

# State of the Rule of Law in Europe in 2022

## Reports from National Human Rights Institutions

Hungary



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# Hungary

*Commissioner for Fundamental Rights*

## Impact of 2021 rule of law reporting

### Impact on the Institution's work

The 2021 ENNHRI Rule of law Report impacted the work of the Commissioner for Fundamental Rights (hereinafter referred to as: CFR) in many ways. The fact that its findings were channelled 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 2021 Report also gave an excellent overview of the trends and challenges in the European scene and shared 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 provided 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.

## Independence and effectiveness of the NHRI

### International accreditation status and SCA recommendations

The Hungarian NHRI currently holds a B-status after being downgraded in March 2022. (1). In October 2019, the SCA had decided to defer its decision on the re-accreditation of the NHRI (2). In June 2021, the SCA recommended that the Hungarian NHRI be downgraded to B-status, with recommendations on 'addressing human rights violations', 'selection and

appointment', 'interaction with the international human rights system' and 'cooperation with civil society' (3). The Hungarian NHRI had one year to provide the documentary evidence necessary to establish its continued conformity with the UN Paris Principles and maintained its A-status during this period. However, in March 2022, the SCA confirmed its recommendation for the Hungarian NHRI to be downgraded to B-status. The NHRI challenged this recommendation before the GANHRI Bureau, in accordance with Article 12 of the GANHRI Statute (4). This challenge was not successful, and the decision became final on 17 May 2022.

Regarding the selection and appointment of the Commissioner, the NHRI informed that it has transmitted the SCA concerns in a letter written to the Hungarian Ministry of Justice. Moreover, the NHRI noted that the Commissioner and his or her deputies shall be elected for six years with the votes of two thirds of the Members of the Parliament (MP). Therefore, in most cases, the support of the opposition is also needed for the election of the CFR, which supposes strong legitimacy and a wide-ranging support independent of party affiliation.

In addition, the President of the Republic shall propose candidates for the position of Commissioner and, before the election, MPs may address questions to the nominee. Moreover, any Hungarian citizen can be elected as Commissioner or Deputy Commissioner if he/she holds a law degree, has the right to stand as a candidate in elections of MPs, outstanding theoretical knowledge or at least ten years of professional experience, has reached the age of thirty-five years and has considerable experience in conducting or supervising proceedings concerning fundamental rights. The mandate of the Commissioner and Deputies is incompatible with any other state, local government, social or political office or mandate, or any other gainful occupation, with the exception of scientific, educational, artistic activities.

Finally, the Hungarian NHRI notes that the Hungarian President has no political liability either to the voters or to the Parliament and his/her independence is ensured by strict conflict of interest rules. The President is, thus, free to nominate anybody who meets the statutory criteria, independently from the approval or the permission of the Government. Thus, the Hungarian NHRI argues that, in the Hungarian legal system, a nomination by the President of the Republic ensures a high level of legitimacy for the official elected by the Parliament.

Regarding the Deputy Commissioners, it is the Commissioner who makes a proposal for potential nominees, who must also be lawyers with outstanding theoretical knowledge in their own academic fields or having at least ten years of professional experience, who have

gained considerable experience in conducting and supervising the procedures concerning the relevant fundamental rights, as well as in the academic theory thereof.

## **References**

- (1) [https://ganhri.org/wp-content/uploads/2022/04/SCA-Report-March-2022\\_EN.pdf](https://ganhri.org/wp-content/uploads/2022/04/SCA-Report-March-2022_EN.pdf)
- (2) [https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA\\_Report\\_October\\_2019\\_English.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/SCA_Report_October_2019_English.pdf)
- (3) <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN-SCA-Report-June-2021.pdf>
- (4) GANHRI Statute:  
[https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN\\_GANHRI\\_Statute\\_adopted\\_05.03.2019\\_vf.pdf](https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/GANHRI/EN_GANHRI_Statute_adopted_05.03.2019_vf.pdf)

## **Regulatory framework**

The CFR has a constitutional basis and has the mandate to contribute to access to justice for individuals, including through complaints handling, contribution to and participation in strategic litigation before courts and awareness raising.

There is an efficient legal remedy available for the CFR to challenge any decisions adopted in an administrative procedure conducted pursuant to Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities (hereinafter referred to as: Ebktv) with regard to the violations of both procedural and substantive law. An administrative lawsuit can be started against such decision. Such procedural case may be requested in the form of a written petition addressed to the Metropolitan Court of Budapest and lodged to the CFR within 30 days from delivery.

