

## Hungary

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*Commissioner for Fundamental Rights*

### Independence and effectiveness of the NHRI

#### International accreditation status and SCA recommendations

The Hungarian NHRI was accredited with A status in October 2014. In October 2018, the SCA decided to defer its decision on the accreditation of the NHRI.

#### Developments relevant for the independent and effective fulfilment of the NHRI's mandate

The Government has provided new, modern, state-of-the-art **premises** to the Office of the CFR: the CFR is about to move to its new premises this year, presumably in June.

In recent years, the CFR has faced the devaluation of the staff's salaries: the base salary (a sum defined in Act CXCIX of 2011 on Public Servants, and which provides a basis of calculation for the salaries of public servants) has not increased since 2008, thus the salaries of our staff have lost their value considerably over the past 10 years. As of May 2020, however, a new law entering into force regarding the **status and remuneration of the CFR's staff** (Act CVII of 2019) will remedy this problem, providing for a substantial, 30% average pay rise.

#### Changes in the national regulatory framework applicable to the NHRI change since the last review by the SCA

As of 1 January 2014, Act CVI of 2011 on the Commissioner for Fundamental Rights (CFR Act) and Act CLXV of 2013 on Complaints and Public Interest Disclosures have defined new responsibilities for the Commissioner for Fundamental Rights (CFR) concerning the handling of public interest disclosures. The aim of the new legislation is to support whistleblowers, protect and process their personal data in a closed system if necessary, and provide effective protection for them.

As of 1 January 2015, the CFR acts as National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture (OPCAT). Chapter III/A of the CFR Act provides for detailed procedural rules for this mandate.

**Further responsibilities** were added to CFR's mandate in 2020: Pursuant to Section 145 of Act CIX of 2019 adopted by the Parliament, the CFR took over the responsibilities of the Independent Police Complaints Board as of 27 February 2020. The procedure on police complaints is conducted by the Ombudsman on the basis of Section 39/F-L of Act CXI of 2011 on the Commissioner for Fundamental Rights, which, similarly to the earlier procedure of the Board, is not an administrative procedure. The reports to be prepared as a result of the Ombudsman's inquiries into police complaints will be followed by an administrative procedure conducted by the police. It is possible to request legal remedy against the decision made as a result of such procedure according to the Rules of Procedure for Judicial Review of Administrative Decisions.

## Checks and balances

In accordance with Section 2(2) of the CFR Act, the Commissioner shall give an **opinion on the draft legislation** affecting his/her tasks and competences, on long-term development and spatial planning plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations, and may make proposals for the amendment or making of legislation affecting fundamental rights and/or the expression of consent to be bound by an international treaty. Whenever the CFR finds that a draft is not in line with constitutional or international human rights standards or lacks the necessary consultation with civil and professional organisations, he draws the legislator's attention to these shortcomings. While it is in the Hungarian NHRI's legal mandate to give its opinion on different legislative drafts, our experience in the past years had been that Ministries often failed to send such drafts to the NHRIs for our opinion. However, there seems to be a development in this respect, where in the half year the CFR seems to receive more legislative drafts for its comments. Due to the speeding up of all phases of the process of adoption of legislations, in those cases when we do receive a draft, the deadline for the submittal of opinion is often very short. The yearly reports submitted by the Ombudsman to the Parliament regularly raises attention to these problems.

## Functioning of justice systems

The **role and structure of the National Judicial Council (NJC)** has been under debate during 2019 because of the two sharply contrasting views on the constitutional operation of

the NJC which resulted in an uncertainty in interpretation that jeopardized legal certainty. In accordance with the principle of the separation of powers, as well as constitutional requirements of judicial independence, the competence of the NHRI does not extend to the examination of the judicial practice of the courts. Therefore, the Commissioner was not in the position to assess whether the operation of the NJC, which qualifies as a judicial self-governing organ, could be regarded as lawful or not. Consequently, the Commissioner proposed that the provisions of the Fundamental Law of Hungary be interpreted by the Constitutional Court. Therefore, in March 2019, the CFR proposed that the Constitutional Court interpret constitutional provisions on the role and structure of the NJC of the Fundamental Law of Hungary [Paragraphs (5) and (6) of Article 25] to resolve such constitutional law issue concerning the operation of the NJC. In this case, the specific constitutional law issue that could be inquired into in the context of Constitutional Court proceedings was caused by the fact that, according to a signal from the NJC President, some uncertainty of interpretation emerged in relation to the operation of the NJC which jeopardized legal certainty, and in lack of relevant positive statutory provisions, it could be resolved only through the abstract interpretation of the relevant provisions of the Fundamental Law of Hungary. The case is currently pending before the Constitutional Court.

