

**COMMISSIONER FOR FUNDAMENTAL RIGHTS**  
**THE NATIONAL HUMAN RIGHTS INSTITUTION ACCREDITED BY THE UNITED NATIONS**

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**Comprehensive Report**  
**by the Commissioner for Fundamental Rights**  
**on the Activities of the OPCAT National Preventive Mechanism in**  
**2019**



June 2020



ISSN 2732-205X

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Published by: Office of the Commissioner for Fundamental Rights  
1051 Budapest, Falk Miksa u. 9-11.

Phone: +36 (1) 475-7100, Fax: +36 (1) 269-1615

Internet: [www.ajbh.hu](http://www.ajbh.hu)

Responsible publisher: Dr. Ákos Kozma

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Cover picture: Decorative object prepared by a detainee in a handicraft class



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### Abbreviations

<b>BVOP</b>	Hungarian Prison Service Headquarters
<b>CCB</b>	Civil Consultative Body
<b>Committee (CAT)</b>	UN Committee against Torture
<b>County Holding Facility</b>	County Holding Facility of the Nógrád County Police Headquarters
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>CPU</b>	Chronic Post-care Unit of Facility III of Szeged Strict and Medium Regime Prison
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007
<b>Department</b>	OPCAT National Preventive Mechanism Department
<b>ECtHR</b>	European Court of Human Rights
<b>ELTE</b>	Eötvös Loránd University
<b>EMMI</b>	Ministry of Human Capacities
<b>European Convention on Human Rights</b>	Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, promulgated by Act XXXI of 1993
<b>Hospital</b>	Balassa János Hospital of Tolna County
<b>Institution</b>	Nagymágocs Castle Home of the Aranysziget Integrated Retirement Home of Csongrád County
<b>MPHB</b>	Metropolitan Police Headquarters of Budapest
<b>National Commander</b>	National Commander of the Hungarian Prison Service Headquarters
<b>NPM</b>	National Preventive Mechanism
<b>NUPS</b>	National University of Public Service
<b>Office</b>	Office of the Commissioner for Fundamental Rights
<b>Ombudsman Act</b>	Act CXI of 2011 on the Commissioner for Fundamental Rights
<b>OPCAT</b>	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment



	promulgated by Legislative Decree CXLIII of 2011
<b>Place of detention</b>	Any place under the state's jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (Article 4 of the OPCAT)
<b>Prison Code</b>	Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention for Misdemeanour
<b>Retirement Home</b>	Visegrád Aranykor Foundation Retirement Home
<b>SEE-NPM Network</b>	South-East Europe National Preventive Mechanism Network
<b>Social Care Institution</b>	Integrated Social Care Institution of South Borsod
<b>Strict Regime Prison</b>	Márianosztra Strict and Medium Regime Prison
<b>Subcommittee on Prevention of Torture (SPT)</b>	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>UN</b>	United Nations
<b>UN Convention against Torture (UNCAT)</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment promulgated by Legislative Decree 3 of 1988

## Introduction



Ever since the establishment of the ombudsman institution in Hungary, Ombudsmen – responsible to the Parliament – have been regularly visiting state and local institutions where the residents were persons deprived of or restricted in their liberty. The objective of the ombudsman’s inspections has been to learn to what extent the fundamental rights of persons who are detained in institutions or are restricted in their liberty for shorter or longer periods of time due to their age, health condition, difficult situation, or as a result of a judicial order, are respected.

In recognition of the knowledge and practical experience in the examination of the treatment of persons living in institutional care obtained by the Ombudsman, the Parliament has decided to entrust the Commissioner for Fundamental Rights with the performance of the tasks of the National Preventive Mechanism (hereinafter: the “NPM”) pursuant to Article 3 of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment (hereinafter: the “OPCAT”<sup>1</sup>).<sup>2</sup>

As of 1 January 2015, the Commissioner for Fundamental Rights has performed the tasks of the National Preventive Mechanism besides his general competence to protect fundamental rights prescribed by Article 30 of the Fundamental Law of Hungary. In order to act as the National Preventive Mechanism, the Commissioner for Fundamental Rights regularly examines the treatment of persons deprived of their liberty and held at various places of detention (hereinafter: “place of detention”), specified in Article 4 of the Protocol, also in the absence of any petition or alleged impropriety.<sup>3</sup>

The mandate of Dr. László Székely, the first Hungarian Commissioner for Fundamental Rights to carry out the tasks of the NPM, expired on 25 September 2019.

As Commissioner for Fundamental Rights elected by the Hungarian National Assembly, I have performed the tasks of the National Preventive Mechanism since my entry into office, i.e. as of 26 September 2019.

This is the first time that I am complying with my legal obligation to prepare a comprehensive report on the performance of the tasks related to the National Preventive Mechanism.<sup>4</sup> In consideration of my entry into office, the comprehensive report is mostly an overview of the activity of my predecessor in the Office.

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<sup>1</sup> Optional Protocol to the Convention against Torture and other Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011 (hereinafter: the “OPCAT”).

<sup>2</sup> Section 2(6) of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter: the Ombudsman Act).

<sup>3</sup> Section 39/B(1) of the Ombudsman Act.

<sup>4</sup> Section 39/C of the Ombudsman Act

In addition to reporting on the visits, this comprehensive report on the performance of the tasks of the NPM in 2019 is also to inform the reader about the challenges, the dialogue with the competent ministries and authorities, and the cooperation with non-governmental organizations, foreign partner institutions, and international human rights organizations, as well as liaising with the Subcommittee on Prevention of Torture.

Budapest, June 2020

Dr. Ákos Kozma

## 1. The legal background of the operation of the National Preventive Mechanism

The State shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.<sup>5</sup>

### 1.1. The Fundamental Law of Hungary

Pursuant to Article 5 of the Universal Declaration of Human Rights adopted in 1948, “*no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment*”. Hungary deposited<sup>6</sup> its instrument of ratification of the International Covenant on Civil and Political Rights on 17 January 1974, then<sup>7</sup> its instrument of ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter: the “UN Convention against Torture”) on 15 April 1987 with the UN Secretary General.

The *prohibition of torture and other cruel, inhuman or degrading treatment or punishment* became a constitutionally enshrined fundamental right on 23 October 1989<sup>8</sup>, basically by the incorporation of Article 7 of the Covenant on Civil and Political Rights.<sup>9</sup>

Pursuant to Article III(1) of the Fundamental Law of Hungary adopted in spring 2011, “no one shall be subjected to torture or to inhuman or degrading treatment or punishment, or held in servitude”. Differently from the documents formulated by the UN, the term “*cruel*” does not appear in the text of Article III of the Fundamental Law, which, however, does not imply that the Hungarian constitutional system would not offer protection against cruel treatment or punishment. According to the interpretation of the Constitutional Court of Hungary, “*it is a shared characteristic of the prohibitions listed in Article III that each of them causes a certain degree of physical and/ or psychological torture, suffering or pain to the person affected*”.<sup>10</sup> The body also considers the provisions of Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: the “European Convention on Human Rights”), dated on 4 November 1950 in Rome, promulgated by Act XXXI of 1993, “*...as one of the main guarantees of the most fundamental values of a democratic society...*”, which prescribes not only the prohibition of torture but also “*...the absolute prohibition of inhuman or degrading treatment or punishment*”.<sup>11</sup>

With reference to the nearly identical wording of the European Convention on Human Rights and Article III of the Fundamental Law of Hungary, as well as to its own jurisprudence, namely, that it

<sup>5</sup> Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988.

<sup>6</sup> International Covenant on Civil and Political Rights, adopted by the 21st Session of the UN General Assembly on 16 December 1966, promulgated by Law-decree 8 of 1976.

<sup>7</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988 (hereinafter: the “UN Convention against Torture”).

<sup>8</sup> See Section 34 of Act XXXI of 1989 on the amendment of the Constitution. Hungarian Official Gazette, 1989/74 (23 October 1989), p. 1227.

<sup>9</sup> Section 34(2) of Act XX of 1949 on the Constitution of the Hungarian Republic, having entered into force on 23 October 1989, declared the following fundamental right: “*No one may be subjected to torture or cruel, inhuman or degrading treatment or punishment, and in particular, no one shall be subjected without his or her free consent to medical or scientific experimentation.*”

<sup>10</sup> Constitutional Court Decision 32/2014 (XI. 3.) on the establishment and annulment of the breach of an international treaty of Section 137(1) of Decree 6/1996 of the Minister of Justice on the rules of prison sentencing and pre-trial detention and its violation of the Fundamental Law of Hungary (hereinafter: “Constitutional Court Decision 32/2014 (XI. 3.)”, Reasoning, [34].

