1. **Question One**

Act III of 1993 on Social Governance and Social Benefits (hereinafter the "Social Act") presents two definitions relative to homeless people. According to the first, governance-related definition, *"homeless persons are persons who have no registered residence, with the exception of those whose registered residence is a homeless shelter."* (Section 4, Subsection (2) of the Social Act)

By virtue of this definition, *"in the case of homeless persons, conducting social governance proceedings shall fall within the jurisdiction of that social governance organ whose area of competence has been indicated by the homeless as their abode when applying for social benefit"*. (Section 6 of the Social Act) In the case of benefits in kind and in cash, provided to the homeless, local governments shall proceed in accordance with the above definition.

According to the second, benefit-related definition given by the Social Act, *"homeless persons are persons who spend the night in public areas or in premises intended for non-residential purposes"*. (Section 4, Subsection (3) of the Social Act) This definition is based on social benefit considerations. By virtue of this second definition, *"local governments, their jurisdiction and competence notwithstanding, shall provide the needy with transitional aid, meals and accommodation, if the lack thereof endangers the life or personal integrity of those in need"*. (Section 7, Subsection (1) of the Social Act)

Benefits involving personal care, reserved for the homeless, are tied to this definition by the Social Act. Local governments have to follow this definition when they provide personal care in the form of warming centers, night or temporary shelters. (Sections 78, 84 and 89 of the Social Act) It also means that territorial jurisdiction according to someone's current or last known address may not be set forward as a precondition when providing social benefits.

According to the latest data, there are around 10,000 homeless living in Hungary[[1]](#footnote-1). In the report on the 2001 census, homeless persons are represented either as residents of collective living quarters (homeless hostels or rehabilitation institutions for the homeless, and night or temporary shelters providing temporary accommodation), or as primary homeless (including those registered in the warming centers).

People listed as residents of so called "other inhabited living units" did not qualify as homeless from the point of view of the census.

From sociological standpoint, a larger group of the population may be considered as homeless, since the social profession use several definitions for homelessness. Accordingly:

1. *"roofless"* – persons who

* spend the nights in public or external spaces or places that cannot be defined as living quarters;

1. *"actual homeless"* – persons who

* are either "roofless", or
* do not have any place to stay, but have to "work hard" to find a place they can spend the night, either a house/apartment where they would be taken in by kindness, or other, non-residential premises offering accommodation (e.g., a homeless care institution);

1. *"houseless"* – persons who

* are either "roofless", or
* "actual homeless", or
* regularly stay in non-residential premises offering accommodation (e.g., workers' hostels, prisons, residential institutions etc.), or
* regularly spend the night in a house/apartment, but have no control over the long-term utilization of the accommodation (are not owners or main tenants, but subtenants, bedtenants, courtesy occupants, persons taken in, adult family members);

1. *"homeless"* ("people at risk of homelessness" or the homeless, using the internationally accepted terminology) – persons who

* are either "roofless", or
* "actual homeless", or
* "houseless", or
* live in a flat that is unsuitable for starting a family and create a home (due to its crowdedness or physical state)."[[2]](#footnote-2)

1. **Question Two**

In Hungary, the degree of homelessness and the composition of groups affected by homelessness vary territorially. According to the data collected in major provincial cities, it can be established that homelessness in these cities affects less people than in Budapest. In 2015 in Budapest, 4,730 people declared themselves homeless, while in the county seats this number fluctuated between 112 (in Szolnok) and 837 (in Pécs). Altogether 10,928 people are registered as homeless.

There are fewer women living in public areas than men; however, their majority (56%) live together with a life partner. As far as homeless women are concerned, only a few of them have vocational training (22%), in most cases (62%) their highest level of completed education is primary school (8th grade), in some cases (12%) even less. In their case, the reasons of becoming homeless include not only those typical of men, e.g., family conflicts and divorce, but also eviction, resulting from the failure to pay the rent.