Pursuant to the Ebktv, the CFR may act as a representative in any procedures that were launched because of the violation of the requirement of equal treatment, especially in lawsuits started for the enforcement of personality rights, labour cases, lawsuits related to public service legal relationships, and he may also launch such procedures as an entity enforcing public interest claims.

During the review of the administrative decisions adopted on the basis of the Ebktv, the CFR acts as a contestant in court. In the case of condemning decisions made in procedures launched ex officio, he also represents the case in the course of the judicial review.

As long as the police decision adopted in the case of a police complaint investigated into by the CFR is challenged by the affected person before the court, the CFR may intervene in



## Enabling space

Relevant state authorities have good awareness of the CFR's mandate, independence and role. However, the CFR is often not involved in timely manner and in all stages of legislation and policy making with human rights implications.

In accordance with 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. In practice, not all relevant or important bills are being sent to the CFR by the Government. Due to discussions with several ministries, there seems to be an improvement in this regard. The ministries often send the bills to the CFR with extremely short deadlines. The CFR 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. In his opinions on the draft bills received, the CFR also emphasized the need for adequate public participation in the legislative processes and - when in line with the topic of the legislation - also calls attention to compliance with the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.

The addressees of the CFR's recommendations are legally obliged to provide a timely and reasoned reply. The organs affected by the recommendations/initiatives/legislative proposals made by the Commissioner, as well as their controlling organs and the legislator are obliged to provide a reasoned reply within 30 or 60 days, respectively, pursuant to the provisions set out by the CFR Act.

Timely compliance with the CFR's recommendations is promoted by the fact that, to our knowledge, within some ministries (for example, at the Ministry of Justice), there is a specific organisational unit designated to prepare the responses to be given to the Ombudsman's measures or legislative proposals.

Pursuant to Section 459 of the Criminal Code of Hungary, the Commissioner for Fundamental Rights, his deputies and the staff of his office enjoy increased criminal law protection. This means that some crimes committed to their detriment entail a more severe sanction, as they are qualified as public officials by the Criminal Code. The CFR and his Deputies also enjoy an immunity equal to the Members of Parliament. These measures are, in our opinion, sufficient to ensure a safe environment.

## Human rights defenders and civil society space

### Laws and practices negatively impacting on civil society space and/or on human rights defenders' activities

In case No. C-821/19 the European Commission v Hungary, the Court of Justice of the European Union examined the amendment of some of the statutory provisions on asylum. The case was related to some of the rules set out in Act LXXX of 2007 on Asylum, Act C of 2012 on the Criminal Code of Hungary, as well as Act XXXIV of 1994 on the Police. According to the judgement, Hungary violated the law of the European Union by having sanctioned, by criminal law, any organisational activity aimed at allowing those persons who do not meet the criteria for international protection defined in the national law to initiate procedures aimed at providing international protection. The Court stipulated that qualifying such acts as crimes violates the exercising of the rights to provide support to the persons applying for international protection, as guaranteed by the EU legislator.

The bans on assembly introduced at different occasions in response to the COVID-19 pandemic affected the activities performed by the civil sector and the advocacy organisations. A blanket ban on assembly was ordered by Government Decree No. 46/2020 of 16 March 2020 in the first wave of the pandemic until 18 June 2020, and again by Government Decree No. 484/2020 of 10 November 2020 in the second wave of the pandemic. The latter ban was in force until 23 May 2021. The Constitutional Court was called to rule on the constitutionality of the ban on assembly, i.e. on Government Decree No. 484/2020. (XI. 10.). In Constitutional Court decision No. 23/2021. (VII. 13.), the Constitutional Court declared that overcoming the coronavirus pandemic, more precisely, the mitigation of the health, social and economic effects thereof, as well as the alleviation of the pandemic consequences are goals which justify the restriction of fundamental rights, including the right of assembly, from a constitutional perspective. Consequently, the Court maintained that the restriction of the fundamental right to freedom of peaceful assembly has a constitutionally justifiable, legitimate goal. On the other hand, in its decision, the Constitutional Court stipulated the following constitutional requirements to be complied with in the future: the legislator may only suspend the exercise of the right of assembly to the extent and for a duration that is absolutely necessary, even in a state of danger; in addition, the legislator should ensure that at reasonable intervals, it should be examined whether the circumstance that made the restriction necessary continues to justify the suspension, or the restriction of the fundamental right in question, in accordance with the definition specified in Section (3), Article I of the Fundamental Law of Hungary.