<sup>11</sup> Constitutional Court Decision 32/2014 (XI. 3.), Reasoning, [33].

accepts the level of legal protection enshrined in international treaties and elaborated in its related jurisprudence as the minimum standard of the enforcement of fundamental rights, the Constitutional Court – when examining the legal provisions constituting the subject of its proceedings – considers the jurisprudence of the European Court of Human Rights (hereinafter: the “ECtHR”) in interpreting Article 3 of the European Convention on Human Rights as “*particularly applicable*”.<sup>12</sup>

## 1.2. International treaties

According to the Fundamental Law, in Hungary, the “*rules for fundamental rights and obligations shall be laid down in an Act*”.<sup>13</sup> Acts shall be adopted by the Parliament.<sup>14</sup> International treaties containing rules pertaining to fundamental rights and obligations shall be promulgated by an act.<sup>15</sup>

### 1.2.1. UN instruments

From the aspect of performing tasks related to the National Preventive Mechanism, Article 10(1) of the Covenant on Civil and Political Rights, stipulating in general that “*all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,*” has special significance.

The definition of torture was introduced to the Hungarian law upon the entering into force of the UN Convention against Torture. Pursuant to Article 1 of the UN Convention against Torture, the term “**torture**” means any act

- by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person,
- for such purposes as obtaining from him/her or from a third person information or a confession, punishing him/her for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him/her or a third person, or for any reason based on discrimination of any kind,
- when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of “**cruel, inhuman or degrading treatment or punishment** (hereinafter collectively: “ill-treatment”)<sup>16</sup> *which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity*”.

The States Parties shall inform the UN Committee against Torture (hereinafter: the “Committee”), in the form of periodic reports, on the performance of their obligations deriving from the UN Convention against Torture and any new measures taken by them. The Committee may inquire into complaints, submitted by states or private persons, which claim that any State Party fails to comply with its obligations deriving from the UN Convention against Torture. The Committee may launch an inquiry if it receives reliable information which appears to it to contain well-founded

<sup>12</sup> Constitutional Court Decision 32/2014 (XI. 3.), Reasoning, [50].

<sup>13</sup> See Article I(3) of the Fundamental Law.

<sup>14</sup> See Article 1(2)b) of the Fundamental Law.

<sup>15</sup> See Section 9(1) of Act L of 2005 on the procedure related to international treaties.

<sup>16</sup> See: UN Committee Against Torture (CAT) *General Comment No. 2* (Clause 3 of CAT/C/GC/2).  
<https://undocs.org/CAT/C/GC/2>

indications that torture is systematically practised in the territory of a State Party.<sup>17</sup> Documents published by the Committee, including, in particular, its general comments, the periodic reports of the States Parties,<sup>18</sup> documents generated within the frameworks of the complaints mechanism, and the Committee's annual reports provide important guidelines to the National Preventive Mechanisms.<sup>19</sup>

The **Optional Protocol to the Convention against Torture and Other Inhuman or Degrading Treatment or Punishment** (hereinafter: the "OPCAT"), promulgated by Act CXLIII of 2011, is open to accession by only those States that have ratified or acceded to the Convention.<sup>20</sup>

According to the OPCAT, the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment may be ensured not through judicial means but via regular, preventive visits to the various places of detention. In the system established by the OPCAT, regular visits are undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.<sup>21</sup>

Pursuant to Article 4(2) of the Protocol, "*deprivation of liberty means any form of 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*".

On the one hand, one of the tasks of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment established by the OPCAT (hereinafter: the "Subcommittee on Prevention of Torture") is to inspect places where persons are deprived of their liberty; on the other hand, it advises and assists States Parties, when necessary, in establishing and operating their independent national bodies conducting regular visits to places of detention.<sup>22</sup> From the aspect of the operation of the National Preventive Mechanisms and in addition to the general directives<sup>23</sup> of the Subcommittee on Prevention of Torture, the specific directives and recommendations<sup>24</sup> made in its reports on the Subcommittee's visits to the States Parties are also applicable.

Following the visit of the Subcommittee on Prevention of Torture to Hungary from 21 to 30 March 2017, the observations and recommendations put forth by the SPT for the NPM have served as a guideline during the performance of the NPM's duties.<sup>25</sup>

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<sup>17</sup> See Articles 19–22 of the UN Convention against Torture.

<sup>18</sup> Information on the periodic reports submitted by Hungary are available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=HUN&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=HUN&Lang=EN)

<sup>19</sup> The documents of the UN Committee against Torture (CAT) are available at <http://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>

<sup>20</sup> See Article 27(3) of the OPCAT.

<sup>21</sup> See Article 1 of the OPCAT.

<sup>22</sup> See Article 11 of the OPCAT.

<sup>23</sup> SPT: *Guidelines on National Preventive Mechanisms* (CAT/OP/12/5) <https://undocs.org/CAT/OP/12/5>; SPT: *Analytical Self-assessment Tool for National Preventive Mechanisms* (CAT/OP/1/Rev.1) <https://undocs.org/CAT/OP/1/Rev.1>; *Compilation of SPT Advices to NPMs* <https://www.ohchr.org/EN/HRBodies/OPCAT/Pages/AdvicesToNPMs.aspx>

<sup>24</sup> See: SPT: *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives*, (26 February 2009) (CAT/OP/MDV/1), Note 72. c). <https://undocs.org/CAT/OP/MDV/1>

<sup>25</sup> SPT Visit to Hungary undertaken 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism (CAT/OP/HUN/R.2) <https://www.ajbh.hu/documents/14315/2605713/CAT-OP-HUN-R2+ENG.pdf>

According to Article 37 of the **Convention on the Rights of the Child, signed in New York on 20 November 1989**, promulgated by Act LXIV of 1991, the States Parties shall ensure that *“no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age.”*

Pursuant to Article 15 of the **Convention on the Rights of Persons with Disabilities** (hereinafter: the “CRPD”), promulgated by Act XCII of 2007, *“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”*. The *“States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or treatment or punishment”*.

### 1.2.2. Instruments of the Council of Europe

Hungary acceded to the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**, signed in Strasbourg on 26 November 1987, promulgated by Act III of 1995, on 4 November 1993; its provisions are to be observed as of 1 March 1994.<sup>26</sup>

The provisions of the OPCAT do *“not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention”*.<sup>27</sup> The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter: the “CPT”) has been established by the European Convention for the Prevention of Torture. The CPT shall, by means of regular visits to the territories of the High Contracting Parties, *“examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment”*. Following every visit, the CPT prepares a report containing, in addition to the facts discovered in the course of the visit, the comments of the body and its recommendations to the authorities concerned. The CPT’s reports on its visits to Hungary are of major importance for the National Preventive Mechanism.

The comprehensive standards<sup>28</sup> of treating persons deprived of their liberty, elaborated by the CPT, interpret the prohibition of torture, inhuman or degrading treatment, stipulated in Article 3 of the European Convention on Human Rights, from the aspects of the practical operation of various places of detention (e.g. prisons, police lock-ups, psychiatric institutions, detention centres for refugees) and various vulnerable groups, such as women and juveniles.

The CPT met the Parliamentary Commissioner for Civil Rights for the first time on its 1999 periodic visit;<sup>29</sup> since then, the CPT has visited the Office of the Commissioner for Fundamental Rights during every visit paid to Hungary (the last visit took place on 19 November 2018).<sup>30</sup> When drafting the National Preventive Mechanism’s schedule of visits, the NPM relied on the conclusions of the CPT’s report on its previous periodic visit to Hungary, its recommendations made to the Government, as well as the latter’s response thereto.<sup>31</sup>

<sup>26</sup> See Section 3 of Act III of 1995.

<sup>27</sup> Article 31 of the OPCAT.

<sup>28</sup> CPT standards <https://www.coe.int/en/web/cpt/standards>

<sup>29</sup> The first Parliamentary Commissioner for Civil Rights (Ombudsman) was inaugurated on 1 July 1995.

<sup>30</sup> Information related to the CPT’s visits to Hungary are available at: <http://www.coe.int/en/web/cpt/hungary>

<sup>31</sup> CPT: *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 12 April 2013* [CPT/Inf (2014) 13] <https://rm.coe.int/1680696b7f>; The Hungarian Government’s Response to the CPT’s Report [CPT/Inf (2014) 14] <https://rm.coe.int/1680696b7e>

### ***1.3. Preventive activities of the National Preventive Mechanism***

The “*Commissioner for Fundamental Rights shall perform fundamental rights protection activities*”<sup>32</sup> which also cover the enforcement of the prohibition of torture, inhuman or degrading treatment or punishment.

In the opinion of the Constitutional Court, the prohibition of torture and cruel, inhuman, and degrading treatment or punishment is an absolute prohibition, and “*thus no other constitutional right or task may be weighed against it*”.<sup>33</sup>

The “*State shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction*”.<sup>34</sup> “*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency,*”<sup>35</sup> or “*an order from a superior officer or a public authority*”<sup>36</sup> may be invoked as a justification of torture.

Pursuant to Article 11 of the UN Convention against Torture, “*each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture*”, and this obligation also includes the prevention of ill-treatment.<sup>37</sup>

In order to perform his tasks related to the National Preventive Mechanism, the Commissioner for Fundamental Rights regularly examines the treatment of persons deprived of their liberty held at various places of detention specified in Article 4 of the OPCAT, also in the absence of any petition or alleged impropriety. During the on-site inspection, the NPM may enter without any restriction the places of detention and other premises of the authority under inquiry, may inspect all documents concerning the number of persons deprived of their liberty who are held there, on the treatment of these persons and on the conditions of their detention, and make extracts from or copies of these documents, and may hear the personnel of the authority under inspection and any persons deprived of their liberty, including any person present on the site. Apart from the National Preventive Mechanism and the person who is given a hearing, no other person may participate in the hearing, unless the Commissioner for Fundamental Rights authorised their participation.<sup>38</sup>

A preventive monitoring visit by the NPM, by necessity, also means a practice-oriented review of the legal regulations relevant to the operation of a given place of detention. When planning the visits, the NPM automatically identifies and reviews the legal regulations determining the operation of the designated places of detention.

