ANNUAL REPORT OF THE COMMISSIONER FOR EDUCATIONAL RIGHTS ON ACTIVITIES IN THE YEAR 2002

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"When the hunter points a gun at the hare,
I am on the hare's side,
when the hare bites into a cabbage, on the cabbage's."

Elek Benedek

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Decree 40/1999. (X. 8.) of the Minister of Education (hereinafter Ojbr.) on the tasks and operation of the Office of the Commissioner for Educational Rights (Oktatási Jogok Miniszteri Biztosa Hivatala) requires us to present an annual report on our activities to the Minister. We think it important to publish this report, so that the public may also be informed about our activities. The Office began functioning on 1 December 1999 and our third report covers the period from 1 January 2002 to 31 December 2002.

INTRODUCTION

One of the challenges faced by the Commissioner for Educational Rights and his young and talented colleagues is whether it is possible to embed a new institution in the Hungarian system of public law, which is unprecedented in Hungary and in Europe as well. One of the peculiar features of ombudsman-type institutions is that they are created by governments to protect its citizens from governmental authorities. A further peculiarity in the context of the Commissioner for Educational Rights is that instead of authorities, his inquiries can be primarily targeted at unlawful decisions and actions of educational institutions providing public education services. As a result, the Commissioner for Educational Rights always stands on the side of the weaker party or parties, protecting them by utilising the tools of law rather than politics. In addition to personal skills, his effectiveness is determined by his independence from politics.

The procedures of the Commissioner for Educational Rights are affected by the different characteristics of the various fields of education. Our activities in the context of enforcing rights in higher education correspond to the classic role of an ombudsman. In these cases, we primarily examine one-time decisions and applications of the law by universities and colleges. It follows from the autonomy of higher education institutions that they have the right to establish their own frame of reference for numerous procedures. Their decisions and actions are usually documented in writing. Thus, with the majority of our inquiries documents are sufficient to form our opinion. When examining cases in primary and secondary education, our actions rather resemble conciliation. Decisions and especially actions in this field and in vocational training are less likely to be documented, their internal rules often mix laws with pedagogy, and are sometimes not compliant with higher-level legislative rules. Therefore, in addition to rectifying a specific violation of the law, we always strive to ensure co-operation between the affected parties, both with respect to the specific issue and in the future.

In order to maintain the trust of participants in education in the institution to which they turn for assistance in the enforcement of their rights, procedures must be unbiased and fair. When investigating a complaint, we always approach the other party before forming our legal opinion, thus making it transparent that all significant components have been considered and analysed. In each case, we strive to make our reasoning easy to understand, even for a citizen who is not conversant with law, while at the same time being well-grounded in law. This can only be achieved when exclusively legal aspects are considered in the course of a procedure and other interests are not allowed to influence our activities.

A characteristic potential for action on the part of ombudsman-type institutions is to draw up initiatives and recommendations. These do not have legal force, meaning that the addressed institutions are not compelled to act upon them. Our procedures must take this into account all along. One of our most important tasks is to generate an open, honest and professionally sound dialogue about the rights of pupils, teachers and parents. The entire process must be geared towards ensuring that the parties accept the initiative or recommendation emerging from the procedure as their own, that they accept the proposed solution – which was formed with their involvement in the course of the reconciliation process – and they implement the same voluntarily, without being forced to do so legally. In 2000 we issued 35 initiatives and recommendations, 51 in 2001 and 41 in 2002. The addressed parties, with two exceptions, accepted our dispositions in 2002.

The problem is not that conflicts arise in educational institutions, but that the opportunity and the will to resolve them are often lacking. In our procedure, special principles – the principles of conciliation in person – have been developed to tackle these situations. Here, the parties affected in the conflict work together, with our help, to identify all relevant circumstances. Our role is to provide the framework for efficient discussion and to clarify the legal background. This conciliation process is organised in such a manner that provides the parties sufficient time to hear each other out. Conciliation in person facilitates the identification of possible forms of remedy in the event of a violation of the law, and thus the parties affected by the conflict can contribute to finding a solution. They are thus involved in the procedure leading to the solution and accept it as their own. We are convinced that this form of con-

ciliation increases the possibilities for voluntary application of the law, since a solution that is reached together can have more permanent results than a decision of an authority enforced by legal means. This civilised and effective form of conflict management may create a demand for similar forums established by the educational institutions themselves. It is apparent from the cases brought before us that in most situations when the law is violated dignity is also injured. We regard the personal conciliation arrangement an effective tool in resolving conflicts, because this allows the parties to close the issue without their dignity being injured. For this reason, we continue to place much emphasis on reaching a situation at the end of our procedures whereby all affected persons feel that it was worth listening to the other party, that it was worth working together to find a solution in compliance with the law, and that it was worth resolving the conflict in a manner which respects the rights of the other party. Exposure to this sort of culture can improve the atmosphere in the institutions as well. In the coming years, we wish to follow the same principles and apply the same values in our activities.

In recent years, we have initiated several sociological surveys whose results we have discussed and will continue to discuss in the future. One survey examined the nature of school conflicts, pointing out deficiencies in legislation and the application of law. In order to be able to assist participants in education resolve their conflicts and prevent violation of the law in the future, we published a booklet in 2002 in co-operation with non-governmental organisations. In this publication we surveyed conflict management techniques that have been used successfully by teachers and pupils. Another study examined the relationship between schools and parents. A third provided us with an overview of the situation of pupils with special needs. In the near future, we hope to put the findings of these surveys on the agenda of professional events, and discuss them with numerous participants and communities in the field of education. With this, we would like to contribute to a better awareness of rights, to avoiding the occurrence of situations in which the law is violated, and to provide assistance in resolving conflicts in a lawful manner. Year 2003 will be the European Year of People with Disabilities. In view of this, we think it would be useful to organise an international conference. The aim of the conference will be to invite local NGOs, families and institutions to organise local events to discuss the problems they face. We are ready to publish a booklet based on the experiences collected in this process and which helps children

with special needs, as well as their parents, to learn about their rights and opportunities.

One of our on-going tasks is to make our services known and easily accessible. In addition to publishing our annual report, we regularly issue information about ourselves through the print and electronic media. Several media outlets have published studies, presentations and other informative material about our work, categories of cases and our experience. As of 15 March 2001, we can also be reached via the Internet at www.oktbiztos.hu, in both Hungarian and English. At the site, the most important information can also be found in the languages of the national and ethnic minorities in Hungary. Our annual report is accessible here, as well as information about the events we organise, our staff and contact information. Growing awareness of our web pages and our e-mail address is shown by the fact that in 2000, only five per cent of the complaints were received by e-mail, whereas this figure was close to one-third in 2001, and in 2002 half of the 711 were received electronically. In order to enable blind and vision-impaired participants in education to use our services, a summary of our activities, as well as our reports for 2000 and 2001 have also been published in Braille format. We have continued our tradition of setting up two-day temporary offices two or three times a year at various locations in the country. In 2002, such "open days" were held in Kalocsa and Sopron, with assistance from NGOs in both places. We attend forums to meet teachers, pupils, parents and university and college pupils. During our 'day of complaints', local citizens can come to us directly to present their complaints and ask their questions about education.

To ensure the Office's autonomy and protect the personal data of all those who address us, the complaints we receive are filed in a separate system which can only be accessed by our staff. Mail sent to us is forwarded to us intact by the central mail separating and opening service; and is opened in our institution. The Office is situated at an easily accessible location, on the first floor of the Ministry of Education, somewhat separated from other units of the Ministry. We have eight well-equipped rooms, which makes it possible for complainants to talk to our staff alone, if they wish. The Office is provided with the necessary technical equipment, along with all the conditions for appropriate work. In addition to the Commissioner for Educational Rights, seven officers, with the help of an administrative assistant, are available to

hear complaints. One of the officers has a diploma in teaching, three have law diplomas, while three have both. There are no special time slots allocated for consultation – citizens are heard upon previous notification in normal business hours, or beyond, if it seems necessary.

Ever since the start of our operation, we have placed much emphasis on ensuring that the full autonomy of our institution under the law is enforced. In year 2002, some amendments were made to the legal provisions concerning the Commissioner for Educational Rights. Following the change of government, Parliament amended the Public Education Act. One change was that the Commissioner for Educational Rights is now nominated by the Minister's consultative body, the Országos Köznevelési Tanács (OKNT, National Public Education Council). The role of the Minister of Education also changed in this respect, since now he appoints and dismisses the Commissioner for Educational Rights upon the proposal of the OKNT. With this step, the Minister of Education now shares the right of appointment with a council representing professional associations, thus restricting his former freedom of decision-making. We consider this change in the legislation the first step in ensuring wide-ranging autonomy for the Office. Following a procedure of application, the OKNT supported the extension of the mandate of the candidate currently occupying this post, and nominated him for appointment by the Minister. The Minister accepted the proposal and confirmed the Commissioner for Educational Rights in his position. The true winners, however, are pupils, teachers, parents, university and college teachers and students, who deserve a Commissioner with increased strength to assist them in asserting their rights. Whether further guarantees are given to strengthen the autonomy of the Commissioner for Educational Rights depends on the legislators. We provide the necessary experience.

It is an obvious sign of trust that the Commissioner for Educational Rights, who is at the same time the former and current holder of this post, has been allowed to continue his work. It is a common interest that the Office enjoy general trust, as the law can only work satisfactorily under such circumstances. Trust can be built through everyday work and through constant dialogue with all participants in education – an activity which does not and should not involve issues of day-to-day politics. It has, however, a serious democratic message: acceptance of the rule of law.

FIELDS OF EDUCATION

PUBLIC EDUCATION

Public education is one of the most extensive public service in Hungary. A large number of citizens are involved as pupils, teachers and parents. Due to the existence of compulsory schooling, participation in this service is not voluntary on the part of the pupils and parents. In addition to senior governmental officers, school managers and teachers, a growing number of parents and pupils consider education a very important public matter, and thus expect much more information in order to make responsible decisions. The Office of the Commissioner for Educational Rights receives an increasing number of questions which are not yet requests for our procedures to be implemented, only requests for information about rights and possibilities. We issue such information if the Commissioner for Educational Rights has already conducted an inquiry and drawn up a legal opinion about the given theme, or if the available information and the legislation are sufficient to give a clear answer. Most often, this occurs through the telephone. In comparison to earlier years, we are contacted much more often by telephone. In each case we place great emphasis on enabling the caller to decide whether, based on the information received, they wish to initiate the proceeding of our Office, and also on providing them with correct information on the legal background of the situation covered by their complaint and their possibilities for asserting their rights, even when the case does not fall into our sphere of competence.

We have mentioned earlier that the actions and decisions of public education institutions are less documented, and several decisions are not backed by a local regulatory framework. There are further characteristics of public education as well, one of them being that the participants in legal relationships in public education are the pupils, parents, teachers, heads of institutions, managers and finally the state. These participants are also connected to one another separately. Their relationships are characterised by mutual dependence, and all this significantly affects the enforcement of the rights of participants in education. Dependence is rooted in not only educational, but also labour law relations. We also cannot ignore the closed nature of the community, as, due to compulsory

schooling, the participation of educational players in this community is of an obligatory and mutually dependent nature. It is also important to note that one group of the players is more vulnerable than the others. Children and pupils have always been less able to enforce their rights and are more defenceless against the infringement of rights. The rights of children can only be fully enforced if adults take an active role in ensuring that this is so. In the context of public education, we receive submissions not only with respect to rights directly connected to education, but also basic rights of the educational players, specified by the Constitution and reaffirmed by the Public Education Act, as these become very vulnerable in the framework of mutual dependence.

HUMAN RIGHTS AND FREEDOMS

As emphasised a number of times in our earlier reports, the personal freedoms of participants in public education are fundamental constitutional rights which, with regard to their significance, are stipulated repeatedly by the Public Education Act as the main rights of educational participants. These rights are especially vulnerable in the world of mutual dependencies which exists in the schools, and can only be preserved with the co-operation and awareness of the participants involved in education.

We continued to receive many complaints in 2002 about the violation of human dignity, the right to privacy and the protection of personal data, and also many inquiries about the content of these rights. The right to human dignity is a fundamental constitutional right afforded to each person and thus each educational participant. This means, for example, that corporal punishment of pupils, and physical aggression against parents and teachers is forbidden, as well as the humiliation of any participant in education. Educational participants are entitled to the right to human dignity regardless of their age.

Pursuant to Paragraph (2) of Article 10 of the Public Education Act, the personality, human dignity and rights of children and pupils shall be respected, and they shall be protected against physical and mental aggression. Children and pupils may not be subjected to corporal punishment, torture, cruel, inhuman or humiliating punishment or treatment. The Office received complaints in year 2002 from parents making a grievance of corporal punishment against

their child by a teacher. In our opinion, the most serious violation of the law which can occur in an educational institution is physical abuse.

When a pupil behaves in an undisciplined manner and thus disturbs the class, the work of the teacher and the others in the class, the teacher may only apply those means of discipline whereby the law is not violated. In the course of teaching, teachers are free to decide which pedagogical method to use to discipline pupils. Such means, however, are subject to strict legal restrictions, in that there cannot exist a teaching situation where the only solution involves the violation of a basic human right. Therefore, teachers may only use means of discipline which are allowed by legislation, so as not to impair the human dignity or violate human rights of the pupils at school.

Our experience is that heads of the institutions consider corporal punishment a serious breach of duty, and seek to investigate relevant notifications of parents as thoroughly as possible. Often, once the investigation is completed, the heads of the institution take the necessary steps within their own competence with respect to the breach committed by a teacher, so that no similar events may occur in the future. The heads of the institution must consider all merits of the case when, as employers, they decide on the action to be taken with respect to the teacher who has committed a breach of duty.

> One parent claimed that the child was hit several time at school. The complainant claimed that on the last occasion, her partner was also an eyewitness when the child's teacher hit the child with a book with such strength that the little girl was dazed. The mother also thought the abuse to be related to the child's Roma origin. The principal started an inquiry about the parent's notification concerning the abuse of the child, and, having considered the facts, gave the teacher a warning. As the head of the institution started a thorough investigation of the case, we did not prepare an initiative, but reminded the principal of the above-mentioned restrictions of discipline.
> The child's Roma origin increased the sensitiveness of the case. In this respect we gave the following advice to the principal. In some schools attended by a larger number of Roma children, a practice has proved successful whereby the Roma parents choose one of them to act as a mediator between them and the school. This mediator is a person who knows the Roma families well and who is well aware of their position concerning various issues of school life, as well as any problems which might be solved by the school, and who regularly communicates these to the school. With this, the representative of Roma parents can be very helpful not only to the Roma families but also to the management and teachers working at the school. The mediator may thus eliminate mistrust between parents and the school,

> prevent misunderstandings, overcome obstacles in communication, and facilitate co-operation for both sides. Correspondingly, we asked the parents that if such a request is made by the school, they help the teachers find the person suitable for the role. (K-OJOG-56/2002.)

The Constitution protects the right to personal privacy. Paragraph (1) of Article 59 stipulates that each person in the Republic of Hungary has the right to good reputation, the privacy of home, and the right to protection of private secrets and personal data. Pursuant to Section e) of Paragraph (3) of Article 10 of the Public Education Act, children, pupils and pupils have the right to have their personal rights, especially their rights to the unobstructed growth of their personality, their right of self-determination, their right to free action, right to family life and their right to privacy, respected by the kindergarten, the school and the hall of residence.

Many conflicts may be generated when the teacher stops the flow of small private letters in the classroom during class – which disturbs teaching – by taking such letters away from the pupils. In the three years of our operation, mostly pupils and their parents have come to us with problems in this field. Naturally, teachers may apply disciplinary acts and steps when pupils behave in an undisciplined manner and disturb teaching by writing letters in class; depending on the seriousness of the actions, even a disciplinary proceeding may be initiated. This is governed by the rules set forth in the school's own rules. Educational rights are not violated when a teacher takes away letters from pupils in order to stop behaviour which disturbs teaching. When, however, a teacher not only takes the letters away but also reads them or reads them out, he or she violates the personal rights of pupils. (K-OJOG-16/2002.)

Also in year 2002, we had several cases which concerned the right to the protection of personal rights. We have found that this right can be impaired for any of the participants in education.

In one submission, the issue of protection of personal data was raised in connection with creating school web pages.

> A teacher was creating the school's homepage together with a pupil, and they wished to show the names and photos of the pupils, as well as the names and the timetables of teachers. They were told by the head of the institution, however, that the listed data may only be displayed on the school's homepage if the parents of the

pupils and the teachers approve. The teacher asked whether they need to ask the permission of the affected persons, and whether displaying the names, timetables and photos on the homepage constitutes a breach of the law.
Pursuant to Article 2.1 of the Data Protection Act, personal data are data which can be connected to a specific natural person (the affected person), as well as conclusions which may be made from these data with respect to the affected person. In the course of data processing, personal data maintain their status as personal data as long as their connection to the affected person may be restored. Pursuant to this statutory definition, the data items to be displayed on the school homepage, as mentioned by the teacher – the names, photos and timetables of pupils and teachers – fall into the category of personal data. Under Article 3 and Paragraph (2) of Article 83/B of the Public Employee Act, the name, position, categorisation details and the name of the employer of teachers may be published without the prior approval of teachers employed as public employees. Under Paragraph (3) of Article 3 of the Data Protection Act, other personal data of teachers employed as public employees, as well as all personal data of teachers who are not employed as public employees, and of pupils, can only be published (including placement on the school homepage) with the prior approval of those affected. We informed the complainant that when asking for permission, the aim of the handling of data needs to be accurately identified, and the data may not be used for any other purpose. Approval must be voluntary and may be withdrawn any time in the future. Should this happen, the data of the person withdrawing permission have to be deleted. (K-OJOG-69/2002.)

In one case, the head of an institution violated the personal rights of one of the teachers at the school by not observing data protection regulations.

