in common. In each of these cases we can find serious legislative and legal practice deficiencies that cannot be characterized otherwise than being blank areas in the Hungarian environmental law. These are blank areas on fields which ought to have a social priority and therefore both the legislator and those applying the law may feel it necessary to close their eyes even over the most obvious injuries to the law and order.

To get to know, to explore the system of environmental legislation and legal practice is our primary task and in 2010 we made a significant progress. We hope to have the opportunity to convert this knowledge into “kinetic energy” even more efficiently in the next years, so that we can protect the health and environment of present and future generations of the communities affected.

V. INTERNATIONAL ACTIVITIES

The Ombudsman Act has empowered the Parliamentary Commissioner for Future Generations (or Future Generations Ombudsman – FGO) with very powerful international competences. Under the act the commissioner takes part in the governmental decision-making related to European Union issues and expresses his opinion on motions related to the ratification of international agreements on environmental protection, nature conservation and the protection of heritage. The commissioner participates in drafting the implementation reports of international treaties, as well as following with attention and estimating the impacts of the implementation of international treaties in Hungary.

V.1. PARTICIPATION IN DECISION-MAKING ON EUROPEAN UNION ISSUES

We were limited in practicing this competence, we have applied this opportunity provided by the Ombudsman Act in a very few cases. As we described in more detail in our annual report on 2008–2009, the structure and practice of Hungary's foreign affairs policy can adopt the new legal obligations concerning this competence only uncomfortably. In this context, as we shall see, the FGO's competence related to European Union issues is becoming respected gradually and therefore we have gained a more and more serious role in shaping and representing Hungary's community policy.

We have drafted detailed observations and recommendations in connection with the European Commission's statement titled "The Future of Common Agricultural Policy Towards 2020: Managing the Challenges of Food, Natural Resources and Territory".

At the end of 2010 the Ministry for Foreign Affairs of the Republic of Hungary and the Ministry of Rural Development have called upon the commissioner to provide experts for the government to manage the Hungarian EU Presidency in the second half of 2011. In the framework of this cooperation the head of the FGO's Strategic and Scientific Department chairs the meetings of the Working Party on International Environment Issues in the course of the preparation

for the 26th session of the United Nations Environment Programme Governing Council (UNEP GC). During the session of the Governing Council, our colleague carries out the coordination and facilitation of EU negotiations concerning the UNEP GC resolutions. Furthermore he represents the EU and its Member States in this issue in the speeches and disputes at the Committee of the Whole.

The commissioner has been invited to participate in and to speak at the informal Environmental Council meeting of the EU, held in March 2010 in Gödöllő. We support the EU Presidency with expertise at the meetings of the Environmental Council, and at the high level session of the UN Committee for Sustainable Development, to be held in May 2011.

Furthermore upon the invitation of the Ministry of Rural Development we have participated in the preparatory works of the Hungarian EU Presidency's tasks related to the Aarhus Convention, in cooperation with the ministry. Still related to the preparation of the Presidency one of our colleagues attended the meeting of the EU Council's Working Party on International Issues (WPIEI), where the Belgian Presidency passed on the tasks for the Hungarian experts. Moreover our colleague prepared two analyses for WPIEI on the topics of "Adhesion of Third Countries to the Convention" and "The Legal Status of the Convention's new implementation guideline".

At the request of the Ministry of National Resources, we were involved in commenting on the Commission's Conclusion for European Sustainable Development negotiation documents and in drafting the final text that was passed at the meeting of the European Union Council's Committee of Education, Youth, Culture and Sport on the 19th of November 2010.

V.2. COLLABORATION IN THE PREPARATION OF NATIONAL REPORTS ON INTERNATIONAL TREATIES

According to Article 10 (2) of the Aarhus Convention, at their meetings, the Parties shall keep under continuous review the implementation of the Convention on the basis of regular reporting by the Parties. The national reports are discussed by the Meeting of the Parties. The latest report had to be drafted by the Parties by the end of 2010. The reporting period covered the years 2008, 2009 and 2010. In this period our office conducted several investigations in connection with public participation on demand of NGOs and ex officio as well. Thus, based on our statements, we could contribute to the national report with numerous remarks and supplements. The Ministry of Rural Development has accepted almost all the supplements and several times indicated in the text of the national report that the author of the actual paragraph is not a governmental institution.