The NPM “*may make proposals for the amendment or making of legal rules affecting fundamental rights and/ or the expression of consent to be bound by an international treaty.*”<sup>39</sup> Through publishing its conclusions and impressions regarding the visits, and making legislative recommendations based on the critical assessment thereof, the NPM facilitates domestic legislation.<sup>40</sup>

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<sup>32</sup> Article 30(1) of the Fundamental Law.

<sup>33</sup> Chapter IV, Clause 2.4 of Constitutional Court Decision 36/2000 (X. 27.).

<sup>34</sup> UN Convention against Torture, Article 2, Note 1.

<sup>35</sup> UN Convention against Torture, Article 2, Note 2.

<sup>36</sup> UN Convention against Torture, Article 2, Note 3.

<sup>37</sup> CAT *General Comment No. 2* (Clause 3 of CAT/C/GC/2) <https://undocs.org/CAT/C/GC/2>

<sup>38</sup> Section 39/B of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter: the “Ombudsman Act”).

<sup>39</sup> Section 2(2) of the Ombudsman Act.

<sup>40</sup> In its reports published in 2019, the NPM made altogether 4 legislative recommendations.





## 2. Staff members participating in performing tasks related to the NPM and the costs related to performing the tasks of the NPM

### *2.1. Public servants in the Office of the Commissioner for Fundamental Rights*

Pursuant to Article 18(2) of the OPCAT, the States Parties “shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country”.

In the performance of his tasks, the NPM may act in person or by way of the members of his staff authorised by him. Staff members authorised by the NPM shall have the investigative powers of the NPM<sup>41</sup>, and the obligation for cooperation of the authorities concerned as well as their management and staff pursuant to Section 25 of the Ombudsman Act shall be complied with also in their respect.<sup>42</sup>

To perform the tasks related to the National Preventive Mechanism, the NPM must authorise, on a permanent basis, at least eleven public servants from among the staff members of the Office of the Commissioner for Fundamental Rights (hereinafter: the “Office”). The “authorised public servant staff members shall have outstanding knowledge in the field of the treatment of persons deprived of their liberty or have at least five years of professional experience”.<sup>43</sup> Among them, “there shall be at least one person who has been proposed by the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary and at least two persons each with a degree in law, medicine and psychology respectively. Among the authorised public servant staff members, the number of the representatives of either sex may exceed that of the other by one at the most.”<sup>44</sup>

The staff members of the Office permanently authorised to perform tasks related to the NPM<sup>45</sup> carry out their activities within a separate organizational unit, the OPCAT National Preventive Mechanism Department<sup>46</sup> (hereinafter: the “Department”). On 1 January 2019, the Department started its annual work with three psychologists and five lawyers on board, joined by a sixth lawyer on 1 February. The Department’s gender composition was in compliance with the provisions of the Ombudsman Act.

In 2019, the NPM faced two major challenges during the performance of its tasks. On the one hand, due to the lack of applicants, the two physician positions stipulated in Section 39/D(4) of the Ombudsman Act could not be filled. The Office employed the physicians participating in the NPM’s visits on an ad hoc basis, using civil law contracts.

The other significant challenge was that the Office moved to new premises. The Office of the Commissioner for Fundamental Rights and its legal predecessor, the Office of the Parliamentary Commissioner had used the headquarters located in the heart of Budapest<sup>47</sup> from 2002. The condition of the 19th-century listed monument, which suffered from a scarcity of space and whose

<sup>41</sup> See Sections 21, 22 and 26, and 27(1)-(2) of the Ombudsman Act.

<sup>42</sup> See Section 39/D(1) of the Ombudsman Act.

<sup>43</sup> See Section 39/D(3) of the Ombudsman Act.

<sup>44</sup> See Section 39/D(4) of the Ombudsman Act.

<sup>45</sup> See Section 39/D(3)-(4) of the Ombudsman Act.

<sup>46</sup> SPT: *Guidelines on National Preventive Mechanisms* (Clause 32 of CAT/OP/12/5).

<https://undocs.org/CAT/OP/12/5>

<sup>47</sup> Budapest 5th District, Nádor Street 22.

deteriorating technical conditions were only worsened by nearly two decades of wear and tear, could have been maintained only at the cost of expensive construction and conservation works.

Accordingly, the Government decided in spring 2019 that from June 2020, the Office would move to a newly refurbished, more spacious and well-planned office building located in the city centre that would meet 21st-century expectations and would be easily accessible by public transport.<sup>48</sup>

During the time of the refurbishment works of the new headquarters, it was the Hungarian National Asset Management Inc. that rented office premises for the Office and the staff members of the OPCAT Department.<sup>49</sup>

## ***2.2. Ad hoc experts***

In addition to the public servant staff members, the Office may also authorise, either permanently or on an ad hoc basis, other experts to contribute to performing the tasks related to the NPM.<sup>50</sup>

In its report on its first country visit to Sweden, the Subcommittee on Prevention of Torture pointed out that *“prevention necessitates the examination of rights and conditions from the very outset of deprivation of liberty until the moment of release. Such examination should take a multi-disciplinary approach and involve, for example, the medical profession, children and gender specialists and psychologists in addition to a strict legal focus.”*<sup>51</sup>

External experts contributing to the performance of tasks related to the NPM are selected in an autonomous way, from the roster of experts recommended by the members of the Civil Consultative Body, following consultations with the recommending civil organisation. Those physicians who collaborated in the NPM’s visits as non-public servants worked and were remunerated on the basis of civil law contracts, in accordance with the legal provisions on forensic medical experts.<sup>52</sup> The experts issued written statements on confidentially handling any and all data and information learned in connection with performing their tasks, not disclosing them to third persons without the NPM’s written consent, and not making any statements to the media and/or any third person.

On some occasions, during the preparation of the visits, the NPM also involved experts by experience, i.e. persons with practical knowledge of the operation of the place of detention to be visited.

The following persons participated as ad hoc experts in the visits of the NPM in 2019:<sup>53</sup> *dr. Szegedyné dr. Krisztina Baraczká*, psychiatrist, neurologist, forensic psychiatrist; *dr. Ádám Lebach*, internist, geriatrician, gastroenterologist; *dr. Brigitta Baran*, psychiatrist, neurologist, forensic expert psychiatrist, gerontologist, psychotherapist; *dr. Mónika Máté*, psychiatrist, child psychiatrist; *Dr. János Nemes*, infantologist and paediatrician, infant and child cardiologist; *dr. Zolt Petke*, psychiatrist, addiction specialist; *Ervin Czékmán* and *Gabriella Hartmann*, dietitians.

<sup>48</sup> Gov. Resolution 2051/2019 on the measures related to the rationalisation of the location of public institutions and to increasing their cost-efficiency

<sup>49</sup> Budapest 7th District, Rákóczi Street 70-72.

<sup>50</sup> See Section 39/D(3) of the Ombudsman Act.

<sup>51</sup> See: SPT: *Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to Sweden* (10 September 2008) (Clause 36 of CAT/OP/SWE/1). <https://undocs.org/CAT/OP/SWE/1>

<sup>52</sup> See Act XXIX of 2016 on Judicial Experts and Minister of Justice’s Decree 3/1986 (II. 21.) on the Remuneration of Judicial Experts.

<sup>53</sup> Pursuant to Section 39/D(3) of the Ombudsman Act.

### 2.3. Costs related to performing the tasks of the NPM in 2019

The Office performing the administrative and preparatory tasks related to the tasks of the NPM constitutes an independent chapter in the structure of the central budget, established by the Parliament in an act. The 2019 budget of the Office was planned in consideration of the financial coverage necessary for the performance of the tasks of the NPM. The resources at the NPM's disposal covered the costs of the performance of the tasks in connection with his mandate.<sup>54</sup>

Expenditure for 2019	Amount
Personal allowances	58,850,304
Contributions	12,517,194
Professional and administrative materials	725,301
IT and communication expenses	1,708,556
Services supporting professional activities	1,382,279
Delegation expenses	254,207
International membership fees	359,302
Maintenance and repair costs	532,277
Public utility fees	875,648
Operational services	7,373,780
VAT	2,890,382
<b>Total in HUF:</b>	<b>87,469,230*</b>

Personal allowances, contributions and delegation expenses indicate amounts allocated to the Department separately. The NPM's annual budget was HUF 69,647,352 in 2015, HUF 63,760,490 in 2016, HUF 76,217,024 in 2017, and HUF 82,789,143 in 2018.