A teacher's complaint was that the school principal had made an inquiry with the head of a higher education department, because the principal had doubts about the complainant's higher education diploma. The claim was that the principal's method of action constituted a violation of the complainant's rights as a teacher.
In public education institutions, employer's rights are exercised by the principal of the institution, who is also responsible for the lawful operation of the school. It is the principal's job to verify that the teachers employed in the institution possess the qualifications required by the Public Education Act. In our opinion, the law does not prevent the principal from seeking the opinion of the head of the department of the institution which issued the diploma.
In the next phase, our inquiry was targeted at finding out whether the principal respected personal rights and data protection regulations when requesting the opinion of the head of the department; more specifically, whether the principal violated the complainant's rights to the protection of personal data when supplying the teacher's name along with the teacher's qualification and the subjects taught. We found that pursuant to Paragraph (2) of Article 83/B of the Public Employee Act, of the records of the register of public employees, the employer's name, the public employee's name and categorisation details may be published without the approval of the affected person. Not included here, however, are the public employee's qual-

ification and the subjects taught. By supplying the teacher's name together with the teacher's qualification and the subjects taught (without the approval of the affected person), the principal communicated personal data without authorisation. Thereby the principal violated the right of the teacher provided by Paragraph (1) of Article 19 of the Public Education Act, that is, in the context of the their job, teachers are entitled to have their personal rights (including the right to the protection of personal data) respected. With a view to this, we initiated with the head of the institution that in the future, the principal respect the personal rights of teachers when fulfilling the job. The principal accepted our initiative. (K-OJOG-312/2002.)

Another question related to the personal freedoms of pupils concerned the issue of what objects the pupils may take with them into the school building.

In the context of the school's responsibility for objects taken into the school, the chairman of a parents' association asked whether the school may forbid pupils to take any objects not closely related to education with them into the school building. We answered by telling the inquirer that the case of objects taken in the school corresponds to the liability form 'special forms of deposit' under the Civil Code. Paragraph (1) of Article 471 of the Code governs the liability of baths, cafés, restaurants, theatres and similar entities, as well as cloak-room operators. In the literature and in judicial practice, the liability of schools for property taken by pupils into the school which are needed for school attendance and which the pupils cannot guard during teaching belongs in the same category. In judicial practice, the regulations on strict liability generally apply only to objects which people usually take with themselves to the facility in question. Thus, liability does not cover the loss, damage etc. of assets which were not needed by a client to use a relevant service or carry out a relevant activity. Liability does not cover, for example, valuable watches made of precious materials, or a larger amount of cash, bank cards or securities, etc. The latter do not qualify as objects which are needed to use the relevant service and which are essential to reaching the goal of the visit by the client. From this, it is obvious that the school is not liable for objects not closely related to education, and therefore, they may not be forbidden by referring to this non-existent liability. Pupils may take such objects with them, but only at their own responsibility.
The inquirer also asked whether the wearing of any jewellery may be forbidden at school on the ground that it may cause injuries. Pursuant to Section e) of Paragraph (3) of Article 10 of the Public Education Act, pupils may not endanger their own health and safety, or the health and safety of other pupils or the staff of the educational institution by exercising their rights. Under this provision, the institutions which forbid in their own rules certain dangerous objects do not violate the law. However, the decision concerning which objects are deemed dangerous requires individual consideration. Whether a rule is in accordance with the law or not can only be decided after collecting all facts of the case. One thing can be said for certain, that forbidding jewellery in general seems to give rise to concerns, as it is not reasonable to presume that each piece of jewellery seriously jeopardises the health of pupils and staff. (K-OJOG-171/2002.)

RIGHTS DIRECTLY RELATED TO EDUCATION

Rights rooted in the freedom of education

Articles 70/F and 70/G of the Constitution lay down that in the Republic of Hungary, everybody has the right to education. This is realised through public, general education compulsory and free primary school, and secondary and higher education accessible for all in accordance with their skills and the financial contribution of learners. The Republic of Hungary respects and supports the freedom of science and art, and the freedom of education and of teaching.

One primary manifestation of the freedom of education is the free choice of school, a right laid down in the Public Education Act. The actual meaning of this right is, however, not always clear for parents. Pursuant to Paragraph (1) of Article 13 of the Public Education Act, parents have the right of free choice of educational institutions. In accordance with the right of free choice of educational institutions, the parent may choose the school which best fits the child's abilities, skills and interests, the parent's religious belief, nationality or ethnicity. Parents are often confused about whether they can enrol their child with the school they like, or whether they must take the child to a school which is obligatorily allocated to them.

Local authorities may not restrict the parents' right of free choice of school, and may not limit the competence of the head of a public education institution with regard to deciding about the admission of pupils. The maintaining authority may only specify the catchment area of the school. Under Paragraph (1) of Article 90 of the law, the local authority maintaining the public education institution is required to specify the catchment area from which the admission of learners may not be refused by the school. This only means that the school is required to admit some pupils, and is not a specification of a single area from which admission is possible. Therefore, any decision or measure which hinders parents in exercising their right to enrol their children in the school of their choice is unlawful. In our opinion, the parents' right of free choice of school is also impaired when not all pupils may apply, if some children can not apply to a school of their choice. (K-OJOG-110/2002.)

Under the law, then, parents may send the application form of their children to any educational institution of their choice, as long as it is in the Republic of Hungary. Pursuant to Paragraph (1) of Article 66 of the Public Education Act, the head of the institution determines which pupils to admit. The principal must act in accordance with the relevant legislation when making such decisions. Under Paragraph (1) of Article 42, the school may set requirements as the condition of admission, but these may only be of an academic or group organisational nature.

> A parent wished to send her younger child to the same school as her older child, and made a grievance of the fact that the school refused admission for the younger child for lack of capacity. Having to escort the two children to two different schools was problematic for the single parent. As the older child liked to go to the given school and was progressing well there, the parent did not want to take the older child to another school. As the school selected by the complainant was not the school providing mandatory admission, and there was a lack of capacity in the school, the refusal was not unlawful. It is also not unlawful that, as a result of the decision, the two children will not attend the same school. Only the school providing mandatory admission for the catchment area where the children live (or stay) has a legal obligation to admit both children. (K-OJOG-281/2002.)

The right to free choice of school does not belong to those which cannot be restricted.

> A complainant asked us to provide assistance with enforcement of the right to free choice of school by his wife, who was doing her sentence at a detention facility located outside Budapest. The wife wanted to pursue secondary studies not at the local educational institution, but at one in Budapest. Section n) of Paragraph (1) of Article 36 of Decree-law 11 of 1979 on the execution of punishments and actions set forth that convicted persons have the right to conduct primary school studies, and if justified, also secondary and higher studies. Under Section f) of Paragraph (5) the right to education is restricted as a result of the imprisonment. The director of the institution may allow secondary studies, but is not required to do so. Consequently, no violation of the law was found. (K-OJOG-446/2002.)

In accordance with the provisions of Paragraph (1) of Article 7 of the Public Education Act, the constitutional right to the freedom of education includes the right of parents to decide about the form in which their child fulfils his or her obligation of compulsory schooling, that is, whether by school attendance or as a private learner. Both parents and heads of institutions have asked the

Office for information on the conditions for a pupil becoming a private learner. The parent shall notify the relevant intention to the head of the institution. The principal shall obtain the opinion of the child welfare service competent according to the domicile – or if none, then place of stay – of the child within three days of receiving the notification, in order to decide whether or not the arrangement would be detrimental for the child. When the principal deems that not fulfilling the obligation of compulsory schooling would be detrimental to the child, or the studies started in this arrangement cannot be expected to be completed, the principal shall notify the chief executive of the local authority competent according to the domicile – or if none, place of stay – of the child, who will decide on the form in which the pupil shall fulfil his obligation of compulsory schooling. Thus, the principal cannot unilaterally refuse the request, but when the principal deems that exercising this right would be contrary to the child's interests, the right to decide in the matter is transferred to the chief executive. (K-OJOG-488/2002.)

There is another way of becoming a private learner under the law. Pursuant to Paragraph (3) of Article 23 of Decree 11/1994. (VI. 8.) MKM, the expert and rehabilitation committee examining the child's learning skills, and the educational counsellor service have the authority to recommend that a child with special needs, or experiencing problems with adaptation, learning deficiencies or problematic behaviour, pursue his or her studies as a private learner. The expert opinion is a recommendation for the parent, and only becomes mandatory when accepted and signed by the parent. The school, therefore, cannot ever decide about making the child a private learner in place of the parent. A frequent problem is that, even though choosing to become a private learner is the right of pupils, the heads of institutions exploit the ignorance or fear of parents and decide about the private learner status of a pupil unilaterally, for example because of the pupil's behavioural problems. Becoming a private learner, however, cannot be a sanction for behavioural problems. When pupils are undisciplined, they may be subject to disciplinary actions set forth in the rules of operation and organisation, or a disciplinary proceeding may be invoked and the disciplinary penalties specified in the Public Education Act may be applied.

> One parent turned to us with the complaint that, pursuant to the principal's decision, his child must fulfil his obligation of compulsory schooling as a private learner, due to his behavioural problems. This was against the will of both the parent and

> the child. The documents provided to us supported the parent's claim. The pupil truly became a private learner, even though the expert and rehabilitation committee examining his learning skills issued a proposal for the academic year 2001/2002 that he should fulfil his obligation of compulsory schooling through school attendance. We found that the school's decision about making the child a private learner was unlawful, and initiated with the head of the institution that the necessary steps be taken to ensure that the child could fulfil his obligation of compulsory schooling in the form of school attendance. Upon our initiative, an agreement was reached between the parent and the school and the breach of law was remedied. (K-OJOG-504/2002.)

Concerning teachers, the freedom of teaching includes, among others, the following sub-categories. The teacher has the right to apply the methodology and textbooks of his own choice in teaching. Naturally, there are certain limits to this right which cannot be ignored. One of them is that the teacher must respect the pupils' right to human dignity, health and safety, and must follow the school's pedagogical programme, and at the end of the preceding academic year, must inform the parents about the textbooks and other tools which will be necessary for schoolwork. (K-OJOG-6/2002., K-OJOG-75/2002., K-OJOG-325/2002., K-OJOG-596/2002.)

Assessment and evaluation

The majority of complaints concerning evaluation were received from parents who claimed that their children were undervalued at school. Parents often have a different view of their children's educational performance than teachers, and therefore criticise the grades given by the teacher.

Pursuant to Sections e) and f) of Paragraph (1) of Article 19 of the Public Education Act, teachers have the right – in the context of their job – to assess the performance of pupils and evaluate their progress. This means that the grades received by pupils at the end of the term and at the end of the academic year are determined by the teacher, based on the pupil's work and grades during the year. When assessing and grading the work of pupils, the teacher has extensive freedom in both the methods used for assessment and the grades given. This autonomy of the teacher, however, is not unrestricted: the limits are determined by other provisions of the law, including the ones on the rights of pupils and parents, as well as the rules on the operation and internal pro-

cedures of the institution. We cannot take action in a case which concerns the actual grade received by a pupil from the autonomous teacher. But when the procedural rules of the assessment process – which function as guarantee – are violated, the Office can start an inquiry. (K-OJOG-267/2002., K-OJOG-306/2002., K-OJOG-331/2002., K-OJOG-422/2002.)

Pursuant to Section b) of Paragraph (1) of Article 48 of the Public Education Act, the school's pedagogic programme determines the school's local curriculum, and within that, among others, the requirements and manner of testing, as well as the manner of evaluating and assessing pupil performance.

> One parent turned to us with the complaint that in the school attended by her child, pupils in the eighth year have to sit a final exam in nine subjects, and the grade received for such exams are taken into consideration when the end-of-the-year grade is determined. We informed her that it is possible to require pupils in the eighth year to sit a final exam, which can involve the grading of such exams, when specified in the school's educational programme adopted by the teaching staff and approved by the maintaining authority. Both the grade given by teachers for the child's performance at the exam, and the manner of considering the grades received in the course of the academic year when determining the end-of-the-year grade may be different for various subjects. The principles of assessment, however, must be set forth in the school's educational programme (K-OJOG-282/2002.)

The autonomy of the teacher allows him or her to consider the grades with different weight when determining grades at the end of the first term or at the end of the year. As long as the procedure used for determining the grade is in conformity with the rules set forth in the educational programme, it is not unlawful if the grade given by the teacher does not correspond to the mean of the grades given in the course of the year. (K-OJOG-288/2002., K-OJOG-711/2002.)

Under Section a) of Paragraph (1) of Article 14 of the Public Education Act, the parent is entitled to be aware of the pedagogical programme of the educational institution and to receive information about its content. The programme must therefore be published. Pursuant to the provisions of Decree 11/1994. (VI. 8.) MKM on the operation of educational institutions. Schools are required to display their educational programmes in a manner which makes them freely accessible to pupils and parents.

A further restriction on the autonomy of teachers is their obligation to provide information. Under the Public Education Act, parents are entitled to regular, detailed and meaningful information on the progress of their children, and the teachers are also required to provide regular information to pupils and parents on the issues which are of concern for them. This means that teachers are required to inform the pupils and the parents about the grades determined, in a manner and at the time specified in the school's internal regulations.

> One parent turned to us with the complaint that her child received grade 4 for German at the end of the year. The parent felt this unjustified, and had expected grade 5 on the basis of the marks in the pupil's grade booklet, which were signed by the teacher.
> Our inquiry was not targeted at the grade itself, but at the question whether the parent received sufficient information on the progress of the child. The inquiry found out that the information in the class book and the pupil's grade booklet were not identical: neither the number of marks, nor the performance for which they were given (test, oral questioning) were the same. We concluded that the information concerning assessment was not in conformity with legal provisions in the institution. By signing the marks in the pupil's grade booklet, in our opinion, the teacher is responsible for ensuring that the information presented is true and correct and that they are identical with the information in the class book.
> With a view to the findings described above, we initiated with the head of the institution that the necessary steps be taken to ensure that in the future, the provision of information concerning grades occurs in conformity with the legal provisions in the institution. The school principal agreed to the initiative and regulated the manner of providing information about grades as follows. The performance for which the pupil received the mark must be noted by the teacher in the pupil's grade booklet. The class teacher must review the conformity of the grades in the class book and the pupil's grade booklet each month, and the deputy principal occasionally reviews that this is performed. (K-OJOG-331/2002.)

> One parent turned to us with the complaint that the school informed him of his child's bad progress only five days before the end-of-the-year conference of teachers when grades are discussed. Acting upon our notification, the school decided that in the future, parents whose child is expected to fail at the end of the year receive a written notice of the child's progress one month before the conference. (K-OJOG-417/2002.)

The provisions of public education institutions in terms of the institution's operation, and internal and external relationships are laid down in its rules of operation and organisation. This document contains the rules for informing parents about assessment and evaluation, including the manner in which par-

ents are informed of the principles of education laid down in the pedagogical programme and the method of calculating grades. In addition, the rules for the deadline for correcting tests and the procedure by which they may be viewed can be regulated here. (K-OJOG-177/2002.) The right of parents to sufficient information is impaired if they are not provided with adequate information concerning the principles of assessment, or the manner of calculation of marks, or grades given at the end of the first term or the end of the year. We have frequently found that conflicts between parents and the school are rooted in a lack of sufficient information. It is therefore important that parents and pupils are familiar with school documents, as these documents contain the rules for testing, the system of assessment, the subject-specific requirements and the conditions of progress. By making the educational programme, the rules of operation and organisation, and the school's own rules public, some frequent complaints of parents, such as that the high level of requirements causes a large number of subject failures, can be avoided.

Under the law, the parent and child have a right to legal remedy against the unlawful decision of a teacher related to assessment and evaluation. Under Paragraph (2) of Article 83 of the Public Education Act, the pupil or the parent may start a proceeding in the favour of the pupil with respect to a decision made by the school concerning the assessment and evaluation of the pupil's performance. This proceeding must be started no later than fifteen days from notification of the parent, or if none, then within fifteen days from being informed of the facts. The proceeding may be started on the ground that the decision was not based on the content of the local curriculum used by the school, or if the course of action was unlawful or violated the provisions concerning the legal standing of pupils. This proceeding for the verification of lawfulness is processed by the representative of the school's maintainer. Naturally, the right to human dignity must be respected in exercising this right of the parent. Namely, Article 19(1)a) of the Public Education Act stipulates that in the context of their job, teachers have the right to be respected in their person as a member of the teaching community, their human dignity and personal rights respected, and their educational activities valued and recognised. The proceeding in itself does not impair the teacher's human dignity, and teachers must subject themselves to it. The proceeding for verifying lawfulness also functions as a guarantee for the teacher, as the statements made must be proven, and thus the proceeding can clarify the situation.

> We gave this information to a teacher whose complaint was that he was accused by the parents of a pupil because of the worse grades given to the child, and the parents started a proceeding against him. (K-OJOG-139/2002.)

We received several questions asking how a pupil can be exempted from attending language classes after succeeding in an official state language examination in the given language. We informed the inquirers that pupils who have obtained a state language examination certificate must submit a request to the school principal asking to be exempted from attending the language classes. Under Paragraph (2) of Article 69 of the Public Education Act, the principal may exempt a pupil – upon the pupil's request – from attending compulsory school activities if this is justified by the individual skills and specific situation of the pupil. The head of the institution, however, has the right to consider whether the exemption is given. The teacher of the relevant subject is both entitled and required to assess the performance of pupils who continue attending classes. In the course of such assessment, the teacher is not bound by any examination certificate that the pupil may have. (K-OJOG-291/2002.) Exemption of a pupil from attendance at compulsory classes does not entail exemption from assessment. In such cases, the pupil must be tested at a grading examination before the teaching staff, on the date determined by the principal. The grading examination may be held at any time in the course of the academic year. The pupil must be informed of the date of the examination at the time of application. (K-OJOG-167/2002., K-OJOG-393/2002.)

Under the Public Education Act, it is not possible to review grades determined in a lawful manner, or to review the report card, but pupils have the possibility of sitting an examination before an independent examination board. (K-OJOG-195/2002., K-OJOG-338/2002.) The examinations before an independent examination board are organised by the institution appointed by the Országos Közoktatási Értékelési és Vizsgaközpont (National Public Education Evaluation and Examination Centre). This type of examination is heard by a committee comprising three members, none of whom may be a teacher teaching at the school where the pupil is enrolled. This might be a good solution in cases where the parents object to the grade given by a teacher because they presume there are personal dislikes and bias in the background. It might therefore be useful for the school to make public the rules for sitting an examination before an independent examination board.