Among the roofless, 25% were identified by their peers (or by themselves) as members of the Roma minority; this rate is higher among women. Twenty eight percent of the homeless had been raised in state institutions, the parents of another 46% among them had divorced during their childhood. Among the registered homeless, 43.4% are divorced. Among the people living in the streets, those in their forties (33%) and fifties (28%) constitute the largest group, those younger than forty altogether account for 30% of the homeless.[[3]](#footnote-3)

1. **Question Three**

The Commissioner's practice (also) confirms that the systemic core points of homelessness and the inevitable starting points of this issue's long-term solution can be found in the related issues of "input" and "output". The already established and operable institutional framework of homeless care is capable of and fundamentally, albeit not ideally, suitable for providing care to people without a roof above their heads, living on the streets.

As a result of acute, occasionally personal, communal or even socio-economic crisis situations, the number of people who become homeless and enter the system is significantly larger that the number of people who, upon leaving the system, re-integrate themselves into society; the vast majority of people affected by homelessness stay in the system for years, decades or even for good.

The chances of becoming and remaining homeless are augmented by the facts that there is a very fine line between gravely deprived life situations and actual homelessness[[4]](#footnote-4), and there are but a few forms of dwelling and occupation (also) supported by the means of social care, while those existing are rudimentary, not widely available and rather ineffective. The Commissioner's standpoint has been unchanged for years: using alternative dwelling programs, rental models, social housing, and implementing creative labor market and occupational policy measure, and through changes in the legal system facilitating the aforementioned, the prevention of homelessness could be more effective and the chances of re-integration would increase.

1. **Question Four**

In Hungary, there were and still there are examples of legal regulations and law enforcement practices, both at national and local levels, which are discriminative, stigmatizing and penalizing as far as homelessness and related behaviors are concerned. In all such cases, the Commissioner for Fundamental Rights has uncovered improprieties related to human dignity, legal certainty, the requirement of equal treatment and the right to due process, and proposed remedies within his competence (proposals, recommendations, awareness-rising).

As a last resort, weighing the gravity of the infringement of fundamental rights and the responses given by the legislative organs (ministries, local governments), the Commissioner has initiated the review and annulment of norms by the competent organs, e.g., the Constitutional Court or, in the case of local governments, the Curia. From the Ombudsman's practice, the following cases are worth mentioning:

***About sanctions against anti-social behavior at public spaces (Report AJB-1040/2012)***

The Ombudsman founded that the new legislation regulations empowering local governments to adopt new regulations, effective from 1 January 2013 and replacing previous provisions annulled by the Constitutional Court raise serious concerns about legal certainty. The Ombudsman urged to the establishment of a clear legislative framework and the immediate revision of local government regulations acting beyond their authorization in order to reduce their “eagerness” for fining. Moreover the definition of “anti-social behavior” is also not clear enough.

In some cases the scope was extended to such activities which could realize by omission, and it occurred a regulation method, which says “illicit anti-social behavior is, what is qualified so by decree.”

It is also unclear which procedural safeguards guarantees the liability process and judging significant fines, this latter is solicitous because these fines are completely entitled to the local authorities, so they are getting interested in sanctioning.

Up to the 1st September 2012, 699 local authorities from 3175 in Hungary, adopted decrees on illicit anti-social behavior. Nationwide 40 municipality prohibited dustbin scavenging, 10 forbid silent mendacity, 9 begging, 552 local authority decrees qualified the so called not ordinary usage of public spaces as anti-social behavior.

The Constitutional Court annulled at 12th November 2012 a legal provision according to which local governments could define them locally punishable anti-social behavior.

This decision sends a clear message that in Hungary human dignity and rule of law has existing safeguards and punitive power of state is limited. The Ombudsman reminded this has antecedents: the Constitutional Court in December 2011 annulled the local authority decree which sanctioned scavenging.

Exclusion is not a solution for homelessness. Homeless and criminal attitude cannot automatically linked to each other. Based on police statistics 3-4000 crime/year are related to homeless people, who are often also victims.

The Ombudsman highlighted that all actors can and have to discuss about homelessness and extreme poverty, about forms of tackling against it, especially about possibilities and limits of state interventions and activities; but as social phenomena.