<sup>54</sup> SPT Visit to Hungary undertaken 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism (Clause 24 of CAT/OP/HUN/R.2).  
<https://www.ajbh.hu/documents/14315/2605713/CAT-OP-HUN-R2+ENG.pdf>

### 3. The NPM's cooperation with civil society organizations

Pursuant to Article 3 of the OPCAT, the Commissioner for Fundamental Rights has to perform the tasks related to the NPM independently.<sup>55</sup> However, in its activities aimed at facilitating the enforcement and protection of human rights, the NPM has to cooperate with “*organisations and national institutions aiming at the promotion of the protection of fundamental rights*”.<sup>56</sup>

#### 3.1. The tasks of the Civil Consultative Body

The Civil Consultative Body (hereinafter: the “CCB”), which consists of four invited members and another four members selected as a result of a public call for applications, assists the activities of the National Preventive Mechanism with its recommendations and comments. The CCB – whose members are various organizations registered and operating in Hungary – has been established to support the NPM's work by the members' outstanding practical and/or high-level theoretical knowledge relative to the treatment of persons deprived of their liberty.

The CCB's mandate is for three years.<sup>57</sup> The mandate of the CCB – set up in 2014 for the first time – expired on 19 November 2017. The NPM published its public call for applications on 19 October 2017 on the website and social media site of the Office of the Commissioner for Fundamental Rights, as well as in the weekly newsletter edited and disseminated by the Non-profit Information and Training Center Foundation, containing the information necessary for the everyday operation of civil society organisations operating in Hungary.

Members of the CCB selected as a result of a public call for applications are the Cordelia Foundations for the Rehabilitation of Torture Victims, the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union, and the Validity Foundation (earlier called: Mental Disability Advocacy Center – MDAC). The organisations invited by the Commissioner for Fundamental Rights are the Hungarian Medical Chamber, the Hungarian Psychiatric Association, the Hungarian Dietetic Association and the Hungarian Bar Association.

The CCB operates as a body. In the course of the CCB's operation, 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 they represent. The CCB may review the NPM's working methods, reports, information materials, and other publications; discuss the training plan designed for developing the capabilities of the staff members authorised to perform the tasks related to the NPM; furthermore, it may participate in conferences, workshops, exhibitions, and other events organized by the NPM.<sup>58</sup>

Similarly to the practice of the previous years, the 2019 schedule of visits was devised in consideration of the CCB's recommendations. The Department relied on the CCB's

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<sup>55</sup> Section 2(6) of the Ombudsman Act.

<sup>56</sup> Section 2(5) of the Ombudsman Act.

<sup>57</sup> See Section 1(6) of Normative Instruction 3/2014 (IX. 11.) of the Commissioner for Fundamental Rights on the establishment and the rules of procedure of the Civil Consultative Body facilitating the performance of the tasks of the National Preventive Mechanism.

<sup>58</sup> See Section 6 of Normative Instruction 3/2014 (IX. 11.) of the Commissioner for Fundamental Rights on the establishment and the rules of procedure of the Civil Consultative Body facilitating the performance of the tasks of the National Preventive Mechanism.

recommendations not only when selecting the locations for the visits, but also during the preparation of the visiting plans.

The NPM has to develop coherent and transparent rules of procedure for the employment of external experts with necessary qualifications and practical knowledge.<sup>59</sup> Since the statutory provision regarding the employment of two physicians could not be complied with due to the lack of applicants, some members of the Hungarian Medical Chamber and the Hungarian Psychiatric Association contributed to the NPM's visits as appointed experts. When selecting external experts, in addition to the recommendations of the Hungarian Medical Chamber and the Hungarian Psychiatric Association, the relevant provisions of the legal regulation on judicial (forensic) experts were taken into account.<sup>60</sup> The reports on the NPM's visits were forwarded to the members of the CCB as well.

### ***3.2. The meeting of the CCB***

The Commissioner for Fundamental Rights greeted the participants of the meeting of the Civil Consultative Body (CCB) on 3 December 2019.<sup>61</sup> He expressed his pleasure over the fact that the cooperation between the NPM and the members of the CCB had been so close and unbroken in this important field. He said that as Vice-President of the Independent Police Complaints' Board, he had previously dealt with fundamental rights issues concerning the operation of police services. He underlined his commitment towards the function of the NPM, and his ambition to conduct many visits, issue reports on visits as soon as possible, and make significant progress in the field of preventing ill-treatments. He introduced the new Secretary General of the Office, Dr. Réka Varga.

The Head of Department presented the activities of the NPM carried out since the CCB's last meeting. He said that the NPM had conducted 45 visits since its establishment, which had involved inspecting 60 places of detention. Meanwhile, the NPM had published its comprehensive report on its activities carried out in 2018, which was sent to those present in the room as well. The staff members of the Department participated in two meetings of the South-East Europe NPM Network, the festive event of the CPT held on the occasion of its 30th anniversary and the related international conferences, and the workshops of the international project on the rights of suspects and accused persons carried out by the Hungarian Helsinki Committee and its international partners.

The NPM conducted six visits at nine places of detention since the previous meeting of the CCB. These included a visit to a retirement home in Visegrád; to the Bács-Kiskun County Remand Prison in Kecskemét; to one of the facilities of the Middle-Transdanubium National Prison in Baracska; to the EMMI's (Ministry of Human Capacities) Special Children's Home Centre, Primary School and Trade School in Esztergom; to the custodial premises of four police departments in Békés County; and it also paid a follow-up visit to the Integrated Care Centre of Bács-Kiskun County in Kecskemét. In the above mentioned period, the NPM published six reports on its visits to the following places: Integrated Social Care Institution of South Borsod, Unit 1 of the Budapest Remand Prison where the delegation of the UN Subcommittee on Prevention of Torture was also

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<sup>59</sup> See SPT: *Analytical Self-assessment Tool for National Preventive Mechanisms* (Clause 16(e) of CAT/OP/1/Rev.1). <https://undocs.org/CAT/OP/1/Rev.1>

<sup>60</sup> See Act XXIX of 2016 on judicial experts and the provisions of Minister of Justice's Decree 9/2006 on the specialities of judicial experts and on the qualification and other professional conditions related to them.

<sup>61</sup> The materials of the 3 December 2019 meeting of the CCB are filed in the Office under number AJB-5703/2019. The minutes of the CCB meetings are accessible to the public on the NPM's homepage. See: <https://www.ajbh.hu/en/web/ajbh-en/opcat-ccb>

present, the Psychiatric Department of the Balassa János Hospital of Tolna County; police lock-up facilities and police detention facilities in Nógrád County; the Chronic Post-care Unit of Facility III of the Szeged Strict and Medium Regime Prison, and the Visegrád Retirement Home operated by the Visegrád Aranykor Foundation. The staff members of the Department are currently drafting nine more reports.

The NPM pursued dialogues with the relevant authorities regarding its recommendations made in its previously published reports. The NPM led consultations about the following matters: the institutional reorganisation related to the adaptation leave in the case of persons under involuntary treatment; the right to notify third parties, the practice of using coercive measures, the right to appropriate information, and the supply of medicines in case of police detention; the nutrition of detainees, the assessment of suitability for detainees' individual placement, and the treatment of sex offenders with respect to prison services; and the validity of health workers' license of operation and the provision of direct contact to a patients' rights representative relating to persons placed in psychiatric wards.

The Head of Department informed the participants that in spring 2019, the NPM had submitted its application to the Subcommittee on Prevention of Torture for a grant from the special fund set up under Article 26 of the OPCAT with a view to covering the costs of organizing a workshop on interviewing techniques. The aim of the workshop is to boost the efficiency of interviews conducted with children, people with psycho-social disabilities, foreigners, and LGBTQ people. The NPM would like to invite the members of the South-East Europe NPM Network, the Czech NPM and the Slovakian ombudsman institute, and the experts of the CPT, the APT, the SPT, the OSCE, the UNHCR, as well as the experts of the CCB members to this workshop. The event is expected to take place in autumn 2020.

The Head of Department called upon the representatives of the CCB members to make suggestions orally, and later by e-mail, regarding the places of detention to be visited in 2020. He underlined that their suggestions would not be included in the publicly accessible memo of the meeting.

The representative of the Hungarian Bar Association called attention to the fact that if a court imposes the prohibition to exercise professional activity on a teacher, this punishment is not recorded and its execution is not supervised by any of the state organs. If a perpetrator is sentenced to suspended imprisonment, the task of keeping a record of this fact is not delegated to any government agencies or to the Educational Authority; moreover, in the absence of specific regulatory requirements, the courts may not inform the schools about these punishments. She asked the Commissioner for Fundamental Rights to look into this issue, either in his capacity as National Preventive Mechanism, or acting in his general competence to protect fundamental rights.

The Deputy Head of Department pointed out that the functioning of the judiciary – as one of the branches of power – could not be examined by the Commissioner for Fundamental Rights, but the obligation to keep registers falls within the competence of bodies belonging to the executive branch. Therefore, it should be considered whether the Commissioner should inquire into this issue in the framework of his general competence to protect fundamental rights. She also recommended that since the lawfulness of the execution of penal enforcement is supervised by the prosecution services, the Hungarian Bar Association should also indicate this problem to them.