Generally we noted that during the reporting period legislative changes had occurred which have reduced the existing public participation possibilities in environmental procedures and in other procedures relevant in this respect.

We have completed the national report about the office's activity to encourage public participation: we presented, among others, the commissioner's competence concerning the investigation of complaints related to environmental issues. We mentioned our training organized for administrative judges on European Union legal topics; our meetings with NGOs; and the package of environmental education propositions, prepared in cooperation with the National Council for Sustainable Development. Furthermore we described the working group, established together with NGOs, the industry and the authorities, for the amendment of the implementation of the Aarhus Convention in nuclear issues.

V.3. ACTIVITIES AIMED AT FOLLOWING THE ENFORCEMENT OF INTERNATIONAL TREATIES

Our office paid special attention to the enforcement of European Union law equally in the course of its examination activities in individual cases and in commenting on laws. Considering that between 80–90% of the Hungarian environmental legislation is coming from the European Union, the proper interpretation of EU law by the Hungarian authorities, including the courts, is particularly important, because this is the only way to ensure their proper enforcement, alongside those of the related Hungarian acts. Therefore in several cases we called the authorities' and ministries' attention to the judgments of the Court of Justice of the European Union, being the primary sources of interpretation of the EU law.

However our activity was not restricted to revealing infringements, as we endeavoured to promote the proper application of the EU and international environmental law as well. This was the purpose of the two training sessions we organized in cooperation with the Association of Hungarian Administrative Judges, especially for judges, public prosecutors and administration experts, on EU environmental law issues. We also aimed at this with our role in the working group dealing with the implementation of the Aarhus Convention in nuclear issues.

Priority investigations on the proper enforcement of EU and international law

Authorisation problems of projects intervening in the environment, in the light of EU law, with special regard to tracking establishments

As we have established in our previous annual report, the FGO initiated an ex officio investigation related to the authorisation of projects intervening in the environment, in order to reveal the problems related to EU law. The

outcomes of this investigation, completed in 2010, served as a basis for further statements.

We could assume, based on the available information, that certain authorities do not consider the application of EU law to be their task. From their point of view the adaptation of EU law is a duty of the national legislator, as the application of EU law does not impose tasks on the authorities. Therefore should the legislator not transplant an EU directive fully or precisely into the Hungarian law, then the authorities cannot correct it, due to their lack of competence.

We have examined, among others, whether the environmental impact assessment (EIA) could be neglected, in cases where a specific activity does not reach the thresholds and other parameters of absolute effect, set in the Hungarian decree on EIA. We have analysed also, if the EIA could be neglected in the case where a track project is isolated in time and/or space and is carried out under the thresholds set in the decree on EIA (these are the so-called critical estimation problems).

In the statement we called attention to the fact that the relationship of EU and national law is determined by the principle of the primacy of EU law, that is in case of the conflict of national and EU law, EU law has primacy. It is the duty of the party applying the law to make sure that in the case of a collision of the national and EU law the authorities should apply the provisions of EU law. Any authority's attitude that due to their lack of competence they do not consider it to be their duty to apply the EU law is absolutely unacceptable. The application of EU law is not only a right of the authorities – including the courts – but it is their obligation too.

The legal framework for the EIA is provided in the European Union by the EIA Directive, while in the Hungarian law it is covered by the Act on Environmental Protection and the Decree on Environmental Impact Assessment. Considering that the EIA Directive and the decree on EIA do not overlap completely, in many cases the authorities interpret the existing Hungarian legal regulation in a narrow sense, in relation to the EIA the obligation for the direct application of the EIA Directive and the EU Court's case law against the Hungarian decree on EIA is clear and emerges especially emphatically.

In our statement we have highlighted that related to the interventions in the environment, thus related to the application of the EIA Directive, the Court of Justice of the European Union has established an especially strict interpretation on the complete enforcement of the EU law. According to the court, any project or investment has to be taken under examination, where it is expected to make a significant impact on the environment due to its character, size or situation. In judging the significance of the impact the considerations in the annex III of the EIA Directive are normative. The court says it is a consequence of the principles of prevention and precaution, as well as of the "wide circle of application and wide-range objectives" of the EIA Directive, that in course of judging the questions, one can not apply solutions, through which the member states or the authorities exempt project groups in advance from the obligation

of examination – emptying the EU law –, without even analysing if the given project has a significant impact on the environment.

