

Hungary

Commissioner for Fundamental Rights

International accreditation status and SCA recommendations

The Hungarian NHRI was [accredited](#) with A status in October 2014. In October 2019, the SCA decided to [defer](#) its decision on the accreditation of the NHRI. The SCA will review the Hungarian NHRI in [June 2021](#).

Impact of 2020 rule of law reporting

Impact on the Institution's work

The 2020 ENNHRI Rule of law Report impacted the work of the Commissioner for Fundamental Rights (CFR) in many ways. The fact that its findings were channeled into the rule of law mechanisms of the European Union, and of other relevant regional and international entities, granted the Report a greater importance and provided **further publicity and weight to the input of NHRIs**.

The 2020 Report also gives an excellent overview of the **trends and challenges** in the European scene and shares good examples to learn from in the field of the promotion and protection of human rights, including on the functioning of and the different approaches taken by NHRIs of different countries. Recognizing common issues can lead to a **concerted strategic approach** between partner organizations and, eventually, to more efficient solutions to problems in European rule of law mechanisms such as timely and inclusive coordination between partners, and the common understanding of the notion of rule of law. **Civil society organizations can also rely on the findings of the Report in their advocacy and awareness raising activities, e.g.,** in their participation in different human rights fora such as the Human Rights Council or its Universal Periodic Review.

The Report provides a good combination of general and specific information on the human rights situation on the ground. The common reporting structure **enabled the CFR to get to a more comprehensive and informed assessment of the situation in each country**. It also stimulated the CFR to work in a more concerted manner on rule of law-related matters through the **enhanced cooperation between its different departments**.

Follow-up initiatives by the Institution

The COVID-19 pandemic prevented the CFR from implementing several of the planned follow-up activities. However, it broadly shared the Report with its partners, for instance through its newsletters.

Other follow-up initiatives based on the 2020 Report included **preventive awareness raising activities on human rights violations**, with several statements and general comments published in the relevant fields of concern, such as: combating hate speech and hate crimes against members of nationality groups and disadvantaged communities; addressing the challenges posed by the Covid-19 crisis and its economic and social implications disproportionately affecting the most vulnerable groups of the society, including the Roma.

One of the focus points of the 2020 Report was the situation of **media pluralism** in Hungary. As a follow-up to that, the OCFR launched in 2020 a follow-up investigation to its inquiry of 2018 (1) on the implementation of national cultural autonomy in the field of public media services. The MTVA (Hungarian Media Services and Support Trust Fund) stated in 2018 that digital audio broadcasting (DAB), which was then under development in Hungary, would answer all complaints raised by the nationality communities regarding the fact that the technical conditions for the availability of nationality radio programs were inadequate. The Office thoroughly studied the situation in its inquiry reviewing the impact of the shutdown of digital terrestrial radio broadcasting in Hungary on the accessibility of national radio programs. Although the drafting of the relevant general comment is still under way, the Office has maintained its concerns about the current outdated technical conditions (AM transmission) and the termination of the technically promising DAB-transmission for public service radio broadcasts for the nationalities living in Hungary.

References

- (1) 2018 investigation:
http://nemzetisegijogok.hu/documents/2657648/3055496/3_2018+sz.+%C3%A1ll%C3%A1sfoglal%C3%A1s+a+nemzetis%C3%A9gi+kultur%C3%A1lis+autonomia+%C3%A9rv%C3%A9nyes%C3%BCI%C3%A9s%C3%A9r%C5%91+a+k%C3%B6zszolg%C3%A1lati+m%C3%A9diazolg%C3%A1lat%C3%A1s+ter%C3%BClet%C3%A9n.pdf/9cf87f06-cd96-8b54-21e2-7aa764e3618d?version=1.0

Independence and effectiveness of the NHRI

Changes in the regulatory framework applicable to the Institution

The Hungarian Ombudsman institution has recently become **exceptionally powerful in Europe thanks to the integration of the advantages of the ombudsman-type legal protection and the legal protection by a public authority** by extending the competences assigned to the CFR. The rules pertaining to the CFR, in particular his/her special legal status (institution set up by the Fundamental Law, mandate with sole responsibility to the National Assembly, full independence from the executive branch of power, immunity, strict professional requirements towards the person fulfilling the position) and his/her wide-ranging investigative powers are suitable for guaranteeing the effective identification of fundamental rights-related improprieties. The Ombudsman's competences have been strengthened in two areas of particular importance: in connection with police complaints, and with regard to the enforcement of the principle of equal treatment.