The representative of the Hungarian Helsinki Committee reminded the NPM that they had recently asked the NPM – with regard to a number of specific cases (for example in connection with tying a person to an object as an informal sanction) – to conduct inquiries within its competence to

prevent ill-treatment. The Hungarian Helsinki Committee received an answer explaining that as the suspicion of a criminal offence and a disciplinary offence had been raised, the Office forwarded the complaint to the prosecution services and the Hungarian Prison Service Headquarters. In his opinion, if the NPM identifies a systematic problem, it can carry out an inquiry even if it is possible that the criminal responsibility of individuals arises in that case. The Commissioner for Fundamental Rights had the possibility to examine this issue by launching proceedings *ex officio* within its general competence to protect fundamental rights.

The representative of the Hungarian Helsinki Committee was glad to acknowledge that the NPM had also examined the infrastructure of visitation (for example, contact rooms with plexiglas) at places of detention. The access of persons detained in police or prison services to their own (medical or detention-related) documentation, the circumstances of transport/countywide transport, and the procedural guarantees (such as the access to defence, the possibility of independent medical examination, or the rules of notifying relatives), and furthermore, the treatment of persons staying in immigration or asylum-related detention or transit zones, as well as their access to a lawyer were proposed by him as further aspects to be examined. He also brought it up for consideration that it should be followed up whether decisions made in cases of transfer from a special children's home centre to a general home centre are professionally justified or they only serve the clearing of institutions by administrative means. Regarding the procedures of recompense for poor prison conditions, he drew attention to the fact that the courts do not consider the Central Hospital of the Prison Service as a place of detention justifying a claim for recompense.

The representative of the Hungarian Civil Liberties Union proposed that a number of specific places of detention be visited on the basis of complaints submitted to their organization.

The representative of the Hungarian Psychiatric Association suggested that the minimum requirements on patient safety in psychiatric wards (for example the adequate number of staff), as well as the practice of courts on issuing a decision regarding the mandatory treatment of those psychiatric patients who had been under emergency treatment should be examined.

The representative of the Cordelia Foundation suggested that transit zones should be inspected, with special regard to the mental hygiene support available to people staying in such areas.

The Commissioner for Fundamental Rights thanked the participants for this information, and before leaving the meeting due to his other professional engagements, he invited the members of the CCB to send their eventual comments and proposals to his staff even in between the meetings of the CCB.

The representative of the Hungarian Bar Association indicated that their proposals on specific places of detention for future visits would be sent in writing. As a systemic problem, she drew the attention of the NPM to the shortage of staff in penitentiary institutions and their overwork.

Regarding the sanction of tying a person to an object, the Deputy Head of Department mentioned that the NPM had encountered this problem during the visit of the Budapest Remand Prison.<sup>62</sup> The prison service pointed out that this sanction is only applied in emergency situations, for example, in order to restrain a suicidal detainee. The NPM turned to the prosecution services regarding the specific problem detected in the Budapest Remand Prison, and they established the infringement in this case. The justification for using this measure needs to be examined on a case-by-case basis, but this exceeds the competence of the NPM which conducts visits for preventive

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<sup>62</sup> Case No. AJB-501/2018.



purposes. With respect to the circumstances of visitation, she said that in this field the NPM considers that the recommendation of the Committee of Ministers of the Council of Europe concerning the rights of children with imprisoned parents should be followed. The NPM endeavours to make its recommendations by relying on the legal interpretation of international bodies monitoring the implementation of human rights conventions, including “soft law”.

The Deputy Head of Department also noted that whereas according to the statistics, the investigative authorities in Hungary appoint public defenders for the suspected persons in a large number of cases, they only meet their clients in the court rooms for the first time. At the same time, the appointed public defenders are usually absent in the investigative stage of the proceedings, i.e. during the interrogation, when their presence, in fact, would be crucial with a view to the prevention of ill-treatment. The former parliamentary commissioners (ombudsmen) have also studied this issue, not only with regard to criminal proceedings, but for example also in connection with asylum procedures affecting unaccompanied minors.

Regarding the immigration detention sites, the NPM will examine the registry of places of detention in Hungary and will assess the number of people affected by this issue. According to the ruling of the Grand Chamber of the ECtHR, transit zones located along land borders are not considered to be places of detention under Article 5 of the European Convention on Human Rights.<sup>63</sup> As confirmed by the inspection results of the Office, foreigners staying in the transit zone and nearing their effective deportation tend to leave Hungary in the direction of Serbia at their own request.<sup>64</sup>

The NPM initiated that upon their arrival at the detention facility, detainees should not to be examined by a police surgeon, but there was great resistance in this field. The NPM also took actions with regard to the notification of the detainees’ family members or third parties. Regrettably, the modification of the legal prescriptions shifted towards the tightening of the regulations.<sup>65</sup>

As to the question raised in connection with the special children’s home centre, the NPM has no competence. Neither the NPM, nor the Ombudsman can influence the judicial decisions made in cases of recompense.

In relation to the investigative method of the practice of tying a person to an object, the representative of the Hungarian Helsinki Committee suggested that the visiting group inquire into the documents of those cases that come to their knowledge while at the place of detention concerned. Regarding the question of detainees’ right to contacts, he drew the NPM’s attention to the judgement delivered by the ECtHR in the case of *Moiseyev v. Russia*.<sup>66</sup> Concerning the transit zones, he pointed out that the shortness of time spent in these zones by the complainants had been an important argument in the judgement of the Strasbourg Court. The situation has changed significantly since the case which led to the judgement, both with respect to the time spent in these zones, as well as to the treatment therein. On the issue of recompense, he noted that the Commissioner for Fundamental Rights could exercise his right to propose legislation in order to ensure that the wards of the Central Hospital of the Prison Service would also clearly fall within the scope of the relevant legal provisions.

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<sup>63</sup> *Ilias and Ahmed v. Hungary*, (Application No. 47287/15), judgement of the ECtHR [Grand Chamber] 21 November 2019, Note 249. <http://hudoc.echr.coe.int/eng?i=001-198760>

<sup>64</sup> Case No. AJB-2577/2019.

<sup>65</sup> Section 11 of Act CXXI of 2018 on Amendments to Certain Acts on Internal Affairs and Other Related Matters, effective as of 1 January 2019.

<sup>66</sup> *Moiseyev v. Russia*, (Application No. 62936/00) judgement of the ECtHR 09 October 2008. <http://hudoc.echr.coe.int/eng?i=001-88780>

The Deputy Head of Department noted that the NPM gives high priority to the working conditions of the staff members of the various places of detention, as this factor can have a substantial impact on the treatment of detainees. She informed the participants that the NPM had published four reports up until then in 2019, and it intended to release four more reports in the foreseeable future. In the framework of disseminating NPM activities, one study by Krisztina Izsó, legal expert of the Department, had already been published, and two other articles written by Katalin Haraszti are already in press at prestigious professional journals.

The Secretary General informed the participants that the NPM would wish to hold two CCB meetings the next year.

### 3.3. Further cooperation with civil society organizations

<i>Name of the civil society organization</i>	<i>Form of cooperation</i>
Hintalovon Foundation	Participation in the panel discussion titled “ <i>Politikáról jól vagy semmit? Gyermek a politika célkeresztjében</i> ” [Don’t Speak Ill of Politics? Children in the Bull’s Eye of Politics]
Association of Cultural Heritage Managers	Participation in the workshop titled “ <i>Tisztelt a látogató!</i> ” [Respect the Visitors] held at the Budapest Business School (21 February 2019)
Hungarian Helsinki Committee	Interview in the framework of the project titled “ <i>Access to Justice for Victims of Violent Crimes Suffered in Detention</i> ” (25 January 2019)
	Participation of experts in the scientific and expert conference on the nearly one-year practice of arrest and the appointment of public defenders (27 May 2019)
	Participation of experts in the conference titled “ <i>A magyar nemzeti emberi jogi intézmény szerepe a gyanúsítottak és vádlottak jogainak érvényesítésében, különös tekintettel a védőhöz való jogra</i> ” [The Role of the Hungarian National Human Rights Institution in the Enforcement of the Rights of the Suspected and the Accused, in Particular Their Right to a Public Defender] (29 May 2019)
Hungarian Criminological Association	Participation in the scientific session titled “ <i>Alternatív végrehajtási lehetőségek a büntetés-végrehajtásban</i> ” [Alternative Enforcement Possibilities in the Penitentiary System] (17 October 2019)
	Participation in the session of the Victimology Section of the Hungarian Criminological Association titled “ <i>Családban marad? A hozzátartozók sérelmére elkövetett bűncselekmények a legújabb empirikus kutatások tükrében</i> ” [It Stays in the Family? Criminal Offence Committed Against Relatives in Light of the Latest Empirical Studies] (22 February 2019)
Moholy-Nagy University of Art and Design	Professional counselling and consultation for the architectural planning of children’s homes also serving as places of detention (21 October 2019)

Saint Nicholas Foundation, Hungarian Prison-Cursillo	Professional counselling and consultation in relation to the organization of prison visits; international networking (16 May and 28 August 2019)
European Regional Office of Terre des Hommes	Participation in the training organized on the introduction of Barnahus and child-friendly hearings (2–4 April 2019)

#### 4. Register of domestic places of detention and the NPM's annual schedule of visits

Pursuant to Article 20(a) of the OPCAT, the States Parties, in order to enable the National Preventive Mechanisms to fulfil their mandate, grant them “access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location”.

