



European Network of
National Human Rights Institutions

Implementing the Council of Europe Recommendation on National Human Rights Institutions: The State of Play

The situation in Hungary



Hungary Country Report

Overview

Name of NHRI and mandate:

- Commissioner for Fundamental Rights (CFR)
- NHRI. Also: Ombuds-institution, Equality body, NPM.

Sources:

- NHRI: [ENNHRI, State of the Rule of Law in Europe in 2022, Hungary Country Report](#)
- Sub-Committee on Accreditation (SCA): [SCA Report March 2022](#)
- CoE Independent Bodies: [Venice Commission Opinion on Hungary \(2021\)](#); [CoE Commissioner for Human Rights Statement on Hungary \(2020\)](#)

Good practices and improvements:

- **CM Principle 2:** the CFR has a constitutional basis.
- **CM Principle 3§6: strong mandate to contribute to effective justice:** The CFR has a strong 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. Due to the merger of the equality mandate under the CFR, it has the power to issue binding decisions in individual cases falling under the equality competence.

- **CM Principle 6 & 7: adequate and sustainable resources for own priorities:** The CFR reports having access to adequate funds, while the Venice Commission (2021) reports that the budget is guaranteed through an independent budget line with autonomy to allocate its budget according to its priorities.
- **CM Principle 9: legal obligation for timely and reasoned reply and follow-up mechanisms:** the CFR reports relevant authorities have a legal obligation to respond in a timely and reasoned manner. Moreover, some authorities promote follow-up, such as through a dedicated department with the task to respond to the CFR recommendations within the Ministry of Justice.

Key areas where improvement is needed:

- **CM Principle 1:** Since 2022, the NHRI has been downgraded from A-status to **B-status**.
- **CM Principle 3§3: & 11: NHRI mandate and environment to independently and effectively address all human rights violations:** In the 2022 SCA report, and in line with a statement of the CoE Commissioner for Human Rights, it was found that the NHRI has not adequately spoken out in a manner that effectively promotes and protects of all human rights, including in relation to cases deemed political and institutional. In doing so, the SCA deemed that the NHRI had failed to demonstrate sufficient independence.
- **CM Principle 3§5:** the CFR reports, that despite its mandate, it is often **not involved in timely manner and in all stages of legislation and policy making with human rights implications**. At the same time, the CFR reports there is some improvement after discussion with relevant ministries.
- **CM Principle 4: selection and appointment:** the SCA recommends the selection and appointment process to be more clear, transparent, and participatory so as to enhance independence and public trust.

Specific findings per Principle

The tables below include data on the assessment of the implementation of each Principle (i.e. the individual parts) within the Recommendation from three sources: the National Human Rights Institutions, the Sub-Committee on Accreditation of GANHRI and the Council of Europe independent bodies. Overall, the findings are considered in four overall groups: the establishment of NHRIs; the strengthening of NHRIs; a safe and enabling environment for NHRIs; and cooperation with and support for NHRIs.

I. Establishment of NHRIs

<p>Principle 1</p>	<p>Member States should ensure that NHRIs are in place and that they are established, accredited and function in full compliance with the Paris Principles</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The work and the mandate of the Commissioner for Fundamental Rights and his Office are determined by the Article 30 of the Fundamental Law of Hungary adopted in 2011 and based on the Act CXI of 2011 on the Commissioner for Fundamental Rights, both which enter into force 1st January 2012. Pursuant to the relevant regulations, the Commissioner for Fundamental Rights is the legal successor of the Parliamentary Commissioner for Civil Rights, who ensures the effective, coherent and most comprehensive protection of fundamental rights and in order to implement the Fundamental Law of Hungary.</p> <p>The Commissioner for Fundamental Rights pays special attention to the protection of</p> <ul style="list-style-type: none"> - the rights of children, - the rights of nationalities living in Hungary,

- the rights of the most vulnerable social groups,
- the values determined as 'the interests of future generations'.

The Commissioner for Fundamental Rights gives an opinion on the draft rules of law affecting his/her tasks and competences; on long-term development and land management plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations; and he/she may make proposals for the amendment or making of rules of law affecting fundamental rights and/or the recognition of the binding nature of an international treaty.

The Commissioner surveys and analyses the situation of fundamental rights in Hungary, and prepares statistics on those infringements of rights in Hungary which are related to fundamental rights. Therefore, the Commissioner submits his/her annual report to the Parliament, in which he/she gives information on his/her fundamental rights activities and gives recommendations and proposals for regulations or any amendments. The Parliament shall debate the report during the year of its submission.

In the course of his/her activities, the Commissioner cooperates with organisations aiming at the promotion of the protection fundamental rights.

The Commissioner for Fundamental Rights may initiate the review of rules of law at the Constitutional Court as to their conformity with the Fundamental Law.

Furthermore, the CFR participates in the preparation of national reports based on international treaties relating to his/her tasks and competences, and monitors and evaluates the enforcement of these treaties under Hungarian jurisdiction.

In 2022, the CFR for Fundamental Rights of Hungary, as a National Human Rights Institution accredited by the UN, continued to carry out his duties in accordance with the Paris Principles. The

	<p>powers of the Commissioner for Fundamental Rights of Hungary were further extended when the functions of the Independent Police Complaints Board were taken over and the Equal Treatment Authority was integrated with the Ombudsman. The Office of the Commissioner for Fundamental Rights of Hungary now protects the widest possible range of human rights and exercises official powers to ensure equal treatment.</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA Report March 2022, p. 43</i></p> <p>The SCA recommends that the CFR be downgraded to B status.</p>
<p>Principle 2</p>	<p>Member States should provide a firm legal basis for NHRIs, preferably at the constitutional level, and/or in a law which defines the mandates and functions of such institutions, guarantees their independence and provides them with the means necessary to accomplish their functions effectively, both at national and international levels, bearing in mind existing standards and recommendations on NHRIs, in particular the Paris Principles and their interpretation developed by GANHRI's Sub-Committee on Accreditation.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The CFR has a constitutional basis.</p> <p>the CFR is a supervisory body of the Parliament and enjoys full independence through the guarantees provided for in the Fundamental Law of Hungary and the relevant legal provisions.</p> <p>THE FUNDAMENTAL LAW OF HUNGARY:</p> <p>Article 30</p>

	<p>The Commissioner for Fundamental Rights</p> <p>(1) The Commissioner for Fundamental Rights shall perform fundamental rights protection activities; his or her procedures may be initiated by anyone.</p> <p>(2) The Commissioner for Fundamental Rights shall investigate any violations related to fundamental rights that come to his or her knowledge, or have such violations investigated, and shall initiate general or specific measures to remedy them.</p> <p>(3) The Commissioner for Fundamental Rights and his or her deputies shall be elected for six years with the votes of two thirds of the Members of the National Assembly. The deputies shall protect the interests of future generations and the rights of national minorities living in Hungary. The Commissioner for Fundamental Rights and his or her deputies may not be members of political parties or engage in political activities.</p> <p>(4) The Commissioner for Fundamental Rights shall give an account annually to the National Assembly of his or her activities.</p> <p>(5) The detailed rules for the Commissioner for Fundamental Rights and his or her deputies shall be laid down in an Act.</p> <p>THE OMBUDSMAN ACT Act CXI of 2011 on the Commissioner for Fundamental Rights, Section 11 In conducting his/her proceedings, the Commissioner for Fundamental Rights shall be independent, subordinated only to Acts, and may not be given instructions regarding his/her activities.</p> <p>The powers and functions of the Commissioner for Fundamental Rights of Hungary are wide-ranging, his independence and effectiveness are guaranteed by law, his access to legislation is</p>
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	adequate, and his recommendations are implemented by the public authorities, with explicit justification required for any deviation from them.
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II. Strengthening of NHRIs