Another concern can be raised as regards the **execution of a national court's judgment** related to the respect of fundamental rights which has been in the focus of debate in Hungary. The reference is to a court ruling ordering for the compensation for school segregation of Roma in Gyöngyöspata. In February 2020 the government refused to pay almost HUF 100 million (EUR 300.000) in compensation, stating it would only pay in kind, that is, by education and training. The deputy ombudsman responsible for the protection of national minorities has launched an inquiry to review the follow-up to the Gyöngyöspata report issued in connection with the previous Ombudsman's inquiry and the implementation of the decisions made in the report. The deputy ombudsman expressed concern regarding recent developments in the case, namely the debates on the rulings on the compensations and the "rising public tension".

## Media pluralism

The CFR has no information about insufficient protection of journalists', inadequacy of resources, or inadequate investigations on attacks on journalists.

As regards **access to information**, and in particular **public interest disclosures**, the CFR ensures – through his Office – the operation of an electronic system for disclosing and

recording public interest information, also in case of the above mentioned situation. At present, public interest disclosures can only be made through the electronic system (i.e. on the platform established for this purpose on the Office's website, [www.ajbh.hu](http://www.ajbh.hu)), due to remote working arrangements during the COVID-19 emergency. The person ("the whistleblower") disclosing the information may follow the dossier relating to his/her disclosure request on the webpage, and may query the status of his/her case (this option/function is available only in Hungarian). In addition to that, the brief excerpt of the disclosure (the so-called "public excerpt"), without personal data, is publicly accessible.

### *References*

- Act CXI of 2011 on the Commissioner for Fundamental Rights (CFR Act, Hungarian acronym: Ajbt.)
- Act CLXV of 2013 on Complaints and Public Interest Disclosures (CPID Act, Hungarian acronym: Pkbt.)

## Corruption

The National Service for Protection is the organisation performing internal crime prevention and detection duties with nationwide competence according to Act XXXIV of 1994 on the Police. The Service's general goal is to fight against corruption and organised crime.

A system is in place to ensure the **protection of whistle-blowers in Hungary in relation to disclosure of public interest information**, which ensures in the opinion of the CFR a satisfactory level of protection. The system, relying on an electronic software operated by the CFR, relies on the following key principles:

- Anonymity  
The whistle blower may request that his/her submission be treated anonymously. In this case, the acting body may only access the excerpted version of the public interest disclosure, and any data that would reveal the identity of the whistleblower are removed. Thus, the whistleblower's identity remains hidden, so that he/she would not suffer any disadvantage because of his/her disclosure.
- CFR inquiry into the practice of the acting bodies (CFR Act)  
After the inquiry of the public interest disclosure, the whistle blower may submit a petition requesting the CFR to remedy a perceived misbehaviour if the acting body

found his/her disclosure unsubstantiated, or the whistleblower does not agree with the result of the inquiry, or the acting body did not fully examine his/her disclosure.

The CFR can take the following measures:

- It may contact the relevant acting body,
- it may request the body to provide information or submit the documents of the case,
- It may arrange a personal hearing,
- It may perform an on-site inquiry

If, based on his/her inquiry, the Commissioner finds irregularities, he/she may make recommendations for remedying them in the case of those involved, or their superior body.

- Safeguards for whistleblowers considered to be at risk  
According to the CPID Act, with the exception of the actions referred to in Section 3(4) (see 1.2.3.), any action taken as a result of a public interest disclosure which may cause a disadvantage to the whistleblower shall be unlawful even if it were otherwise lawful. A whistleblower is considered to be at risk, except in the case referred to in Section 3(4), if the disadvantages threatening him/her as a result of the public interest disclosure he/she has made are likely to seriously endanger his/her life circumstances, except in the case referred to in Section 3(4). Any whistleblower who is a natural person is entitled to legal aid and assistance provided in order to ensure the protection of whistleblowers, as defined in the relevant law, if he/she is likely to be at risk.  
The state provides whistleblowers the aid and assistance defined in Act LXXX of 2003 on Legal Aid, under the conditions defined in the same act.  
In addition, according to Section 206/A of Act II of 2012 on regulatory offences, offence procedures and the system for registering regulatory offences, any person who causes disadvantage to the whistleblower commits an offence (Persecution of the whistleblower). It is the duty and competence of the police to investigate alleged offences.

## In-focus section on COVID-19 measures

### Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law in the country

The first cases of the pandemic in Hungary were announced on 4 March. On 11 March, the government declared a state of danger. According to Article 53 of the Fundamental Law of Hungary, in a state of emergency, the government may adopt decrees by means of which it may suspend the application of certain acts, derogate from the provisions of acts and take other extraordinary measures. (It should be highlighted that it is the government that may end the state of emergency as well.) These decrees shall remain in force for fifteen days, unless the government, on the basis of authorisation by the Parliament, extends those decrees.