## References

- Judgment of the Court of Justice of the European Union No. C-821/19 (in English): <https://curia.europa.eu/juris/document/document.jsf?jsessionid=F13C3B1AD5EA69455E97D46F00CF84A5?text=&docid=249322&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=1268537>
- Constitutional Court decision No. 23/2021. (VII. 13.) (in Hungarian): <http://public.mkab.hu/dev/dontesek.nsf/0/D40B2E62697552C4C1258709005BC5DF?OpenDocument>

## Access to and involvement of civil society actors in law and policy making

Civil society organisations do not always receive the draft laws that affect their activity for comments. The Commissioner for Fundamental Rights has called the ministries concerned to ensure the right of the civil society organisations to express their opinions in several of his comments on laws.

## NHRI's role in promoting and protecting civil society space and human rights defenders

In the area of equal opportunities and children's rights, the civil society organisations that are involved in the protection of human rights most frequently appear as professional petitioners, as a kind of intermediary of citizens' complaints. In 2021, there were several reports and inquiries whose petitioners were civil advocacy groups. In addition to these, there are some specifically civil-professional fora of which the Ombudsman and his staff have been participating as invited members for a long time (for example, the Commissioner is a consulting member of the Civil Society Coalition on the Convention on the Rights of the Child).

According to the CFR Act, the CFR has to "cooperate with organizations and national institutions aiming at the promotion of the protection of fundamental rights." According to Act, the CFR has to perform the tasks of the National Preventive Mechanism (hereinafter referred to as: NPM) autonomously. However, in accordance with the above-mentioned regulation, in order to "utilize the outstanding practical and/or high-level theoretical knowledge of various organizations registered and operating in Hungary relative to the treatment of persons deprived of their liberty"<sup>1</sup>, the NPM established a Civil Consultative Body (hereinafter referred to as: CCB).

The CCB, which consists of invited members and also members selected as a result of a public call for applications, assists the activities of the NPM with its recommendations. The sessions of the CCB are convened by the CFR as necessary, but at least twice annually.

Its members may make recommendations relative to the contents of the annual schedule of visits of the NPM and the inspection priorities; initiate visits to certain places of detention; recommend the involvement of experts with special knowledge who may be affiliated with the organization that they represent.

The CCB may review the NPM's working methods, reports, and other publications; discuss the training plan designed for developing the capabilities of the staff members authorized to perform the tasks related to the NPM; furthermore, it may participate in conferences, and other events.

Its current members are the following: Hungarian Dietetic Association, Hungarian Medical Chamber, Hungarian Psychiatric Association, Hungarian Bar Association, Hungarian Catholic Church, Evangelical Lutheran Church in Hungary, Reformed Church in Hungary, Federation of Hungarian Jewish Communities, Together for Fundamental Rights Foundation, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Hungarian Association for Persons with Intellectual Disability, Mental Health Interest Forum, Pressley Ridge Hungary Foundation, Streetlawyer Association. The body held its last meeting on 17 December 2021.

### **NHRI's recommendations to national and regional authorities**

The CFR recommends to the Minister of the Interior that the members of the civil sector be involved in the implementation of the activities supporting the reintegration of detainees in penitentiary institutions.

### **Checks and balances**

In case No. AJB-4461/2021, the President of the Hungarian Chamber of Civil Law Notaries and the President of the Hungarian Bar Association turned to the Commissioner for Fundamental Rights in a joint petition. The petitioners objected to the statutory regulation allowing the State Audit Office of Hungary to perform audits with regard to public bodies, such as the two affected chambers. The petitioners stated that the State Audit Office of Hungary was currently performing audits at the two chambers concerned. It should be noted that chambers and public bodies are organisations that are self-governed and do not qualify as state organs, which, however, participate in the performance of public tasks.

The State Audit Office of Hungary is the economic-financial control organ of the Hungarian Parliament. The Office enjoys a high level of independence and its ability to perform its operations without any interference or control is protected by constitutional and statutory provisions. In order to ensure independence of such body, Act CXI of 2011 on

the CFR, among others, specifically declares that the CFR is not entitled to review the activities performed by the State Audit Office of Hungary. Accordingly, the inquiry conducted by the Ombudsman was only targeted at reviewing the statutory environment with regard to fundamental rights, but did not extend to the specific procedures and measures of the State Audit Office.