<p>Principle 3.1</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - monitor and analyse the human rights situation in the country, publish reports on these findings and address recommendations to public authorities at national, regional and local levels and, when applicable, to private entities, and present an annual report to the relevant authorities, including before parliament, for its consideration.
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The CFR reviews and analyses the situation of fundamental rights in Hungary and prepares a statistical report on fundamental rights violations in Hungary.</p> <p>The CFR is empowered to investigate infringements of fundamental rights on the basis of the Ombudsman Act, both ex officio and based on a filed complaint.</p> <p>Ombudsman Act, Section 28 (1) The Commissioner for Fundamental Rights shall make a report on the inquiry he/she has conducted; it shall contain the uncovered facts, and the findings and conclusions based on the facts.</p> <p>The UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment became part of the domestic legal system as a result of the adoption of Legislative Decree 3 of 1988. The Parliament adopted Act CXLIII of 2011 on the Promulgation of the Optional Protocol to the Convention (hereinafter referred to as the "Protocol"), aimed at the practical implementation of the ban on torture and other cruel, inhuman or degrading treatment or</p>

	<p>punishment, on October 24, 2011. The Protocol established a system within which independent international and national bodies may regularly inspect those places where people deprived of their liberty stay.</p> <p>Article 39/C (...) shall draw up an annual comprehensive report which shall be published on the website of the Office.</p> <p>It issues a report on its findings and proposed measures. It submits an annual report on its activities to Parliament, which is available to the public.</p> <p>It exercises official powers and may impose sanctions in connection with the requirement of equal treatment.</p>
<p>Principle 3.2</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - freely address public opinion, raise public awareness on human rights and carry out education and training programmes;
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The Ombudsman Act, Section 2(5), The Commissioner for Fundamental Rights shall promote the enforcement and protection of fundamental rights. In doing so, he/she shall engage in social awareness raising and information activities and cooperate with organisations and national institutions aiming at the promotion of the protection of fundamental rights.</p>

In his work, the CFR pays particular attention to protecting the rights of children, the interests of future generations, the rights of national minorities living in Hungary and the rights of the most vulnerable groups in society.

In 2022, the Office continued the previously proven practice of 2021, so the renovation of several children's homes was carried out at the initiative of the CFR. After the renovation of the Rum Special Children's Home, the renewal of the Saint Agatha Child Protection Service's Szentlőrinc Group Home and Gyulafirátót Children's Home became necessary, due to the fact that the CFR's staff found various deficiencies during an unannounced on-site inspection. The CFR, then, engaged in a dialogue with the civil society organisations on how he could effectively support them in their development.

By renovating children's homes, the CFR has raised public awareness of the importance of children's rights and encouraged them to play an active role.

Reflecting on the war in Ukraine and the acts of the CFR, we highlight that after the outbreak of the Ukrainian war, the CFR was one of the first to act almost immediately in the interests of the rights of asylum-seekers. The Commissioner for Fundamental Rights of Hungary found it imperative to monitor the events personally, especially in those extraordinary times, to be able to provide direct legal and humanitarian support to as many people as possible. With a view to the wider enforcement of human rights, he opened several temporary offices at the time of the outbreak of the war, i.e. in March, near the Ukrainian-Hungarian border section, in the regions that were hit hardest by the Ukrainian refugee crisis. The staff members of the office provided voluntary support not only at the temporary offices opened near the Ukrainian-Hungarian border (in the settlements of Záhony and Beregsurány) but also in the capital, at the reception centre opened for the refugees. Besides the provision of legal support, the staff members of the Office distributed information leaflets in Hungarian, English and Ukrainian and they also made it possible for the refugees to file complaints against the procedures of the authorities. Furthermore, the Commissioner for Fundamental Rights also displayed an information material on the official website of the Office, in which it was not only

	<p>on the rights of refugees that he provided information but also, on his own activities and the accessibility of the Office, furthermore, he presented the accessibility and competence of other organizations as well. The 2022 ENNHRI report and the large-scale humanitarian disaster also highlighted the significance of cooperation and coordinated efforts with state authorities and civil society organizations. The above-mentioned information material is currently available on the website as well, it is displayed separately, is well-visible and easily accessible, it is available in Hungarian and English, and is continuously updated.</p> <p>The OCFR and the CFR personally visit the border and the regional temporary offices, and there, the staff is always informed about the current situation, the measures taken to speed up the border crossing, the conditions of reception of refugees from Ukraine via Beregsurány and the experiences of the staff on duty there.</p> <p>The CFR also received professionals from different institutions to report on his activities and exchange good practice.</p>
<p>Principle 3.3</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <p>- fully address all alleged human rights violations by all administrative authorities, other relevant State entities and, when applicable, private entities</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>One of the most powerful tools in the classic Ombudsman activity is the conduct of investigations, and in this area of competence we can provide the following data for 2022: there were 169</p>

recommendations formulated in the 226 reports of such investigations. Out of those, the recommendations made by the Commissioner for Fundamental Rights of Hungary were accepted in as many as 153 cases, which means a rate of 91%, on the current level of processing.

However, we shall highlight that the OCFR's work is wide-ranging, as it also deals with equal treatment cases (General Directorate for Equal Treatment, hereinafter referred as "ETA"), and police complaints (General Directorate of Police Complaints) under the mandate of the CFR. Altogether, 689 were generated at the Directorate of Police Complaint.

Furthermore, The CFR pays particular attention to the protection of the rights of vulnerable social groups, equal treatment, the protection of rights of national minorities living in Hungary, the protection of people with disabilities, and the protection of children's rights, in addition to his core activities. The legitimacy of the Deputy Commissioner for Fundamental Rights, Ombudsman for the Rights of National Minorities derives from the Fundamental Law of Hungary. The Deputy Commissioner has a number of powers to ensure that protection is fully provided. The Directorate General for Equal Treatment is responsible for examining the compliance with the requirements of equal treatment of the listed social groups in the event of discrimination on grounds of sex, race, or any other ground, and may issue binding administrative decisions to remedy any violation.

The Deputy-Commissioner for Fundamental Rights, Ombudsman for Future Generations regularly issues general opinions and legal summaries containing legal analyses and legislative recommendations to the national and local authorities under his mandate. All of these address systemic issues of fundamental rights relevance (the right to a healthy environment, physical and mental health, and the rights of future generations) and provide examples of relevant case law from the Hungarian Constitutional Court and the European Court of Justice, which underpin the close cooperation. In order to draw the attention of local authorities to these summaries, the Ministry of Interior has explicitly included these general opinions and legal summaries in its internal newsletter to local authorities in 2022.