A **new law** on the containment of coronavirus (hereinafter referred to as the Coronavirus Law) was enacted which allows the government to make these extensions under the control of the Parliament. Under Section 2 of this new law (Act XII of 2020 on the containment of coronavirus), during this period the Government may, in order to guarantee that life, health, person, property and rights of the citizens are protected, and to guarantee the stability of the national economy, by means of a decree, suspend the application of certain Acts, derogate from the provisions of Acts and take other extraordinary measures.

Also added as a restriction, the Government may exercise its power only for the purpose of preventing, controlling and eliminating the human epidemic, and preventing and averting its harmful effects, to the extent necessary and proportionate to the objective pursued. According to Section 4 the Government also shall regularly provide information on the measures taken to eliminate the state of danger until the measures are in effect at the sessions of the Parliament or, in the absence thereof, to the Speaker of the Parliament and the leaders of the parliamentary groups.

The Parliament, on the basis of Article 53(3) of the Fundamental Law, authorises the Government to extend the applicability of the government decrees adopted in the state of danger until the end of the period of state of danger, but this authorisation is not unlimited. The Parliament may withdraw the general authorisation before the end of the period of state of danger [Para. (2) Section 3].

The Coronavirus Law also modified Act C of 2012 on the Criminal Code. Section 337 of the Criminal Code shall be replaced by the following provision: "(1) A person who, at a site of public danger and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact with regard to the public danger that is capable of causing disturbance or unrest in a larger group of persons at the site of public danger is guilty of a felony and shall be punished by imprisonment for up to three years. (2) A person who, during the period of a special legal order and in front of a large audience, states or disseminates any untrue fact or any misrepresented true fact that is capable of hindering or preventing the efficiency of protection is guilty of a felony and shall be punished by imprisonment for one to five years."

A constantly growing collection of guidelines and professional information materials related to COVID-19 have been gathered and published on the CFR website.

The Commissioner and his deputies issued a statement raising attention to the needs of especially **vulnerable persons** in the present circumstances.

The Deputy Commissioner for the protection of national minorities also issued a statement raising attention to the special vulnerability and needs of the **Roma population** in the present situation.

The Commissioner has issued a statement raising attention on the need for state authorities to **monitor child abuses** even during the COVID-19 situation.

The Commissioner ordered a **comprehensive inquiry in retirement homes**. Moreover, he paid a personal visit to some residential institutions: child protection facilities, care homes for people living with disabilities, and penitentiary institutions.

With a view to the **enforcement of patients' rights**, the Commissioner issued a statement regarding the evacuation of in-patient beds ordered in hospitals.

As the NPM, the CFR continues to fulfil his mandate during the COVID-19 crisis, bearing in mind the principle of "do no harm". The CFR has requested information from the Operational Group responsible for the containment of the coronavirus infection, the Hungarian Prison Service Headquarters, the National Police Headquarters, the Ministry of Human Capacities, the Hungarian Directorate-General for Social Affairs and Child Protection concerning the special procedures they have established in relation to the COVID-19 crisis. The CFR inquired also about the technical conditions for ensuring confidential remote communication between persons deprived of their liberty and the staff

members of the NPM. The CFR requested the authorities to designate a contact person to be available on short notice and to provide information about the setting up of new and temporary places of detention, such as home quarantines. Furthermore, observing the SPT Advice (CAT/OP/9) on compulsory quarantine for coronavirus, the CFR has visited several home quarantines.

To date the CFR has visited the following places of detention, strategically important police or military centres and border crossing points:

- 14 April, Ipolyság-Parassapuszta Border Crossing Point
- 14 April, Hungarian National Police Headquarters
- 15 April, Záhony-Čop Border Crossing Point
- 15 April, Sátoraljaújhely Strict and Medium Regime Prison
- 15 April, Sátoraljaújhely Border Crossing Point
- 16 April, Kiskunhalas National Prison and Mobile Epidemic Hospital
- 16 April, Tompa-Kelebia Border Crossing Point
- 17 April, Szentendre Police Station and home quarantines
- 17 April, Center of the COVID-19 Operational Group
- 22 April, Bezerédj-Castle Therapy Foundation's Special Home for Children in Szedres
- 22 April, 86th Military Air Base of the Hungarian Army in Szolnok
- 23 April, Letenye Border Crossing Point
- 23 April, Fertőrákos Border Crossing Point
- 23 April, Home for Mentally Disabled Persons in Kéthely
- 23 April, Hegyeshalom Border Crossing Point
- 24 April, two group home units of the Veszprém County Children's Home Center
- 29 April, Nagykanizsa Reformatory of the Ministry of Human Capacities.