As a result of the inquiry, the CFR established that it might be justified to clarify Act LXVI of 2011 on the State Audit Office of Hungary. Consequently, the Commissioner made a legislative proposal asking the Minister of Justice to examine the possibility to amend Act LXVI of 2011 on the State Audit Office regarding the State Audit Office's tasks in connection with public bodies. The CFR noted that it might be reasonable in particular to clarify under what conditions the State Audit Office may exercise its right of scrutiny pertaining to public bodies and chambers. The CFR pointed out that the revision of the relevant regulations could contribute to the enforcement of the right of the respective professional and economic chambers subject to audits to fair administration of official matters to the fullest extent possible, and, at the same time, it could also be a step forward in the enforcement of the constitutional values of the rule of law and legal certainty. It is also important to note that in the case of those organisations that are legitimately subject to an audit by the State Audit Office, the clarification of the regulations could lead to the promotion of increased cooperation. This could also facilitate the professional activities of the State Audit Office, as well as the execution of audits. As part of the initiative, the CFR also requested the Minister of Justice that during the preparatory phase of the legal amendment, the Ministry should work in cooperation with the State Audit Office and that it should also meaningfully involve public bodies and especially, chambers representing legal professions.

### **References**

- Press release on Report No. AJB-4461/2021 of the Commissioner for Fundamental Rights (in Hungarian): <https://www.ajbh.hu/en/-/2670755-22>

### **Trust amongst citizens and between citizens and the public administration**

The Commissioner for Fundamental Rights may not pursue any political activities. Accordingly, the Commissioner does not, as a general rule, review state measures from the point of view of fitness for the purpose of increasing trust towards public administration. The Commissioner only reviews state measures with regard to their compliance with fundamental rights.

The CFR monitors the procedures of the actors of state administration in general, to check whether fundamental rights are respected. Thus, it has no direct information on the data

regarding the confidence of the citizens in each other, and in the players of state administration. However, one cannot state that the coronavirus pandemic and the consequent global economic and political situation have not affected the citizens' trust in institutions and government decision-makers in Hungary.

The impacts of the public health crisis in undermining public confidence are further strengthened by the rapid, almost unhindered spreading of fake news, which, for example, increases mistrust in vaccinations and thus also prevents the effective management of the pandemic.

At the same time, almost twice as many petitions as in the previous year came in via the secure electronic system of public interest disclosures operated by the CFR in 2021 (316 petitions in 2020; 529 petitions as of 11.12.2021), which were forwarded by the CFR to the organs that have competence for their investigation. We think that the increase is an indication of the critical approach of the citizens to the management of the problems caused by the pandemic, and at the same time, their confidence in the checks and balances, as they have searched for the channel applicable for the reception and forwarding of public interest disclosures, which gives them the opportunity for anonymous reporting. Of course, choosing the option of making anonymous reports also involves the fear of retaliation but trust in the system as well, i.e. that the detected problem will be remedied or considered by the addressed institution.

### **NHRIs as part of the system of checks and balances**

The initiative taken by the CFR in case No. AJB-4461/2021 to advise on the reform of the regulations governing the operations of the State Audit Office of Hungary is an example of the role of the CFR in contributing to the strengthening of the national system of checks and balances.

In the context of cooperating with regional actors, especially in terms of increasing the role of the CFR within the system of checks and balances, it can be mentioned that in 2021, the CFR started the creation of Regional Offices in six regional centres throughout the country. The fundamental reason and goal of establishing the network of regional rapporteurs is to bring the performance of the tasks of the CFR closer to the citizens in a geographical sense, especially because the types of cases and procedures as well as the fundamental-rights-related activities of the CFR were expanded over the last two years. Through the offices in the regional centres, the CFR can directly reach citizens, and he can establish more personal contacts with the institutions, too.

## NHRI's recommendations to national and regional authorities

As explained above, the CFR proposes the revision of Act LXVI of 2011 on the State Audit Office in order to determine those very specific cases in which the State Audit Office may audit public bodies.

## Functioning of the justice system

In its decision No. 13/2021 of 14 April 2021, the Constitutional Court of Hungary annulled certain provisions of the law regulating the application for judicial posts on the ground of their incompatibility with the Fundamental Law. The law excluded any complaint based on a procedural irregularity potentially affecting the outcome of the proceedings to the detriment of the losing candidates. According to the Constitutional Court, existing provisions regulating the complaint procedure in the context of the application for judicial posts did not sufficiently ensure the respect of the right to a legal remedy, insofar as they did not provide for any remedy to be used in order to challenge the assessment of the application and the decision on the filling of judicial posts.

In March 2019, the CFR proposed that the Constitutional Court should interpret Paragraphs (5) and (6) of Article 25 of the Fundamental Law of Hungary to solve the constitutional law issue concerning the operations of the National Judicial Council (hereinafter referred to as: OBT). The OBT operated with a smaller number of members than prescribed by law and the president of the OBH (administrative body of the court system) considered this unconstitutional, while the president of the OBT did not see any issue of unconstitutionality.