It is also important to emphasise that Article 30(3) of the Fundamental Law of Hungary states that the CFR may not engage in political activities. It shall carry out its work in the most effective way possible, impartially and independently of politics, in the national and international field, in order to protect human rights. The CFR has a mandate of full coverage to protect fundamental rights and is actively and personally involved in the effective protection of human rights. On the initiative of the CFR, as reported to ENNHRI and on the international platforms, he has opened three temporary regional offices on the Ukrainian-Hungarian border (Beregsurány, Záhony) and in Budapest. All this just days after the outbreak of the war. Refugees arriving from Ukraine will thus receive full and immediate assistance on the ground. The CFR visits these temporary points regularly and in person.

As regards refugees, Hungary was the first safe country, along with the border countries of Ukraine, during the humanitarian disaster in Ukraine in 2022. The Commissioner implemented an immediate action plan to help refugees in the week following the outbreak of the war. The Commissioner published information on the Office's website in Ukrainian, Hungarian, and English, and opened temporary field offices along the border (Záhony, Beregsurány) and an information point in Budapest. The Office's staff have provided and continue to provide assistance to refugees fleeing the war, helping them to access the necessary information and giving them the opportunity to lodge complaints against the activities of Hungarian authorities. The work of the Commissioner and the Office has been recognised by several international delegations. The above activities highlight that the CFR does not hesitate to take proactive action in situations and cases that have a political aspect.

The following data shows that the capacities of the ombudsman are comprehensive and extend way beyond the classic Ombudsman toolkit.

In 2022, 689 cases were generated at the Directorate of Police Complaint. There were 124 complaints against police actions, and 477 complaints against offences, criminal proceedings and enforcement of sentences. In addition, 79 cases were prosecuted ex officio, while 9 cases of an administrative nature concerning internal activities were opened. The Directorate closed 75 cases in respect of cases carried over from 2020, 399 cases in respect of cases opened in 2021 and 427 cases in respect of

cases opened in 2022, for a total of 901 cases. In the year under review, the CFR issued 29 reports on complaints against police action. In 24 of the reported police measures, the National Police Commissioner conducted the administrative procedure, taking into account the findings of the CFR. In 20 cases, the decision was in full agreement with the Commissioner's decision, in 1 case it was contrary to the Commissioner's position, while in 3 cases the complaint was rejected by the National Police Commissioner on the grounds of procedural obstacles.

In 2021, after the merger, the ETA dealt with a total of 462 cases. Of these, 265 were administrative cases and 197 were non-administrative cases, in which the CFR, through ETA, informed clients who approached him in individual cases about the possibility of seeking redress for violations of the requirement of equal treatment without any official procedure or decision having been taken. In 2021, the ETA took 169 decision closing proceedings.

Only in n 2022, the ETA dealt with a total of 463 cases. Of these, 265 were administrative cases, and there were also 198 non-administrative cases, in which the CFR, through the ETA, provided information to complaints, typically in individual cases, on how to seek redress for violations of equal treatment requirements, or otherwise provided information on the ETA's activities.

In addition to the Ombudsman activities, it is important to highlight the special Ombudsman tasks related to the war, which activities were aimed at eliminating possible infringements by the administrative authorities or other public bodies and private persons.

The challenges caused by the humanitarian crisis in Ukraine required rapid action plans and vigorous action. In the extraordinary situation, the risk of grave fundamental rights violations grew higher, therefore the CFR launched immediate investigations with a view to remedying the potential improprieties without delay. He ordered an inquiry into the institutions of the service system for those who are under temporary protection, in the focus of which he placed the protection of all the highly vulnerable groups of society such as children, persons with disabilities, the elderly and minorities.

	<p>The CFR has ordered an inquiry about the institutions forming part of the services system available for those refugees/persons enjoying temporary protection who cross the Hungarian border due to the Russian–Ukrainian military conflict. The inquiry focuses on all the vulnerable groups, especially children, persons with disabilities and elderly persons fleeing from the war. The continuous, comprehensive inquiry examines the following areas in particular: <u>healthcare, children’s homes, the elderly and the disabled, schools, and higher education.</u></p> <p>In addition to the above inquiry, the National Preventive Mechanism (NPM) has also committed itself to pay visits to places of detention located on the Hungarian–Ukrainian border. Places have been made available for families fleeing the Russian–Ukrainian war in residential social care homes and child protection institutions near the border.</p> <p>The CFR also makes it a priority to prevent further human rights violations affecting vulnerable groups, such as the LGBTQI+ community. 14 applicants have reached out to the CFR since 2021 in LGBTQI+ related cases, so that is the number of cases received. Therefore, the Equal Treatment Authority and the CFR conducted 14 administrative procedures in which the applicant invoked sexual orientation/gender identity as a protected characteristic.</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA Report 2022 March, pp. 43-44</i></p> <p>In October 2019, the SCA noted with concern that the CFR did not demonstrate adequate efforts in addressing all human rights issues, nor had it spoken out in a manner that promotes and protects all human rights</p> <p>[...]</p> <p>The SCA remains concerned that it has not received the written evidence necessary to establish that the CFR is effectively carrying out its mandate in relation to vulnerable groups such as</p>

	<p>ethnic minorities, LGBTQI people, human rights defenders, refugees and migrants, or related to important human rights issues such as media pluralism, civic space and judicial independence. The SCA has not received sufficient evidence on the CFR engagement with the constitutional court and international human rights mechanisms in relation to cases deemed political and institutional. The SCA emphasizes that the failure to do so evidences a lack of independence. Accordingly, the SCA is of the view that the CFR is acting in a way that seriously compromises its compliance with the Paris Principles.</p> <p><i>Please note the NHRI reports this SCA recommendation does not represent the current situation.</i></p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>CoE Commissioner for Human Rights Statement on Hungary, 2020</i></p> <p>Doubts remained about [...] the Institution’s efforts to address all human rights issues and speak out in a manner that promotes and protects all human rights.</p>
<p>Principle 3.4</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - have unfettered access to all relevant premises, including places of deprivation of liberty, and to all relevant individuals, in order to be able to carry out a credible examination of all issues covered by their mandate and to all relevant information, subject to possible restrictions stemming from the protection of other rights and legitimate interests and with due respect for the confidentiality of information obtained;

<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The wide-ranging investigative powers of the CFR are provided for in Articles 21-27 of the Ombudsman Act, Article 39 of the Act and Chapters III/A, III/B, III/C and III/D of the Act.</p> <p>Section 21 (1) In the course of his/her inquiries the Commissioner for Fundamental Rights</p> <ul style="list-style-type: none"> a) may request data and information from the authority subject to inquiry on the proceedings it has conducted or failed to conduct, and may request copies of the relevant documents, b) may invite the head of the authority, the head of its supervisory authority or the head of the organ otherwise authorised to do so to conduct an inquiry, c) may participate in a public hearing, and d) may conduct on-site inspections. <p>Section 22 (1) In the course of an on-site inspection the Commissioner for Fundamental Rights or members of his/her staff authorised to conduct the inquiry</p> <ul style="list-style-type: none"> a) may enter the premises of the authority subject to inquiry, unless provided otherwise by a legal regulation, b) may inspect all documents which may have any relevance to the case under inquiry, and may make copies or extracts thereof, and c) may conduct a hearing of any employee of the authority subject to inquiry. <p>Section 26 (1) In the inquiries conducted by the Commissioner for Fundamental Rights, the persons or organisations not qualifying as authority pursuant to this Act as well as the authorities not affected by the inquiry shall be obliged to cooperate.</p> <p>Section 27 (1) In the course of his/her proceedings the Commissioner for Fundamental Rights may process – to the extent necessary for those proceedings – all those personal data and data qualifying</p>
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as secrets protected by an Act or as secrets restricted to the exercise of a profession which are related to the inquiry or the processing of which is necessary for the successful conduct of the proceedings.