On 15 December 2018, referring to Article 20(a) of the OPCAT, the NPM sent letters to the heads of the governmental organs concerned, requesting them to provide him with the data, as of 31 December 2018, of all places of detention as defined in Article 4 of the OPCAT.<sup>67</sup>

All the requested organs complied with his data request. According to the data provided to the NPM, on **31 December 2018**, in the **3141** places of detention under Hungarian jurisdiction with a total capacity of **137,544** detainees, there were **121,462** persons being detained.<sup>68</sup>

**The aggregate list of places of detention under Hungarian jurisdiction**  
as of 31 December 2018, or in the case of the judiciary system, on the last workday of the year

Type	Number of places	Holding capacity/ number of beds	Number of detainees/ patients
Social care institutions <sup>69</sup>	1,425	83,585	79,848
Child protection services	501 <sup>70</sup>	27,198 <sup>71</sup>	21,153 <sup>72</sup>
Juvenile correctional institutions	5	565	344
<b>Total in child protection</b>	<b>506</b>	<b>27,763</b>	<b>21,497</b>
Penitentiary institutions	36	14,019	16,066
Medical institutions of the penitentiary system	2	608	406
<b>Total in penitentiary system</b>	<b>38</b>	<b>14,627</b>	<b>16,472</b>
<b>Healthcare<sup>73</sup></b>	<b>181</b>	<b>7,909</b>	<b>3,353</b>
Police	873	2,948	273 <sup>74</sup>
Airport Police Directorate	4	69	5 <sup>75</sup>
<b>Total for police</b>	<b>877</b>	<b>3,017</b>	<b>278</b>
<b>Guarded refugee reception centres</b>	<b>2</b>	<b>290</b>	<b>1<sup>76</sup></b>
<b>Judiciary</b>	<b>112</b>	<b>353</b>	<b>13<sup>77</sup></b>
<b>Total</b>	<b>3,141</b>	<b>137,544</b>	<b>121,462</b>

<sup>67</sup> The letters requesting data provision are registered under File No. AJB-5063/2018 in the Office.

<sup>68</sup> The data provided to the Office are registered under File No. AJB-88/2019 in the Office.

<sup>69</sup> Without institutions providing temporary, day and night care for the homeless, and other institutions providing only day care.

<sup>70</sup> Exclusive of the homes of foster parents.

<sup>71</sup> Exclusive of the venues reserved for those receiving post-care, and of external venues.

<sup>72</sup> The number of minors receiving care from child protection services (exclusive of those receiving aftercare).

<sup>73</sup> Figures relative to the child, adolescent and adult psychiatric and addictology; as well as gerontology and infectology wards of the hospitals.

<sup>74</sup> In 2018, there were altogether 90,646 detainees (of whom, 20,925 women, 7,379 minors and 7,127 foreign nationals) held in places of detention operated by the police.

<sup>75</sup> In 2018, there were altogether 751 persons, (of whom 115 women, 20 minors and 422 foreign nationals) detained on the premises under the authority of the Airport Police Directorate.

<sup>76</sup> In 2018, there were altogether 30 persons (including 2 women) detained for 39 days on average on the premises of the Guarded Refugee Reception Centre.

<sup>77</sup> In 2018, based on the data provided by the National Office for the Judiciary (NOJ), there were altogether 5,850 detainees who were held in the custodial units of the courts for 100 minutes per person on average.

#### ***4.1. The 2019 schedule of visits of the NPM***

Pursuant to Article 20(e) of the OPCAT, the NPMs shall be granted the liberty to choose the places they want to visit.

On 15 December 2018, based on the list of places of detention, the NPM determined the 2019 schedule of its visits.<sup>78</sup> When preparing the schedule of visits, in addition to selecting institutions of different types and geographical locations and with different supervising authorities, the Department also tried to take into account the age of detainees and the experiences gained during the visits of the previous years. Nearly half of the places included in the schedule of visits were selected upon the proposals of CCB members.<sup>79</sup> In addition to institutions with a capacity of several hundred persons, the 2019 schedule of visits of the NPM also included the homes of foster parents raising and educating a small number of children.

The locations of the follow-up visits are selected on the basis of the impressions of previous visits, keeping in mind two criteria. On the one hand, follow-up visits were conducted at places of detention where the visiting delegations had detected ill-treatment or the threat thereof, affecting a large number of detainees.<sup>80</sup> On the other, follow-up visits were paid also to an institution that had been operating on temporary premises at the time of the first inspection, due to refurbishment works. In the latter case, the objective of the follow-up visit was to inspect to what extent the NPM's recommendations made as regards the temporary premises and the treatment of detainees had been implemented after moving back to the permanent premises.<sup>81</sup> As – based on the experience of the second visit – there was no substantial improvement in the treatment of persons deprived of their liberty, the NPM paid a third visit to the institution in 2019.<sup>82</sup>

The Office handled the schedule of visits confidentially; staff members working at other organizational units could not have access thereto.

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<sup>78</sup> SPT: *Guidelines on National Preventive Mechanisms* (Clause 33 of CAT/OP/12/5).

<sup>79</sup> SPT Visit to Hungary undertaken 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism (Clause 31 of CAT/OP/HUN/R.2).

<sup>80</sup> See Report No. AJB-496/2018 on the follow-up visit to the Central Holding Facility of the MPH.B.

<sup>81</sup> See Report No. AJB-3772/2017 on the follow-up visit to Platán Integrated Social Care Institution of Bács-Kiskun County.

<sup>82</sup> Such a visit was the second follow-up visit paid to Platán Integrated Social Care Institution of Bács-Kiskun County on 21–22 October 2019.

## 5. The NPM's visits

In order to perform his tasks related to the NPM, the Commissioner for Fundamental Rights has to regularly examine the treatment of persons deprived of their liberty and held at various places of detention specified in Article 4 of the OPCAT also in the absence of any petition or alleged impropriety.<sup>83</sup>

In 2019, the NPM inspected **3,162** detention units in **10** locations. The table below shows the date of the visits, the names of the places of detention as well as the number of detention units visited.

**Locations visited by the NPM in 2019**

Number	Date of the visit 2019	Name of the place of detention	Number of interviewees at the time of the visit				Number of interviewees
			Authorized capacity (persons)	Number of detention units inspected <sup>84</sup>	Utilization rate %	Number of detainees	
1.	27–28 February 2019	Bács-Kiskun County Remand Prison	225+ 21 <sup>85</sup>	288+ 21 <sup>86</sup>	128	288+ 8 <sup>87</sup>	115
2.	24–25 April 2019	Baracska Facility of the Middle-Transdanubium National Prison	607	767	126.36	767	179
3.	4–5 September 2019	EMMI's (Ministry of Human Capacities) Special Children's Home Centre, Primary School and Trade School, Esztergom	64	64	85.94	55	56
4.	8 October 2019	Police Department of Békéscsaba	6	6	16.66	1	12
5.	09 October 2019	Police Department of Békés	7	7	14.28	1	19
6.	09 October 2019	Police Department of Sarkad	18	18	-	0	11
7.	10 October 2019	Police Department of Orosháza	4	4	25	1	18
8.	21–22 October 2019	Platán Integrated Social Care Institution of Bács-Kiskun County	100	100	97	97	26
9.	3–4 December 2019	Tiszalök National Prison	700 <sup>88</sup>	764	109	764	72
10.	9–10 December 2019	Budapest Remand Prison, inspection of weekly countrywide transport	963 <sup>89</sup>	963+ 160 <sup>90</sup>	90.13	868	139
<b>Total</b>		<b>Number of inspected places: 10</b>	<b>2,715</b>	<b>3,162</b>	<b>69.23</b>	<b>2,850</b>	<b>647</b>

<sup>83</sup> See Section 39/B(1) of the Ombudsman Act.

<sup>84</sup> The number of inspected places of detention includes both authorized and additionally created places.

<sup>85</sup> Places for infants accommodated together with their mothers in the mother-child unit.

<sup>86</sup> Places for infants accommodated together with their mothers in the mother-child unit.

<sup>87</sup> Number of infants accommodated in the mother-child unit.

<sup>88</sup> According to the management contract, operation is legal up to 770 persons (at 110 % of its capacity).

<sup>89</sup> Capacities of the custodial unit before transport.

<sup>90</sup> An additional 160 places in the transport vehicles.

The primary objective of the NPM's visits is to establish which elements of the treatment of persons deprived of their liberty may lead to torture or other cruel, inhuman, and degrading treatment or punishment, and how to prevent them. Another important task of the NPM is to make recommendations in order to prevent these from happening or recurring.<sup>91</sup>

As a general rule, the staff members of the Department do not inquire into complaints lodged with the Office. The only exceptions are submissions containing data or information indicative of the violation of the provisions on the prohibition of sanctions, stipulated in Article 21(1) of the OPCAT, which are investigated by the staff members of the Department authorized to perform tasks related to the NPM. The Department forwarded all individual complaints submitted to the e-mail address displayed on the NPM's homepage or to the members of the visiting groups to the competent organizational unit of the Office. Individual complaints submitted to the Office serve as a compass for the selection of the locations of visits and the inspection criteria.