Considering these things we have stated that regarding the critical discretion issues specified above, the domestic regulation and practice do not comply with the EU norms and with the court's case law. Therefore it is the task of the Hungarian authorities – inasmuch as a project becomes known to them, which belongs within the general category of annex II of the EIA Directive but does not come under the ruling of the Hungarian decree on EIA, where one or more phases of the project do not reach the threshold value specified in annex 3 of the domestic decree on EIA – to ensure the conduct of the preliminary examination of the project and in the case where a significant impact is probable, to carry out the environmental impact assessment. Moreover we considered it important to remind the authorities that if an investor requests the preliminary assessment of such a project, then the authority should not refuse this by referring to a lack of competence but should make sure that the project is properly examined.

The commissioner called upon the government to create without delay the harmony of the decree on EIA with the EU law. Furthermore the ombudsman called on the minister of environment and water management to have the environmental inspectorates and the chief inspectorate – as proceeding authorities – conduct the preliminary assessment and the environmental impact assessment where needed for all the ongoing and future activities that become known to them, if based on the case law of the EU Court of Justice, these are qualified as potentially obliged to undertake EIA.

Partly due to our statement, the competent ministry started to reform the domestic impact assessment law in order to make it fully comply with the EU norms. Significant favourable changes can be expected on the field of reducing the threshold values specified in the decree on EIA, especially in order to prevent the infringements resulting from breaking up the projects. Our office was involved in the amendment of the decree on EIA and we commented on the related draft.

Examination of the traffic development plans aimed at improving the Danube's navigability

A central issue of our examination was to establish the international provisions concerning the navigability of the Danube in order to decide whether the interventions aimed at further improvement of the river's navigability conditions (the depth of river bed and the number of navigable days) are in fact obligatory for Hungary or not. We had to consider specifically that these interventions may have an unfavourable impact on the other utilizations of the river (obtaining drinking water, agriculture, nature conservation, tourism, recreation etc.).

We launched our investigation based on the complaint of the WWF Hungary Foundation. The client objected to the preparation procedure and the content of the "Study for the Foundation of the Project on Improving the Navigability of the Danube" prepared by the consortium led by the Environmental Protection

and Water Management Research Institute Public Utility Ltd. (abbreviated in Hungarian as VITUKI). The study was focused on improving the navigability conditions of the Danube on the Hungarian section between the village of Szob and the southern frontier, particularly by liquidating the shoals and contractions impeding the navigation.

During the investigation of the complaint, the commissioner focused on mapping Hungary's international engagements and examining the related Hungarian regulation. Furthermore, in the procedure the green ombudsman assessed to what extent VITUKI took into consideration the provisions of the Water Framework Directive, and to what extent it analysed the relationship between the Directive and the project. The commissioner's office examined the European Commission's resolution determining the conditions for the EU support of the VITUKI study, focusing on the procedural and material law interrelations which constituted its background, especially the community law provisions concerning the development of the Trans-European Transport Network (TEN-T). The examination analysed the navigation parameters stated in the VITUKI study from both environmental and economic perspectives, and evaluated the economic foundations of the project, too.

In the regard of the Danube's navigability and the navigation parameters, the international background is provided by the AGN Agreement (European Agreement on Main Inland Waterways of International Importance) elaborated by the European Economic Committee of the UN, furthermore, based on the Belgrade Convention, the recommendations adopted by the Danube Committee (DC recommendations) without binding force, in regard to the resolution on the European transport network.

The AGN Agreement ordains for the Hungarian section of the Danube that it has to comply at least with the requirements of the ship class no. 4. The DC recommendations applied a different approach from the AGN Agreement; however, as noted above, these have no binding force. The decision on the development of TEN-T does not determine independent navigation parameters, but it orders as a minimum requirement complying with ship class no. 4 of the AGN Agreement. Consequently, in regard of Hungary, the normative, compulsory international rule is ship class no. 4.

The general classification of Hungarian navigable waters is determined by the decree of the Ministry of Environment and Water Management. The parameters specified in this decree significantly exceed the international minimum requirements described above.