As of 27 February 2020, the CFR performs the tasks and responsibilities of the **former Independent Police Complaints Board**. The investigative powers of the CFR have been increased significantly in this field: the CFR may now proceed directly in cases concerning police complaints (i.e., prior to potential investigations carried out by police organs). In these cases, the police organs may deviate from the conclusions drawn by the CFR only if they provide adequate justification for the derogation in their decisions. If an action is brought before the court to seek the judicial review of a police decision, the CFR may participate and represent his/her position in the proceeding, even if it is different from that of the police organ making the decision.

On 1 January 2021, the **Equal Treatment Authority** (ETA) was merged into the Office. The CFR took over all the responsibilities and functions of the ETA, including its authority competences. The fact that an inquiry has been conducted under the CFR Act does not preclude that, after its conclusion, the CFR institute a proceeding, upon complaint or ex officio, in the same case under the provisions of the Equal Treatment Act. Thereby, it has become possible that if the violation of the principle of equal treatment is exposed by the CFR in an ombudsman-type procedure, he/she may not only make a non-binding recommendation to remedy the impropriety exposed, but he/she may also make an administrative decision in a separate procedure, in which he/she may order the termination of the injurious situation, forbid the continuation of the violation, or even impose a fine. In order to ensure the professional performance of tasks, the former staff members of the ETA have been taken over by the CFR.

Under the Act on Bodies with Special Legal Status and the Status of Their Employees all **employees were re-classified**, and at the initiative of the Commissioner for Fundamental Rights, **a significant raise of their salaries** took place enabling a better working environment.

Enabling space

In accordance with Act CXI of 2011 on the Commissioner for Fundamental Rights, the Commissioner shall give an **opinion on the draft legislation** affecting his/her tasks and competences, and on directly affecting the quality of life of future generations. The CFR may make proposals to develop or amend legislation affecting fundamental rights, or regarding the State's consent to be bound by an international treaty. However, ministries often send the bills for review to the CFR with **short deadlines**. The Ombudsman has stressed this problem in its annual report submitted to the Parliament, as well as in the plenary session of the Parliament discussing this report.

On the other hand, authorities usually respond to the CFR's inquiries within deadline, providing in depth answers.

The CFR is involved in several **government-established working groups** on human rights-related matters, such as children's rights, rights of persons with disabilities, or digital security. The working group on children's rights expressly requested the CFR's active participation.

Pursuant to the provisions of the Act on the Commissioner for Fundamental Rights, if the CFR finds an impropriety with regard to fundamental rights, it can **make a recommendation to the supervisory body of the authority under investigation to remedy such situation**, while informing the authority concerned. The addressee then decides whether to accept the recommendations. The acceptance rate of the CFR's recommendations is 85 to 90%.

Developments relevant for the independent and effective fulfilment of the NHRIs' mandate

In 2020, the Office of the Commissioner for Fundamental Rights (OCFR) moved to a **new** building that effectively meets the requirements for an environment enabling to perform effectively the increased quantity of the CFR tasks. Despite the move, the Office has been able to process citizens' complaints without interruption.

The long-awaited **salary raise** of civil servants employed by the Office, in addition to those of other public bodies, was accomplished by Act CVII of 2019 on Bodies with Special Legal Status and the Status of their Employees, leading to an average of 30% salary increase.

From 2020 onward, the Central State Budget allocates a considerably **larger budget to the CFR**: a 22 and 33% increase compared to the previous financial year for 2020 and 2021 respectively. This considerable growth is the result of the above-mentioned improved salary system and the merging of the Independent Police Complaints Board with the CFR. However, this increase does not yet include the effects of the **merger with the Equal Treatment Authority** (outlined in detail later in the report), which will take effect in 2021.

The global **COVID-19 pandemic** and subsequent economic and social crisis posed unprecedented challenges to governments, administrations and societies, including national human rights institutions. The Office of the Commissioner for Fundamental Rights had to adapt also its operation to the special circumstances. On-site inspections as well as offline programs and events have mostly been replaced by online meetings and inquiries requiring desk research. Still, the CFR has conducted numerous on-site inspections during the pandemic to inspect the preventive measures taken against the virus.