Section 38/(1) The Commissioner for Fundamental Rights shall provide for the operation of an electronic system for filing and registering public interest disclosures in accordance with the Act on complaints and public interest disclosures (hereinafter referred to as the “electronic system”).

(2) In connection with public interest disclosures filed through the electronic system and their investigation, the authorities specified under Section 18, Subsection (1), Paragraphs a)-k) shall provide the Commissioner for Fundamental Rights with data necessary for performing his/her tasks.

Section 38/C A whistleblower may submit a petition requesting the Commissioner for Fundamental Rights to remedy a perceived impropriety if

- a) a public interest disclosure is qualified as unfounded by the organ authorised to proceed under the Act on Complaints and Public Interest Disclosures (hereinafter referred to as the “organ authorised to proceed),
- b) the whistleblower does not agree with the conclusions of the inquiry,
- c) according to the whistleblower, the organ authorised to proceed has failed to conduct a comprehensive inquiry into a public interest disclosure.

Section 38/D Staff members of the Office performing tasks directly related to public interest disclosures shall carry out their duties in posts falling within the scope of national security checks and requiring a personal security certificate.

The OCFR must ensure the confidentiality of sensitive information. It is prescribed by law that no personal data should be disclosed without the express consent of the person concerned, and that no harm should be caused to those who share information with the CFR or with the staff of the NPM

	<p>authorised to carry out its tasks.</p>
<p>Principle 3.5</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - monitor existing and draft policies and legislation with human rights implications before, during and after their adoption in order to advise the State about the impact of such policies and legislation on human rights and on the activities of human rights defenders, including by making relevant and concrete recommendations.
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>As the 2022 war in Ukraine has affected the work of the CFR, he monitored the legal situation of persons fleeing Ukraine. In the Hungarian legislation and in the work of the authorities in 2022, priority was given to solving the legal situation of persons fleeing Ukraine, the social and health care and housing provided to them, as well as ensuring the education of school-age children. As part of his active role in supporting people fleeing the war to Hungary, the Commissioner personally monitored the situation during these extraordinary times and continuously examined the newly adopted and enacted legislation in favour of those fleeing the war in Ukraine.</p> <p>Following the implementing decision of the Council of the European Union on 4 March 2022, the Government issued a decree stipulating that Hungary should grant protection:</p> <ul style="list-style-type: none"> a) to a Ukrainian citizen residing in Ukraine before 24 February 2022,

	<p>b) to a stateless person or a non-Ukrainian third-country national who was granted international protection or equivalent national protection in Ukraine before 24 February 2022, or</p> <p>(c) to a member of the family of the person referred to in (a) and (b).</p>
<p>Principle 3.6</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <ul style="list-style-type: none"> - contribute to an effective justice system for all, through awareness-raising measures and facilitating access to rights and remedies and, as applicable, by providing legal assistance, being a party before the courts or, when applicable, receiving individual complaints;
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 3</i></p> <p>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.</p> <p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 9</i></p> <p>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.</p>

ENNHRI, State of the Rule of Law in Europe in 2022, p. 4:

In addition, on 1 January 2021, the Equal Treatment Authority (hereinafter referred to as: ETA) was merged into the Office of the CFR. The CFR took over all the responsibilities and functions of the ETA, including its power to make legally binding decisions. The fact that an inquiry has been conducted under the CFR Act does not preclude that, after its conclusion, the CFR may 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 violation, intimate against the continuation of the violation, and even impose a fine ranging from HUF 50,000 to HUF 6,000,000.

Information Provided by the NHRI in 2023

As the current set-up of the ETA gives petitioners the widest possible range of options. The CFR is acting at the discretion of the petitioner, so their rights can be exercised based on the petitioner's preferred way. The concern would be more likely to arise if he did not have this right and the CFR did not proceed according to the procedure he had requested. If the petitioners cannot judge which procedure would be appropriate for them, the CFR will proceed under the Act of "Ebkvt". In this way, it can issue a binding decision in an administrative procedure, which the applicant can challenge in court. Given that the Directorate-General for Equal Treatment deals only with these cases, there is no real mixing of procedures. The merger does not cause any problems, all procedures are carried out in accordance with the relevant legislation. Citizens can now benefit from more effective assistance from the Office, thanks to the fact that the CFR has a much broader mandate than the former ETA. The OCFR now protects the widest range of human rights and exercises public authority powers to ensure equal treatment.

	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 34</i></p> <p>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.</p> <p>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 this lawsuit on the basis of the provisions set out by the Act CXI of 2011 on the Commissioner for Fundamental Rights (Hereinafter referred to as: CFR Act).</p> <p>The CFR may also intervene in court cases launched in relation to environmental law decisions on the basis of the provisions set out in the CFR Act.</p> <p>The reports issued by the Commissioner may be submitted to the court as evidence by the persons and civil society organisations seeking the enforcement of their rights.</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>Venice Commission Opinion on Hungary 2021, p. 9 (Para.34)</i></p> <p>As a result of the merger, the CFR has a mandate to conduct two types of proceedings which are different in nature and outcome. Under the Equal Treatment Act, the complaints are investigated as part of an administrative procedure with clear deadlines, the possibility to impose fines and other sanctions, and the possibility to seek judicial review. In case of the proceedings under the Commissioner Act, no timelines are prescribed, and no binding decisions are issued in the end, only recommendations.</p> <p>This is further complicated by the fact that it is the petitioner who has to choose one proceeding over another (the Equal Treatment Act or the Commissioner Act), and only in case no special preference is expressed by the petitioner, or he/she requests the initiation of both proceedings, shall the CFR initiate the proceedings under the Equality Act. It is unusual to leave the choice of the procedure to be followed to the petitioner.</p>

	<p><i>Please note the NHRI reports this finding from the Venice Commission does not represent the current situation.</i></p>
<p>Principle 3.7</p>	<p>Member States should ensure that the mandate given to NHRIs to protect and promote human rights is as broad as possible and in full compliance with the Paris Principles and that it allows them, inter alia, to:</p> <p>- encourage the signature, ratification of and accession to international human rights treaties and contribute to the effective implementation of such treaties, as well as related judgments, decisions and recommendations as well as to monitor States' compliance with them.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>In 2022, the CFR was responsible for the following UN conventions, too;</p> <p>The CFR performs the functions of the National Preventive Mechanism ("NPM") under Article 3 of the Act CXLIII of 2011 on the Promulgation of the Optional Protocol to the Convention (hereinafter referred to as the "Protocol"). Please see later for detailed explanation.</p> <p>According to the Ombudsman Act, Section 2(2), The Commissioner for Fundamental Rights 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 and drafting of legislation affecting fundamental rights, and the expression of consent to be bound by an international treaty.</p>

(4) The Commissioner for Fundamental Rights shall participate in the preparation of national reports based on international treaties relating to his/her tasks and competences, and shall monitor and evaluate the enforcement of these treaties under Hungarian jurisdiction.