***Cases concerning “cabin demolition” (Reports AJB-4326/2012; AJB-3513/2012; AJB-5125/2012)***

Fighting against homelessness had an unusual method in 2011: a very offensive demolishing of cabins in Budapest (Zugló), it was followed by Kőbánya, Ferencváros, so in other parts of Budapest.

Local authority of Zugló had questioned, but the Ombudsman maintained his findings made in December 2011 which founded arbitrary and illegal demolishing the cabin settlement at the area rented by Hungarian Railway Company. After the recommendation of the Ombudsman, Budapest Government Office carried out legal supervision on the procedure of the local authority concerning the demolition. They had found that the local authority cleaned the area without administrative decision, based on private law regulations, which caused high uncertainty. In the ombudsman’s opinion the local government did not have any legal possibility to clean the area arbitrary with authority measures and staff.

He added this is an abuse of rights independently whether those people had stayed there illegally, and their living conditions could justify any intervention.

The Ombudsman also founded that in that district the number of night shelters and day-care is not sufficient for the people in need, so the obligation for care provision is not fulfilled.

The Commissioner founded abusive also some activities of Ferencváros local authority in Budapest. It is unacceptable that cleaning up cabins of homeless people and gathering their belongings as garbage by “pretending” authority procedure, public cleaning or even gardening. But of course it is justifiable that the municipality would like to guarantee the public order and cleanness. The local authority took measures without adequate consideration and prudence on termination of homeless settlement in a line of trees at Határ street, the placement of these vulnerable people in need. On the other hand this reaction is at least concerning because the settlement was tolerated by the authorities for a decade. The Mayor of Ferencváros refused the findings and founded them unnecessary and without legal basis; but Budapest Government Office after the recommendation of the Ombudsman carried out a legal supervision and agreed with the Ombudsman’s findings, but further measures they could not take (in lack of any administrative decision, as it was in the case of Zugló).

***Transforming system of penalties concerning homeless people in the Ombudsman’s practice (Report AJB-6727/2012)***

The Commissioner said that the new legislation regulations empowering local governments to adopt new regulations, effective from 1 January 2013 and replacing previous provisions annulled by the Constitutional Court raise serious concerns about legal certainty. The Ombudsman urged to the establishment of a clear legislative framework and the immediate revision of local government regulations acting beyond their authorization in order to reduce their “eagerness” for fining.

At the end of 2011, the ombudsman requested the Constitutional Court to examine the legal regulations authorizing local governments to adopt local regulations. Furthermore, during the fall of 2012 the Ombudsman reviewed local regulations already adopted concerning anti-social behavior. According to the commissioner, local communities may adopt, besides general provisions imposing criminal prohibitions or penalizing minor offences, special norms as well, however these norms should be predictable, and should not constitute an infringement on any fundamental right: they can impose restrictions on housing exclusively to a reasonable extent.

The comprehensive review of regulatory sanctions adopted in 2012 by local governments and their practices confirmed the constitutional concerns indicated in the petition submitted to the Constitutional Court. The ombudsman has detected several content and formal-type mistakes in the wording of the regulations: several settlements were sanctioning behaviors without any constitutional reason or which had been already sanctioned under higher-level legislation regulations. In spite of the relevant decisions of the Constitutional Court, several local governments criminalized homelessness, life sustaining activities in public spaces, scavenging or silent begging.

The ombudsman's investigation was still running when, in November 2012 the Constitutional Court annulled the contested authorizing provisions of the act on local governments which empowered local governments to determine, in an extremely wide scope and arbitrarily those behaviors that were considered as anti-social. Following the decision of the Constitutional Court, the ombudsman reviewed the legal fate of the relevant local regulations and any attempt to re-regulation. The report states that although government agencies did not receive any guidance from the competent ministry, they intended to promote the fulfillment of the requirement of the rule of law, initiated the repeal of contested local government regulations, which in part was fulfilled.