So in the course of the examination we have stated on the one hand that the decree of the ministry does not comply with the international obligations imposed on Hungary, whilst on the other hand Hungary is not subject to any international obligation that would require establishing the navigation parameters in the ministerial decree. At the same time the state is free to decide whether to provide for the navigability beyond the regulation mentioned. However in our statement we called attention to the fact that project preparation examinations were not sufficient to make a well-founded decision in this regard. Especially

with regard to the fact that the VITUKI study mistakenly supposed the existence of an international obligation, it did not attach decisive significance to the ecological, economical and transport policy aspects in its conclusions. The interventions related to the provision of the Danube's navigability have, at the same time, a direct impact on the ecological condition of the river, therefore it is of essential importance to have the requirements of the Water Framework Directive completely prevail in course of planning the interventions.

Because of the deficiencies presented we have stated the existence of the possibility that – based on the inadequate analysis of the project in the respect of ecology, economy and transport policy – the state development of the Danube will be implemented to an unduly excessive measure and this will result in an infringement connected to the right to a healthy environment.

Based on all these comments, the FGO made a proposal to the minister responsible for traffic to amend the prevailing regulation according to the international requirements and we requested the minister to provide for our involvement in the legislation process. Moreover the FGO initiated a request to the minister to harmonize the VITUKI study with the requirements of the Water Framework Directive, and to consider the examination aspects specified by the Directive. The ombudsman's office also initiated another request that the minister responsible for traffic should examine the sound economic foundations of the project, especially the guarantee of effective utilization of state expenditure, including analysing to what extent the implementation of the plans would contribute to improving the competitiveness of Hungary. Furthermore the FGO suggested that the government of the Republic of Hungary should create a decree that provided guidelines concerning the harmonization of TEN-T projects, the coordination work, and establishes the procedures guaranteeing the consideration of environmental protection, nature conservation and water management interests.

We held several discussions on our statement with the Governmental Commissioner for the Danube strategy. In order to enforce the ecological interests, further examinations are in progress. Following the publication of our statement, the communiqué of the European Commission was also published on the EU strategy concerning the Danube region, which specified the maximum immersion depth in two and a half meters. This is in harmony with the international obligations determined in our statement.

Visit of the UNESCO-ICOMOS expert mission

In 2009, the FGO issued its statement concerning the straw-fired power plant of Szerencs, which was planned to be established in the buffer zone of the world heritage site of Tokaj. The statement analysed among others the harmony of the regulation in respect of the domestic world heritage sites with the World Heritage Convention. In 2010 the UNESCO-ICOMOS expert mission, that was visiting Hungary, initiated a meeting with our office in relation to this statement. The delegation was examining whether the power plant planned endangered the prominent universal values of the world heritage site.

The report prepared on the basis of the expert mission's visit confirmed our position and referred to it, as they argued that the power plant must not be installed in the territory planned, because such a power plant may have a negative effect on several characteristics which bear those prominent universal values of the world heritage site.

The report reminded everyone that the protection and management of the world heritage site should be strengthened and improved in order to have the objectives of the management plan, aimed at maintaining the specificities bearing the prominent universal value, reflected in the national and local (municipal) spatial plans. This way any major subsequent intervention can already be examined at its early planning phase from the respect of potential impacts affecting this prominent universal value.

Furthermore, related to the World Heritage Convention we note that at the request of the Office of the President of the Republic we have prepared an analysis on the probable international legal consequences of establishing the power plant.

The anomalies of procedures concerning Natura 2000 sites

In 2010 we also paid special attention to making the authorization procedures related to Natura 2000 sites comply with EU law. One reason for this is that the Natura 2000 sites are home to rare species and habitats, which are significant not only for Hungary but for the whole of the European Union as well. Our other reason is the relative novelty of the domestic regulation concerning Natura 2000 sites and its EU legal background. In our statements we called the attention of the authorities not only to the obligations ensuing from the Habitats Directive, but to the questions of interpretation that may be determined from the very rich case law of the European Union's Court of Justice, as well as in the guidelines of the European Commission. We conducted two examinations which established that the authorities were not proceeding carefully enough, when in the course of the authorization of a project or activity conditions were required which were not suitable to the conservation of habitats and species of community significance. In our statements we highlighted that the jurisprudence of the European Court of Justice applies consistently the precautionary principle for authorization procedures related to Natura 2000 sites. The court has declared in several judgments that national authorities may license an activity only if they make sure that it does not involve harmful effects endangering the integrity of the natural site affected. This is the case if we can declare without doubt that such effects will not occur, according to scientific examinations and with reasonable consideration.