As already highlighted above, as of 27 February 2020, the CFR also performs the tasks and responsibilities of the **former Independent Police Complaints Board**. The investigative powers of the CFR have been increased significantly in this field: the CFR may now proceed directly in cases concerning police complaints (i.e., prior to potential investigations carried out by police organs). In these cases, police organs may deviate from the conclusions drawn by the CFR only if they provide an adequate justification. If an action is brought before the court to seek the judicial review of a police decision, the CFR may represent its position in the proceeding.

On 1 January 2021, the **Equal Treatment Authority** (ETA) was merged with the CFR. The Office took over all the responsibilities and functions of the ETA. An inquiry under the CFR Act does not preclude that the CFR then initiates a proceeding, upon complaint or ex officio, in the same case under the provisions of the Equal Treatment Act. Thereby, it has become possible that if the violation of the principle of equal treatment is exposed by the CFR in an ombudsman-type procedure, the Commissioner makes not only a non-binding recommendation to remedy the impropriety exposed, but also issues an administrative decision in a separate procedure to order the termination of the injurious situation, forbid the continuation of the violation, or impose a fine.

In accordance with Act CXI of 2011 on the Commissioner for Fundamental Rights, 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. Ministries often send the bills for review to the CFR with **short deadlines**. The Ombudsman has expressed this problem in the annual report submitted to the Parliament and has also voiced his concern in the plenary session of the Parliament discussing the report. For instance, as a tool to further compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the Office has also addressed a **letter to the Minister of Justice drawing attention to the importance of public consultation in environmental issues**.

After the outbreak of the COVID-19 pandemic, the CFR decided to focus also on **comprehensive studies** to be concluded with publishing general comments and he also issued several statements.

Human rights defenders and civil society space

Restrictions imposed on the right of assembly due to the state of danger declared because of COVID-19 also affect the exercise of the rights of nationalities. The prohibition of group gatherings prevents the holding of regular annual cultural events of the nationality communities, impacting their right to maintain their cultural identity. Similarly, the social distancing rules prevent the holding of the regular annual public hearings of the nationality self-governments.

In summer 2014, civil society organisations turned to the Commissioner in a letter objecting the audit initiated by the Government Control Office (GCO) regarding the **distribution of the NGO Fund of the European Economic Area (EEA) / Norway Grants**, which had been performed through calls for applications. The operation of the “Norwegian Financial Mechanism” rests on international treaties. The international agreement for the 2004–2009 funding period designated the GCO as the organ in charge of the control of the projects funded by the Norwegian Financial Mechanism. However, the new agreement for the 2009–2014 funding period made no mention of the GCO and designated the Directorate General for Audit of European Funds (EUTAF) as Audit Authority with respect to the funding allocated on the basis of relevant international treaties. In this funding period, grants were handed out in the following way: funding awarded from the NGO Fund of the EEA/Norway Grants was transferred directly by the Brussels-based Financing Mechanism Office to the civil society organisations performing operator’s tasks in Hungary. These civil society organisations – a civil consortium headed by Ökotárs Foundation – then re-distributed the grants of the NGO Fund of the EEA/Norway Grants to the beneficiary civil society organisations.

The Commissioner called on the Prime Minister’s Office to exchange with the Norwegian Government that signed the agreement in order to clarify its provisions, therefore clearly defining

the powers of control of the GCO in connection with the NGO Fund of the EEA/Norway Grants. At the end of 2020, the Norwegian and Hungarian Governments concluded an agreement according to which funding was made available to civil society and establishing a fund operator independent of the Hungarian authorities. On 19 January 2021, the Commissioner for Fundamental Rights received the Ambassador of Norway to Hungary. They reinforced their intention to cooperate in the future, with special regard to enhancing the execution of the agreement.

The Ombudsman and his Deputies are in a unique position to be able to act as a bridge between civil society, legislators, regulatory authorities, business organisations and academia by bringing the various stakeholders to the negotiation table on sensitive matters. Currently, the OCFR is in the process of **setting up an additional consultative body for NGOs** to support the implementation of the other mandates of the CFR. In addressing individual complaints, the CFR strives to seek cooperation with NGOs and civil society organisations locally involved.

The OCFR is an active member of international human rights networks such as EQUINET, ENNHRI, GANHRI, OPRE-platform, CAHROM and the regional V4 cooperation of the ombudspersons of the Visegrad Countries.