The commissioner for fundamental rights, however, underlined that the new provisions of the act on local governments have provided even broader powers to adopt local regulations. The relevant local regulations referring to the provisions effective from 1 January 2013 give a very broad interpretation of community rules when determining sanctions, going even beyond this new authorization. For this reason Ombudsman requested the government agency to review the said regulations.

1. **Question Five**

The Office of the Commissioner for Fundamental Rights, the sole Status "A" National Human Rights Institution of Hungary, carrying out its tasks stipulated in Act CXI of 2011 on the Commissioner for Fundamental Rights, pays particular attention to the protection of the rights of the most vulnerable groups of society.

Relying on a consistent, fundamental rights-related argumentation, it calls the attention to the human rights aspects of homelessness, i.e., to the improprieties deriving from law-and-order sanctioning and the deficiencies of the state-sponsored care system. It makes concrete recommendations to legislators and law enforcement officials as to remedying fundamental rights-related improprieties concerning the homeless. In the course of his investigations conducted in connection with homelessness[[5]](#footnote-5), the Commissioner has uncovered improprieties related to the rights to life and human dignity, social security, mental and physical health, due process and to the requirements of equal treatment and legal certainty.

Hungarian courts do not treat homelessness as a human rights violation. However, in accordance with the amendment of Act II of 2012 on misdemeanors (hereinafter the "Misdemeanor Act), misdemeanor proceedings and the registration system of misdemeanors, adopted in 2013[[6]](#footnote-6), habitual residence in certain public places may be considered as unlawful, punishable behavior. The Misdemeanor Act empowers local governments to designate areas where habitual residence in public places is considered unlawful in order to protect public order, public security, public health and cultural heritage[[7]](#footnote-7).

In this context, it should be pointed out that in early 2014 the Commissioner established that one of the provisions of a decree issued by the local government of Kaposvár, stipulating that *storing habitual residence-related effects in public places within the entire territory of the municipality* should be sanctioned, was in breach of the right to human dignity. That finding was based on an earlier report[[8]](#footnote-8), in which the Commissioner had called for the amendment of the constitutionally problematic regulations; however, the Municipality of Kaposvár failed to comply, and the investigation conducted by the competent county government office would not reveal any infringement, contrary to the Commissioner's argument. Since the Commissioner maintained his standpoint, he initiated the review of the norm in question by the Constitutional Court.

In December 2013, the General Assembly of the Municipality of Budapest issued a decree, in which, acting on and reflecting to the proposals of the districts, it designated those parts of the administrative areas under the capital's and the districts' jurisdiction where habitual residence in public places shall qualify as unlawful. Upon reviewing the decree in question, the Commissioner concluded that the decree issued by the Municipality of Budapest runs contrary to the Misdemeanor Act on several instances and oversteps the legal boundaries defined by the Act; therefore, he initiated an inquiry by the Curia. The Curia's decision partially upheld the Ombudsman's motion. Stating that the authorizing provisions of the Misdemeanor Act should be interpreted restrictively, the Curia found the Municipality's regulation lawful in the case of pedestrian underpasses, but declared prohibition unlawful in those areas which are automatically linked by the General Assembly of the Municipality of Budapest to public places protected from the point of view of public parking. Since, according to the Curia, the decree issued by the Municipality, in breach of the law, had overstepped the authorization provided by the Misdemeanor Act, the Curia annulled it as of May 31, 2015.

1. **Question Six**

In the course of his activities, the Commissioner for Fundamental Rights shall survey and analyze the situation of fundamental rights in Hungary, give an opinion on the draft legal regulations affecting his tasks and competences, on long term development and spatial planning plans and concepts, and may make proposals for the amendment or making of legal regulations affecting fundamental rights and/or the expression of consent to be bound by an international treaty. The Commissioner for Fundamental Rights may proceed if the activity or omission of a public administration organ or authority infringes or threatens to infringe a fundamental right of a person, provided that this person has exhausted the available administrative legal remedies. In addition, the Hungarian Ombudsman may conduct ex officio proceedings in order to have such improprieties terminated as are related to fundamental rights and which have arisen in the course of the activities of the authorities. If, on the basis of an inquiry conducted, the Ombudsman comes to the conclusion that an impropriety in relation to a fundamental right does exist, he may address a recommendation to the supervisory organ of the authority subject to inquiry.