Therefore it is very important to emphasize that the authorities have wrongly interpreted the Natura decree's provisions concerning effect assessment, when they issue a favourable expert authority statement referring that "the significant impact cannot be proved". According to the proper interpretation complying with the precautionary principle, licenses can be issued only if the absence of significant impact can be proved, that is the authority is absolutely sure that the project will not have significant unfavourable impacts.

We consider it as an important result that the Ministry of Rural Development fully agreed with our statement issued on the examination described above and with its central element, our EU law argumentation. Moreover, through an order the ministry has repealed the authorization of changing the utilization of a territory, which would have made possible the implementation of the project representing the destruction of several members of a species that is specially protected on the Hungarian and EU levels.

Deficiencies related to the strategic environmental assessment

In our statements we often note the omission or raise objection to the institution of the environmental assessment conducted according to the decree on strategic environmental assessment (SEA). The legal background of this institution is constituted by the EU law, more precisely the SEA Directive. Unfortunately the municipalities often omit in their spatial planning procedures the application of this tool that is excellently suitable for prevention or they conduct the procedure inadequately.

Other examinations aimed at complying with the international or EU law

In our statement issued on the case of the gene-bank of Érd we examined among other issues to what extent the domestic regulation complied with the Biodiversity Convention, with the FAO (Food and Agriculture Organization) Convention. The examination of the red sludge disaster handled the compliance with the EU waste management law as a priority issue.

Our activity aimed at promoting the proper enforcement of international and EU law

Aarhus Working Group – application of the Aarhus Convention in the cases related to nuclear energy

This working group initiated by the European Union, was designed to conduct national level dialogues to feed a European level discussion about the experiences of the enforcement of the Aarhus Convention in the cases related to nuclear energy. The Council of the European Union suggested in March 2007 “to conduct discussions on the risks and opportunities of nuclear energy with the participation of all the parties affected”. Following this the European Nuclear Energy Forum was established, with three working groups on the issues of “Risks”, “Opportunities” and “Transparency”. In the framework of the “Transparency” working group, ANCLI (Association Nationale des Commissions Locales d’Information – National Association of Local Information Commissions, France) was entrusted to coordinate an initiative on the practical application of the Aarhus Convention within the nuclear field. A further background to the initiative is the directive on nuclear safety, which has been passed in the meantime, which covers the requirement of transparency as well. Another reason for the dialogue was that concerns emerged related to the harmony of the EURATOM Treaty and the Aarhus Convention.

The dialogue in Hungary was initiated by the Regional Environmental Centre (REC). There are two levels for the discussion, a roundtable with wider participation and a smaller working group. The working group reveals the domestic problems, prepares analyses and proposals for the roundtable. The roundtable decides on the proposals of the working group. The members of the working group are the REC, the FGO, the Office of the Data Protection Ombudsman, the Hungarian Atomic Energy Authority, the Paks Nuclear Power Plant Co., the Hungarian Power Companies Ltd., the Environmental Management and Law Association, the Energy Club as well as the Hungarian Civil Liberties Union. In the second half of 2009 and in 2010 several working group meetings and one roundtable session were held.

Besides providing for the place of the meetings, our office fulfils several functions in the work of both the working group and the roundtable. Of these tasks we have to underline that FGO prepares professional background materials and owing to its independence plays a mediator role in the discussions as well as. Our office has analysed the materials of the so-called nuclear lawsuits, which have been dragging on for years. These procedures were launched by the NGOs in cases where their requests for information were denied by the authority. We have compiled our report titled "The Publication of Environmental Data and the Legal Regulation of Business Secrets" from the lessons of nuclear lawsuits, the analysis of the domestic and international, including the EU, legal environment for the working group.

In our report we have come to the conclusion that referring to business secret raises inevitably several questions of deliberation, the judgment of which over and over again in each case makes the access to information difficult, and ruins the public's confidence related to the performance of an activity provoking such high social sensibilities.

Our analysis and proposals were supported by the working group, so they were submitted to the roundtable as the common proposals of the working group. At the roundtable meeting organized in 2010, the highest level representatives of the organizations involved in the working group, several NGOs, the National Council for Sustainable Development as well as ministries were present. The roundtable expressed its acknowledgement of our document analysing the domestic problems and supported the proposals formulated in it.