This divergence of views led to some uncertainty of interpretation which risked jeopardizing legal certainty, therefore an interpretation of the regulations of the Fundamental Law concerning the court system was deemed necessary by the CFR. According to the complaint, in the absence of relevant statutory provisions, such an issue could only be resolved through the abstract interpretation of the relevant provisions of the Fundamental Law of Hungary. The case is still pending at the Constitutional Court.

In 2021, the unjustified distinction that had existed for years – namely that the salaries of the representatives of the prosecution, i.e. the prosecutors were higher than those of the judges – was terminated. This is included in the annual Act on the budget of Hungary.

It has to be noted that, in accordance with the principle of the separation of powers, as well as from the constitutional requirement of judicial independence, the competence of the Commissioner for Fundamental Rights does not extend to the examination of the judicial practice of the courts. According to Section (3) Article 18 of the CFR Act, the CFR may not conduct inquiries into the activities of the courts. According to Section (7) of

Article 18 of the CFR Act, the CFR may not proceed in cases where administrative court proceedings have been initiated for the review of the decision or where a final court decision has been rendered. However, we think that it is essential that we assist the complainants turning to the Office in enforcing their rights by providing them with a wide range of information.

### **References**

- The pending case (in Hungarian) on the National Judicial Council:  
<http://public.mkab.hu/dev/dontesek.nsf/0/7BED35373E456259C1258709005BB41A?OpenDocument>
- Decision No. 13/2021 (of 14 April 2021) of the Constitutional Court (in Hungarian): [http://public.mkab.hu/dev/dontesek.nsf/0/3e97ca663040c528c125804f00589767/\\$FILE/13\\_2021%20AB%20hat%C3%A1rozat.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/3e97ca663040c528c125804f00589767/$FILE/13_2021%20AB%20hat%C3%A1rozat.pdf)

### **NHRI's recommendations to national and regional authorities**

The CFR recommends that the independence of the judiciary be reflected by maintaining the salaries of judges at an adequate level.

### **Media freedom, pluralism and safety of journalists**

In Report No. AJB-422/2021, the CFR summarised the results of his inquiry into the issuance of a normative order by a major pertaining to the communications of the executive managers of the commercial companies owned by the local government. According to the CFR, the order violated freedom of expression insofar as, exceeding Hungarian labour law regulations, prohibited to employees to communicate anything that would "cause a moral, economic or professional disadvantage" or would "shake the inhabitants' trust in the local government". The Ombudsman emphasized that the normative order in question, worded in a way that it could be applied not only to the executives but comprehensively to the entire staff of the companies, may give rise to an interpretation which may – extensively and in a preventive manner – restrict the freedom of expression of the employees affected due to the negative labour law and civil law consequences therein implied. After his inquiry into a case, the CFR pointed out that the person exercising executive power is entitled to act against the expression of any opinion by the employees that violates or threatens the employer's specific interests. According to the CFR, however, in the actual implementation, complying with the statutory regulations, the enforcement of the principles of the rule of law and the obligation to respect the fundamental right to freedom of expression, as well as the observation of the appropriate formal requirements, are also fundamental constitutional principles whose observance

must be ensured. The CFR requested the major to repeal the instruction raising concerns, and to take the necessary measures to ensure redress against any prejudice suffered by the employees, from a labour law perspective, as a result of the application of the contested instruction.

Within the framework of monitoring the enforcement of the rights of national minority communities to preserve their cultural identity, the Deputy Commissioner for the Rights of National Minorities examined the current situation of the availability of national minority public service radio broadcasts in 2021. In her General Comment No. 2/2021, the Deputy Commissioner outlined how the reception options of national minority public service radio broadcasts are affected by the fact that the digital radio broadcasting using the so-called DAB+ technology was switched off in Hungary in September 2020. Indeed, the bodies responsible for public service radio broadcasting previously considered this technology as the solution for the broadcasting of nationality radio programmes with adequate quality and availability. As it is elaborated in the General Comment, the Deputy Commissioner underlined the importance to make sure that the technical conditions for receiving public service radio programmes be equally available to both users from national minorities and the majority population.

### **References**

- [https://www.ajbh.hu/documents/2664086/4216263/General+Comment+2\\_2021\\_summary.pdf/8dc45562-c40f-80fe-77b9-76550689ce28](https://www.ajbh.hu/documents/2664086/4216263/General+Comment+2_2021_summary.pdf/8dc45562-c40f-80fe-77b9-76550689ce28)

### **NHRI's recommendations to national and regional authorities**

The Deputy Commissioner considers it appropriate for the relevant Ministry to develop a long-term strategy for the broadcasting conditions of radio programmes addressed to national minorities, based on a real dialogue between the management of the public service media provider and the elected representatives of the nationalities in Hungary.