Under the law, whether a pupil has the opportunity to take a repeat examination to improve a fail mark received at the end of the year depends on the number of subjects in which the pupil fails at the end of the year. If the number of fail marks exceeds two, the pupil needs the approval of the teaching staff to have the opportunity to sit a repeat exam. If, however, the pupil does not receive this approval, i.e. the teaching staff decides that the pupil may only continue his studies by repeating a year, then a repeat exam is not possible, and thus there is no possibility for sitting an examination before an independent examination board, either. The pupil must repeat the year. (K-OJOG-342/2002.)

A pupil received three fail marks at the end of year ten. At the end-of-the-year conference of teachers, when grades are discussed, the teaching staff decided that the pupil would not be allowed to sit a repeat exam. The parents submitted a request to the principal, asking for a revision of this decision. The principal noted his negative decision regarding the request submitted in his own hand, and signed it. The parents notified the Office that their request for revision was not processed in accordance with the legal provisions.

Under Paragraph (2) of Article 83 of the Public Education Act, parents have the right to start a proceeding in favour of their child to challenge a decision or action of the school. The parents invoked this right of legal remedy against the decision of the teaching staff which stipulated that the child is not allowed to sit three repeat exams in three subjects. Paragraph (5) of Article 83 of the Public Education Act stipulates that such requests for revision, submitted on the grounds of personal infringement of right, shall be examined by the school board, or, if no such organisation exists, by a committee comprising at least three members of the teaching staff. Therefore, the request for revision submitted by the parents was not processed by the school in a lawful manner, as the relevant decision was made by the principal alone. Following our inquiry, the school remedied the infringement under its own competence: the request was processed by a five-person committee in a lawful manner; it nullified the decision of the teaching staff and required the teaching staff to bring a new decision. Pursuant to the new decision, the pupil was able to sit the repeat exams. (K-OJOG-452/2002.)

Absence

In the context of the cases notified to us, we think it important to describe the statutory provisions related to absence during this year as well. Under Decree 11/1994. (VI. 8.) MKM on the operation of educational institutions, pupils absent from a class have to justify their reason for absence. The rules

governing the justification of absence have to be included in the rules of operation and organisation of the educational institution. Therefore, two things follow from the text of the law: first, any time when a pupil is missing from a class is considered as absence, and second, absence can only be considered to occur if the pupil is missing from the class. Under the statutory regulations, the primary obligation associated with absence from class is the justification of the reasons for the absence, with the requirement that the relevant rules are to be laid down in the rules of operation and organisation. If the absence is not justified, it is unjustified. When absence is not interpreted in conformity with the law, and when the rules of the institution contain unlawful rules as a result, this also endangers further educational rights. Under the law, unjustified absences entail serious legal consequences. Paragraph (3) of Article 75 of the Public Education Act stipulates that – with the exception of pupils of compulsory school age – a child's pupil status ceases when he or she is unjustifiably absent from compulsory activities of the school and this amounts to a certain time threshold.

Consequently, it cannot be considered absence when a pupil comes late to class.

> One parent turned to us with the complaint that her child, who – due to traffic problems and other reasons – was 6-8 minutes late for school, and could not go to the first class. She said that pupils who are late for school must stay in the teachers' room and join the others after the end of the first class. The principal confirmed that, in accordance with their local rules, pupils who arrive late are automatically banned from the first class, and thus they miss the entire class.
> In our opinion, pupils cannot be forced to be absent from an entire class due to being late, as this violates the child's right to learning. Also, absence has very serious legal consequences. Pupils who are late cannot be punished with having to miss an entire class and to bear all legal consequences thereof. The school may use other sanctions to punish lateness. Being late cannot result in missing the entire class, even if the reason for such absence is justified by the school. Consequently, we found that the relevant rules in the internal rules of the school impair the pupils' right to learning, and therefore we initiated with the head of the institution to take the necessary steps to amend the relevant sections of the internal rules, in order to ensure that the local regulations are in conformity with the law with respect to determining the consequences of being late from class. The principal accepted our initiative. (K-OJOG-593/2002.)

We received several inquiries, by mail and over the phone, asking whether a pupil can be expelled from a school because of being often late. The inquirers who turned to us claimed that pupils living in the countryside often arrive late

because of factors which they cannot be held responsible for, for example, traffic. As the idea and consequences of being late from the class are not regulated, they must be set forth in the school's rules of operation and organisation. Our opinion is that, because being late for a class is not being absent from the class, late arrivals cannot be treated as unjustified absence. For the protection of classes, however, other disciplinary actions, or even disciplinary proceedings may be applied as a sanction for being late. (K-OJOG-693/2002.)

> One parent requested us to conduct an inquiry concerning the fact that a disciplinary proceeding was started against her child, because the child had over twenty unjustified absences. The parent's objection was that in several instances, the child's lateness for class was considered as absence. The head of the institution, however, informed the Office that under the rules of operation and organisation of the school, late arrivals from class cannot be treated as unjustified absence from class, but repeated instances of coming late entail a disciplinary proceeding. From the documents made available to us, we established that the institution's rules of operation and organisation sufficiently cover the issue of sanctions for being late. We also established that in conformity with the rules, the school did not include late arrivals among the unjustified absences, and thus we closed the case for lack of infringement. (K-OJOG-319/2002.)

Sending the children out from class raise similar issues. We received numerous inquiries about this issue as well. The issue of undisciplined behaviour of pupils in class is a complex one, as in this way, the pupil not only fails to fulfil his or her own duties, but also disturbs teaching in the class, prevents the others from exercising their right to education, and hinders the teacher in doing his or her job. It is therefore justified that this behaviour is not left without consequences, but sending the pupil out cannot be used for as a sanction. In our opinion, a pupil may only be sent out from the classroom if this is necessary to protect the rights of others or the other rights of the pupil in question. In each case, the teacher has the right and responsibility to decide whether a pupil has to be sent outside. Irrespective of which minute of the class when the pupil is sent outside, this cannot automatically last until the end of the class, but only for the necessary period. Additionally, the supervision of any child sent out from the classroom needs to be ensured. (K-OJOG-28/2002.)

The case when, due to a large number of absences, a pupil cannot meet his or her duties of learning is governed by the provisions of law. In such cases, the pupil has been absent from a significant portion of the classes, the pupil's

learning achievement could not be tested, and thus teachers cannot determine the grade at the end of the first term or at the end of the year. Inquirers about this issue were given the following information.

Pursuant to Section d) of Paragraph (6) of Article 20 of Decree 11/1994. (VI. 8.) MKM, pupils whose total number of missed classes (both justified and unjustified) accumulated over one academic year for a certain subject exceeds thirty per cent of the relevant classes, and whose study performance cannot be evaluated by grading in the course of the year, may not receive a mark at the end of the academic year, unless the teaching staff authorises the pupil to sit a grading examination. The teaching staff may refuse the grading examination if the number of unjustified absences exceeds the number of justified ones, provided that the school had fulfilled its notification obligation. A pupil who could not receive a grade at the end of the year can only continue his studies by repeating a year. If the number of classes missed by a pupil already exceeds the specified number by the end of the first term, and the pupil's progress cannot be assessed in the form of marks, the pupil is required to take a grading examination at the end of the first term. It follows from these rules that the only case when a pupil who has missed more than thirty per cent of the classes in a given subject cannot receive a grade at the end of the academic year if his or her learning achievement could not be assessed in the form of marks during the year, due to absences. If the subject teacher thinks that the pupil's progress can be evaluated on the basis of grades, the pupil does not need to take a grading examination. When such progress cannot be evaluated, the teaching staff may authorise the pupil to sit a grading examination. (K-OJOG-117/2002.)

The pupil's disciplinary liability; disciplinary actions

Failure to fulfil their duties may have various consequences for pupils. When the transgression is serious and culpable, a disciplinary proceeding is justified. When the acts of the pupil do not reach the level when a disciplinary proceeding is necessary, other disciplinary actions may be applied. The disciplinary liability of pupils is regulated in Article 76 of the Public Education Act, while the rules of conducting disciplinary proceedings are set forth in Annex 5 to Decree 11/1994. (VI. 8.) MKM. Finally, the form which disciplinary

actions might take, as well as the principles for their application, need to be specified in the rules of operation and organisation of the institution.

With a view to the fact that numerous complaints concerned the manner in which disciplinary proceedings were conducted, as well as the results of the proceedings, we here present some major statutory provisions.

Under Annex 5 to Decree 11/1994. (VI. 8.) MKM, the pupil – and for minors, the pupil's parents – need to be notified of the initiation of any disciplinary proceeding. The notification must also state the accused infringement on the part of the pupil, as well as the date, time and place of the hearing, together with the information that the hearing may also be held if the pupil, the parent or their agent is not present, despite repeated invitation in accordance with the rules. The pupil must also be informed that he or she may be represented by an agent during the procedure. The notification must be made in a manner which ensures that the pupil, the parent and the representing agent receives it at least one week prior to the hearing.

The Decree stipulates that at the hearing of the disciplinary matter, the body exercising disciplinary competence must clarify the facts of the case sufficiently to allow a decision to be made. If the available information is sufficient for this, the body must conduct a proof inquiry. Tools in the proof inquiry may be especially the statements of the pupil and parents, the document, witness testimonies, inspection of the premises, and expertise. The disciplinary proceeding must strive to uncover all circumstances which are in favour or against the pupil in deciding about the transgression and in deciding about the disciplinary sanction.

Under the Decree, the disciplinary proceeding has to be dismissed through a resolution when the pupil has not committed a transgression, when it cannot be proven that transgression has occurred or, if it was committed by the pupil, then, similarly, a resolution has to be adopted.

The relevant Annex to Decree 11/1994. (VI. 8.) MKM also governs the requirements pertaining to the form and content of the resolution following from the disciplinary proceeding. Under the relevant legislation, the operative part of the disciplinary resolution must contain the name of the body issuing

the resolution, the number and subject of the resolution, the personal details of the pupil, the disciplinary sanction, the duration of the sanction, the suspension of the sanction and a reference to the legal basis of starting the procedure. The explanatory part must contain a short description of the transgression, description of the evidence leading to the establishment of the facts of the case, the justification for the decision stated in the operative part, in the case when the action for proofs is refused, the ground for refusal, the day when the resolution was issued, the signature and position of the person issuing the resolution. If the teaching staff processes the case as the first instance body, the resolution must be signed by the person directing the hearing on behalf of the teaching staff, as well as a member of the teaching staff who was present the entire length of the hearing.

Two parents turned to the Office with an objection to the disciplinary proceeding conducted against their children, claiming that the discontinuation of the pupil status of their children was unlawful. The relevant pupils attended a vocational school in Budapest, where a charity box was broken open and the contents removed. The school's management, based on indirect evidence, held the two pupils responsible and started a disciplinary proceeding in their case.

From the minutes sent to the Office we established that of the methods of obtaining evidence, the disciplinary hearing used the testimonies of the pupils and witnesses in an attempt to clarify the facts of the case. The witnesses heard could only confirm in their testimony that the pupils subjected to the proceeding were close to the charity box during the relevant period of time. They could not confirm, however, that the pupils broke open the box. At the same time, the affected pupils unanimously stated that they did not do it. Consequently, not a single piece of information with the power of evidence was heard which would have supported the theory that the act for which the disciplinary proceeding was initiated was committed by these pupils. The disciplinary committee processing the case, however, found that the transgression was proved. As a disciplinary sanction, it banned the pupils from continuation of their studies in the relevant year, and suspended the enforcement of the sanction until the end of the academic year. The resolution also stated that should the pupils commit another disciplinary transgression during the period of suspension, the resolution takes effect.

As the pupils committed an act entailing a disciplinary proceeding in a few days, the institution again initiated a disciplinary proceeding against them. As a result, the disciplinary penalty inflicted earlier became effective, and the school discontinued the pupil status of the two pupils. The institution should have followed the relevant legal provision in this case as well, and should have established the disciplinary liability of the affected pupils through a lawful disciplinary proceeding. The institution, however, did not meet its notification and information obligations concerning the hearing. The infringement of procedural rules is not affected by the fact that the parents attended the hearing. The minutes of the disciplinary hearing were again

unsuitable to establish what evidence there was to prove that the pupils had committed the disciplinary transgressions with which they were charged, or the disciplinary sanction which was applied.
The affected parties made available to us the notification sent to them by the school on the basis of the two disciplinary hearings, in which they were informed of the disciplinary sanction. The letters sent by the school, however, failed to satisfy the legal provision on the form of the disciplinary resolution: for example, it did not indicate the right to appeal, and did not describe the evidence.
In the course of the disciplinary proceeding, both pupils were banned from continuing their studies in the academic year, and then their pupil status was discontinued. The sanction of banning the continuation of studies in the specific school, on the one hand, and the sanction of expulsion from the school, on the other, are not the same. Pursuant to Paragraph (4) of Article 75 of the Public Education Act, a pupil status is only discontinued on the day when the disciplinary resolution on expulsion from the school takes effect. Under the law, however, banning of continuation of studies in the specific school does not entail the sanction of discontinuation of pupil status.
From the information made available to us, we established that in the first disciplinary proceeding, the disciplinary board could not prove that the transgression was committed by the pupils against whom the procedure was started, and that, therefore, the disciplinary sanction was inflicted unlawfully. We also established that the second disciplinary proceeding took place in a manner which constituted an infringement of procedural regulations, thereby violating the educational rights of the pupils in question. In our opinion, the disciplinary resolution also did not meet the relevant legal regulations. For example, it did not indicate the right of appeal. We established that the pupil status of the two pupils was discontinued in a manner which constituted a violation of the provisions of the Public Education Act. Consequently, we initiated with the head of the institution that the necessary steps be taken to restore the pupil status of the pupils concerned. We also initiated that in the future, the institution act in accordance with the relevant legislation in carrying out any disciplinary proceedings. The principal did not accept our initiative. Therefore, we turned to the maintaining authority of the institution with the recommendation that in the framework of an inquiry to verify conformity with the law, the management start an inquiry into the lawfulness of the disciplinary proceeding against the two pupils, with regard to the aspects described above.
The management also found the manner in which the two proceedings were carried out contrary to the law, and thus requested the head of the institution to restore conformity with the law. The head of the institution notified the Office in a letter that the pupil status of the pupils affected was restored in October 2002. (K-OJOG-131/2002.)

A parent claimed in his complaint that the disciplinary proceeding against his child was unjustified. He explained that several pupils, including his child, were throwing paper balls during class. He was of the opinion that this act is not such a serious transgression which would justify a disciplinary proceeding. We informed the parent that a disciplinary proceeding may be started when a pupil culpably and seriously fails in his duties. The graveness of the actions of the pupil, however, is determined

by the school, in accordance with its code of behaviour set forth in the school's rules of operation and organisation. In our inquiry, we established that the objected proceeding took place in conformity with the legal provisions, and therefore the educational rights of the complainant's child were not impaired. (K-OJOG-319/2002.)

Discontinuation of pupil status

As indicated in the previous section and in our earlier reports, discontinuation of pupil status is only possible in the cases provided for in Articles 74 and 75 of the Public Education Act, and then only in the manner provided for thereunder. Pursuant to Section d) of Paragraph (1) of Article 81 of the Act, only institutions not maintained by the local authority or a public authority may depart from these rules.

Any event whereby the school does not follow the provisions with guarantee function under the Public Education Act constitutes an infringement of educational rights. We have found that principals often recommend parents of pupils with problematic behaviour to take their children to another school. If parents agree with the reasoning of the school, they may decide to find a new school for their child. If, however, they decide against this, the school may not unilaterally discontinue the child's pupil status. Infringement of educational rights occurs when the parents could not exercise their right of free choice in making this decision because the school applies some form of coercion. In these cases the parent and the principal representing the school are in a widely different situation. Here, the parent's bargaining position is very poor, as he does not wish his child ill and does not want to force the child to study in a possibly hostile environment at the school. When acting upon the request of the school, the parent appears to exercise his right of free choice of school when taking the child to another institution. In truth, however, he is acting under pressure, as he feels that he has no other choice. We are therefore of the opinion that this type of 'solution' coupled with pressure should not occur in institutions of public education. When pupils fail to perform their duties, the school may apply sanctions specified under the law, including disciplinary actions or a disciplinary proceeding, if necessary. Other methods not sanctioned by the law should, however, not be used, as these deny the pupil from the guarantees related to the application of these sanctions.

We received several complaints from parents whose children were excluded from school by the principal. Because the statements of objection were not put into writing, it was very hard to find any evidence. Due to the conflicting statements of the parties concerned, we established no infringement in these cases. (K-OJOG-127/2002., K-OJOG-335/2002.)

One parent requested that the Office conduct an inquiry concerning the exclusion of her child from school. She explained that the child was involved in a theft from a shop then in the pupil dormitory in the course of the academic year. She explained that – despite her explicit request – the school applied no disciplinary action against the pupil, and did not initiate a disciplinary proceeding. Before the end of the academic year, however, the principal requested that the parent take the child away from the school. In the last three weeks of the school year, the pupil was not allowed to attend the school.
In his letter, the head of the institution explained that, being a church-affiliated school, the institution provides a significantly better provision for the pupils, but also demands more of them. He also informed the Office that he had found another school for the child, but the parents did not accept the opportunity offered. Concerning the lack of disciplinary proceeding, he explained that the 30-day deadline for starting the disciplinary proceeding was exceeded because of the consultations with the parent. Although unwilling, he informed us that in the meanwhile, he had come to an agreement with the parents and thus, in accordance with the relevant statutory provisions, the pupil could continue his studies in his institution. As the principal rectified the infringement on his own authority, we closed our inquiry without drawing up an initiative. (K-OJOG-367/2002.)

A mother requested that the Office carry out an inquiry concerning a case involving her child attending secondary school. The complainant explained that, due to the child's problematic behaviour, she was under constant pressure on the part of the school to take the child to another institution. As the parent did not yield to pressure, the school carried out a disciplinary proceeding, which resulted in expulsion from the school as disciplinary sanction. The parent found several aspects of the disciplinary proceeding contrary to the law.