Regarding "OPCAT", the Parliament adopted **Act CXLIII of 2011** on the Promulgation of the Optional Protocol to the Convention (hereinafter referred to as the "Protocol"), aimed at the practical implementation of the ban on torture and other cruel, inhuman or degrading treatment or punishment, on October 24, 2011. The Protocol established a system within which independent international and national bodies may regularly inspect those places where people deprived of their liberty stay.

The system is built on the *Subcommittee on Prevention*, comprising 25 independent experts and operating under the auspices of the UN, and on the *National Preventive Mechanism* operated by the State Parties.

The Committee on Prevention, just as the National Prevention Mechanism, may inspect on-the-spot the detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority. The competences of the Subcommittee on Prevention and the National Preventive Mechanism are identical.

As of January 1, 2015, the Commissioner for Fundamental Rights shall proceed as National Preventive Mechanism either personally or with the cooperation of his colleagues.

<p>Principle 4</p>	<p>The process of selection and appointment of the leadership of a NHRI should be competence based, transparent and participatory, in order to guarantee the independence and pluralist representation of these institutions. It should also be based on clear, predetermined, objective and publicly accessible criteria.</p> <p>The duration of the appointment should be clearly set out in the founding legislation, so that the leadership posts of the NHRI do not stay vacant for any significant period of time.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The general rules for the election of the Commissioner for Fundamental Rights are included in the Fundamental Law of Hungary, and based on the Commissioner for Fundamental Rights. The Commissioner for Fundamental Rights and its Deputies are elected for six years by the two-thirds of the Members of the Parliament.</p> <p>The CFR is given special legitimacy by the fact that he is elected by two-thirds of the Members of Parliament on the proposal of the President of Hungary.</p> <p>The Parliament shall elect the CFR from among lawyers of outstanding theoretical knowledge or with at least ten years' professional experience, who are at least thirty-five years of age and have considerable experience in the conduct, supervision or academic theory of proceedings concerning fundamental rights. This legal requirement underpins the competence-based selection of CFRs and highlights that selection criteria are clear, publicly available and predetermined, and the parliamentary procedure is transparent and based on an objective democratic process.</p> <p>The CFR and his deputies issue statements and investigations in any case where fundamental and human rights are concerned.</p>

	<p>In its efforts to protect human rights, the CFR opened 6 regional offices in Hungary's largest rural towns in 2022, in order to provide more effective personal presence, counselling, personal client assistance, and telephone information throughout the country.</p> <p>The introduction of regional offices is an innovative achievement in Europe, as the full powers of the Commissioner for Fundamental Rights of Hungary are now available to citizens. From 1 February 2022, citizens are able to request the Ombudsman's inquiry in person not only in Budapest, but also in Győr, Szeged and Debrecen, and from March 2022, in three other large provincial cities, i.e., Székesfehérvár, Miskolc and Pécs.</p>
<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA Report March 2022, p. 45</i></p> <p>The SCA provided the CFR the opportunity to respond to the aforementioned concerns. However, the SCA was not informed of any changes in the selection and appointment process and is of the view that the CFR has not sufficiently advocated for the formalization and application of a clear, transparent, and participatory selection and appointment process.</p> <p>The SCA encourages the CFR to strengthen its recommendations and advocacy for the necessary amendments to its selection and appointment process, in law and in practice, in order to ensure the actual and perceived independence of this process and promote public confidence in the institution.</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>Council of Europe Commissioner for Human Rights Statement on Hungary, 2020</i></p> <p>Doubts remained about the appointment process of the incumbent and the adequacy of the Institution's efforts to address all human rights issues and speak out in a manner that promotes and protects all human rights.</p> <p><u>Please note the NHRI reports this Statement of the CoE Commissioner does not represent the current situation.</u></p>

Venice Commission Opinion on Hungary 2021, p. 11 (Para.42)

During the virtual meetings, the Venice Commission was informed that to date (after 9 months of the merger), neither the Director General for Equality Treatment nor the Deputy Director General have been appointed. Moreover, the CFR could not confirm either the date for filling these vacancies or elaborate on the criteria and rules of selection. According to the additional information received by the Venice Commission, due to various reasons the ETD is currently understaffed, which affects the overall quality of its performance.

Please note the NHRI reports this part of the Venice Commission Opinion does not represent the current situation.

The Commission reminds the Hungarian authorities that member States should ensure sufficient adequately qualified staff for the equality bodies to guarantee effective fulfilment of their functions.

The Venice Commission is not in a position to assess the developments concerning staff turnover or the effect caused by the failure to appoint the DGET or his/her Deputy. The Commissions' role is to assess the above-mentioned amendments in light of the relevant international standards.

An analysis of these provisions suggests that they do not contradict the standards of effectiveness and independence encompassing, inter alia, a decision on the internal structure of the institution and the recruitment/appointment policy of the staff. However, the Commission reminds the Hungarian authorities that failure to follow the relevant regulations renders the guarantees provided therein purely theoretical and illusory, devoid of any practical and effective implication. Without DGET, it is hard to imagine the promotion and visibility of equality mandate as required by ECRI General Policy Recommendation No 2. The Commission encourages the Hungarian authorities to ensure a timely appointment of GDET and his/her Deputy in accordance with clear and transparent criteria defined by law.

<p>Principle 5</p>	<p>To ensure independence, the enabling legislation of a NHRI should contain an objective dismissal process for the NHRI leadership, with clearly defined terms in a constitutional or legislative text. The dismissal process should be fair and ensure objectivity and impartiality and should be confined to only those actions which impact adversely on the capacity of the leaders of NHRIs to fulfil their mandate.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 4</i></p> <p>Act CXXII of 2021 on the Amendment of Certain Laws on Justice and those related to Justice made it clear that the votes of two-thirds of the Members of Parliament are required for the termination of the mandate of the Commissioner for Fundamental Rights.</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p>The CFR is only responsible to the law. Subject to the above, his mandate may be terminated only in the following cases:</p> <p>Section 16(5) The mandate of the Commissioner for Fundamental Rights may be terminated by dismissal if, for reasons not imputable to him/her, the Commissioner for Fundamental Rights is not able to perform the duties deriving from his/her mandate for more than ninety days. A motion for dismissal may be submitted by any Member of Parliament. In the event of dismissal, the Commissioner for Fundamental Rights shall be entitled to three months' additional salary.</p> <p>(6) The mandate of the Commissioner for Fundamental Rights may be terminated by removal from office if, for reasons imputable to him/her, the Commissioner for Fundamental Rights fails to perform the duties deriving from his/her mandate for more than ninety days, if he/she deliberately fails to comply with his/her obligation to make a declaration of assets, or if he/she deliberately makes a false declaration on important data or facts in his/her declaration of assets. A motion for removal from</p>