The working group continues its work in 2011 too, by elaborating proposals to solve the problems revealed. We have to report the results from Hungary in the summer of 2011 in a European closing conference, where the member states summarize their results and make recommendations to improve the practical implementation of the Aarhus Convention in the nuclear sector.

Facilitating the revival of the Aarhus Working Committee

The NGO the Hungarian Network of Eco-counselling Offices turned to us with a complaint related to the operational deficiencies of the Aarhus Working Committee. According to the client the Ministry of Environment ordered the establishment of the working committee in December 2004. The committee was

operating rather accidentally in the client's opinion, only holding a single meeting in the Aarhus Convention reporting period from 2005 to 2008. Furthermore the NGO objected that they did not know of anyone at the ministry, to whom they could send their remarks related to the implementation of the Convention in order to have these remarks incorporated in the next national report.

In our letter we have informed the minister of the environment that based on the Act on the Proclamation of the Aarhus Convention, the minister of environment should provide for the implementation of the Convention. The point 2 of article 10 of the Convention requires the parties to prepare reports on the implementation. Based on the guidelines of the Convention's Compliance Committee regarding the reporting requirements, we called upon the minister of the environment to create the conditions for continuing the operation of the Aarhus Working Committee as soon as possible, considering that the next national report was due in 2010.

We regard it as a success that the minister of the environment informed the green ombudsman that in order to perform the coordination of the Aarhus Working Committee properly, the ministry would announce a competition, and the working committee will be convened out of turn. Since then the coordinator has started to work, contacted our office personally and the inaugural meeting of the committee has also been held.

V.4. INTERNATIONAL RELATIONS

Participating in international conferences

Our office was often invited to foreign conferences and other events. We tried to fulfil these invitations, especially as we were mostly considered not merely as audience, but as prominent lecturers. The social dialogue on the implementation of future generations' institutional representation has been started in several countries. The aim of our participation in such events was to promote these initiatives by presenting the FGO as an example to be followed.

In 2010 Mr. Sándor Fülöp was invited to Portugal to deliver the keynote speech at the international conference "Ways to legally implement intergenerational justice".

Upon the invitation of the Greek minister of education our colleague presented the circumstances of the establishment of the office, the commissioner's competence, activity and impact in Athens.

The green ombudsman introduced the work of the FGO in Poitiers (France) as well. The aim of this conference, organized among others by two renowned universities and UNESCO, was the joint discussion of philosophical and legal issues related to future generations.

In Slovenia the commissioner delivered a lecture at a conference on the relation of environmental law and human rights. This conference was organized by

the Slovenian human rights ombudsman, and was opened by the Slovenian President of the Republic and furthermore was addressed by the environmental commissioner of the European Union.

Cooperating with prominent partners

World Future Council

The aim of the World Future Council (WFC) is to have the decision-makers all around the world to make long term decisions that promote sustainable life and guarantee the respecting of future generations' right to have the opportunity to live in a healthy world. WFC is made up of fifty universally respected councillors representing the five continents of the world.

The organisation uses our institution as a model in its campaign aimed at the European level representation of the interests of future generations. In several studies the WFC has referred to the Hungarian Parliamentary Commissioner for Future Generations as one of the examples of institutionalising the representation of future generations to be followed.

For its fourth annual meeting the WFC has invited the Hungarian green ombudsman to Hamburg. The councillors elected Mr. Fülöp among the fifty councillors of WFC. At the meeting the commissioner delivered a plenary lecture on the circumstances of the FGO's creation, its network, strategy, successes and problems. The journal Der Spiegel also carried an interview with the ombudsman.

The European Commission and the European Council

The European Commission's Directorate-General for the Environment turned to our office at the end of 2010, raising the possibility of cooperation. Following this the head of our international department discussed the outlines of the cooperation in Brussels with the deputy head and two colleagues of the DG Unit Enforcement, Infringements coordination & legal issues. The negotiations will be carried on in 2011.

The European Council invited our office to take part in the preparation of the charter on shared social responsibility. The charter offers possible solutions for the questions raised by the acute multidimensional – economic, social, environmental, political – crisis of today. The draft calls the attention to the mutual intergenerational dependence, that is to the way that the present decisions fundamentally determine the future generations' existence and situation.