Because the complainant had not appealed against the disciplinary resolution and thus had not used all possibilities of legal remedy available to her, the Office could not investigate the lawfulness of the disciplinary proceeding for lack of competence. In the context of exclusion, however, as was acknowledged by the school's principal, the Office initiated with the head of the institution that he act in accordance with the law in similar cases in the future. In our initiative we reminded the principal that pupils who have committed a disciplinary transgression must be subjected to a disciplinary proceeding, and in the case of other offences, disciplinary actions are to be taken. The principal accepted our initiative. (K-OJOG-159/2002.)

The Office was requested to investigate a similar case by another complainant as well. In her statement, the head of the institution concerned informed the Office that she had asked the parent to search for a new school for the child due to the troubled atmosphere in the class. One of the documents made available to us was a letter from the principal to the form master of the pupil concerned, in which the principal asked information concerning how the pupil received information that "he is forced to leave the school for reasons of bad behaviour".
In our letter of response, we informed the principal that, although such advice has no legal force whatsoever, it still has a serious influence on the parents. We also pointed out that by applying this solution, the school channelled the case, which should have been processed in accordance with strict regulations, to a legally not regulated venue. We established that the course of action followed by the school caused an infringement of educational rights. Considering that, in the meantime, the pupil continued his studies in another educational institution and did not wish to restore his pupil status at the school in question, we initiated with the head of the institution that in the future she refrain from exerting pressure on the parents of pupils with problematic behaviour to remove their child to another school. Instead, the parents should be informed of the behaviour of their child and pupils who fail to perform their duty should be disciplined in a manner provided for in the law. We have not yet received a response to our initiative. (K-OJOG-631/2002.)

As was mentioned at the beginning of this section, public education institutions maintained by bodies other than local authorities may, on the basis of a written agreement, deviate from the provisions under Articles 74 and 75 of the Act with respect to discontinuation of placement in a kindergarten, pupil status or the legal relationship of residing in a pupil dormitory.

A parent turned to the Office with the complaint that her autistic child was excluded from a kindergarten maintained by a religious organisation. She explained that the ground for exclusion was the claim of the head of the kindergarten that the child was only admitted to the institution for "probation", and, due to the child's bad behaviour, the kindergarten did not wish to teach the child on a permanent basis. The head of the kindergarten explained that the child of the complainant had had to be repeatedly moved to a different group due to the child's bad behaviour. At the end of the kindergarten year, however, the group which could meet the needs of the child was discontinued, and therefore the kindergarten could not admit the child for the following year.
The possible reasons of discontinuing kindergarten education are listed under Article 74 of the Public Education Act. These do not include the reasons referred to by the head of the kindergarten. Although Section d) of Paragraph (1) of Article 81 of the Act makes it possible for the parties concerned to conclude a written agreement specifying different provisions when the institution is maintained by a body other than the local authority or a public authority, in this case no such agreement was concluded between the parent and the maintaining authority of the institution. As the parties did not put their agreement on admittance for probation in

writing, the institution should have followed the provisions of the Public Education Act. As this was not the case, we established that the educational rights of the complainant had been impaired. However, because the parent had already taken the child to another institution, we initiated with the head of the kindergarten that in the future, kindergarten education is only discontinued in accordance with the legal provisions. The head of the institution accepted our initiative. (K-OJOG-250/2002.)

Maintaining authority's governance

The provisions of the Public Education Act clearly distinguish between the decision-making rights of a public educational institution and the maintaining authority. It can be decided on this basis whether a given case falls under the competence of the public educational institution or the authority. This is not only a division of tasks between the institution and the maintaining authority but in several aspects also functional as a guarantee. These provisions also prevent the maintaining authority from removing areas of competence from the institution.

Under the Public Education Act, in the case of legitimacy requests submitted in the interest of a child or pupil, and in cases of supervision requests concerning the establishment and discontinuation of pupil status, or pupil's disciplinary cases, the representative of the maintaining authority acts on and passes a decision of second instance. According to the regulation, legitimacy requests concerning violation of the rights of the school board, the pupils' council and the parents' association are also judged by the maintaining authority. Therefore, in several cases the decisions of first instance passed by the school are reviewed by the authority, as a forum of second instance. This rule functions as a guarantee for those who might be subjects of the decisions of the school.

The manager of a private school asked whether he could be appointed as the director of the school. In our opinion this could lead to grave violation of the law, if the same person acted as maintaining authority and the head of institution in a public educational institute, because then, in making decisions, the forum that should act at second instance would be identical with the organ acting at first instance. In view of this, our point of view is that the strict and clear separation of the competences of the maintaining authority and the head of the institution cannot be regarded as a pure formality, even in the case of private schools. (K-OJOG-200/2002.)

The Public Education Act provides a high level of professional autonomy for the institutions. As part of this, the maintaining authority is not entitled to exercise professional control regarding the pedagogical work of the training or educational institution. Based on Paragraph (1) of Article 54 of the Act, the head of an educational institution is responsible for the pedagogical work in the institution. Article 106 of the Act also states that maintainer's control cannot damage the professional independence of the institution and its scope of professional decisions.

The maintainer's rights of the local authority do not include issues that involve the parents' or the children's or the pupils' property.

> The leader of a parents' association asked whether it is an offence of any regulation if a kindergarten teacher fulfils a request from the parents by settling the price of certain goods or service directly through monies transferred to him or her. The maintaining authority of the kindergarten regarded this as unjustifiable and claimed that parents fulfil the payment towards the maintainer. The second question was whether it is contrary to the regulations if the parents' voluntary donations in kind (for example handkerchiefs, toothpaste, napkins) are stored in the rooms of the kindergarten and distributed among the children evenly, as seen as needed by the kindergarten teacher.
> Concerning the first question it can be stated that public educational regulations do not deal with the highlighted case, therefore the question should not be investigated in an educational legal context, but as if the educational institution had no role in the case. In agreement with the general regulations of civil law, the transferred monies remain in the parents' or children's possession. The parents commission the kindergarten teacher, for example, to pay for the entrances at the ticket office of the zoo. Based on the kindergarten teacher's voluntary and free undertaking, a civil relationship is formed between him and the parents, and this relationship is completely independent from the institution. The formation of this relationship is not prohibited by regulations, either for the parents or the teacher.
> Concerning the second question, we informed the inquirer of the following: donations made by parents (handkerchiefs, napkins, etc.) are not transferred into the possession of the institution; they remain in the parents' common property in accordance with the intention of the donation. The primary purpose of the rooms of the institution is not to store parents' properties but in our opinion, if the storage does not endanger the operation of the kindergarten, then there is nothing to prevent the storage of the above mentioned objects in the rooms of the kindergarten. (K-OJOG-603/2002.)

A group of complaints submitted to the Office contained grievances against decisions passed by the maintaining authorities involving organisational

issues connected to the control of public educational institutions. The allowed maximum number of pupils in classes is defined in Annex 3 to the Public Education Act. The regulation determines the average number and the maximum number of pupils according to year groups. The regulations of the organisation of classes indicate that the average number can be disregarded, or the classes of the school should be organised in such a way that the number of pupils enrolled in the class does not exceed the maximum number. As an exception, the maximum number determined for school classes can be exceeded by twenty per cent at the beginning of the school year, if in the given year only one class starts in the school, or also in the course of the school year, if it is justified by the reception of a new pupil. The management can therefore merge classes with a small number of pupils until the maximum number of pupils is reached; within a year, the creation of a merged class is not illegal at the beginning of the school year.

> This information was given to a teacher who wished to obtain information about the rules governing the merging of classes, because the two seventh-year classes of their school were to be merged in the following school year. (K-OJOG-400/2002.)

According to Paragraph (2) of Article 102 of the Public Education Act, the decisions concerning the reorganisation and closure of public educational institutions belong to the competence of the maintaining authority. On the other hand, according to Paragraph (9), the authority cannot reorganise or close a pupils' dormitory, cannot hand over the maintenance rights, cannot reorganise or dissolve pupils' dormitory groups and cannot alter the tasks of the pupils' dormitory during the school year.

> Our office received a complaint connected to the closure of a pupils' dormitory. The pupils were informed in writing in summer, that the pupils' dormitory of a secondary vocational school was being closed due to "technical reasons", and in the future they would be accommodated in the pupils' dormitory of a secondary grammar school. The head of the secondary vocational school informed us that he and the head of the secondary grammar school reached an agreement about the pupils' accommodation in August. In a decision passed during their meeting on 24th September, the board of the representatives of the municipal council maintaining the secondary vocational school requested the county municipal authority to allow the temporary accommodation of the pupils in the pupils' dormitory of the secondary grammar school maintained by the county municipal council.
> We established that the board of the representatives of the maintaining municipal authority offended the quoted regulation of the Public Education Act in passing a decision about the closure of the pupils' dormitory during the school year.

> Regarding the above, we initiated the restoration of the legal conditions at the board of the representatives of the municipal council. The board of the representatives of the municipal council informed our Office without due justification that they rejected the initiative. Because of this, we turned to the leader of the public administration office exercising the legal supervision of the municipal council and requested the performance of the necessary supervision measures. The leader of the public administration office disagreed with the proposal, because the municipal council did not close the pupils' dormitory, did not dispose of maintenance rights, did not pass a decision about the alteration of its tasks and the redirection of pupils enrolled in the pupils' dormitory to another one, and the issue could not be regarded as reorganisation either. In his point of view, reorganisation is a decision or measure affecting the operation of a given institute and causing structural change. Furthermore, no pupils' dormitory group can be mentioned because its prerequisite, pupils' dormitory membership state, was not established, given that the enrolment of pupils had not been implemented.
> We disagreed with the point of view of the public administration office because we regard the fact that a pupils' dormitory is not operational and has no pupils as closure. On the other hand, if we accepted that this is not closure, then the decision redirecting the pupils to another pupils' dormitory would be illegal. (K-OJOG-90/2002.)

Enforcement of the rights of pupils with special needs

Based on Paragraph (1) of Article 30 of the Public Education Act, it is the right of a child or pupil with special needs to receive pedagogical, special educational, conductive pedagogical care within the framework of special care as made necessary by his or her state from the time his or her special needs are identified. Special care should be provided based on the age and condition of the child, the pupil, and as stated in the professional opinion of the expert and rehabilitation committee (hereinafter referred to as expert committee) through examining learning ability. The specific content of the right to special care as regulated by the Public Education Act is, therefore, determined by the content of the professional opinion of the expert committee. On the other side, parallel with this are the obligations of the parents, the training-educational institution, the local authority and other bodies with public educational duties. The pupil with special needs is entitled to pupil status in the public educational institution determined by the expert opinion and the parent is obliged to enrol him or her in the institution. If the pupil wishes to change school within the given school type, the pupil or the parent should inform the expert committee in writing. If the chosen school is included in the list of institutions in relation to the given special need, the expert committee

acknowledges the announcement in writing and modifies the regulations of the professional opinion regarding the appointed school.

> A parent turned to our Office because he did not want to enrol his child in the special school appointed in the professional opinion. He was informed that if he had signed the professional opinion, but later disagreed with the appointment of the school, he may initiate a procedure to change the professional opinion. (K-OJOG-399/2002.)

In the given public educational institution the pupil is entitled to receive the special care determined in the professional opinion – rehabilitation lesson allocation, receiving individual improvement activity, use of auxiliary devices during testing etc. – and the institution is obliged to provide these. Under the Public Education Act, the pupil fulfils his or her compulsory school attendance – based on the parent's choice – through attending school or as a private learner. In the case of pupils with special needs, this right of the parent to choose may be constrained by the professional opinion of the expert committee. The professional opinion should include the statement whether the pupil with special needs can fulfil his or her compulsory school attendance solely through attending school, or based on the parent's decision through attending school or as a private learner, or solely as a private learner. The institution has no rights of decision in this question.

> A parent was interested whether a school could classify his pupil with slight mental handicap as a private learner. He was informed that the institution could not pass such a decision. The parent did not ask further procedures from us. (K-OJOG-710/2002.)

The state operates the system of public education according to the Public Education Act with a view to enforcing the right to special care. Kindergartens, primary schools, vocational schools, secondary schools, pupils' dormitories and pedagogical professional services are therefore provided through the institution-maintaining activities of state organs and municipalities, or within the framework of state or local municipal task fulfilment. The participation of pupils with physical, sensory, mental, speech or other handicaps in education, and their pupils' dormitory care in institutions maintained by the state or by the municipalities, is free in every case. Besides the appropriate fulfilment of duties, the municipalities are not obliged to aid the payment of the education fee of a foundation school or itself assume the payment. If a parent chooses an educational institution operated by a foundation, any involved payment obligations fall on the parent.

The parent of a child with learning difficulties requested the local authority to aid the payment of the education fee of the foundation school appointed by the professional opinion and complained to our Office about the local authority rejecting his request. We found that the municipal decision does not offend the law. The parent was informed that should he want to enrol his child in an institution maintained by the state or the local authority, he should request the modification of the professional opinion with regard to its disposition concerning the appointed school. (K-OJOG-162/2002.)

A parent wrote concerning what possibilities he had to receive aid to pay the costs of a foundation school. He was informed that although the local authority has no obligation, it may provide financial support on social or some other basis to cover schooling costs. The application for such aid is different for each local authority. If the local authority does not wish to, or cannot provide aid towards the payment of the pupil's schooling costs, the parent may possibly obtain support from the maintaining authority of the private school, typically via the advisory board of the foundation. (K-OJOG-94/2002.)

The Public Education Act contains the task fulfilment obligations of the municipalities concerning the school care of pupils with special needs. The local authority can decide by evaluating its possibilities whether it fulfils its obligations through the maintenance of institutions, the launching of special classes and the application of an expert, through public educational agreement contract or by other means. However, upon being informed by the expert committee or by the parent that in the case of a pupil school training and education cannot be organised because the list of institutions does not contain a suitable school, the mayor is obliged to ensure that a suitable educational institution becomes available. Furthermore, if needed, the mayor should contact the chief executive of the capital or the county to provide the necessary special educator or other expert from the mobile expert network.

The parent of a pupil with other special needs requested the chief executive and the mayor of a town several times to find a suitable local institution for his child. The requested persons did not answer the question what free educational possibilities were available to the pupil in the town. Because of this, the parent enrolled his child in a different town to fulfil compulsory school attendance and submitted a complaint about the existing situation to our Office. As a result of our investigations, we concluded that the pupil is entitled to special care. The conditions for the enforcement of this right were not provided by the relevant local authority through its failing to inform the parent about free local schools following several requests. As the family had already moved from the town, we turned to the mayor of the local authority offending the law with the proposal that in the future he should take every measure to provide that the local authority ensures the primary school

care of pupils with other special care as needed and to provide information concerning this to parents facing the same problems. The case is presently in progress. (K-OJOG-460/2002.)

The training tasks of the parents and the teachers and the fulfilment of the tasks of the educational institutions are helped by pedagogical professional services. Pedagogical professional services have an extremely important role in the training, education and development of pupils with special needs, because they include special education counselling, early development and care, expert and rehabilitation activities examining learning abilities and countrywide expert and rehabilitation activities, training counselling, speech therapy, further education and vocational guidance, conductive pedagogical care and remedial gymnastics. These tasks form an integral part of the system of public education; the failure to provide these can be a grave offence against the participants of education.

The head of an institution turned to our Office with the complaint that some tasks of the pedagogical special services for the pupils of the school are not fulfilled, among others pedagogical counselling, speech therapy sessions and early development. During our procedure, the local authority of the county with task fulfilment obligation informed our Office that in the meantime it had fulfilled the task by concluding a public educational agreement. As the offence of the law was remedied by the local authority in its own competence, we did not take any initiative (K-OJOG-14/2002.)

Even when an institutional network ensuring appropriate provision exists, some people may not have access to the channels of information flow established under the law. We received numerous submissions from parents who could not find a suitable institution for their child with special needs in terms of physical, sensory, mental, speech or other needs. In the context of the existing institutional network, several bodies are charged with the provision of information.

The recorder or chief executive of the local authority maintaining an institution of public education continuously informs the relevant expert committee of the institutions which meet the special conditions needed to provide special care for pupils with special needs. Based on this information, the expert committee draws up a list of those institutions which participate in education of pupils with special needs. The expert committee informs the parents of the children examined by the committee about the possibilities for the child in meeting the

obligation of compulsory schooling. The parents select the appropriate educational institution from among those recommended by the expert committee.

Often, the reason why the appropriate institute of public education was not found was that the child did not get to the expert committee, and thus the parent could not learn of the list of institutions. Instead of the expert committees, these pupils were examined by children's hospitals, and the parents relied on the hospital's examination record in finding a suitable educational institution. The input of professionals employed in hospitals is often essential for pupils with special needs, but it cannot replace the examination by the expert committee.

Under Paragraph (2) of Article 10 of Decree 14/1994. (VI. 24.) MKM on compulsory schooling and the special pedagogical service, examination of children and pupils with "other" types of special needs is the task of the capital's or county's expert and rehabilitation committee examining learning skills. The capital's or county's expert and rehabilitation committees examining learning skills initiate examination by the national expert and rehabilitation committee responsible for the examination of speech, intelligence and personality as necessary.

The main objective of such examination is to establish or rule out that the pupil has special needs of some type, and to draw up a recommendation for the most suitable educational arrangement. Additionally, the recommendation of the experts gives guidance to the parents, teachers and heads of institutions in many other respects by presenting a view on issues such as the pedagogical approach to be applied, exemption from certain subjects or parts of subjects, or the private learner status. Thus, the involvement of the expert committee is important not only because it helps the parent select a suitable institution, but also because only the bodies specified in the legislation referred to above may issue an expert opinion which, under the Public Education Act, is legally binding for the parents, pupils and institutions. In addition, such opinions may only be issued in a procedure where the rules of such procedure stipulated in the same legislation are observed. In our opinion, attendance at such an examination is a prerequisite of enforcement of the child's right to special care. Co-operation between the parent an the expert committee can efficiently assist in the child's development and catching up.

One submission concerned a case where the children's hospital and the expert committee were of a different opinion concerning the child of a person turning to us. The committee was of the opinion that the child had a slight mental disability, and recommended that his education take place in a specialised institution. The children's hospital, however, found only partial functional deficiencies, and recommended integrated education for the child in a primary school with a standard curriculum. The parent turned to us for assistance with enrolling the child in a school with a standard curriculum. We informed the parent of the provisions described above and that in the event when he disagrees with the expert opinion, he may initiate the revision of the same. (K-OJOG-333/2002.)