### ***5.1. Planning and preparing the visits***

By virtue of Section 30 of the Ombudsman Act, *“the Commissioner for Fundamental Rights shall determine the rules and methods of his inquiries in normative instructions”*.<sup>92</sup>

The NPM conducts its visit based on a schedule of visits adopted during the previous year. Upon selecting a place of detention to inspect, the Commissioner for Fundamental Rights also appoints the head of the visiting delegation, and the preparations begin.

The head of the visiting delegation studies the conclusions and recommendations of the Ombudsman's reports on investigations conducted at the selected place of detention or other places of detention of the same type, the reports of other National Preventive Mechanisms, international organizations, foreign and domestic civil organizations conducting visits to places of detention, as well as the provisions of the relevant legal regulations. The visiting delegations also check the implementation of the NPM's earlier recommendations made in reports on earlier visits made within the frameworks of performing the NPM's general fundamental-rights-protections duties.

In certain cases, upon the initiative of the head of the visiting delegation, experts by experience possessing practical knowledge of the operation of the selected place of detention are also involved in preparing the visit. The reports of the experts by experience contribute to recognizing facts and circumstances potentially resulting in ill-treatment. The Office handles both the personal data and the reports of the experts by experience confidentially.<sup>93</sup>

Visits are conducted in accordance with the visiting plan drafted by the head of the visiting delegation and approved by the NPM. In addition to naming the place of detention selected, the visiting plan also contains the date and time of the visit, the names and qualifications of the members of the visiting delegation, as well as their official positions. The inspection criteria are approved together with the visiting plan, as an annex thereto by the NPM.

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<sup>91</sup> SPT: *Report on the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives* (26 February 2009) (Clause 5 of AT/OP/MDV/1). <https://undocs.org/CAT/OP/MDV/1>

<sup>92</sup> See CFR Instruction No. 3/2015 (XI. 30.) on the professional rules and methods of the inquiries conducted by the Commissioner for Fundamental Rights.

<sup>93</sup> See Article 21(2) of the OPCAT.

### 5.1.1. Composition of the visiting delegations

Pursuant to Article 18(2) of the OPCAT, the experts of the NPM shall have the required capabilities and professional knowledge.

In 2019, the visits were performed by groups of five to seven. The members of the visiting delegations were designated based on the recommendations of the head of the visiting delegation. In addition to the professional skills of the NPM's staff members, the size and capacity of the selected place of detention, as well as the gender and age composition of the persons deprived of their liberty are also taken into consideration when selecting the members of the delegation. Besides maintaining gender balance, the NPM also tried to ensure multi-disciplinarity and involve experts in the field of the protection of national and ethnic minority rights when setting up the visiting delegations.

To perform the tasks related to the Commissioner's general activities aimed at the protection of fundamental rights, the Office employs mainly public servants with a law degree. In addition to lawyers, medical, psychological, educational, and dietitian experts also participated in the NPM's visits in 2019.

#### The composition of the NPM's visiting delegations in 2019

Number	Date of visit 2019	Name of place of detention	Composition of visiting delegation	
			number of visitors	qualification of visitors
1.	27–28 February 2019	Bács-Kiskun County Remand Prison	7	2 lawyers; 4 psychologists; 1 education professional, 1 infantologist and paediatrician, 1 dietitian
2.	24–25 April 2019	Baracska Facility of the Middle-Transdanubium National Prison	7	2 lawyers, 3 psychologists, 1 education professional, 1 gastroenterologist, 1 psychiatrist
3.	4–5 September 2019	EMMI's (Ministry of Human Capacities) Special Children's Home Centre, Primary School and Trade School (Esztergom)	5	1 lawyer, 4 psychologists, 1 education professional, 1 child psychiatrist
4.	8 October 2019	Police Department of Békéscsaba	5	2 lawyers, 3 psychologists, 1 education professional
5.	9 October 2019	Police Department of Békés	5	2 lawyers, 3 psychologists, 1 education professional
6.	9 October 2019	Police Department of Sarkad	5	2 lawyers, 3 psychologists, 1 education professional
7.	10 October 2019	Police Department of Orosháza	5	2 lawyers, 3 psychologists, 1 education professional
8.	21–22 October 2019	Platán Integrated Social Care Institution of Bács-Kiskun County	5	3 lawyers, 1 psychologist, 1 psychiatrist, 1 dietitian
9.	3–4 December 2019	Tiszalök National Prison	5	1 lawyer, 2 psychologists, 1 education professional, 1 infant and child cardiologist, 1 dietitian
10.	9–10 December 2019	Budapest Remand Prison, inspection of weekly countryside transport	5	3 lawyers; 3 psychologists
<b>Total</b>		average number of visitors per delegation	5.4 persons	2.0 lawyers; 2.9 psychologists; 0.8 education professional; 0.5 physician;



## 5.2. Conducting the visits

### 5.2.1. Access to places of detention, proving the mandate to proceed

Pursuant to Articles 20(b) and (c) of the OPCAT, the NPM shall be granted access to all places of detention and their installations and facilities, and to all information referring to the treatment of persons deprived of their liberty as well as their conditions of detention.

When acting within the powers of the NPM, the Commissioner for Fundamental Rights may proceed without any restriction. When proceeding in person, he notifies the management of the place of detention and the detainees held therein that he is proceeding within the competence of the NPM. When performing the tasks related to the NPM through his authorized staff members, they also shall have the rights pursuant to Sections 21, 22 and 26, Section 27(1), and Section 39/B of the Ombudsman Act, and the obligation for cooperation pursuant to Section 25 of the Ombudsman Act shall be complied with also in their respect.<sup>94</sup>

The NPM's public servant colleagues possess investigator's photo ID cards issued by the Office of the Commissioner for Fundamental Rights, displaying their names as well as their official positions. Upon arriving at the place of detention, the head of the visiting delegation introduces himself/herself and informs the management and the detainees that he/she is proceeding in order to perform tasks related to the NPM's mandate. The members of the visiting delegation state the purpose of the visit, present their investigator's photo ID cards and hand over their commission letter signed by the Commissioner for Fundamental Rights, proving their being authorized to proceed in order to perform tasks related to the NPM. The commission letter also contains the names of external experts participating in the visit and their authorization to cooperate in conducting the visit.

In the commission letter, the NPM calls the attention of the management and the personnel of the place of detention concerned to the fact that *"no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way"*.<sup>95</sup>

In 2019, all places of detention were visited without prior notification. The timing of the visits was usually adjusted to the Office's working hours. The timing of visits to some institutions holding extremely vulnerable detainees was adjusted to the peculiarities of the given place of detention. The visiting delegations were given access to all places of detention without any delay.

### 5.2.2. Inspecting a place of detention

Pursuant to Section 39/B(3)a) of the Ombudsman Act, the NPM may *"enter without any restriction the places of detention and other premises of the authority under inquiry"*.

In 2019, the visits by the NPM were all conducted in accordance with the professional rules and methods specified in CFR Instruction 3/2015 (XI. 30.).<sup>96</sup>

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<sup>94</sup> See Section 39/D(1) of the Ombudsman Act.

<sup>95</sup> Article 21(1) of the OPCAT.

<sup>96</sup> The special professional rules and methods related to the performance of the tasks of the NPM are stipulated in Chapter X of CFR Instruction No. 3/2015 (XI. 30.) on the professional rules and methods of the inquiries conducted by the Commissioner for Fundamental Rights.

The members of the visiting delegations inspected the premises, equipment, and furnishing of the places of detention, as well as the documents related to the number, treatment, and conditions of detention of the persons deprived of their liberty, made copies of some of those documents, and, among others, observed the engagement of those persons deprived of their liberty. In order to prevent the ill-treatment of persons deprived of their liberty, the members of the visiting delegations inspected the vacant detention units as well.<sup>97</sup>

During the visits, the NPM's staff members took pictures of their observations and measured the size and temperature of the premises where the persons deprived of their liberty were placed.

### 5.2.3. Interviews

Pursuant to Section 39/B(3)c) of the Ombudsman Act, the NPM shall *“hear any person present on the site, including the personnel of the authority under inspection and any persons deprived of their liberty”*.

By virtue of Article 20(e) of the OPCAT, the NPMs shall have the liberty to choose *“the persons they want to interview”*. The management and the personnel of the place of detention inspected as well as their supervisors shall cooperate with the visiting delegation and its members.<sup>98</sup> The members of the visiting delegation may conduct, on the basis of pre-compiled questionnaires, interviews with the head and the personnel of the place of detention, as well as any other persons staying on the premises at the time of the visit.

Pursuant to Section 39/B(4) of the Ombudsman Act, in the hearing, *“apart from the person who is given a hearing, no other person may participate, unless the Commissioner for Fundamental Rights authorized their participation”*.

Interviews are conducted with no witnesses present and in the absence of the local personnel. The visiting delegations aim at conducting tête-à-têtes, but occasionally, group hearings are conducted as well.