	<p>office may be submitted by the Conflict of Interests Committee after examination of the reasons justifying the removal.</p>
<p>Principle 6</p>	<p>Member States should provide NHRIs with adequate, sufficient and sustainable resources to allow them to carry out their mandate, including to engage with all relevant stakeholders in a fully independent manner and freely determine their priorities and activities.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The OCFR is a budgetary body under the control of Parliament, with its own economic organisation and independent budget.</p> <p>The resources necessary for the performance of its tasks are laid down in the Budget Act for the year in question, in which the Office appears as Chapter IV.</p> <p>The budget is fundamentally provided on the basis of basic appropriations, i.e. it is calculated on the basis of the previous year's figures. This amount will be increased if there is a new task and a supplementary grant, or an account will be taken of any measures which may reduce the budget (e.g. a reduction in the subsidy due to a reduction in the % of the employer's contribution).</p> <p>The funds provided for the operation of the Office (payment of salaries, operation) are opened by the Hungarian State Treasury in equal monthly instalments and transferred to the Office's account; if the funds are used for renovation or investment, they are transferred on request.</p> <p>The budget is not allocated to the individual departments of the Office, which do not have their own budgets; however, the Office's economic department always takes into account the needs of the departments and the previous year's utilisation data when planning the budget.</p>

	<p>The Office is debt-free and has met its obligations to both staff and suppliers on time. No professional programme or request has been refused by the departments concerned for lack of resources.</p> <p>In all cases, the requested vehicle, related fuel, possibly accommodation, and daily subsistence expenses were covered by insurance as requested.</p> <p>In all cases, the Office's economic department endeavours to ensure that, in parallel with and in parallel with the smooth operation of the Office, the needs of the professional units are settled.</p> <p>The total budget of the OCFR for 2023 is 2 956,- million HUF. The entire Office has a sufficient budget and the Commissioner is constantly vigilant to ensure that each department is able to carry out its tasks and has sufficient financial resources to do so.</p> <p>This is demonstrated by the fact that, in 2022, immediately after the outbreak of the war, the CFR drew up an action plan, which the CFR has implemented independently, using his own budget. It set up temporary field offices in border communities, provided travel for staff to volunteer and organised fundraising.</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>Venice Commission Opinion 2021, p. 11 (Para.47)</i></p> <p>During the virtual meeting with the CFR, the Venice Commission was informed that 462 000 000 HUF, a budget of ETA for 2020, was added to the overall budget of CFR for 2021 for tasks related to equal treatment, internal distribution of which is a competence of the CFR. The Venice Commission has not been provided with additional information concerning the internal distribution of the budget, in particular the budget distributed to the ETD.</p> <p>Once again, it falls beyond the mandate of the Venice Commission to assess whether the 2021 budget of the CFR is adequate to the needs of the institution and whether the sum allocated to the ETD is appropriate to ensure its effective operation. However, the Commission reminds the</p>

	<p>Hungarian authorities that this element bears serious consequence for the independent and efficient exercise of the NEBs' mandate and therefore should be adequately considered.</p> <p>The Commission welcomes the fact that the CFR has a separate chapter in the central budget and an autonomy to allocate its budget according to its priorities as required by international standards. It remains hopeful that ETD is under no risk of under financing and that work on equality issues, as a result of the merger, is taken to a higher level.</p>
<p>Principle 7</p>	<p>NHRIs should have the authority to determine their staffing profile and recruit their own staff, as well as sufficient resources available, in order to fulfil their mandate, so as to permit the employment and retention of staff and to ensure that they receive adequate training.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information Provided by the NHRI in 2023</i></p> <p>As mentioned in the previous point, the CFR has the power to define the staff profile of the Office and to recruit staff. The Office's departments have sufficient resources to fulfil their mandate. The financial framework allows for the employment and retention of staff. Training is provided for the staff of the Office, in particular through a joint cooperation with a university in Hungary.</p> <p>It is important to underline that the CFR is attentive to the needs of his employees in terms of training and education. The training of public sector employees is centrally provided on a compulsory annual basis (i.e. practically everyone attends some training) through the "Probono" system.</p> <p>In addition to the "Probono" training scheme, the OCFR also provides specific support for the training, study or legal examinations of its staff through study contracts at the initiative of the staff member.</p>

	<p>It is important to underline that the CFR is supported in his expanded competences by the professional directorates-generals and departments, with the appropriate staff. In this context, it should be noted that the Office, as the successor to the ETA, has been able to successfully take over the former staff of the ETA in order to ensure the smooth running of its tasks.</p>
<p>Principle 8</p>	<p>Member States should ensure that NHRIs enjoy adequate access to information and to policy makers and legislators, including timely consultations on the human rights implications of draft legislation and policy strategies.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>According to the Ombudsman Act, the law also supports the CFR in his right to give opinion. Section 2(2), The Commissioner for Fundamental Rights 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 and drafting of legislation affecting fundamental rights, and the expression of consent to be bound by an international treaty.</p> <p>(4) The Commissioner for Fundamental Rights shall participate in the preparation of national reports based on international treaties relating to his/her tasks and competences, and shall monitor and evaluate the enforcement of these treaties under Hungarian jurisdiction.</p>

<p>Principle 9</p>	<p>Member States should implement the recommendations of NHRIs and are encouraged:</p> <ul style="list-style-type: none"> - to make it a legal obligation for all addressees of NHRI recommendations to provide a reasoned reply within an appropriate time frame, - to develop processes to facilitate effective follow-up of NHRI recommendations, in a timely fashion and - include information thereon in their relevant documents and reports.
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 5</i></p> <p>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.</p> <p>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.</p> <p><i>Information Provided by the NHRI in 2023</i></p> <p>In the case of 169 recommendations formulated in the 226 reports issued in 2022, the recommendations made by the Commissioner for Fundamental Rights were accepted in as many as 153 cases, which means a rate of 91%, on the current level of processing.</p>

	<p>This highlights that state institutions pay suitable consideration to the recommendations in the Commissioner's reports, which ensures that our institution is able to work independently and efficiently.</p>
<p>Principle 10</p>	<p>When member States grant NHRIs additional competences to perform functions foreseen by international conventions in the field of human rights, such as the United Nations Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Convention on the Rights of Persons with Disabilities, the NHRI should have access to sufficient resources to develop the capacity to effectively discharge its functions, including having appropriately qualified and trained staff.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The Parliament adopted Act CXLIII of 2011 on the Promulgation of the Optional Protocol to the Convention (hereinafter referred to as the "Protocol"), aimed at the practical implementation of the ban on torture and other cruel, inhuman or degrading treatment or punishment, on October 24, 2011. The Protocol established a system within which independent international and national bodies may regularly inspect those places where people deprived of their liberty stay.</p> <p>OPCAT has sufficient financial resources to visit the places where people deprived of their liberty are staying. The visits conducted by OPCAT are available in our website in English as well.</p> <p>In Hungary, from 1 January 2015, the Commissioner for Fundamental Rights acts as the national preventive mechanism, in person or through his staff. Minimum of eleven civil servants of the OCFR with outstanding theoretical or practical experience of at least five years in a field related to the treatment of persons deprived of their liberty are involved in this task. At least two or more</p>

professionals with a degree in law, medicine or psychology must be involved per requirement. In 2022, several new colleagues have joined the department.

The Commissioner for Fundamental Rights initiated that the OPCAT Civil Consultative Body be complemented by new members, in order to further enhance the visibility and representation of civil society organizations. Thus, the Body whose membership increased from eight to fifteen back in 2021, could conclude fruitful and proactive sessions in 2022 as well. The increase in membership allowed even broader social participation and the new members brought new approaches to the work of the Body. All in all, the civil society partners gave a favourable assessment of the work performed as part of solving the tasks of the National Preventive Mechanism, which points to the Commissioner's good practices and right decisions.