One parent was repeatedly forced to take her child to another primary school because of the child's hyperactivity. None of the institutions proved appropriate, so a new school was sought each time. The parent asked us to help in finding a suitable school. During our inquiry, we found that the child had not been examined by an expert committee, but by a children's hospital. We informed the parent of our legal view concerning examination by a committee, as well as the legal provisions in force. (K-OJOG-633/2002.)

Pupils with physical disability may have a problem with finding a school which is freely accessible for them.

One parent turned to us because he could not find a suitable secondary school for his secondary school child. Upon our inquiry, the chief executive informed the Office that secondary education of pupils with physical and sensory disabilities was available in several institutions, mostly in an integrated arrangement. In addition to the existing institutions, methodology centres provide assistance to education, as well as the placement of pupils who finish primary school. We were also informed that the development plan of the local authority also includes the building of an alternative secondary school for pupils with physical disability, and that an increasing number of schools are already being turned into an institution accessible for all. (K-OJOG-546/2002.)

VOCATIONAL TRAINING

The primary source of law in the field of vocational training is the Vocational Training Act, which stipulates that the institutions of vocational training are as follows: vocational secondary schools, trade schools, vocational schools and special vocational schools.[1] The institutions listed here are, however, concurrently public education institutions, also governed by the Public Education Act and Decree 11/1994. (VI. 8.) MKM. Those complaints concerning institutions governed by the Vocational Training Act which concerned the infringement of public education rights were discussed in the preceding chapter. This might be one of the reasons why, of the complaints received by the Office, the number of cases which purely concern vocational training remains the lowest.

Only those issues are considered to belong in this category which concern the infringement of rights provided in the legislation on vocational training. Some issues are regulated by these statutes differently from the Public Education Act, and they contain certain provisions which only apply to vocational training.

One issue purely belonging to the field of vocational training is the practical training of students participating in vocational training. The major rules governing practical training of students are stipulated in the Vocational Training Act. We have found that various problems are rooted in the fact that the students and parents are not sufficiently informed about the legal regulations governing practical training. In 2002, one question was whether the practical training of students may only be organised by the school which they attend, and also whether they are entitled to remuneration for their work done in the framework of practical training.

In the context of practical training, the Vocational Training Act distinguishes between forms of vocational training which are part of the school system and those which are not. Pursuant to Paragraph (3) of Article 15 of the Act, practical training done in the framework of vocational training which is part of the school system can be organised and held – including an agreement within or with a school providing vocational education, or an apprenticeship contract

[1] Only the institutions falling under the competence of he Minister of Education are mentioned here.

– at any place of practice maintained or operated by a legal entity or business organisation without legal personality, or self-employed entrepreneur, as long as the place meets the statutory requirement for preparation for requirements of the trade. Pursuant to Paragraph (1) of Article 27 of the Vocational Training Act, practical training can also occur on the basis of a written apprenticeship contract for practical training, concluded between the students and the business entity. Thus, students participating in vocational training which forms part of the school system can do their practical training in a manner not organised by the school, by concluding an apprenticeship contract.

Concerning vocational training which is not part of the school system, the Vocational Training Act stipulates that the location where the training takes place shall be specified in the training contract between the student and the institution providing vocational training. Therefore, in this case, the issue is resolved in the training contract.

The remuneration for work done in the framework of practical training is again regulated in the Vocational Training Act. Pursuant to Article 48 of the Act, students participating in vocational training without an apprenticeship contract are entitled to remuneration for the period of uninterrupted practical training. Students may also receive remuneration for practical training done in the course of the academic year as well, but this is not mandatory. The relevant conditions and rates have to be specified in the rules of operation of the institution providing vocational training and/or in the agreement with the business entity. If the practical training is based on an apprenticeship contract, the business entity must pay a fee to the student. The monthly amount payable to the student – irrespective of the number of days spent with theoretical and practical training – was equivalent to at least 7% of the minimum wage in 2001, and to 6% of the minimum wage in 2002. The amount paid to the various levels of students must be specified in the apprenticeship contract. (K-OJOG-201/2002.)

We have already referred to the provision of the Vocational Training Act whereby practical training may be organised at any school-based practice location or otherwise where the conditions for meeting practical requirements can be satisfied. Furthermore, Article 20 of the Act stipulates that – unless otherwise stipulated in an agreement – the entity organising practical training is

required to provide the human and physical resources needed for the preparation for the requirements of the trade, as well as the practical examination. We have found, however, that the necessary human and physical resources are not always provided at the place where the practical training is held, which may impair the educational right of students in vocational training.

> A parent claimed that the company laboratory where practical training was held for her child who was attending a school for dental technicians, did not provide sufficient human and physical resources for a satisfactory level of professional education. The parent claimed that, as a result, her child needed external assistance for preparing for the examinations at the end of the term. We informed the parent that under Paragraph (2) of Article 19/A and Paragraph (3) of Article 30 of the Vocational Training Act, supervision of practical training held at business entities is performed by the Chamber of Commerce responsible for the region in question. The same chamber also monitors compliance with the legal provisions concerning training. Thus, the parent had to turned to the Chamber of Commerce and Industry in the county. (K-OJOG-287/2002.)

We have found that most problems of final-year students in vocational training concerned the meeting of the requirement for a language examination certificate. In 2002. several students approached us with the question of whether they need to possess a language examination certificate before the school admits them to the vocational examination. The inquirers were informed of the language examination requirements relevant to their specific type of vocational training. (K-OJOG-41/2002., K-OJOG-183/2002., K-OJOG-248/2002.)

> The students attending a vocational training education complained that their school requires them to possess a basic level, C-type language examination certificate before they are admitted to the vocational examination. They also objected to the decision of the Ministry of Education which refused the school's request that the requirements applicable to the training programme are amended in such a manner which allows the students to take the vocational examination without having a language examination certificate. They also objected to the fact that unlike them, college students are allowed to sit the state examination even without a language examination certificate. The complainants deemed that this was an instance of negative discrimination against students in vocational training. In their submission, they requested the Commissioner for Educational Rights to authorise them to take the vocational examination without possessing the required language examination certificate.
> In his statement, the head of the institution informed the Office of the fact that although under Decree 7/1993. (XII. 30.) MüM on the National Training Register, a

language examination is not required for the training programme in question, the school requires students to have one on the basis of Decree 18/1995. (VI. 6.) IKM on the professional and examination requirements of industrial and commercial qualifications. This Decree stipulates that one requirement for admission to vocational examination is the possession of at least a basic level of type C language examination certificate in English or in German, or equivalent.
In our opinion, the school acted in conformity with the legal provision currently in force when requiring the complainants to obtain the language examination certificate required under the Decree referred to above prior to the start of the vocational examination. It is not possible either for the Ministry of Education or the Commissioner for Educational Rights to authorise students of a certain school or those following a certain training programme to take the vocational examination when they do not possess the required language examination certificate. In our opinion, the fact that college students are allowed to sit the state examination without having a language examination certificate does not constitute negative discrimination against the complainants, as the differing requirements were stipulated for two different groups of subjects under the law. In addition, the nature and objective of the education in an accredited tertiary vocational training programme and in a college educational programme are different, and therefore the differences in demands – including the requirement concerning the language examination certificate – may be justified. Consequently, no infringement of educational rights was found in this case. (K-OJOG-278/2002.)

Pursuant to Paragraph (1) of Article 12 of the Vocational Training Act, a diploma certifying a professional qualification may only be issued to a person who has successfully taken the vocational examination. Vocational examinations are governed by Decree 26/2001. (VII. 27.) OM laying down the general rules and rules of procedure of vocational examinations. Pursuant to Paragraph (2) of Article 33 of this decree, examinees who received a fail mark or grade for the part of the examination specified by the Minister responsible for professional qualifications, or for a subject or subjects – possibly all subjects - at the vocational examination or improvement examination, must take a repeat examination. At the same time, Section (6) of the article of the decree referred to above also stipulates that it is not possible to re-sit a failed vocational examination and a repeat examination in the same examination period, or, when the vocational examination was organised in a period other than an examination period, within 30 days from the end of the examination.

The students of an institution providing vocational training had the following complaint. As they failed their vocational examination, they wanted to take a repeat examination sooner than normal, so that they would be able to find a job as soon as possible. At the educational department of the Ministry controlled by the

Minister responsible for vocational qualifications, they were informed that they need the prior approval of the Minister of Education before they can receive the authorisation to sit the examination sooner than normal. The Vocational Training Department of the Ministry of Education stated that in their opinion , when the legal provision issued by the Minister responsible for the vocational qualification of the students submitting their request does not stipulate other rules concerning a failed vocational examination other than those described above, then the Ministry of Education cannot authorise the re-sitting of the examination within the same examination period or within 30 days from the exam. We gave this information to the complainants. (K-OJOG-370/2002.)

Failure at the vocational examination is not the only problem which might occur to the examinees. If the board of examiners at the vocational examination makes an unlawful decision, it constitutes an infringement of the educational rights of the examinees in each case. The right of students and their parents to initiate a legal remedy proceeding against the decision of the board of examiners functions as a guarantee. Under Paragraph (5) of Article 84 of the Public Education Act, students (or their parents) may object the decision, action or lack of action (hereinafter collectively referred to as decision) of the board of examiners at the vocational examination. To this end, they must submit a request for the verification of conformity with the law to the National Public Education Evaluation and Examination Centre (Országos Közoktatási Értékelési és Vizsgaközpont), within three working days from the decision concerning which they claim a violation of the law. The National Public Education Evaluation and Examination Centre must process the request for the verification of conformity with the law within three working days.

One student turned to us with the complaint that each of the 16 students in their group failed the oral part of their vocational examination. The student objected to the decision of the board of examiners at the vocational examination because each student in their group passed the written part of the exam. We provided the inquirer with the above information concerning the possibility of seeking a legal remedy. (K-OJOG-371/2002.)

HIGHER EDUCATION

Thirty-five per cent of all matters concerned the field of higher education, which is similar to the situation of the previous year. It has been already indicated in the introduction that the role we undertake has different characteristics in the two fields of education. Higher education institutions typically make decisions in writing, and have developed regulations for their procedures. Therefore, in most cases, their activities in applying legislation and their decisions in individual matters could be studied on the basis of documents. Accordingly, personal conciliation was initiated in a few cases only. Participants in higher education are grown-up persons with the capacity to act on their own behalf, and this educational field is characterised by dependence to a lesser degree. Consequently, not many of the complaints filed reveal the infringement of fundamental rights ensured by the Constitution. Typically, we receive reports on the rights directly relating to this field of education. As was done in previous years, the matters relating to higher education are presented in three groups.

ENTRANCE INTO HIGHER EDUCATION INSTITUTIONS

The legal basis of entrance into higher education is the rule laid down in Section c) of Paragraph (2) of Article 64 of the Higher Education Act, such that specifying the conditions for admission is a specific case of the manifestation of the autonomy of higher education institutions. Institutions establish on their own authority their target intake, and select future students from the group of candidates at their own discretion. Naturally, these must take place within the framework provided by the applicable laws. Autonomy does not mean, however, that institutions are not required to respect the general legal principles and the provisions laid down in legislation concerning the admission procedure. Another fundamental legal source of rights in this field is Government Decree 269/2000. (XII. 26.) laying down the general rules for the admission procedures of higher education institutions (hereinafter referred to as 'Admission Decree'). In addition to legislation, higher education institutions are also bound by the provisions of their own institutional regulations on admission.

It follows from the institutional autonomy granted by the above mentioned provisions of the Higher Education Act that investigating and evaluating compliance with admission requirements does not fall within the competence of the Commissioner for Educational Rights. The Office of the Commissioner for Educational Rights can only look at whether the educational institution in question has complied with the requirements laid down in the law and the institutional regulations concerning the admission procedure, which has the significance of a guarantee.

In some of the complaints received, the complainant asked a question about the admission procedure for which the answer was available in the guidelines for admission to higher education (hereinafter referred to as 'Admission Guidelines'). In these cases, as in any other case, the Office endeavoured to provide appropriate information, calling the complainant's attention to the fact that detailed information about the subject was available in the Admission Guidelines.

> One of the complaints contained a question about the method the various higher education institutions use to calculate scores. The complainant was informed that the Admission Decree did not specify which subjects should be taken into account for calculating the score for secondary school attainment in the admission procedure, and different higher education institutions may have different score calculation methods. To this end, the Admission Guidelines describes the principles of score calculation and ranking for each degree programme or type of training (full time or part-time studies, correspondence courses, distance learning, etc.) offered by the various institutions. (K-OJOG-109/2002.)

> A parent turned to the Office with the observation that, shortly before the entrance examinations, her child did not know what subjects the examination would cover. The parent was informed that, pursuant to Section c) of Paragraph (4) of Article 2 of the Admission Decree, higher education institutions publish their admission requirements for their various degree programmes in the Admission Guidelines. In accordance with Paragraph (4) of Article 9, the Guidelines specify the subjects the entrance examinations for the various degree programmes cover. Pursuant to Paragraph (12) of the same Article, the requirements for the written and oral examinations in these subjects must be published in the Admission Guidelines at least two years prior to their introduction. Therefore, higher education institutions may only impose requirements that were published in the Admission Guidelines over the previous years. (K-OJOG-500/2002.)

The Ministry of Education ensures the publication of the Admission Guidelines through the National Office for Admission to Higher Education

(hereinafter referred to as 'OFI', in accordance with its Hungarian abbreviation). The Admission Guidelines include the admission requirements of all institutions, and the publication also contains general information about the admission procedure, which enhances its significance. The Admission Guidelines constitute an important guarantee for the constitutional right of candidates participating in entrance examinations to continue their studies in higher education. For many applicants this is an exclusive source of information, and they consider its content credible and comprehensive. This publication, which is literally the "Bible" of those who apply for admission to higher education, also serves as a good point of reference for higher education institutions during the implementation of the admission procedure. Considering the role of this publication, the Office launched an official inquiry in 2001 on the basis of numerous complaints about the incompleteness of the information published in the Admission Guidelines. (K-OJOG-479/2001.) In 2002, on the one hand, we followed up the results of the procedure carried out in the previous year and, on the other, highlighted additional faults and deficiencies.

> The Minister of Education has accepted the observations made in our procedure carried out last year, and promised to take corrective action. Accordingly, the Admission Guidelines for 2002 contain a few changes, but in some cases no corrections have been made. For example, due to the lack of applicable statutory provisions, the guidelines for both 2001 and 2002 claim that, if the application forms are completed differently, the information provided on Form A shall prevail. In both years, the Admission Guidelines gave an incorrect account of the cases in which foreign citizens may participate in state-financed training at Hungarian higher education institutions. The description of the benefits relating to the degree programme leading to a second teacher's degree was also incorrect in both 2001 and 2002.
> The Office has made the following observations on the content of the Admission Guidelines for 2002. The publication defines the cross-term and the summer admission procedure as a special admission procedure, and establishes special rules for them – without any authorisation granted by the law. The Guidelines establish deadlines for submitting the certificates accompanying the application forms in a manner which is independent of the Admission Decree. According to the Guidelines, it is not possible to recover any procedural charges paid by mistake, which is against the law. The practice whereby the entrance examination requirements of the individual institutions are published in "Exercises and Requirements for the Entrance Examination" instead of the Admission Guidelines is not in accordance with the law, either.

As the Admission Guidelines are published by the Ministry of Education, they contain the Ministry's interpretation of the legislation on entrance examinations as well as information about the implementation of the admission

procedure reflecting the intentions of the Minister controlling the educational sector. However, the Guidelines should not be regarded as a source of rights. The interpretation and the aspects of the application of legislation contained therein have neither legal force nor binding effect. Nevertheless, the fact that the Guidelines are published by the Ministry makes them appropriate for being followed by the intended audience (applicants for admission to higher education and higher education institutions) as a set of obligatory requirements. If the content of the Admission Guidelines is not in keeping with the law, it may easily become an instrument corrupting the enforcement of the law, which is incompatible with the requirements of a state based on law.

The conflict between the Guidelines and the legislation violates the constitutional requirement of ensuring a state based on law and legal security, and it infringes upon or threatens the constitutional right to study in higher education. Therefore, the Office of the Commissioner for Educational Rights has proposed an initiative for the Minister of Education which would bring the Guidelines in line with the law. The Minister has adopted the initiative and, as a result, the Admission Guidelines for 2003 has been issued as a partly revised publication. In addition, the Minister promised that any further contradictions will be eliminated by legislative amendments in the first quarter of 2003. (K-OJOG-622/2002.)

A group of complaints received by the Office concerns the conditions for entering the admission procedure, that is the requirements one must meet to submit a valid application for admission.

> One of the complaints included the question whether a certificate of secondary education awarded abroad enables the bearer to apply for admission to a higher education institution in Hungary. The Office informed the person filing the inquiry that, pursuant to Paragraph (2) of Article 4 of Act C of 2001 on the recognition of diplomas and certificates awarded abroad, it falls within the competence of the individual educational institution where the applicant wishes to continue his or her studies whether it recognises the qualification certified by a diploma or certificate awarded abroad for the purpose of studies in the educational institution in question. Therefore, the person filing the query should present the certificate to the selected Hungarian higher education institution in order to have the school attainment required for admission recognised. (K-OJOG-106/2002.)

Pursuant to Paragraph (4) of Article 83 of the Higher Education Act, linking admission to a certain level of qualification or school attainment is a specific,

defined right of higher education institutions. The institutions must publish their requirements in the Admission Guidelines.

> A complainant found it injurious that a higher education institution specified a certain qualification as a requirement for admission to a degree programme. No infringement upon rights was established in this matter, as the institution only exercised its right established by the law when it specified the above requirement for admission. (K-OJOG-395/2002.)

Pursuant to Section i) of Paragraph (4) of Article 2 of the Admission Decree, higher education institutions are required to publish the dates of entrance examinations in the Admission Guidelines. Questions concerning the dates of entrance examinations formed the basis of several complaints.