In this sense, the Hungarian Ombudsman does not simply "use" administrative proceedings, but he turns them into powerful tools to remedy any violations of human rights through reviewing them from the aspects of fundamental rights and their compliance with universal human rights requirements.

1. **Question Seven**

The Commissioner for Fundamental Rights is familiar with all legal regulations aimed at tackling homelessness, as well as with their planned amendments. It may be explained, on the one head, by the relevant provision of the Ombudsman Act empowering him to give an opinion on the draft legal rules affecting his tasks and competences and, on the other hand, by the continuous, substantive communication with the legislators and the rather wide circle of bodies implementing the law in connection with homeless care.

In recent years, it has become a tradition that, during winter time, the Ombudsman monitors the operation of the capital city's homeless care infrastructure. The report published in 2011 uncovered problems related to the "cleaning-up” of underground passages; in the course of his investigation conducted during the winter of 2012, the Commissioner learned that, although the so called "survival points" had been terminated, new shelter had been opened, leading to an increase in the accommodation capacity of the homeless care system. The follow-up report described the situation in 2013 as substantially unchanged, pointing out some positive and negative trends and noteworthy aspects. The Ombudsman's 2014 crisis report called the attention to the uncertainties detectable in the operation of the registration system and in the legal and financial background of certain types of care that already had been reported earlier[[9]](#footnote-9).

Although several of the recommendations put forward in his earlier reports have been implemented[[10]](#footnote-10), the Commissioner still thinks that it is necessary to continuously review and revise the financial regulations concerning the homeless living with psychiatric and addiction disorders of great therapeutic needs, and the legal environment regulating the administrative system of those in need of social care[[11]](#footnote-11). In the Commissioner's view, the catalog of social services given in the Act on Social Governance and Social Benefits is also in need of revision: a more elaborate, more detailed definition of competences is required.

In view of all the above, in his report published in spring 2015, the Commissioner for Fundamental Rights recommended (again) to the competent Ministry the full review and the amendment of the relevant legal and financial regulations. In this context, the Ombudsman is paying special attention to the finalization of and the Government's response to the new concept of the comprehensive transformation of the institutional framework of homeless care and its evolution into a draft amendment to the relevant legal regulation.

1. See: <http://www.bmszki.hu/hu/eves-adatfelvetelek> [↑](#footnote-ref-1)
2. See: Győri Péter: Gyorsjelentés a hajléktalanságról Magyarországon *(Flash report on homelessness in Hungary),* Társadalmi Riport *(Social Review)*, 1990, Budapest [↑](#footnote-ref-2)
3. See: <http://www.bmszki.hu/eves-adatfelvetelek> and <http://www.bmszki.hu/hu/otthontalanul> [↑](#footnote-ref-3)
4. See the "categories" listed under Question One [↑](#footnote-ref-4)
5. Check Page 42 of the Annual Report of 2013: <http://www.ajbh.hu/documents/14315/129172/Annual+Report+2013/42bc9441-1e90-4963-ad01-8f2819d2c3bf?version=1.0> [↑](#footnote-ref-5)
6. By virtue of Article XXII, Paragraph (3) of the Fundamental Law, as of October 15, 2013, the Misdemeanor Act stipulates that any infringement of the rules of habitual residence in public places shall qualify as a misdemeanor. [↑](#footnote-ref-6)
7. See our answer to Question Four [↑](#footnote-ref-7)
8. See report AJB-687/2013 [↑](#footnote-ref-8)
9. See reports AJB-367/2011, AJB-1834/2012, AJB-646/2013 and AJB-518/2014 [↑](#footnote-ref-9)
10. See, e.g., the optimization of scheduling public calls in order to ensure the proper financing of crisis management [↑](#footnote-ref-10)
11. See Report AJB-285/2015 or the related cases concluded in 2015 without publishing a report (AJB-5223/2014, AJB-297/2015, AJB-744/2015) [↑](#footnote-ref-11)