The CFR is actively involved in the governmental **Human Rights Working Group** operating in Hungary, which monitors the enforcement of human rights in the country. The WG considers the implementation of recommendations made with regard to Hungary at the UPR Working Group of the Human Rights Council. Furthermore, it reviews the tasks related to the enforcement of human rights arising from conventions and agreements accepted in the framework of the United Nations, the Council of Europe, the Organisation for Security and Co-operation in Europe, the membership in the European Union and other international commitments and monitors the performance of these tasks. The Human Rights Working Group created in 2012 the **Round Table on Human Rights**, a platform for civil society organisations, working with thematic working groups (e.g. on other civil and political rights, on the rights of LGBT people, on Roma issues, the freedom of expression, the rights of persons with disabilities, the rights of children, the elderly, the homeless). The Office of the Commissioner for Fundamental Rights plays an active role in the dialogue between the members.

In order to support the performance of the **OPCAT National Preventive Mechanism**, the CFR established a **Civil Consultative Body** (CCB) in 2014, involving the experts of civil society organisations which have experience in inspecting places of detention and enforcing the rights of detainees. The CCB meets at least twice a year, receiving a lot of useful information and proposals for locations to visit. The last CCB meeting took place in December 2020.

The CFR also met regularly with the heads of civil society organisations, including the Hungarian Red Cross, the Hungarian Civil Liberties Union, and the Hungarian Helsinki Committee.

The Ombudsman and his Deputies annually grant the “**Justitia Regnorum Fundamentum**” **award** to individuals or groups for outstanding accomplishments and professional activities in the field of protecting human rights.

Checks and balances

The CFR examined some issues relevant to checks and balances which have arisen in the context of the handling of the COVID-19 pandemic. In response to a petition it received, the Commissioner inquired into the ways in which the restrictive measures introduced due to the COVID-19 pandemic might affect the **functioning of the municipal councils of local governments**. The CFR examined whether the restrictive measures make it impossible for the members of municipal councils to take part in the decision-making procedures of municipal councils. The CFR came to the conclusion that it clearly follows from the regulation pertaining to special legal order that the latter allows measures that are absolutely necessary to and suitable for averting the situation for which the special legal order has been introduced. Consequently, the legislator must pay special attention to the requirement of necessity and proportionality, and to the prohibition of abuse of rights. Therefore, measures that are not reasonably related to the aim, not suitable to its attainment, or not absolutely necessary may not be taken.

In the framework of the **state of danger declared because of the COVID-19 pandemic**, several restrictions are applicable to the Election law: no interim election (including nationality self-government elections) shall be scheduled until after the end of the emergency, and the elections already scheduled shall not be held. Any unscheduled or not-held election shall be scheduled within fifteen days after the end of the emergency. This also applies to national and local referendums, including the ones initiated by the members of communities of nationalities living in Hungary.

The CFR also contributes to ensuring transparency of decision-making by providing individuals with the possibility to submit **public interest disclosures** – to be examined – through a **protected electronic system**. The Commissioner forwards these disclosures to the administrative organs concerned, which investigate the given issues and provide information, again through the same system. This protected electronic system protects whistleblowers as they may remain anonymous to the organs investigating their public interest disclosures. In 2020, almost 80% of the whistleblowers indeed requested that their personal data be accessible only to the

Commissioner for Fundamental Rights. The number of public interest disclosures in 2020 corresponds to the average of the past five years.

The Commissioner has additional powers in the field of public interest disclosures. Following the investigation of such disclosure by the competent organ, the whistleblower may submit a petition requesting the CFR to remedy a perceived impropriety in that investigation. The Commissioner shall then conduct an inquiry on the basis of which it may **make a recommendation to the organ concerned or its supervisory authority to remedy a possible impropriety.**

The Commissioner for Fundamental Rights has a **Client Service Office** to provide assistance to whistleblowers. The Client Service Office offers support via telephone, as well as more practical assistance (for example, arranging personal appointments with clients, receiving and issuing documents, providing professional information, etc.). In addition to this, clients can present their case during pre-arranged appointments (or, in exceptional cases, even without making an appointment in advance), while minutes are taken. Based on the cases exposed by the whistleblowers, the professional staff members of the Office working in specialized fields carry out an inquiry. Ever since the outbreak of the coronavirus pandemic, there has been a possibility for whistleblowers to be heard by way of phone calls in order to reduce personal contacts, as well as to make it easier for them to submit their complaints.

In 2020, the CFR initiated the interpretation of the Fundamental Law by the **Constitutional Court** in two cases (1).