> The Office received a query whether someone may repeat an entrance examination missed due to hospital treatment. The person filing the query was informed that, in accordance with Paragraph (18) of Article 9 of the Admission Decree, higher education institutions are not obliged to set additional dates for examinations besides the ones that have been set and published in advance. (K-OJOG-309/2002.)

Several complaints sent to the Office contained a suspicion that the examination was conducted by violating rights. These suspicions are related to the violation of the guarantee-like rules for the procedure of the examination, which jeopardises the fundamental guarantees for the lawful implementation of the admission process.

> Some complainants found it injurious that they were not provided the full 180 minutes due at the written examination. One of them also complained about the organisers not ensuring an undisturbed atmosphere during the examination – mobile phones rang during the examination and there were not enough sheets of paper for working on the exercises. The Office contacted the head of OFI, the organisation responsible for organising the examination, who arranged an investigation of the matters, but could not establish any violation of rules. Therefore, the matters had to be closed due to the lack of available proof. (K-OJOG-285/2002., K-OJOG-358/2002.)

> A person filing a complaint had applied for a double degree programme. The Admission Guidelines and the "General Information" sent by the institution informed the applicant that those who score less than 15 points during the written examination may not take part in the oral examination. The General Information made it clear that the applicants were given dates for the oral examination before the written examinations took place, and everybody was invited to sit for the oral examination, including those who had scored less than 15 points and could not take the

oral part. As the complainant scored 10 points in both subjects at the written examinations, he did not think he could take part in the oral examination. Later it turned out by accident that he was allowed to do so. He sat for the examination in one subject and was informed that he could take the examination in the other subject at a later date, of which he would be notified. According to the information the institution gave, this happened because many applicants were in a similar situation. After all that, the complainant did not receive any notice of the date of the later examination. He was informed, however, that he was not admitted based on his score.

In the letter sent to the Office, the institution admitted dealing with the 15-point rule only after the start of the oral examinations. This means that the institution realised only at that time that, in the case of applications for double degree programmes, it was not clear whether the 15 point limit should be interpreted as the accumulated score of the written examinations in both subjects, or 15 points should be scored in both subjects separately. In the letter sent to the complainant, the institution claimed that, in the initial days of the oral examinations, it was not clear how many points applicants for double degree programmes should score at the written examinations in order to be allowed to sit for the oral examination. On the basis of all this, it can be established that the complainant had a reason to believe, on the basis of the Admission Guidelines and the General Information, that he was not entitled to sit for the oral examination.

The institution did not make any effort to solve the situation caused by the above publication and the form. The default was aggravated by the fact that the institution was aware of the existence of the problem, as well as the fact that some applicants may miss the entrance examination due to incorrect or incomplete information. The procedure is especially injurious, because the applicants were informed of their entrance examination results and admission opportunities by the institution. In such case, the institution's occasional failure will make the applicants defenceless. Without information, they are clearly unable to assert their rights. In this case, the behaviour of the institution constituted a deception of the complainant, who could not sit for the oral examination for this reason, although he would have been entitled to do so.

After the end of the admission procedure, applicants without a duly obtained score cannot be admitted. The institution can neither recognise the score from the previous year, nor provide an additional opportunity to sit for the examination. Thus, the complainant could not be admitted for the academic year of 2002-2003. Therefore, the Office proposed an initiative for the future whereby the institution will clearly specify the rules for the admission procedure, both in the Admission Guidelines and the forms issued by the faculty. The institution has accepted the initiative. (K-OJOG-443/2002.)

The Office of the Commissioner for Educational Rights is not in the position to scrutinise whether the score given at an examination is in line with the applicants' performance. However, the Office can consider complaints about the calculation of scores.

The Office received a complaint from a person whose score obtained at the entrance examination of an institution indicated as third choice was not taken into account by the institution indicated as first choice when deciding about admission, although it had promised to do so in the Admission Guidelines.

The Office contacted the institution, which said in connection with the matter that the computer based implementation of the admission process does not allow an institution listed by the applicant as a higher priority choice to recognise the entrance examination of an institution which the applicant listed as a lower priority choice. The institution invoked Paragraph (5) of Article 5 of the Admission Decree, which stipulates that those who apply for admission to different degree programmes with the same examination subjects must sit for the written examination at the institution requiring such an examination whose name comes first in the list of the applicant's priorities. This means that an examination can only be recognised in a "top down" manner.

The institutions indicated by the person filing the complaint as first and second choices did not organise entrance examinations, and made decisions about admission based on the score calculated on the basis of secondary school performance. Therefore, the complainant could sit for an entrance examination at the institution selected as third choice only.

In this matter, the Office established that the institution against which the complaint was filed committed itself by virtue of its autonomy and its right provided for in Section c) of Paragraph (2) of Article 64 of the Higher Education Act to grant an advantage to applicants by recognising the scores obtained at other institutions, if that was beneficial for the applicant. The institution did not limit this treatment to those applicants who sit for the entrance examination forming the basis of the offered advantage at an institution listed as a higher priority choice, although it could have done that. Higher education institutions are not required to provide advantages of this kind. Those that do so, however, are bound by the information they provide and they are required to act accordingly. This is not affected by the rule laid down in Paragraph (5) of Article 5 of the Admission Decree. The provision of the law and the advertised treatment are not related to each other, for the above mentioned section of the law only provides for the location where the applicant must sit the examination. The complainant met this provision by sitting for the examination at the institution listed as third choice, especially because the complainant did not have an opportunity to sit for an examination at the other two institutions, as they did not organise entrance examinations. However, as has been mentioned earlier, institutions can grant special treatment in the admission process independent of this rule, on a different legal basis. The obligations of an institution are not affected by the fact that the computer-based implementation of the admission process does not support the recognition of an examination passed in the manner in question. Higher education institutions are bound by the information they publish in the Admission Guidelines concerning the special treatment and exemptions they grant. The obligations thus created are independent of the operating principles of the register maintained by an external body, the OFI. OFI performs administrative tasks supporting the implementation of the admission process. It does not have any decision-making power, therefore it cannot substantially influence admission.

In view of the above, the Office proposed an initiative whereby the institution against which the complaint was filed will adopt a decision on taking into account the results of the entrance examination the person filing the complaint sat for at the institution indicated as third choice. The institution has accepted the initiative. (K-OJOG-429/2002.)

A complaint was filed by a person who had been granted admission by an institution to a fee-based tuition programme, as the person in question did not have enough points to be admitted to a state-financed programme. The person filing the complaint claimed that she could have complied with the requirements of the state-financed programme, as she has a certificate which gives entitlement to bonus points. However, she failed to send a copy of that certificate to the institution, because she did not know that it would earn her bonus points.
In accordance with Section c) of Paragraph (1) of Article 5 of the Admission Decree, the application forms must be accompanied by copies of the certificates which give entitlement to bonus points. For the calculation of the final score, institutions may not take into consideration any certificates submitted later, with the exception of documents submitted upon request as additional documents. The matter has been closed due to the lack of infringement of any lawful rights. (K-OJOG-570/2002.)

The problems relating to the financing of an applicant's future studies are also connected to the issue of admission, as a decision about admission contains decisions on such arrangements as well. Students of higher education institutions may enrol either for state-financed or tuition-fee programmes. Students can only enrol for a programme they have been granted admission to. Following admission, transition from one type of programme to the other is possible only in exceptional cases.

A foreign citizen with immigrant status applied for a state-financed programme of a Hungarian higher education institution. In application form B, he ticked the last one of the three options under the heading "nationality" (the three options are: Hungarian / foreigner / foreigner with permanent residence permit.)[2] The institution, however, admitted the complainant to a tuition-fee programme.

[2] It is deemed necessary to mention at this point that application forms use the term "permanent residence permit" as an indication of the applicant's nationality erroneously. Pursuant to Section a) of Paragraph (3) of Article 14 of Government Decree 157/2001. (IX. 12.) on certain issues relating to the tertiary level studies of foreign citizens in Hungary and of Hungarians abroad, for the purposes of the Higher Education Act and the implementation decrees thereof, immigrants and foreigners with a refugee certificate must be considered as having the same legal status as Hungarian citizens as of the date of issue of the Hungarian identification card or refugee certificate. Therefore, in the procedure of admission to higher education, only the immigrant or refugee status ensures the same treatment as that which Hungarian citizens receive, including eligibility for state-financed education, provided that other statutory criteria are met. The term "permanent residence permit" does not appear in legislation. Act XXXIX of 2001 on the immigration and residence of foreigners provides a definition of the institution of residence permit and "resident" status, but it does not identify the "immigrant" or "refugee" status. Consequently, an application form may not include a question concerning the data of a group without an existing status. This observation has been forwarded to the Minister of Education.

Under Section d) of Paragraph (2) of Article 3 of Government Decree 120/2000. (VII. 7.) on the financing of higher education institutions from capitation grants for training and maintenance, and with regard to Section b) of Paragraph (1), foreign citizens with a student status who are participating in full-time initial training and have been admitted to a programme within the state-financed student quota and are subject to the same treatment as students with Hungarian nationality shall be considered on the basis of the law state-financed students of higher education institutions. Pursuant to Paragraph (3) of Article 14 of Government Decree 157/2001 (IX. 12.) on certain issues relating to the tertiary level studies of foreign citizens in Hungary and of Hungarians abroad, for the purposes of the Higher Education Act and the implementation decrees thereof, immigrants and foreigners with a refugee certificate must be considered as having the same legal status as Hungarian citizens as of the date of issue of the Hungarian identification card or refugee certificate.
According to the position of the institution, the complainant ticked the status "foreigner with permanent residence permit" in application form B, and OFI made a mistake during the recording of data and the calculation of the score by treating the applicant as a simple foreign citizen instead of a foreign citizen with a permanent residence permit, who should receive the same treatment as a Hungarian citizen. Pursuant to Section a) of Paragraph (2) of Article 4 of the Admission Decree, applicants must indicate in the application form which higher education institution(s), faculty (faculties), degree programme(s), degree programme group(s), accredited tertiary level vocational training(s), training type(s) they are applying for. They should also indicate whether they are applying for a state-financed or a tuition-fee programme or both. Consequently, higher education institutions may not depart from the options indicated by the applicants, as they are bound by the applicants' choices. Institutions may only decide whether an applicant can be admitted to the indicated programme or not. The form B submitted to the institution by the person filing the complaint contained an application for a state-financed programme. On these grounds – considering that the complainant had enough points to be admitted to a state-financed programme – the institution must admit the complainant to a state-financed programme.
The fact that it was essentially OFI that made the mistake during the recording of the data does not affect this. Based on the information in the form B received by the institution, it should have been aware that the applicant had applied for a state-financed programme and that he was eligible for it.
In view of the above, the Office has proposed an initiative whereby the head of the institution will adopt a decision on the admission or transfer of the person filing the complaint to a state-financed programme and refund the tuition fee already paid. The institution has accepted the initiative. (K-OJOG-415/2002.)

An important guarantee built into the admission procedure is the right to remedy. The basic rules for exercising right are laid down in Article 17 of the Admission Decree.

A person filing a complaint was informed by an institution that her application for admission had been rejected. The reasons for the decision, i.e. the score attained by

the applicant, however, were not communicated. The person filing the complaint lodged an appeal against the decision, but did not receive any response. Likewise, no response was given to her inquiry sent to the institution later. Following that, she contacted our Office, which contacted the institution. As a result, the head of the institution conducted an investigation and found that the score of the person filing the complaint had been calculated incorrectly. Had it been calculated correctly, she would have been admitted. The institution admitted the mistake and offered a compromise for the person filing the complaint whereby she was admitted, could start her studies and was given an opportunity to make up for the studies she was compelled to miss. The person filing the complaint accepted the offer. Thus the institution rectified the infringement of rights within the scope of its own authority. (K-OJOG-592/2002.)

Several people applying for admission to higher education contacted the Office to ask whether they can start their studies in an institution other than the one they have been admitted to.

A person filing a query was granted admission to a higher education institution, but then decided to attend another institution. The Office informed him that, pursuant to the applicable legislation on admission to higher education, applicants may only be admitted to institutions they have applied for, using the forms intended for this purpose and by observing the rules for the admission procedure. Institutions other than the ones indicated in the application form may not grant admission. However, after being granted admission, students of higher education institutions may apply for a transfer to another higher education institution in accordance with the receiving institution's rules for transfer. Institutions are not obliged to accept applications for transfer, and some institutions may not allow any. Detailed information on this subject is available from the target institution, in particular from its regulations. (K-OJOG-412/2002., K-OJOG-497/2002.)

MATTERS RELATING TO STUDIES AND EXAMINATIONS

In higher education institutions, studies and examinations are not only regulated by the applicable laws but also by the Rules for Studies and Examinations (RSE), a set of general rules for conduct with a binding effect on all participants in education. Aligned with the specifics of individual universities and colleges, these rules regulate the above-mentioned fields within the framework provided by the law, detailing and supplementing them. Therefore, the Office of the Commissioner for Educational Rights investigates complaints about the infringement of educational rights in matters relating to studies and examinations by taking into consideration the provisions laid

down in both such rules and the applicable legislation. Accordingly, in several matters relating to studies – e.g. the rejection of applications for omitting or postponing a year of studies – the Office acted on the basis of the joint interpretation of the applicable legislation and RSE.

The Office received a complaint from a student who had applied for the omission of a year, but the head of the institution did not approve the suspension of student status. Pursuant to Paragraph (1) of Article 28 of the Higher Education Act, the student status may be suspended for a period of altogether four terms in the manner defined in the institution's regulations. This period may be prolonged by two terms in duly justified cases, but may not exceed the duration of the training programme. The institution's Rules for Studies and Examinations detailed this statutory provision. In accordance with these rules, students who have enrolled for a given term may request that they fulfil academic obligations at a later date before the last day of the term or before starting taking the obligatory examinations, should the latter fall on an earlier date. An authorisation to omit a year may be granted when a student is unable to fulfil their academic obligations through no fault of their own or in the case of any other reasonable circumstances. It follows from the above that decision makers make equitable decisions based on the institutional rules developed on the basis of the statutory provisions. Decision makers act at their own discretion and they are not required to authorise omission in all cases, including those where students present serious reasons. By definition, in decisions made on the principle of equity the decision maker makes a judgement at his own discretion. Decision makers are not required to justify their decisions. Decision makers can freely consider the reasons, and may make a decision based on their subjective beliefs without being bound by requirements. Based on the foregoing, the Office has established that the institution did not violate any right by rejecting the student's request. (K-OJOG-103/2002.)

A complaint was filed by a person who was granted admission to a university, but did not enrol and submitted a request for postponing a year. The request was rejected, which the complainant found injurious. The Office established that following her successful entrance examination, the complainant was entitled to enrol for courses at the institution and – pursuant to Paragraph (2) of Article 7 of the Higher Education Act – to become a student of the institution. As the person filing the complaint failed to enrol for courses, her name was deleted from the list of persons admitted to the institution. In view of the above, the person filing the complaint did not become a student of the institution. Article 28 of the Higher Education Act and the RSE, however, only allows enrolled students to omit a year or to suspend student status. The RSE does not provide for postponing a year as such. This means that the RSE does not allow individuals who have been granted admission to the faculty to postpone the first enrolment, which leads to student status, to a later academic year not following directly the successful entrance examination. Those who have been granted admission must first enrol for courses in the term following the successful entrance examination to become students of the institutions, and

only following that do they become able to postpone the start of their studies or to suspend their studies. In view of the above, the Office has established that the institution did not violate educational rights by rejecting the student's request for postponing a year. (K-OJOG-276/2002.)

Naturally, the provisions of the regulations created by the university or college council by virtue of the autonomy of the educational institution do not apply to students only. Institutions themselves must observe them in the same way as they observe the applicable legislation, and institutions may not depart from such rules for any reason, including university or college traditions or interpretations given orally.

In several cases, the Office checked if the provisions of such regulations are observed in connection with the requirements of the various courses.

A student found it injurious that, invoking the course specific requirements whereby students have an opportunity to make up for the unfulfilled requirements or prove improvement for one course only, he was not allowed to make up for unaccomplished tasks and his course was not recognised as completed in that term. The regulations require the rules for making up for unaccomplished tasks to be laid down in the specific requirements of the various courses. The lecturer responsible for the course must fix at least one date when students can sit for the missed written examinations. The document containing the requirements for the course did not contain the above provisions. The course specific requirements did not provide for making up for unaccomplished tasks or missed written examinations, and they did not include any rules for restricting the number of such opportunities. In view of the foregoing the Office has established that the institution's opinion whereby students have an opportunity to make up for the unfulfilled requirements or prove improvement for one course only is not substantiated. As the student in question failed to meet the requirements of the course for other reasons, the issue of restricting the opportunities for demonstrating improvement did not affect the recognition of the term. Therefore, the Office did not file any initiatives in the student's case. It did initiative however that, in the future, the higher education institution should draw up the course specific requirements in keeping with the regulations and in those requirements provide for the rules for making up unaccomplished tasks in accordance with the provisions of the RSE. (K-OJOG-67/2002.)

A student found it injurious that she could not start her examination due to absence from a study trip, although she met the course specific requirements published in writing. The student filed several complaints concerning the procedure relating to the certification of the absence and also complained about the conditions for making up for the study trip. The Office has established that the decisions concerning the prescription of a study trip, the method of providing a certificate of the absence

and the conditions for making up for the missed trip were made in accordance with the regulation. It has also been established though that, based on the RSE, students must be informed of the study trip forming part of the course specific requirements, the method and time of providing a certificate of absence, the consequences of absence and the conditions for making up the missed trip at the beginning of the term, and such information must appear on the notice boards of the department. The written requirements of this course did not include the above mentioned information. In view of this, considering that the student filing the complaint is continuing her studies in another degree programme, the Office filed an initiative whereby, in the future, students will be informed of the course specific requirements in accordance with the requirements of the RSE, and such information will contain all course specific requirements as well as provisions for providing a certificate of absence, the consequences of absence and the conditions for making up whatever is missed. The initiative has been accepted. (K-OJOG-27/2002.)