### **Corruption**

As regards whistle blowers protection, Article 4(1) of Government Decree No. 50/2013 of 25 February 2013 provides for the establishment of a system/channel for the management of reports on integrity and corruption risks related to the operation of an organisation, in particular at public administration bodies (i.e., the internal reporting channels operated by public bodies) and for procedural rules of receiving lobbyists. However, it is to be noted that the definition of internal reporting channel as laid down in the EU Whistle blowers Protection Directive covers a broader range of reports than those related to the issue of integrity.

As already outlined in detail in last year's report, the assessment of the issue of corruption lies with the responsibility of the National Protective Service (Hereinafter referred to as: NVSZ). Reports on possible corruption cases received through the protected electronic system operated by the Commissioner for Fundamental Rights are forwarded by the OCFR to the NVSZ as the competent body; however, the number of such cases does not exceed 10 per year. According to the legislation in force, the information provided to the whistle blower on the investigation of the case is considered sufficient if it contains the measures to be taken in the given case.

### **NHRI's recommendations to national and regional authorities**

The CFR started a comprehensive examination (AJB-543/2021) on the internal and external whistle blowers channels of public organisations in accordance with the definitions of the EU Whistle blowers Protection Directive. The preparation of the report is in progress and will provide practical guidance to the authorities in reviewing the recommendations and good practices stated in the report so that they can more effectively design their systems and processes for handling whistle blowers' reports and protect the whistle blowers. The results are showing that rather few (yearly one or two) cases on corruption are submitted through these channels.

## **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**

Important restrictions were introduced as regards the right to assembly due to the COVID-19 pandemic, as also mentioned above in the section on civic space and human rights defenders. Such restrictions have been phased out as follows. Government Decree No. 46/2020 of 16 March 2020 imposing a blanket ban on assemblies during the first wave of the pandemic in Hungary entered into force on 17 March 2020. This piece of legislation, with the ban on assemblies included therein, ceased to have effect upon the termination of the state of danger ordered during the first wave of the pandemic, i.e. on 18 June 2020. Government Decree No. 484/2020 of 10 November 2020, which reintroduced the general ban on assemblies as part of the second phase of the protection measures, was applicable from 11 November 2020. The temporal application of the ban on assemblies was extended by Government Decree No. 27/2021 of 29 January 2021. The general ban on assemblies imposed by this decree was in force until 23 May 2021. Following that, partial epidemiological restrictions were introduced in the field of assemblies for a short period of

time: gatherings of up to five hundred people could be attended by anyone, while assemblies of more than five hundred participants could only be attended by those protected against the coronavirus (i.e. persons with an immunity certificate or those who could confirm their recovery from the COVID-19 infection), alongside with minors subject to their supervision. Participation in spontaneous gatherings was prohibited during this period. The full lifting of the restrictions on assemblies introduced due to the epidemiological situation took effect on 14 June 2021.

The CFR undertook many initiatives to raise attention, and propose solutions, to the problematic human rights issues emerging in the public health crisis context, in line with its mandate.

The Deputy Commissioner for the Rights of National Minorities published a message in November 2021 in connection with the fourth wave of the coronavirus pandemic, as it posed a new challenge for the socially vulnerable, disadvantaged citizens, among them many Roma people. She drew attention to the fact that the competent state and local government bodies had the duty to take effective and targeted action, while individuals could contribute to the rapid resolution of the critical situation by assuming responsibility towards each other, especially by taking up vaccination. She underlined in her message that in order to optimise access to mass vaccination, the abolition of registration obligations and the deployment of vaccination buses and mobile vaccination points in deprived settlements were of key importance.

In connection with the petitions submitted to the Office, the CFR summed up the constitutional requirements pertaining to the application of immunity certificates, and formulated proposals aimed at finding a solution to the practical issues having emerged. Immunity certificates raise several constitutional and practical questions. This is demonstrated by the fact that the CFR received more than eight hundred complaints from private persons over just a few days in relation to this issue. The CFR reviewed the complaints, and in addition to evaluating the legal regulation from the perspective of constitutionality, turning to the Minister of Interior in charge of the Operational Group for the Protection Against the Coronavirus Epidemic and the Minister of Human Capacities with proposals aimed at facilitating the solution of problems that emerged in the application of the law.

In the field of healthcare, the report issued on Case No. AJB-3479/2021 should be highlighted, in which the Commissioner examined – in relation to medical interventions – the fundamental rights-related questions of requiring PCR and antigen tests from patients and of their financing. The CFR asked the Minister of Human Capacities to repeal all of his instructions issued in connection with rehabilitative care and elective procedures, and he

also demanded that as the managing body of the National Public Health Centre, the Minister takes action regarding the withdrawal of the circulars published on this matter. The Government took actions in response to this report, presenting a government decree on the order of planned dental treatments, rehabilitation care and planned invasive procedures in a state of danger.