The Fundamental Law sets out that everyone **whose liberty has been restricted “without a well-founded reason or unlawfully” shall have the right to compensation.** However, from a previous inquiry of the CFR, it became clear that the legislation concerning custody for petty offences, and the legislation related to aliens policing, do not provide for any compensation for the cases when the restriction of liberty has been lawful, albeit without a well-founded reason. As the legislator failed to amend the relevant legal provisions to remedy this incoherency, the CFR turned to the Constitutional Court.

Article III of the Fundamental Law sets out the **prohibition of torture, inhuman or degrading treatment or punishment.** This prohibition is among other issues of special importance concerning the “right to hope”, meaning that a person sentenced to life imprisonment should have the hope to be released. A legislation not providing for a reasonable hope to be released is suspected to violate the prohibition of torture. A previous inquiry of the CFR revealed a gap in the Hungarian criminal law: the former Criminal Code (still applicable to some detainees) does not provide for a maximum period of time upon the expiration of which the detainee’s release on

parole has to be considered. Contrary to the new Criminal Code, the earlier Criminal Code specifies the minimum period of time after which the release on parole can be considered; however, there are no guarantees in the legislation that this deliberation will actually be made at any time. Despite the CFR's recommendation, the legislator failed to amend the relevant piece of legislation in order to ensure the right to the deliberation of release on parole for those who are still subject to the earlier Criminal Code. Therefore, the Commissioner requested the interpretation of Article III of the Fundamental Law with regard to the jurisprudence of the European Court of Human Rights, with a special emphasis on the right to hope.

The OCFR is active in the field of public health and groundwater protection as well. The right to a healthy environment is an important priority of the OCFR and **safeguarding the quantity and quality of groundwater** plays an essential part in this. The OCFR opposed an amendment of the **Water Management Act** that seriously endangered groundwater resources by allowing the drilling of groundwater wells for irrigation purposes without proper authorization. The Office's consultations with the Minister for Agriculture convinced the legislator to modify the proposed act, which amended version included many of the changes suggested by the OCFR.

By giving his/her **opinion on draft legislation**, the Commissioner Fundamental Rights can, in theory, influence the law-making process. However, the ministries often send the bills for review to the CFR with **short deadlines**. The Ombudsman has already pointed out this problem in the annual report (2) submitted to the Parliament and has also voiced his concern in the plenary session of the Parliament discussing the report. Due to discussions between the CFR and several ministries, there seems to be an improvement in this regard.

More generally, the Commissioner has drawn attention to the importance of public consultations and participation in the law-making process. For instance, as recalled above, as a tool to further compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, the Office has addressed a **letter to the Minister of Justice drawing attention to the importance of public consultation in environmental issues**.

Functioning of the justice system

The Commissioner for Fundamental Rights (CFR) raised his voice regarding a **bill relating to administrative courts**, which aimed to modify the specific rules of administrative judicial proceedings. The CFR raised concerns in relation to the regulations of the draft legislation that do not enable legal appeal against such court decisions. The law on administrative courts has not entered into force yet, neither has the act in relation to which the CFR raised his concerns.

The role and structure of the National Judicial Council (NJC) has been under debate since 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. The CFR proposed in March 2019 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. The case is still pending before the Constitutional Court. (3)

References

- Two cases mentioned:
 - <http://public.mkab.hu/dev/dontesek.nsf/0/B3A624F43C1F0989C125865B004BEE5E?OpenDocument>
 - <http://public.mkab.hu/dev/dontesek.nsf/0/D11855993D6C5A0FC125865B004BEE71?OpenDocument>
- (2) CFR Annual report:
<http://www.ajbh.hu/documents/14315/3445212/Report+on+the+Activities+of+the+Commissioner+for+Fundamental+Rights+and+his+Deputies+2019/04ed103e-6c17-deab-623a-00b67db41adb?version=1.0>
- (3) CFR Application submitted to the Constitutional Court:
<http://public.mkab.hu/dev/dontesek.nsf/0/E40059CA0811C088C12583C200614E99?OpenDocument>

Media pluralism and freedom of expression

The conditions of media diversity are laid down **Act CLXXXV of 2010 on Media Services and Mass Media**. It stipulates that the protection of the diversity of media services extends to the prevention of the development of a monopoly of ownership, as well as to the unjustified limitation of market competition; that the act should be interpreted in consideration of the protection of diversity. The law also requires that these criteria be taken into account with a view to ensuring the right of Hungarian citizens to information, and the evolution of democratic publicity.