We may highlight again that the challenges caused by the humanitarian crisis in Ukraine required rapid action plans and vigorous action. In the extraordinary situation, the risk of grave fundamental rights violations grew higher, this is why the Commissioner launched immediate investigations with a view to remedying the potential improprieties without delay. He ordered an inquiry into the institutions of the service system for those who are under temporary protection, in the focus of which he placed the protection of all the highly vulnerable groups of society such as children, persons with disabilities, the elderly and minorities. The investigations conducted by the Commissioner and two departments of the Office, i.e. OPCAT and the Department for Equal Opportunities and Children's Rights, among others, focused on whether or not the rights of children arriving from Ukraine as refugees to education are violated. Simultaneously, it was also assessed whether or not the rights of Hungarian children to education were breached. To this end, the Commissioner has contacted the rectors of several Hungarian universities to monitor the situation of students from Ukraine continuing their higher education in Hungary.

III. Safe and Enabling Environment

<p>Principle 11</p>	<p>Member States should ensure that NHRIs can operate independently, in an environment which is conducive to them carrying out their mandate in an effective manner and in a climate of impartiality, integrity, transparency and fairness.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The CFR is independent in his activities, subject only to the law, and cannot be instructed in connection with his activities. This is laid down by law.</p> <p>The activity of the CFR (after 1 January 2021) demonstrates that he is also effectively fulfilling the role of the ETA, and that the ETA operates with full staff.</p> <p>The General Director of ETA is appointed and maintains an effective and working relationship with the Authority's Head of Department. The staff is working on a daily basis, in sufficient numbers, to ensure that human rights and equal treatment are protected. The ETA has been fully integrated into the Office, with all of its staff (the exception of 1 person), and continues to operate as the Directorate-General for Equal Treatment, with all posts filled. The staff will ensure the smooth continuation of the previous work. It is important to stress that the task and powers are exercised by the Commissioner for Fundamental Rights of Hungary in all cases. The functioning of the department continues unhindered.</p> <p>Act, Section 11, In conducting his/her proceedings, the Commissioner for Fundamental Rights shall be independent, subordinated only to Acts, and may not be given instructions regarding his/her activities.</p>

	<p>The Ombudsman Act § 39/M * (1) The Commissioner for Fundamental Rights shall, in the performance of his/her duties as defined in the Ebktv., act in the framework of administrative authority proceedings.</p> <p>(2) If both the Ombudsman Act and the Ebktv. proceedings may be initiated on the basis of a petition, the proceedings shall be initiated in accordance with the petitioner's statement. If, on the basis of the statement of the petitioner, the petitioner requests the initiation of proceedings under the Act, the petition shall be deemed to be a request under the Act.</p> <p>(3) If the petitioner does not make a statement or requests the initiation of both procedures, the Commissioner for Fundamental Rights shall, with the exception of the following paragraph, initiate the procedure under the Ebktv and inform the petitioner thereof within 10 days, the petition shall be considered as an application under the Ebktv.</p> <p>(4) If the petitioner does not declare in a case related to the enforcement of the rights of national minorities living in Hungary or requests the initiation of both procedures, the Commissioner for Fundamental Rights shall decide on the basis of the recommendation of the deputy responsible for the protection of the rights of national minorities living in Hungary whether it is appropriate to initiate the procedure under this Act or the procedure under the Ebktv.</p> <p>Under the legal provisions, the CFR acts according to the decision of the petitioner, so that his rights can be exercised in the way he wishes. Of course, if it is unable to decide which procedure would be appropriate for it, the CFR will initiate proceedings under the Ebktv. The impartiality of the CFR is therefore guaranteed.</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>Venice Commission Opinion 2020, pp. 7-9 (Para.26)</i></p> <p>During the virtual meetings, the attention of the Venice Commission delegation was drawn to the fact that ETA, as a well-functioning and politically unbiased institution, enjoys public respect and</p>

confidence, while the efficiency and independence of the CFR have been called into question. Similar concerns had been expressed in different reports of international organisations.

Please note the NHRI reports this part of the Venice Commission Opinion does not represent the current situation.

Venice Commission Opinion 2021, p. 8 (Para.27)

The Venice Commission is not in a position to state that the merger of ETA with CFR can be taken as a priori “downgrading” of the issue of non-discrimination as articulated by some interlocutors during the virtual meetings. It reiterates once again that it is not the form that matters, but the substance - chosen model to provide necessary conditions and safeguards to ensure the independent and effective functioning of the institution, in accordance with relevant standards and good practices in the field.

Venice Commission Opinion on Hungary 2020, p. 10 (Para.38)

Finally, the new legislation enables the Commissioner (i) to investigate a complaint first in his capacity as Ombudsman, and then, after that examination is completed (ii) to act as the successor of the ETA if the complainant requests or the Commissioner decides so ex officio (Section 39/M(6)). The Venice Commission observes in this respect that the Commissioner’s quasi-judicial role in the second type of proceedings requires an impartiality that he/she is unlikely to guarantee after having already examined the case under the Commissioner Act.

Please note the NHRI reports this part of the Venice Commission Opinion does not represent the current situation.

An analysis of the legal provisions suggests that, after merger, the CFR combines both, the support and litigation and the decision-making functions. In this case, as suggested by the ECRI General Policy Recommendation No. 2, it is necessary to ensure that each function is provided by a different unit or by different staff. This seems not be the case.

	<p><i>CoE Commissioner for Human Rights Statement on Hungary, 2020</i></p> <p>Major reform of the national human rights infrastructure is being examined in Parliament, consisting of a proposal to merge the Equal Treatment Authority with the Commissioner for Human Rights (Ombudsman institution). While member states have some discretion to organise their national human rights structures as they see fit, it is crucial that in doing so they respect fundamental principles agreed on at international level, especially the need to guarantee and respect the independence and effectiveness of such bodies.</p>
<p>Principle 12</p>	<p>Member States should foster awareness and the co-operation of all relevant public authorities in relation to the mandate, independence and role of NHRIs, including through training and awareness-raising activities.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p. 5</i></p> <p>Relevant state authorities have good awareness of the CFR's mandate, independence and role.</p> <p><i>Information Provided by NHRI 2023</i></p> <p>There is continuous contact with the authorities concerned and they are fully informed about the Ombudsman's powers. Information is also available on the Office's website and by telephone.</p> <p>The aim of the Office of the Commissioner for Fundamental Rights of Hungary to address challenges with the available means has found several followers at international level. Several ombudsmen and institutions contacted the Commissioner for Fundamental Rights of Hungary for information and good practices, and several delegations have personally verified the work carried out with the opening of regional offices in 2022.</p> <p>Related to the core and extended activities of the Commissioner, it was a goal to inform citizens about the extension of the CFR's competences and powers. It was also the intention of the CFR to</p>

give an increasing number of persons concerned more direct and flexible access to the OCFR's activities, closer to their homes, not only through the options offered by digitisation, which are available on the website. Until February 2022, the OCFR was based exclusively in Budapest, so clients had to travel to Budapest to administer their matters in person. It is possible to initiate cases electronically, but some clients lack the necessary devices and knowledge to do so. The task of the CFR, as declared in the Fundamental Law of Hungary, is to perform its tasks of fundamental rights protection for a wide range of society. In this context, it is of particular importance to ensure access to its services for all those who wish to take action or obtain information on the protection of their fundamental rights. With this in mind, the CFR and his staff have sought ways to enable people to initiate the ombudsman procedure in person, closer to their homes. In other words, in addition to the complaint office in the capital, to provide more opportunities for citizens to assert their rights, to have wider access to ombudsman procedures, to learn about the types of cases and procedures, and to improve the delivery of customer service and fundamental rights protection, the Commissioner opened six Regional Offices last year, also related to the expansion of the Office's fundamental rights protection activities over the last two years.