In Case No. AJB-4849/2021 the CFR explained his position in connection with the air-conditioning of operating rooms in healthcare institutions. He inquired into which authority had competence to check the implementation of the relevant regulations for health and safety at work, and whether such monitoring was indeed conducted. In conclusion, he formulated several recommendations for the Ministry concerned, pertaining to both practice and the legal regulatory aspect.

Partly and indirectly connected to the effects of the pandemic, in Report No. AJB-1151/2021 the CFR underlined the necessity of firmer and swifter assistance and clear professional rules in the context of preventing adolescent suicide attempts. While inquiring into a specific case, the CFR came to the conclusion that currently, the recognition and efficient prevention of potentially suicidal behaviours among adolescents is hampered due to the lack of adequate professional regulations and practices.

In 2021, too, the Commissioner for Fundamental Rights deemed it important to maintain personal contacts and dialogues and gathering experience, so he continued his country-wide series of visits that he had launched in spring 2020, the aim of which was to monitor the measures taken in order to curb the waves of the COVID-19 pandemic. In 2021, the Ombudsman once again wished to examine whether the fundamental rights of the most vulnerable groups of society were ensured. In the context of this series of visits across Hungary, the Commissioner continuously monitored – in person or through his staff members – the measures taken for the prevention of the coronavirus pandemic, as well as their impacts. During these visits, the Commissioner was able to monitor the actual, everyday enforcement of the rights of the members of the most vulnerable social groups, and he could offer more prompt and efficient help in solving them.

The Commissioner talked to the heads of the institutions and inspected the living conditions of children, patients, persons living with moderate or severe disabilities, and detainees residing there. Moreover, he also inquired about the strategies of the institutions to be applied in the state of danger. The aim of the visits was to inspect the implementation of the measures taken with a view to preventing the coronavirus pandemic and to averting its consequences, as well as to examine how the restrictions ordered due to the state of danger affected the rights of those concerned. Brief reports were drawn up about the experience gathered during each visit.

The OPCAT National Preventive Mechanism conducted visits also during the third and fourth wave of the COVID-19 pandemic to a wide range of places of detention, including penitentiary institutions, police detention facilities, a reformatory and social care homes. The purpose of the visits was to check the execution of the measures taken to prevent the spread of the coronavirus infection and to remedy the harmful effects of the pandemic. In order to assess the application of restrictive measures, the visiting group examined the accessibility and effectiveness of means of communication with the outside world (telephone, Skype), made available to detainees in the impossibility to ensure in-presence visits. The members of the visiting group conducted interviews with the detainees, members of the staff and the management and reviewed the relevant documentation.

### **References**

COVID-related acts:

- Government Decree No. 46/2020 of 16 March 2020:  
<https://net.jogtar.hu/jogszabaly?docid=a2000046.kor>
- Government Decree No. 484/2020 of 10 November 2020:  
<https://net.jogtar.hu/jogszabaly?docid=a2000484.kor>
- Government Decree No. 27/2021 of 29 January 2021:  
<https://net.jogtar.hu/jogszabaly?docid=A2100027.KOR>
- Message of the Deputy Commissioner for the Rights of National Minorities of November 2021: <https://www.ajbh.hu/en/web/njbh/-/2681089-11>
- Statement of the Commissioner on the immunity certificate:  
<https://www.ajbh.hu/en/web/ajbh-en/-/policy-statement-of-the-commissioner-for-fundamental-rights-regarding-the-evaluation-of-the-immunity-certificate-from-a-fundamental-rights-perspective>

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

As mentioned above, the CFR continued to perform all its monitoring functions while strictly ensuring compliance with precautionary measures and implementing the 'do no harm' principle. In particular, the CFR ensured that visiting teams wear protective equipment during inspections and visits.

## NHRI's recommendations to national and regional authorities

The CFR has recommended the competent Ministry to set up a working group to enhance the role of school psychologists as gatekeepers in order to prevent, identify and address potentially suicidal behaviours among adolescents, as a means to better protect children's rights. The Ministry promised to do so.

The CFR also addressed a recommendation to the Minister of Interior and the Minister of Human Capacities not to prohibit the reception of visitors in places of detention (penal institutions, residential care homes) due to the COVID-19 pandemic, but rather to allow visits subject to the appropriate precautionary measures to be adapted in the light of the evolution of the epidemiological situation.