The measures necessary to fight the coronavirus outbreak during the state of danger have inevitable **implications for detainees**.

Due to the prohibition of leave and restrictions of visits of relatives in the penitentiary system, the detainees' right to communicate has been restricted. The restriction was compensated by the possibility of extended telephone conversations (partly financed by the institutions), and communicating via Skype. The use of Skype is promoted with the help of a user guide among the detainees and their relatives so that they would get acquainted with online communication forms instead of personal contacts.

The detainees' right to work and right to education are also restricted as they may not work outside or participate in trainings. However, such restrictions do not exceed the necessary extent and are proportional to the aim to fight the outbreak.

Measures taken in response to the COVID-19 have not restricted the CFR's right and capacity to carry out OPCAT visits. In fact, the Commissioner for Fundamental Rights so far carried out OPCAT visits in two detention facilities and a house quarantine. Visits will follow in other facilities as well.

In order to prevent the spread of COVID-19, all visits to hospitals and social care homes are prohibited as of 8 March 2020, followed by the prohibition of visits in child care institutions and in juvenile reformatories as of 17 March 2020. No restriction may affect the patients' dignity. A final farewell is an exception to the prohibition of visits, but the necessary protection shall be ensured also in the event of such visits.

Due to the danger of infection, the CFR, acting as National Preventive Mechanism (NPM) considers the means for **visiting closed hospitals and social care homes** in a way as to avoid the possibility of infection of healthy residents or the nursing personnel from outside. The NPM contacted the Minister of Interior as Head of the Operational Group responsible for handling the coronavirus outbreak in Hungary, and asked him for information regarding data on quarantines and the situation of people affected by such measures. The NPM requested information from the Ministry of Human Capacities, the Social and Child Care Authority, the National Healthcare Services Center, the Head of the Hungarian Prison Service Headquarters, and the Hungarian Police Headquarters in order to become acquainted with the circumstances of the infected persons, as well as with the measures for the protection of the residents and detainees living in institutions under their supervision. The NPM has asked the Nagymágocs Castle Home of the Gesztenyeliget Care Center in Csongrád County, where some elderly persons have become infected with the coronavirus, to give information on the situation of the patients and the protective measures.

The Deputy Commissioner for the Protection of the Future Generations (FGO) issued a statement in early April calling the attention of the public to certain measures related to the **right to a healthy environment**, especially clean air amidst the COVID-19 pandemic. As respiratory symptoms are linked to COVID-19 infections, it is of utmost importance to change certain practices harmful to air quality, especially (i) the burning of green garden waste and (ii) the inappropriate heating practices arising from the burning of household and other types of waste. Both practices result in emission of pollutants that pose a danger to the human respiratory system and can result in more aggravated COVID-19 symptoms.

Therefore the FGO has asked the government and local municipalities to take steps to ban such harmful practices and effectively enforce these bans while making sure that people in vulnerable situations are provided adequate materials for heating their homes (wood). Besides being electronically published, this document has also been sent directly to the relevant Ministries by the FGO.

As regards **housing**, the CFR initiated ex officio the extension of the wintertime suspension of evictions during the coronavirus emergency period. The Government decided that the suspension of evictions should remain in place during the period of the state of danger.

### Most important challenges due to COVID-19 for the NHRI's functioning

Due to the lockdown, the CFR has **temporarily suspended personal client service**. However, client service is operating via phone. Working visits to counties – normally organized twice a year – are suspended in order to minimize personal contacts.

Following a decision of the Commissioner, the deadlines given for specific state authorities for giving a response to our requests that are not urgent and that are not regarding COVID-19 have been prolonged.

Following a decision of the Secretary General, the Office's staff is working from home, with full salary.

#### *References*

- Government Decree No. 90/2020 (IV.5.) on the modification of certain rules on the prison service with regard to the state of emergency
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- <https://bv.gov.hu/hu/intezetek/bvszervezet/hirek/3619>
- <https://bv.gov.hu/hu/node/3592>
- Decision No. 13305-8/2020/EÜIG of the National Health Centre
- Decision No. 13305-16/2020/EÜIG of the National Health Centre
- Decision No. 13305-19/2020/EÜIG of the National Health Centre
- [https://hvg.hu/itthon/20200329\\_Koronavirus\\_Pozitiv\\_a\\_tesztje\\_egy\\_idosotthon\\_tobb\\_lakojanak\\_is\\_Csongradban](https://hvg.hu/itthon/20200329_Koronavirus_Pozitiv_a_tesztje_egy_idosotthon_tobb_lakojanak_is_Csongradban)
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