The **rules of the calls for tenders** for the frequencies used by the electronic media providers in an open and transparent manner are aimed at preventing the development of market monopoly. The requirements for the prevention of unlawful mergers also serve this purpose.

In its decision I6/2020. (VII. 8.) AB, the **Constitutional Court** established that “The Constitutional Court also calls attention to the fact that the obligation set forth in paragraph (2), Article IX of the Fundamental Law of Hungary does not mean that any and all changes affecting the diversity of the press are absolutely prohibited. The Hungarian State will only have a protection obligation against the actions of civil actors committed in the scope of free activities and affecting the diversity of the press if the ‘conditions of free information required for the development of a democratic public opinion’ could not be ensured any more in the changed circumstances”. In this case, the very opposite happened as the Government considered that a merger, which was the result of the acquisition of privately-owned media companies by a foundation, was of public interest. The Constitutional Court did not deem the diversity of the press jeopardized on the basis of the arguments put forth in the motion, and therefore it did not find that the State had breached its obligation to protect media diversity.

The CFR is a member of the **Digital Freedom Committee** set up by the Ministry of Justice, which reflects Hungary’s commitment to join efforts to make the operation of transnational technological companies transparent. Indeed, the need for regulation has emerged only in the past few years due to the quick rise of social networks. Concerns identified in the field of **public service nationality media broadcasting and programmes** are addressed in the ongoing investigation (a follow-up to the comprehensive nationality media investigation in 2018) reviewing the impact of the shutdown of digital terrestrial radio broadcasting (DAB) in Hungary on the accessibility of national radio programmes. Furthermore, in order to facilitate the professional dialogue between the stakeholders involved, the Deputy Commissioner for Fundamental Rights/Ombudsman for The Rights of National Minorities is engaged in continuous consultation with the representatives of the nationalities, the member of the public media’s public service body delegated by the nationality self-governments as well as with the managers in charge of nationality broadcasts. This case is also described under the question related to the follow-up initiatives based on the 2020 report.

Media regulation falls outside the Commissioner’s competence. In Hungary, it belongs to the **National Media and Telecommunications Authority (NMHH)**, which is an autonomous regulatory body reporting to the National Assembly on an annual basis. It publishes recommendations to assist in the practical application of the regulations. The Media Council - which is a part of the NMHH - exercises supervisory powers concerning compliance with child protection standards.

However, the CFR has some insight into the digital child protection: The CFR's inquiry into the situation of the practical implementation of **media education** in Hungary pointed out that there is significant variation between children's knowledge concerning media education, media literacy and online awareness regarding their local, individual and school opportunities. Due to the exponential multiplication of information, there has never been a greater need to provide children and youth with education and training that will enable them to orientate themselves safely in a world of diverse media platforms and cyberspace. The CFR study highlighted the main consequences of this dissatisfactory media education on the children and explored possible existing regulations on media-use in public education institutions. There is a lack of qualified media professionals in schools, and media-literacy is not part of the national curriculum. As a first step, the CFR has asked the Minister of Human Capacities to conduct a comprehensive research on the effectiveness of media literacy education and to propose specialised teacher training including the topic of online abuse.

The CFR is a member of the **Child Protection Working Group** operating within the National Cyber Security Coordination Council. The CFR also has a good relationship with the **Internet Roundtable for Child Protection**, which is an advisory body established by the National Media and Telecommunications Authority (NMHH).

Other initiatives of the CFR in the area of media are described above in the section relating to follow-up activities to last year's rule of law report.

References

- Act on media services: <https://net.jogtar.hu/jogszabaly?docid=a1000185.tv>
- Constitutional Court decision I6/2020. (VII. 8.) AB:
[http://public.mkab.hu/dev/dontesek.nsf/0/12bda2b452503d2dc12583a5006153a1/\\$FILE/16_2020%20AB%20hat%C3%A1rozat.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/12bda2b452503d2dc12583a5006153a1/$FILE/16_2020%20AB%20hat%C3%A1rozat.pdf)
- CFR report on media education and the respective press release:
http://www.ajbh.hu/documents/10180/2500969/Jelent%C3%A9s+a+m%C3%A9dia%C3%A9rt%C3%A9s-oktat%C3%A1s+helyzet%C3%A9r%C5%91l+497_2016/41838d72-616e-45bf-8b51-e744c4fa1b59?version=1.0&inheritRedirect=true
- <http://www.ajbh.hu/en/web/ajbh-en/press-releases/-/content/ujPUErMfB9lw/the-intention-is-palpable-the-results-not-so-much-the-ombudsman-s-inquiry-into-the-state-of-media-education-in-schools>