Although the RSE define the rights and obligations of educational participants as a norm, in the same way as legislation does, legislation does not contain any requirement as to the chronological effect of their amendments. Likewise, there are no requirements suggesting that the RSE can be amended in a bottom-up manner only. In lieu of statutory provisions providing a guarantee, the Office developed its position in several cases on the basis of the general legal principles applicable to the modification of norms. Institutional regulations, which lay down the norms applicable within the institution, are subject to the general principle prohibiting retrospective regulation and the general principle requiring a preparatory period. In accordance with these principles, a norm may not diminish any rights existing before the time of establishing the norm in question, or increase obligations with a retrospective effect. Furthermore, the period between the proclamation of any decision concerning the amendment of obligations and its entry into force must be established by ensuring the introduction of the new requirements in a predictable and foreseeable manner, so that students can fulfil them and plan their fulfilment. The question whether the obligations laid down in the RSE violate the above principles and whether they cause any infringement cannot be answered, unless the concrete circumstances are known.

A complaint was filed by a student who commenced her PhD studies on 1 January 1998. The PhD regulations in force at that time did not require an obligatory preliminary workshop discussion. The student found it injurious that the effective PhD regulations, which were adopted and entered into force on 5 September 2001, included such a requirement, and it was applicable for those who had begun their PhD studies before the new regulations were adopted. The student indicated that she had not started the doctoral degree award procedure yet. As the procedure was

not under way at the time of the new regulation's entry into force, the principle prohibiting retrospective regulation was not violated in this case. In what followed, the Office investigated whether a preparatory period was ensured prior to the adoption of the new regulations. The regulations which were in force earlier required a preliminary, favourable assessment of the content of the thesis as a prerequisite of the public discussion of the thesis. The new regulations require a workshop discussion of the thesis prior to the public discussion. The aim of the workshop discussion is to decide whether the thesis is fit for a public discussion, which is similar to the purpose of the preliminary assessment of its content. The organisation of the workshop discussion is the responsibility of the candidate's tutor. The workshop discussion is similar to the practice existing in the procedure for the doctoral degree award earlier on. Therefore, its introduction constitutes a change where candidates who have not started the award procedure yet have enough time for adaptation and preparation for the fulfilment of the new obligation, even if the rule introducing the workshop discussion enters into force on the day of its proclamation. According to our position, the requirement of allowing enough time for preparation had not been prejudiced in this case, therefore the Office cannot establish the infringement of educational rights. (K-OJOG-80/2002.)

A student complained about an amendment to the RSE introducing changes in the rules for determining the assessment appearing in the awarded degree. The changes were applicable to students in the last year of their studies. Earlier, the RSE provided for the determination of the level of the awarded degree in the following manner: "The assessment appearing in the awarded degree shall be determined based on the mean of the results of the final examination, the grade given for the thesis and the mean of the grades obtained in course unit examinations." On 14 February 2001 new RSE were adopted with provisions to be applied as of the second term of the academic year 2001-2002. The new RSE contain the following provision: "The assessment appearing in the awarded degree shall be determined based on the mean of the grades given for the courses covered by the final examination and the grade given for the thesis and the mean of the grades obtained in course unit examinations."

Neither the Higher Education Act, nor the Government Decree on the qualification requirements of the degree programme concerned, contain any rules on how to determine the assessment appearing in an awarded degree. Legislation entrusts the institution with the regulation of this issue. At the same time the RSE, i.e. the norms within the institution, are subject to the general principle prohibiting regulation with retrospective effect, and may not diminish any right existing before the time of establishing the norms in question or impose new obligations or increase existing obligations with a retrospective effect. Therefore, the Office looked at whether the provisions of the new regulation comply with this principle. It has been established that, as a result of the new regulations, students would have had to perform differently in past examinations in order to obtain the same degree in the present, because the grades obtained in past examinations are taken into account with a changed weighting for the assessment appearing in the awarded degree. A grade having a negative impact on the assessment appearing in the degree with an increased weighting

will in fact increase the obligations imposed before the adoption of the new regulation. A grade having a positive impact on the assessment appearing in the degree with a reduced weighting will in fact diminish the rights earned before the adoption of the new regulation. Consequently, if the rules for determining the assessment appearing in the degree, i.e. the impact of grades obtained earlier on, changes, as a result of introducing a new regulation, to the detriment of students, the new regulation will be in conflict with the prohibition of retrospective regulation, and will constitute an infringement of rights. Considering that the prohibition of retrospective regulation only applies to amendments that are detrimental to students, those students who can benefit from the new rules for determining the assessment appearing in the degree will not suffer any infringement of rights. In view of the foregoing, the Office proposed an initiative whereby the higher education institution can amend the rules for determining the assessment appearing in the degree in such a manner that will comply with the general principle prohibiting retrospective regulation. Furthermore, the Office filed an initiative whereby the institution will determine the assessment appearing in the degree in accordance with the old provisions in the case of those students for whom the new rules are detrimental. The initiative has been accepted. (K-OJOG-141/2002.)

In several issues, the Office has established an infringement of educational rights that are provided for expressly neither in the legislation on higher education, nor in the institutional regulations. The Office acted this way when it investigated issues such as the restriction of recording the obtained grades in the grade reports and the establishment of differing academic requirements.

Naturally, higher education institutions must observe all statutory provisions, not only the ones laid down in the legislation on higher education or the institutional regulations. This applies to the provisions of the Data Protection Act, which is applicable in higher education. Accordingly, the Office has formulated initiatives relating to students' constitutional right to the protection of personal data – in connection with specifying the health problem in doctor's certificates or access to examination papers.

In case K-OJOG-67/2002, which has already been mentioned above, a student complained about her doctor's certificate not being accepted, because it failed to specify the health problem. According to the institution, the student presented the certificate after the deadline. The certificate was rejected, because it was presented late. Therefore, the Office did not establish the violation of rights in this issue. However, the head of the department rejecting the doctor's certificate also mentioned that the document should have specified the health problem. On the subject of specifying health problems in doctor's certificates, the Office has established the following: Pursuant to Article 117 of the Higher Education Act and its Annex 2,

higher education institutions may handle students' personal data in relation to the student status, including the certification of absence. There is a principle, though, laid down in Article 5 of the Data Protection Act, which is applicable to the handling of personal data by higher education institutions. In accordance with this principle, the handling of personal data must always have a specific purpose, which is either the exercising of some right or the fulfilment of some obligation. Personal data must be handled in compliance with this principle at all stages. Furthermore, the handling of personal data must be restricted to those personal data that are indispensable and appropriate for attaining the objective of data handling. The handling of personal data may not exceed the extent and period as is necessary for attaining the said objective. As the credibility of a doctor's certificate can be judged without the health problem being specified in the certificate, and since the same applies to making the decision about accepting the doctor's certificate, requiring the specification of the health problem would be against the principle that the use of personal data must always have a specific purpose. In view of this, the Office proposed an initiative whereby the institution will not require students to present doctor's certificates specifying health problems and will not make the acceptability of a doctor's certificate subject to that in the future. The institution has accepted the initiative. (K-OJOG-67/2002.)

A student complained about not having access to his examination paper or a copy thereof in spite of repeated requests. The institution said that the complainant had had a chance to have a look at the examination papers, but the actual issuing of papers was not deemed useful by the institution. The Office had already established in its earlier practice that papers and tests written by a student should be treated the same way as the personal data of the student concerned, and as such, they are the possession of the student. As the party handling the personal data, the higher education institution must provide written information thereof in accordance with Articles 12-13 of the Data Protection Act. Based on the visual inspection of the paper or test, students may file requests for a revision of correction with a view to revealing mistakes. In order to make sure that such requests are formulated after due preparation, having the necessary instruments and time required for writing the request, the visual inspection cannot be restricted to the study of the paper or test – and the way it was corrected – at a place and time determined by the institution. The visual inspection must include the possession of the paper, meaning the provision of a copy thereof. Based on the foregoing, the Office has established that the college violated the student's rights by refusing to issue a copy of the paper on the student's request. In view of this, the Office has contacted the head of the institution with the initiative to issue copies of all of the requested tests and papers for the student without delay. Furthermore, the Office has filed an initiative whereby, in the future, the college will issue copies of papers and tests to students upon request to ensure full access thereto.
Based on the initiative, the college incorporated the following provision into its Rules for Studies and Examinations: "Following the assessment of written assignments specified in the course specific requirements, students filing a request within 15 days after the publication of the assessments may receive a copy of the

requested and assessed document (examination paper, in-class test or paper, rapid test, etc.) from the person responsible for the course. Students must pay a charge for the requested copies. The person responsible for the course must record the issue/receipt of the document." The Office did not find the above provision fully in line with the invoked provisions of the Data Protection Act. The law does not allow the party handling the data to restrict the time available for exercising the right to information; therefore the RSE may not restrict that, either. In addition, pursuant to Section a) of Paragraph (1) of Article 11 of the Data Protection Act, students' right to request information about their personal data must not be restricted to written information. Furthermore, pursuant to Paragraph (3) of Article 12 of the same Act, the provided information must be free for those who have not filed a request for the same information to the party handling the data during the same year. A charge for the information is only lawful in other cases. In view of the above, the Office requested the institution to take all action necessary to ensure that the provision incorporated in the Rules for Studies and Examinations based on the earlier initiative is amended to comply with the requirements of the Data Protection Act. All of the initiatives have been fully accepted regarding the matter. (K-OJOG-368/2002.)

Providing students with adequate information about their rights and obligations is considered a basic prerequisite of educational rights. Although the Higher Education Act does not specify the institutional obligations and student rights relating to this issue, universities and colleges may provide for such rights and obligations in their own regulations, or may introduce individual measures to ensure the provision of adequate information to students.

A student complained that the section of the regulations whereby all students are entitled to receive information about the academic issues concerning them had not been observed in his case. Our view is that this student right creates a twofold obligation on the part of the institution. On the one hand, the institution is expected to publish certain information and documents that are either relevant for many students or are important for some other reason without any special request. On the other hand, the institution must give relevant replies to the queries received from students. The quoted provision does not imply that the institution must provide information about a student's rights and obligations without the student's specific request in individual cases. Therefore the Office has not established the infringement of any right in this case. (K-OJOG-207/2002.)

Students turned to the Office with the complaint that their institution made nine courses obligatory without informing students thereof in advance and in spite of the fact that the courses were not listed in the training plans and the curricula of the four terms. The Office has established that the courses are obligatory for students pursuant to the Rules for Studies and Examinations. In accordance with Section d) of Paragraph (2) of Article 64 of the Higher Education Act, higher education institutions

may lawfully adopt such provisions and impose such obligations on students by virtue of their autonomy. The RSE may establish new obligations for students, which is not affected by the fact that the obligations in question are not published in any other information issued by the institution. Nevertheless, it should be noted that whilst the RSE are available and accessible for all students, any contradiction between the information issued by the institution and the RSE may lead to the infringement of educational rights. The same applies to obligations that are not published in a clear manner. The institution has promised to include the content of the RSE in the publications circulated among students in the future in order to avoid any misunderstanding. Thus the institution has rectified the infringement on its own authority, and the Office has not formulated any initiative in the matter. (K-OJOG-234/2002.)

CHARGES AND FEES PAYABLE BY STUDENTS AND THE AVAILABLE FORMS OF SUPPORT

State-financed training programmes

Every year, including the year of 2002, the Office of the Commissioner for Educational Rights has published information on the eligibility criteria of participation in state-financed training programmes.

In relation to this, a graduate student turning to the Office was informed that the training programme she was involved in could not be qualified as an initial training programme. Besides not complying with the general criteria, the training programme in question is not one of the exceptions listed under Paragraph (2) of Article 3 of Gov. Decree 120/2000. (VII. 7.) on the financing of higher education institutions from capitation grants for training and maintenance. Therefore, the student must pay for her training. (K-OJOG-515/2002.)

The Office received a query from a Hungarian person living outside Hungary. He is not a Hungarian citizen, and as such is not entitled to participate in state-financed education. He asked whether he could earn the right to state-financed education by obtaining a residence permit in Hungary. The Office informed him that, pursuant to Section d) of Paragraph (2) of Article 3 of Government Decree 120/2000 (VII. 7.) on the financing of higher education institutions from capitation grants for training and maintenance, those foreign citizens who are subject to the same treatment as students with Hungarian nationality pursuant to legislation or an international agreement must be considered as state-financed students of higher education institutions, provided that they comply with the other criteria set out by the law. In accordance with Paragraph (3) of Article 14 of Government Decree 157/2001 (IX. 12.) on certain issues relating to the tertiary level studies of foreign citizens in Hungary and of Hungarians abroad, for the purposes of the Higher Education Act and the implementation decrees thereof, immigrants and foreigners with a refugee certificate must be considered as having the same legal status as Hungarian citizens as of the date of issue of the Hungarian iden-

tification card or refugee certificate. Pursuant to the above regulations, a person holding a residence permit is not considered as having the same legal status as Hungarian citizens in terms of eligibility for state financing. Therefore, such persons cannot apply for state-financed training programmes. (K-OJOG-587/2002.)

Obligation of and exemption from tuition fee payment

The Office provided information to students on tuition fee regulations in many cases.

The Office informed those students who decided, after enrolment, that they did not wish to participate in a given training programme and wanted to recover the tuition fees they had already paid, that institutions' tuition fee requirements are valid as of the date of enrolment for courses. The tuition fees already paid cannot be recovered at a later date. (K-OJOG-573/2002., K-OJOG-588/2002.)

Complainants were informed of the rules applying to the raising of the tuition fee. In accordance with Paragraph (3) of Article 22 of Gov. Decree 144/1996 (IX. 12.) on the forms of support available for students and the charges and fees payable by them,[3] the tuition fee charged by an institution may not exceed the amount established in the previous year as increased by the price index applicable for the previous year published by the Central Statistics Office. The amount of the tuition fee payable must be published within the institution in the customary manner by 31 May of the preceding academic year. (K-OJOG-8/2002., K-OJOG-74/2002.)

Those who found the tuition fee too high and wished to be granted exemption from payment received the following information from the Office: In accordance with the applicable regulations, the determination of the tuition fee is the responsibility of the individual institutions. Students who participate in training programmes not financed by the state pay tuition fees. Institutions establish the amount of the tuition fee in their own regulations, which must provide for the available grants provided by the institution, exemption from tuition fee payment and any other fees and charges payable. In accordance with these provisions, students may be exempted from the payment of the tuition fee, or part of it, only if the organisational and operational rules of the institution allow for such exemptions. (K-OJOG-119/2002., K-OJOG-591/2002.)

In the same way as in the previous year, the Office provided information to a number of students in 2002 concerning the regulations on exemption from tuition fee payment to be granted to students receiving pregnancy/childbirth benefits, childcare benefits, child raising assistance or childcare payments. Earlier, the rules for exemption were laid down in Gov. Decree 144/1996 (IX.

[3] Gov. Decree 144/1996. (IX. 17.) is not in force any more, but the currently applicable Government Decree 51/2002. (III. 26.) regulates the issue in a similar manner in Paragraph (4) of Article 19 concerning the charges and fees payable by university and college pupils.

17.). As of 1 September 2002, the issue is regulated by Gov. Decree 51/2002 (III. 26.). Pursuant to Paragraph (1) of Article 22 of the decree in force, those students who participate in a tuition fee programme of a state-owned higher education institutions and receive pregnancy/childbirth benefits, childcare benefits, child raising assistance or childcare payments on the first day of the term concerned may not be required to pay tuition fee while participating in initial training, supplementary initial training, specialised continuing education or accredited tertiary level vocational training. In accordance with Section 4, the application of this exemption in church-affiliated institutions and other institutions maintained by bodies other than the state is subject to agreements concluded with the Ministry of Education. (K-OJOG-59/2002., K-OJOG-107/2002., K-OJOG-237/2002., K-OJOG-448/2002., K-OJOG-468/2002., K-OJOG-480/2002., K-OJOG-493/2002., K-OJOG-645/2002., K-OJOG-682/2002., K-OJOG-694/2002.)

Benefits and allowances

A student status leads to financial obligations other than tuition fee payment. Students of higher education institutions may receive a range of benefits and allowances. Section a) of Paragraph (1) of Article 30 of the Higher Education Act ensures that students participating in state-financed training programmes may receive grants.

The same section gives the Minister of Education a right to publish calls for applications for national grants (a grant awarded by the Republic of Hungary) every year. However, only students who have a valid student status and participate in state-financed training programme are eligible for these grants. The suspension of student status is a disqualifying factor.

> A student filed a complaint with the Office because she had applied for a national grant, but only received it partially, in spite of having been informed of winning the grant. The investigation carried out by the Office revealed that the complainant was not eligible in the term in question, as she had not enrolled for courses under her first initial training programme, i.e. her student status was suspended in that period. (K-OJOG-87/2002.)

The Office received several complaints concerning a form of grant, the Bursa Hungarica Local Authority Grants for Higher Education, established by a separate regulation.[4]

[4] Established by Decree 12/2001 (IV. 28.) of the Minister of Education on the Bursa Hungarica Local Authority Grants for Higher Education.

The Office established that Bursa Hungarica grants are only available for students participating in state-financed training programmes, because the grant was established by the Minister of Education pursuant to the authorisation in Gov. Decree 144/1996 (XII. 17.), which is applicable to state-financed training and education only. (K-OJOG-84/2002., K-OJOG-209/2002.)

In 2002, as in 2001, the Office received several complaints relating to the travel discounts linked to the student ID held by students of higher education institutions.

Complainants participating in distance learning programmes found it injurious that they were not entitled to any travel discounts in contrast to those who participate in full-time, part-time and correspondence programmes. They considered the relevant regulations discriminatory. Distance learning is a special form of higher education, which, due to its specific nature, is subject to rules that are different in certain respects from those applying to other forms of higher education. Students have a right to choose the form of education which is most favourable for them. Those who have chosen distance learning have chosen it together with all of its characteristics. The state may provide direct or indirect support for certain forms of education (e.g. grants are direct, while travel discounts are indirect forms of support). The exact manner of providing public support, however, may be different with the different forms of education. Providing different types of public support for different types of education and training is not discrimination. The rules of such support are dependent on the financing capacity of the state and the political will relating to the role of the state.