The introduction of regional offices is an innovative achievement in Europe, as the full powers of the Commissioner for Fundamental Rights of Hungary are now available to citizens. From 1 February 2022, citizens are able to request the Ombudsman's inquiry in person not only in Budapest, but also in Győr, Szeged and Debrecen, and from March 2022, in three other large provincial cities, i.e. Székesfehérvár, Miskolc and Pécs.

<p>Principle 13</p>	<p>Member States should take all measures necessary to protect and support NHRIs against threats and harassment and any other forms of intimidation, including through ensuring functional immunity. Any cases of alleged reprisals or intimidation against NHRIs, their membership and staff, or against those who co-operate or seek to co-operate with them, should be promptly and thoroughly investigated and the perpetrators brought to justice.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>Personal immunity is guaranteed by the same immunity as that of Members of Parliament. His independence is guaranteed by the fact that his proceedings are subject only to the law and that he cannot be instructed in connection with his activities. His reports are not subject to appeal</p> <p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p.5</i></p> <p>In Hungary, the protection of the CFR is guaranteed by law, through the granting of immunity.</p> <p>The Ombudsman Act, Section 14 (1) highlights that the Commissioner for Fundamental Rights and his/her Deputies shall enjoy the same immunity as Members of Parliament. (2) To proceedings related to immunity the rules of procedure applicable to the immunity of Members of Parliament shall apply.</p> <p>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.</p>

<p>Principle 14</p>	<p>Member States should ensure that confidential information collected by NHRIs in the context of their mandate is privileged and is not unduly made public.</p>
<p>Assessment of implementation by the NHRI</p>	<p><i>Information provided by the NHRI in 2023</i></p> <p>The law guarantees the protection of petitioners: the Commissioner for Fundamental Rights may only disclose the identity of the person lodging the petition if the investigation could not be conducted without this. If the petitioner requests it, the Commissioner for Fundamental Rights may not disclose his or her identity. No one shall suffer any disadvantage as a result of having recourse to the Fundamental Rights Commissioner.</p> <p>Act, Section 18: Section 18 (1) Anyone may turn to the Commissioner for Fundamental Rights if, in his/her judgment, the activity or omission of</p> <ul style="list-style-type: none"> a) an administrative organ, b) a local government, c) a nationality self-government, d) a public body with mandatory membership, e) the Hungarian Defence Forces, f) a law-enforcement organ, g) any other organ while acting in its public administration competence, h) an investigation authority or an investigation organ of the Prosecution Service, i) a notary public, j)[31]

	<p>k) an independent bailiff, or l) an organ performing public services (hereinafter referred to together as “authority”) infringes a fundamental right of the person submitting the petition or presents an imminent danger thereto (hereinafter referred to together as “impropriety”), provided that this person has exhausted the available administrative legal remedies, not including the administrative court action, or that no legal remedy is available to him/her.</p> <p>(2) The reports of the Commissioner for Fundamental Rights shall be public. Published reports may not contain personal data, classified data, secrets protected by an Act or secrets restricted to the exercise of a profession.</p>
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IV. Co-Operation and Support

<p>Principle 15</p>	<p>Member States should take effective measures to enable NHRIs to communicate and co-operate with, in addition to the various levels of administration in the member States, in particular:</p> <ul style="list-style-type: none"> a. counterpart institutions, where appropriate through networking and exchange of information and practices, as well as through regular meetings such as those taking place within the framework of ENNHRI and GANHRI; b. civil society stakeholders, in particular non-governmental organisations and human rights defenders, who should enjoy easy and safe access to NHRIs as part of an enabling environment; c. other human rights structures, including regional, local and/or specialised institutions, notably Ombudsman institutions and equality bodies and their respective networks, where appropriate through jointly organised activities; d. international and regional organisations working in related or similar fields.
<p>Assessment of implementation by the NHRI</p>	<p><i>ENNHRI, State of the Rule of Law in Europe in 2022, p.7</i></p> <p>The Paris Principles place emphasis on the NHRI carrying out its tasks in partnership with civil society organisations. This requirement was a key priority for the Commissioner for Fundamental Rights of Hungary in 2022 as well. The Civil Consultative Body (CCB), which operates alongside the OPCAT, continued to operate in 2022, with an increase in membership from eight to fifteen members (Hungarian Dietetic Association, Hungarian Medical Chamber, Hungarian Psychiatric Association, Hungarian Bar Association, Hungarian Catholic Church, Evangelical Lutheran Church in Hungary,</p>

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).

Frequent participation in conferences, high-level meetings and bilateral consultations was particularly important for the Commissioner for Fundamental Rights of Hungary in 2022, as appropriate legal practices, experience and exchange of ideas were essential for continued and innovative assistance to refugees from Ukraine. The Commissioner for Fundamental Rights of Hungary and his staff regularly provided information in response to requests from international and national bodies.

ENNHRI, State of the Rule of Law in Europe in 2022, p. 10

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.

The ETA is operating effectively, as evidenced by the following data:

In 2022, the ETA and the CFR dealt with a total of 463 cases. Of these, 265 were administrative cases. In addition, 198 were non-administrative cases, in which the CFR, through ETA, informed clients, typically in individual cases, of the possibilities to seek redress for violations of equal treatment and otherwise provided information on ETA's activities.

<p>Assessment of implementation by Sub-Committee on Accreditation (SCA) of GANHRI</p>	<p><i>SCA Report March 2022, pp. 46-47</i></p> <p>In June 2021, the SCA noted the following issues with respect to the CFR’s cooperation with civil society: [...]</p> <p>The SCA provided the CFR the opportunity to respond to the above. The SCA acknowledges that the CFR reported it engages with the Civil Consultative Body to assist them in discharging their mandate as NPM. The CFR further reported that it also launches investigations based upon the initiative of civil society organizations.</p> <p>The SCA encourages the CFR to continue to enhance and formalize its working relationships and cooperation with civil society organizations and human rights defenders, including those working on the rights of vulnerable groups.</p>
<p>Assessment of implementation by CoE independent bodies</p>	<p><i>Venice Commission Opinion on Hungary, p. 9 (Para.31)</i></p> <p>The Commission regrets that no careful planning of the reform (the merger of ETA with CFR) seems to have taken place and that it was carried through during a critical time for the CFR, when its status “A” accreditation review was deferred by the SCA, due to serious concerns related to its compliance with the Paris Principles.</p> <p><u><i>NB: please note the NHRI reports this part of the Venice Commission Opinion does not represent the current situation.</i></u></p> <p>[...] <i>p. 10 (Para.40)</i></p> <p>It appears that, eventually, as a result of the merger and the collision of the competences already enjoyed by the CFR under Act CXI and acquired in his capacity as successor of the ETA, the new</p>

	system of protection against discrimination is overall more complicated and thus has the potential to be less effective than the previous one.
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