Corruption

In connection with **whistle blowers'** reports, rules are defined in Act CXI of 2011 on the Commissioner for Fundamental Rights (CFR) and in Act CLXV of 2013 on Complaints and Public Interest Disclosures. The CFR has set up a protected electronic system to safely record and transfer public interest disclosures. The electronic system works as an external channel and is available for reporting corruption cases as well, though this regards very few cases. The investigation of these cases is the competence of the National Protective Service (NPS), a state authority performing internal crime prevention and detection duties. The whistleblower may request that his/her report be treated anonymously. In this case he/she would not suffer any disadvantages because of his/her disclosure. In cases where the whistleblower disclosed untrue information of crucial importance in bad faith, the personal data shall be disclosed to the body or person entitled to carry out the proceedings. After the inquiry of the whistleblowers report, the whistleblower may request the CFR to inquire into the practice of the acting body. The CFR shall inquire *ex officio* as well. Any action taken as a result of a whistleblower report which may cause disadvantages to the whistleblower shall be unlawful, even if it was otherwise lawful. Any whistleblower is entitled to receive legal aid (defined in Act LXXX of 2003 on Legal Aid), provided by the State.

According to 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. The police shall have jurisdiction in the procedure."

The CFR stated (1) that the relevant legal regulations are not clear concerning the **support measures to whistleblowers**, either in the Act on Complaints and Public Interest Disclosures, or in the Act on Legal Aid. Furthermore, it is not clearly defined which authority shall establish that the whistleblower is at risk. Guarantees that a person can benefit from a protection are not regulated under national law, and psychological support to whistleblowers is not and should be provided by the Government. The lack of such measures may prevent to become whistleblowers from fear of being stigmatised and exposed to reprisals. Hopefully, as a result of the 2019 EU Whistleblower Protection Directive, these questions will be settled by the Ministry of Justice, responsible for its implementation.

References

- CFR Report:
https://www.ajbh.hu/documents/10180/2602747/Jelent%C3%A9s+egy+k%C3%B6z%C3%A9rdek%C5%B1+bejelent%C5%91+vesz%C3%A9lyeztetetts%C3%A9g%C3%A9r%C5%91+1873_2017/da2510cb-5353-cab8-b063-eef3dd38e03b?version=1.0

Other relevant developments or issues having an impact on the national rule of law environment

As illustrated above, during the state of danger declared due to the **COVID-19 pandemic**, the CFR has been continuously monitoring the situation and informing the public about his considerations and actions, as well as launching inquiries concerning specific topics. Besides its other activities carried out in 2020, the CFR has conducted numerous **on-site inspections** in Hungary during the first and second waves. Unlike the current international practice of holding events online, the Commissioner has paid personal visits all over Hungary, to children's homes for instance, in order to inspect the measures taken for the prevention of the COVID-19 pandemic.

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. A new bill was drafted 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, persons, property and the 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 shall also 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.

Impact of measures taken in response to COVID-19 on the national rule of law environment

Most significant impacts of measures taken in response to the COVID-19 outbreak on the rule of law and human rights protection

The Government declared a **state of danger on 11 March 2020, a week after the announcement of first Covid-19 cases in Hungary**. According to 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 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. Under a special legal order, such as the state of danger, the exercise of fundamental rights – with the exception of the universal right to human life and dignity, the prohibition of torture, inhuman or degrading treatment, and the guarantees concerning fair trial – may be suspended or restricted and may be exempt from the test of necessity and proportionality. However, even under a special legal order, the application of the Fundamental Law may not be suspended, and the operation of the Constitutional Court may not be restricted. The goal of a special legal order is to maintain the efficiency of the state in the transitional period, to establish such a security and protection system which ensures the performance of the tasks that come up during states of emergency, and the aversion of dangers for which the normal state structure is not suitable

The CFR examined the introduced measures and published a joint statement with its Deputies. It focused on its on-site presence and paid special attention to the most vulnerable groups of society. Regarding the concerns raised, based on the consistent practice and standards of the CFR's past 25 years, our investigations did not reveal any cases in which intervention would have been necessary.

COVID wave 1 – The period of the state of danger declared on 11 March 2020 and terminated on 18 June 2020: Using his general rights protection and other specific mandates, such as the one within the framework of the OPCAT National Preventive Mechanism, the Ombudsman visited 6 children's homes or special homes, 7 social care homes or residential care homes, 2 reformatories, as well as places of detention, and 5 institutions of the national prison service organisation.