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

In her General Comment No. 5/2021 on the educational situation of Roma children in Gyöngyöspata, the Deputy Commissioner for the Rights of National Minorities summed up the events that had taken place in the domain of segregation and integration in the primary school of the settlement over the past ten years since her comprehensive inquiry conducted in 2011. Education in its current form – as a result of now spontaneous segregation – in the Gyöngyöspata Primary School, which educates only Roma children, results in the unlawful segregation on the basis of nationality. Therefore, she made recommendations to the Ministry of the Interior, the Ministry of Human Capacities as well as to the head of the school affected, and she also called attention to the necessity of eliminating not only the segregation process that had begun locally in Gyöngyöspata but also to the general need for national-level state interventions.

General Comment No. 1/2021 also concerned the same matter. In such General Comment, the Deputy Commissioner drew attention to the individual and systemic level deficiencies exposed during the inquiry into the educational and child protection problems of a Roma pupil. She drew attention to the developmental, educational and integration problems of a Roma pupil with difficulties in integration, behaviour and learning, and the resulting serious conflicts between parents and teachers, based on the experience of the investigation of a specific complaint. The observations and suggestions offered may also help other children with similar problems and provide guidance for the institutions and authorities concerned. In addition to the requests formulated to the attention of the head of the competent school district centre, the principals of the primary schools affected, the competent district office, as well as of the family assistance and child welfare centres, the

Deputy Commissioner also proposed some legal amendments to the State Secretary for Public Education. In particular, the Deputy Commissioner recommended that the EMMI Decree No. 15/2013 (II. 26.) be amended in order to ensure that, in the case of the status of pupils with difficulties in integration, learning and behaviour, the expert opinion not requested for review by the parents must be forwarded by the expert committee to the educational institution where the child is being educated. Furthermore, she proposed to consider the amendment of EMMI Decree No. 20/2012 (VIII. 31.) so that in the case of the transfer of a child or pupil with integration, learning and behavioural difficulties, the transferring educational institution should always be obliged to provide the receiving educational institution with the expert opinion containing the pedagogical tasks and improvements.

The Deputy Commissioner also issued General Comment No. 3/2021 in relation to the investigation of the complex situation of the individual use of names in nationality languages, the registration of births and deaths in accordance with the rules of nationality languages and other related official procedures, in particular the issuing of official certificates and the enforcement of the individual use of names in nationality languages. She emphasised that the right to use one's individual name in one's nationality language is closely linked to the right of nationalities living in Hungary to use their mother tongue. She made proposals aimed at promoting the more effective enforcement of the rights of persons belonging to nationality communities. Her proposals mainly concerned the promotion of legal awareness among persons belonging to nationalities and officials and registry offices involved in birth registration, the partial amendment of the rules on birth registration in the nationality language and the online accessibility of nationality surname registers.

### **References**

- [https://www.ajbh.hu/documents/2664086/4216263/General+Comment+1\\_2021\\_summary.pdf/ecec5c3c-aa53-008d-dd0e-d68c64031ba9](https://www.ajbh.hu/documents/2664086/4216263/General+Comment+1_2021_summary.pdf/ecec5c3c-aa53-008d-dd0e-d68c64031ba9)
- [https://www.ajbh.hu/documents/2664086/4216263/General+Comment+3\\_2021\\_summary.pdf/8aa12251-3581-528e-a584-81736b45f002](https://www.ajbh.hu/documents/2664086/4216263/General+Comment+3_2021_summary.pdf/8aa12251-3581-528e-a584-81736b45f002)
- [https://nemzetisegijogok.hu/documents/2664086/4216263/General+Comment+5\\_2021+summary\\_EN.pdf/79c20e6f-732f-d8cd-fcb39e71473ea75f?version=1.0&t=1637568976091&](https://nemzetisegijogok.hu/documents/2664086/4216263/General+Comment+5_2021+summary_EN.pdf/79c20e6f-732f-d8cd-fcb39e71473ea75f?version=1.0&t=1637568976091&)

## NHRI's recommendations to national and regional authorities

As already recommended in the General Comments No. 1 and 5/2021 referred to above, the Deputy Commissioner for the Rights of National Minorities calls on the Ministry of the Interior, the Ministry of Human Capacities, the State Secretary for Public Education as well as the management of educational institutions concerned to take all the measures necessary to prevent and address school segregation of Roma children, including by proposing relevant legal amendments.

In order to promote the more effective enforcement of the rights of persons belonging to nationality communities, the Deputy Commissioner recommends the reform of relevant rules on birth registration in the nationality language, measures to ensure the online accessibility of nationality surname registers as well as awareness raising initiatives among persons belonging to nationalities and officials and registry offices involved in birth registration.