By providing a certain form of support, the state grants preferential treatment for a certain group. In accordance with the practice of the Constitutional Court, the state has a great deal of freedom in identifying the beneficiaries of preferential treatment, provided that the beneficiaries are not chosen in an arbitrary manner. Our position is that the choice of beneficiaries was not arbitrary in this case, as it was based on the reasonable consideration whereby the state provides different levels of support for different types of training. (K-OJOG-476/2002., K-OJOG-555/2002.)

Dormitory placement, a special form of providing benefits

Dormitories constitute a special aspect of higher education. Section d) of Paragraph (1) of Article 30 of the Higher Education Act provides for the right of students to receive a dormitory placement. Those issues relating to eligibility that are not regulated by legislation are governed by the institutional regulations. Based on the number of complaints received in 2002 and due to the relatively special nature of this field, it seems justified to discuss dormitories

under a separate heading, especially because such halls of residence are closed communities where there is an increased chance of violating student rights.

The main issue relating to receiving this benefit is how students may apply for dormitory placement.

> A complainant turned to the Office because she found it injurious that the Registrar's Office of the higher education institution issued grade reports for photocopying only if students paid a special fee, although the photocopy of the grade report is necessary for applying for dormitory placement. The Office contacted the institution and was informed that the Registrar's Office may issue certificates for students, which contain their average academic results in the previous two terms. Such certificates are issued free of charge, and halls of residence accept them. With this, the institution solved the problem on its own authority. Nevertheless, the Office asked the institution to duly inform students of this new approach to prevent similar complaints in the future. (K-OJOG-186/2002.)

The Office initiated an inquiry on its own authority to look at certain issues relating to the operation of the hall of residence of a higher education institution.

> The problem was that the staff of the dormitory warden's office entered students' rooms without asking or informing students several times. In accordance with the rules of the house, members of staff were allowed to enter students' rooms on Wednesday afternoons
> The Office established that a dormitory room must be considered the students' private residence. Therefore, students have the constitutional right relating to the integrity of one's private residence. Naturally, exercising a right may include the waiver of the right in question, i.e. the case where one gives consent to other's access to the protected area. However, such consent must be given on a voluntary basis. In accordance with Paragraph (2) of Article 8 of the Constitution, legislators may adopt regulations to restrict the right to ensure the integrity of one's private residence.
> The quoted provision of the rules of the house cannot be regarded as voluntary consent. Although students accept the provisions of the rules of the house as binding upon themselves when they move into the dormitory, the rules of the house may not allow entrance to the rooms, unless it is based on an authorisation provided by the law. In contrast to legal relationships established on a commercial basis and governed by private law, dormitory membership is governed by public law. Students living in a hall of residence use a benefit provided on the basis of eligibility. Upon moving into the dormitory, students are compelled to accept the provisions of the rules of the house (the dormitory regulations), which implies that dormitory membership is not a legal relationship based on free choice. Therefore, halls of residence may not apply autocratic solutions whereby citizens are compelled to waive an

indisputable constitutional right.
In view of all this, members of staff or any other person may only enter a student's room either with the expressed and voluntary consent of the student concerned, or by virtue of an authorisation provided by the law. If the student concerned does not give his or her consent or the institution is unable to invoke a statutory authorisation, entrance will constitute an infringement of rights.
The registration of guests arriving at the dormitory gave rise to another situation involving the infringement of rights. In accordance with the rules of the house, the guest of a dormitory member must leave an ID at reception. In most cases this is the identity card.
The office established that the identity card is an official document which the person it identifies must carry all the time. The dormitory violates the law by requiring guests to leave their identity cards at reception.
The dormitory's practice of recording the names and other personal particulars of guests may lead to concerns relating to the protection of personal data. In this case, the dormitory handles the personal data of guests for a long time without any adequate purpose. Pursuant to Paragraph (1) of Article 5 of the Data Protection Act, the handling of personal data must always have a specific purpose, which is either the exercising of some right or the fulfilment of some obligation. Paragraph (2) of the same Act stipulates that the handling of personal data must be restricted to those personal data that are indispensable and appropriate for attaining the objective of data handling, and the handling of personal data may not exceed the extent and period as is necessary for attaining the said objective.
In this case the purpose of the handling of personal data is to let the dormitory know who enters its territory with a view to safeguarding its property. To this end, the dormitory may keep records of the personal data needed for the identification of those who enter. On the other hand, any data handling beyond the extent necessary for the attainment of this objective is against the law. After handling, the data must be eliminated, and the data may not be handled for a longer time than what is necessary for the dormitory to determine whether any abuse of its property has taken place.
The institution accepted the position of the Office presented during a face-to-face conciliation. It promised to act in accordance with the above in the future. (K-OJOG-17/2002.)

CONCLUSIONS

The trend whereby many turn to the Office of the Commissioner for Educational Rights only to obtain information for understanding or solving their problems continued in the year 2002. Participants assign outstanding importance to decisions about educational issues, irrespective of whether such decisions are made by the participants themselves or others make such decisions about the participants. The prerequisite of responsible decision-making is to have as much information as possible for the careful consideration of any decision. The state, maintaining authorities, higher education institutions and civil organisations have plenty of information about education, but it is difficult for the users of this public service to gain access to this information. The right to information is regarded as an essential precondition for the enforcement of a range of educational rights. Co-operation between the various participants of education cannot be created without publicity. Indisputably, there are debates and conflicts among the various participants during such co-operation, but it is exactly this type of co-operation that will provide an opportunity to solve existing conflicts. Withholding information, or providing incorrect or insufficient information may lead to a situation without conflict, but that situation is never real. Experience shows that hidden conflicts tend to become apparent sooner or later, and when that happens the situation already involves a great deal of passion and emotion. Those who were excluded from information will feel that they have been let down. Lack of information is accompanied by helplessness, even with humiliation, in the case conflict. This can only be avoided if school citizens and university citizens can make responsible, informed decisions in their disputes in order to solve conflicts in a civilised manner. It is our conviction that this is the only way of achieving a functioning democracy in education.

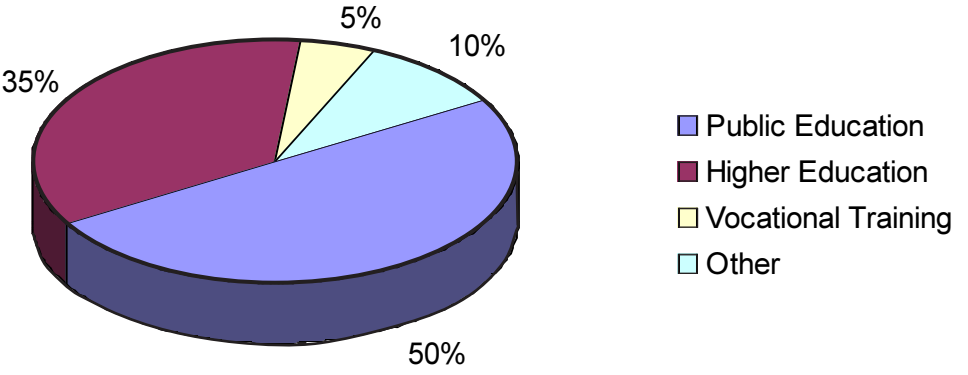
Budapest, 12 March 2003. Aáry-Tamás Lajos

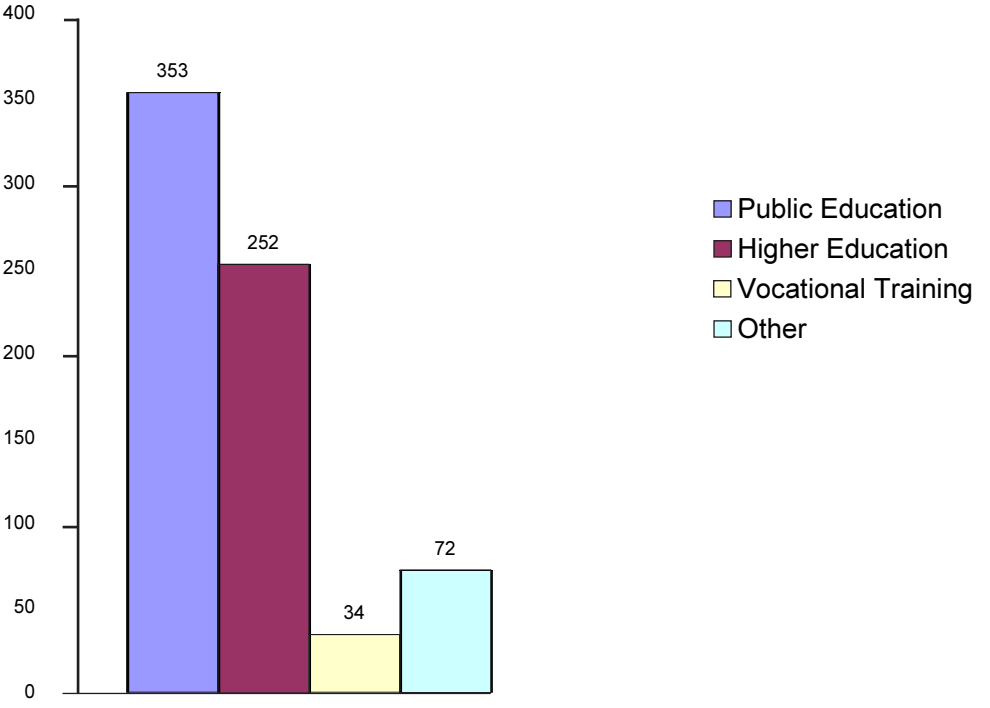
ANNEXES

STATISTICS

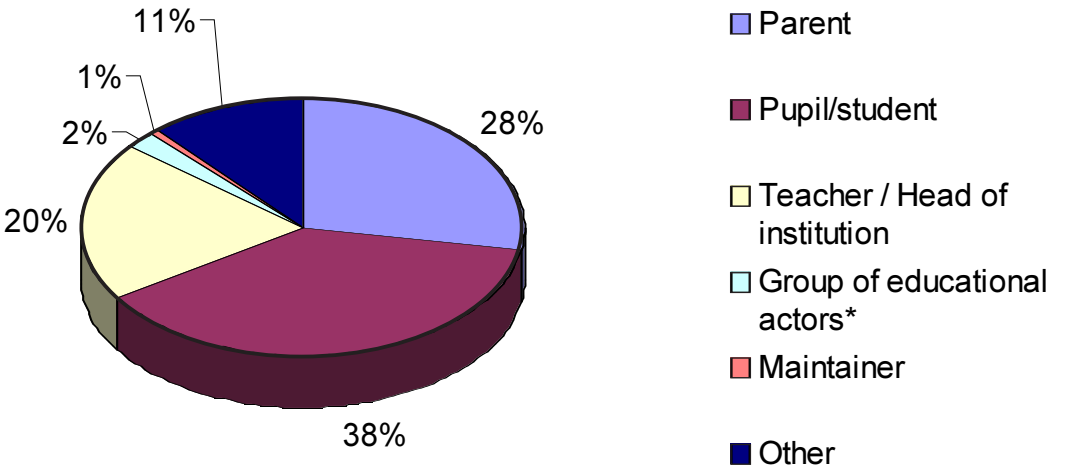
In 2002, the Office investigated 711 cases in total. The following pages show the statistics prepared by the Office according to various criteria.

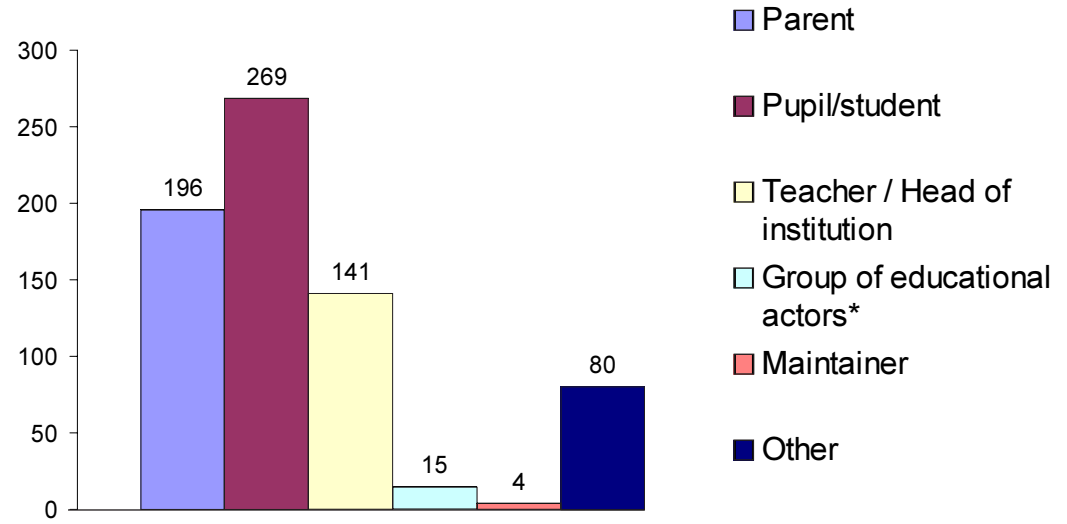
WHICH FIELD OF EDUCATION DID THE COMPLAINT ORIGINATE?





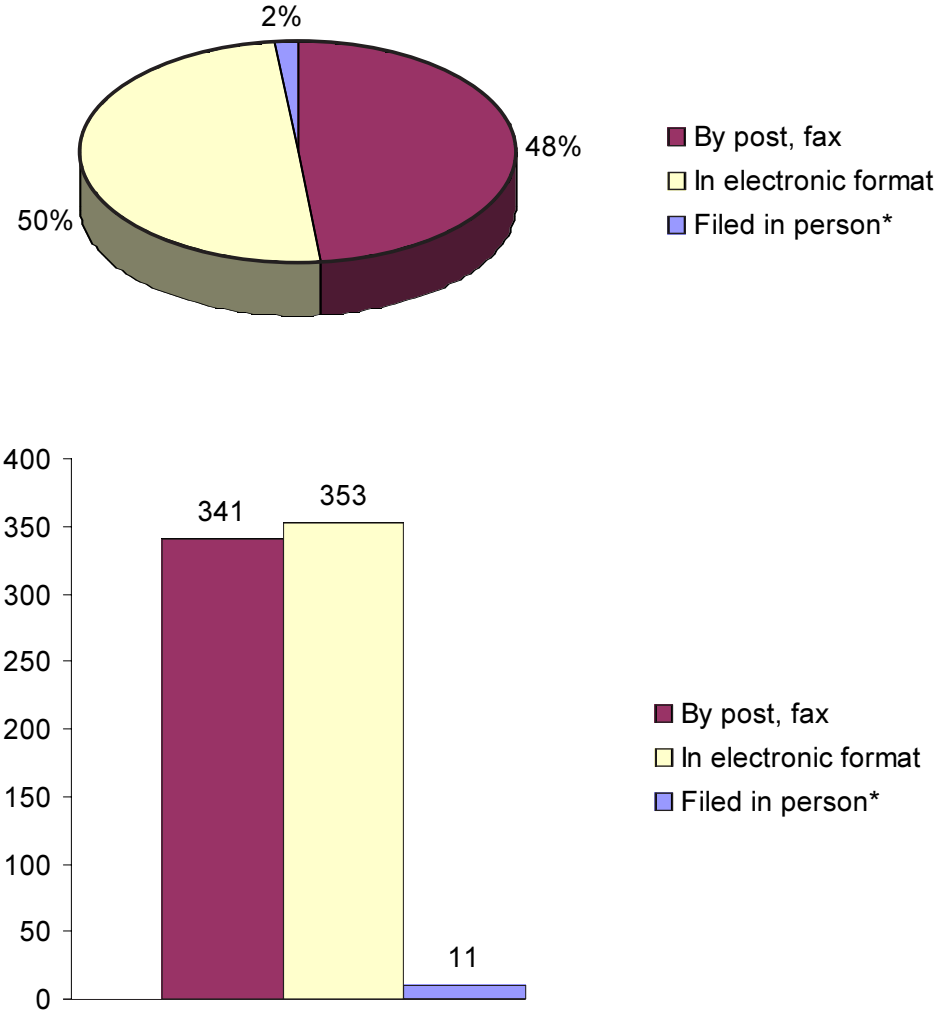
WHO FILED THE COMPLAINT?





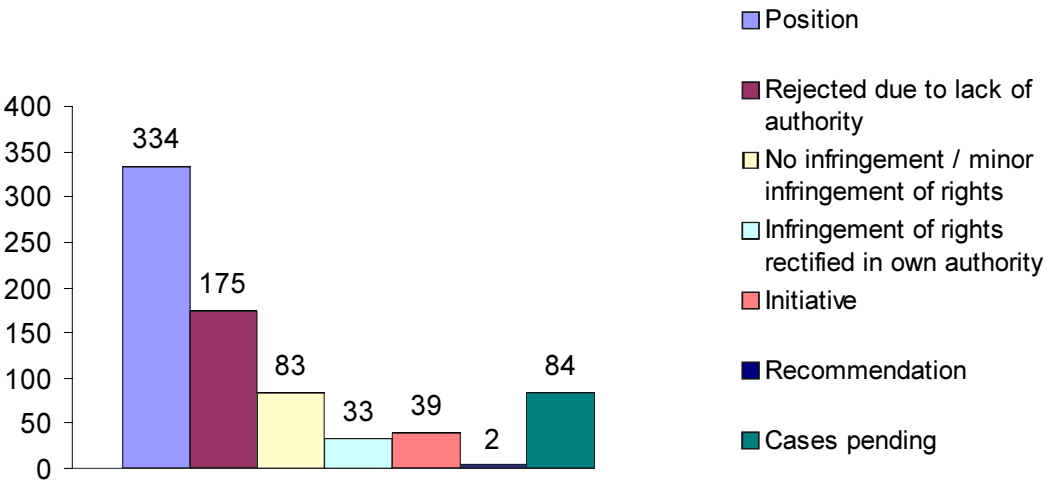
* Parents' association, pupil council, teaching staff, school board, higher education students' body, etc.
Note: In six cases, the Office started an investigation on its own authority.

HOW WAS THE COMPLAINT FORWARDED TO THE OFFICE?



* This figure shows those cases where complainers presented their complaints themselves
Note: In six cases, the Office started an investigation on its own authority

POSITIONS AND MEASURES TAKEN BASED ON INVESTIGATIONS*



* Several measures relating to one case

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