COVID wave 2 – The special legal order restored, and the state of danger repeatedly declared from 4 November 2020: In the recent period, the CFR has resumed his on-site visits in Hungary. The Commissioner visited as many as 32 police units, among others, he inspected 10 border crossing points, as well as 14 county police headquarters and city police departments.

A **new bill** (Act XII of 2020 on the containment of coronavirus) was drafted, allowing the Government to make these extensions under the control of the Parliament. During this period, the Government may, in order to guarantee that life, health, persons, 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 these powers 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 shall also 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, based on 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.

In a **joint statement**, the Ombudsman and his Deputies pointed out that the complex economic and social consequences of the grave epidemic situation, as well as the related state measures make the lives of the citizens difficult and limited in many different ways. Current challenges and losses have been unprecedented in the past few decades. The statement stressed the unequal resilience of different groups in society regarding the prevention, treatment and resolution of the health risks involved by the pandemic. Unique challenges rose as consequences of the epidemic, such as: lack of the technological background necessary for digital education, isolation, narrowed job and earning opportunities, financial difficulties, obstacles to access the basic services. These challenges are particularly hard on the most vulnerable members of society, such as: persons who were already in an extremely dire financial situation, the elderly, the Roma, the ill, persons with disabilities, the homeless, children. The Ombudsman and his Deputies strongly urged everyone **not to leave the most deprived people and communities without support**.

The social welfare and health care system are facing enormous challenges. In addition to the actions of state and municipal institutions entitled and obliged to act in times of emergency, civil initiatives (of individuals and groups, donations from church communities, involvement of local

Roma minority self-governments) can only achieve their goals with appropriate financial background, professional organisation and adequate information. That is why the Ombudsman and his Deputies encouraged the setting up of **a special task force to coordinate the volunteering and donation activities** as a good practice of dealing with the emergency. They recommended that relevant policymakers consider setting up of such a task force to provide extraordinary protection and support to vulnerable groups, notably disadvantaged children and their families, for which they offered their professional experience. The Ombudsman and his Deputies also emphasised that the impact of the challenges caused by the emergency situation was being continuously assessed even in the changing circumstances, with special focus on the challenges faced by members of the endangered social groups.

The Deputy Commissioner for the Rights of National Minorities also published a statement (1) in which she drew attention to the particular vulnerability and special needs of the Roma population in the current situation. The CFR issued a statement in which he pointed out that state authorities need to monitor cases of child abuse even during the COVID-19 situation. It was questionable whether the final school-leaving exams – that were to begin on 3 May 2020 – could be responsibly organised. Parents and teachers submitted concerns regarding the exams to the Commissioner as well.

References

- Statement: <http://www.ajbh.hu/kozlemenyek/-/content/qzyKPkTyQAvM/az-alapveto-jogok-biztosanak-es-helyetteseinek-kozlemen-1>

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

During the state of danger declared due to the COVID-19 pandemic (detailed above), the Commissioner for Fundamental Rights (CFR) has been continuously monitoring the situation and informing the public about his considerations and actions, as well as launching inquiries concerning specific topics. Besides its other activities carried out in 2020, the CFR has conducted numerous on-site inspections in Hungary during the first and second waves of the pandemic. Unlike the current international practice of holding events online, the Commissioner has paid personal visits all over Hungary in order to inspect the measures taken for the prevention of the COVID-19 pandemic.

Being responsible for performing the tasks of the **OPCAT National Preventive Mechanism** (NPM), the CFR pursued its activities during the COVID-19 pandemic in line with the relevant international principles. The NPM conducted visits to a wide range of places of detention, including penitentiary institutions, police detention facilities, a guarded shelter, a guarded refugee reception centre and social care homes. Between May 2020 and February 2021, the NPM visited 31 places of detention. In line with the 'do no harm' principle, the visiting group wore protective equipment during the visits.

The CFR has received a number of **complaints in relation to the pandemic**. At the beginning, complainants evidently lacked information on the topic. The CFR inspected or is inspecting the cases and, even in the cases where the CFR had no competence to launch an inquiry, it provided the complainants with the legal background (i.e., the new rules) as well as about the authorities that they could turn to.

References

- You can find further information about the visits on the website of the OCFR via this link: http://www.ajbh.hu/en/web/ajbh-en/main_page