The persons deprived of their liberty, unlike the head and the personnel of the place of detention concerned, are not compelled to cooperate with the visiting delegation. In the case of persons deprived of their liberty who, due to their age, state of health, or any other circumstance, are not able or willing to give an account of their detention-related experiences, the visiting delegation inspects the conditions of their placement. The objective of the members of the visiting delegation is to meet, if possible, all persons deprived of their liberty staying on the premises at the time of the visit.

The members of the visiting delegation make notes on all hearings conducted with both the persons deprived of their liberty and the personnel of the given place of detention. The interviewees, should they be members of the staff or visitors, are always notified that no one *“shall suffer any disadvantage for providing information to the NPM”*.<sup>99</sup>

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<sup>97</sup> See: SPT: *Analytical Self-assessment Tool for National Preventive Mechanisms* (Clause 25 of AT/OP/1/Rev.1). <https://undocs.org/CAT/OP/1/Rev.1>

<sup>98</sup> See Sections 25(1) and 39/D(1) of the Ombudsman Act.

<sup>99</sup> See Section 39/E of the Ombudsman Act.

#### 5.2.4. Document inspection

Pursuant to Section 39/B(3) of the Ombudsman Act, the NPM may “inspect without any restriction all documents concerning the number and geographical location of places of detention, the number of persons deprived of their liberty who are held there, on the treatment of these persons and on the conditions of their detention, and make extracts from or copies of these documents”.

Prior to starting the inspection, the head of the visiting delegation hands over the list of those documents that he/she or any member of the delegation wishes to inspect or make copies thereof. If, during the visit, inspection of additional documents or making extracts from or copies of those documents becomes necessary, the members of the visiting delegation shall notify thereof the competent staff member of the given place of detention.

In the absence of prior notice, the staff members of the places of detention cannot prepare for the inspection; therefore, they often cannot immediately present some documents or make the requested copies by the end of the visit. Should it be the case, the requested documents shall be presented to the NPM within the deadline set by the head of the visiting delegation, which may not be shorter than fifteen days.<sup>100</sup>

In 2019, the NPM received all the documents required for performing its tasks within the statutory deadline.

#### 5.2.5. Concluding the visit

The duration of the NPM’s visits in 2019 ranged from four hours to two days. All the visits were concluded, stressing partnership, by giving feedback to the personnel of the given place of detention.<sup>101</sup>

During the feedback session, the members of the visiting delegation summarize their experience gained in the course of the visit, including the documents inspected and/or copied, and point out the additional documents that shall be submitted to the NPM by the staff members of the given place of detention.

They also share their positive and/or negative impressions in connection with the detainees’ treatment and the conditions of detention with the head of the given place of detention, which promotes best practices and facilitates the promptest possible solution of problems.

The head of the visiting delegation draws the attention of the head and the personnel of the given place of detention to the prohibition of sanctions stipulated in Article 21(1) of the OPCAT.

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<sup>100</sup> Pursuant to Section 21(1)a) of the Ombudsman Act, “in the course of his inquiries the Commissioner for Fundamental Rights 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”.

By virtue of Section 21(2) of the Ombudsman Act, “the request of the Commissioner for Fundamental Rights pursuant to points a) and b) of subsection (1) shall be complied with within the time-limit set by the Commissioner. The time-limit may not be shorter than 15 days.”

<sup>101</sup> See: SPT: *Analytical Self-assessment Tool for National Preventive Mechanisms* (Clause 27 of AT/OP/1/Rev. 1). <https://undocs.org/CAT/OP/1/Rev.1>

### 5.2.6. Processing and evaluating experience gained and information obtained in the course of the visits

The members of the visiting delegation process the experiences gained and information obtained at the given place of detention. During the discussion, they may identify situations causing trouble and the responses given to them. Visiting various types of places of detention, meeting children and adults deprived – to various extents – of their personal liberty may be overwhelming even in the absence of circumstances indicative of ill-treatment. In addition to helping the members of the visiting delegation to keep their psychological well-being, joint analyses increase the efficiency of future visits by pointing out the reasons and effects of their decisions made on the spot.

The head of the visiting delegation prepares a short note for the NPM on the most important lessons of the visit. Following this preliminary report summarizing the visit's most important lessons, the head of the visiting delegation prepares a short summary of the on-site inspection which, upon approval, is published, both in Hungarian and English, on the NPM's homepage.

### 5.2.7. Prohibition of sanctions

*“No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.”<sup>102</sup>*

According to Section 39/E of the Ombudsman Act, no person may suffer harm due to communicating information to the Commissioner for Fundamental Rights and the staff members authorized by him to carry out tasks in connection with the National Preventive Mechanism.

Shortly after the NPM's visit to the Visegrád Aranykor Foundation Retirement Home (hereinafter: the “Retirement Home”) on 11 December 2018, the maintainer – the Visegrád Aranykor Foundation – terminated the care agreement of one of the residents of the Retirement Home. The reasons for the termination of the agreement were, on the one hand, that the resident in question had violated the House Rules of the institution, and on the other, that (s)he “*made false allegations about the Retirement Home to the staff members of the Office of the Commissioner for Fundamental Rights, by which (s)he has endangered the existence and operation of the Retirement Home*”. According to the termination, the elderly person was to leave the institution within 3 months of receipt of the letter of termination. At the time of the termination, the report on the NPM's visit to the Retirement Home was in its initial phase, thus the NPM had not yet disclosed information about the facts and conditions observed by the visiting delegation.

After having learned about the termination, the NPM immediately requested that the maintainer of the Retirement Home withdraw its letter of termination, and inform the NPM about its action taken in order to end the unlawful situation. Moreover, the NPM asked the Pest County Government Office to hold an inspection at the institution. The inspection conducted by the Government Office at the NPM's request stated that the procedure aimed at the termination of the care agreement had been unlawful, due to which the rights of the resident concerned had been violated. Based on the conclusions of the inspection, the Government Office obliged the maintainer to review its rules of procedure regarding the termination of the legal relation with the institution, and drew the Retirement Home's attention to the importance of lawful operation. As indicated by the Chair of the Board of Trustees in writing, the Visegrád Aranykor Foundation withdrew its letter of termination.

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<sup>102</sup> Article 21(1) of the OPCAT.

In consideration of the weight of this impropriety, the NPM also initiated via the Prosecutor General that action be taken by the competent prosecutor.<sup>103</sup> The prosecutor of the Pest County Prosecution Service paid a visit to the Retirement Home, interviewed the people concerned, and examined the relevant documentation. Following the visit, the prosecutor concluded that as a result of the withdrawal of the declaration, the resident affected by the termination continued to live in the Retirement Home, so the matter was considered resolved.<sup>104</sup>

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<sup>103</sup> Section 33(1) of the Act on the Constitutional Court.

<sup>104</sup> See File No. AJB-326/2019.

## 6. Focal points of the visits conducted within the powers of the NPM

To prevent ill-treatment, each State Party “shall keep under systematic review interrogation rules, instructions, methods, and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction”.<sup>105</sup>

The goal of the NPM’s visits is to encourage the respective authorities and institutions to improve the effectiveness of their measures aimed at the prevention of ill-treatment.<sup>106</sup> “The scope of preventive work is large, encompassing any form of abuse of people deprived of their liberty which, if unchecked, could grow into torture or other cruel, inhuman or degrading treatment or punishment”.<sup>107</sup>

In the course of the inspection of places of detention, the NPM examines the conditions of placement of persons deprived of their liberty and their treatment. The visiting delegations examined those aspects of placement and treatment which presented the highest risk of the insufficient enforcement of the fundamental rights of persons deprived of their liberty.

A special feature of the visits conducted in connection with performing tasks related to the NPM is that the detection and identification of signs of torture and other cruel, inhuman or degrading treatment or punishment, physical and psychological abuse, in particular, is carried out with the use of medical and psychological methods.

The focal points were determined on the basis of the CPT’s reports on visiting places of detention in the territory of Hungary, the reports of the UN Committee against Torture, the reports of the Subcommittee on Prevention of Torture on its country visits, the decisions of the European Court of Human Rights, as well as the conclusions of the on-site inspections conducted as part of the NPM’s general activities aimed at protecting fundamental rights, and the CCB’s recommendations.

### 6.1. Reception

Since persons deprived of their liberty are extremely vulnerable in the early stages of their detention, the NPM conducts an examination of the reception procedure in every place of detention. The legal grounds of deprivation of liberty, as well as the reception of a person to a place of detention and information provided to him/her on his/her rights must be documented according to the relevant legal regulations. In addition to the procedural acts of reception, e.g. medical examination, designation of the detainee’s bed, providing them with clothing, bedding, toiletry, the inspection also covers the in-house rules of the given place of detention, the contents of the briefing on the rules of behaviour, and the ways and conditions of keeping in touch with his/her legal representative, his/her relatives, and the security personnel.<sup>108</sup>

### 6.2. Material conditions of detention

The members of the visiting delegations inspect the premises, equipment, and furnishing of the places of detention, as well as the vehicles used to transport the detainees. They examine the

<sup>105</sup> See Article 11 of the UN Convention against Torture.

<sup>106</sup> See: SPT: *Report on the Visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives* (26 February 2009) (Clause 5 of AT/OP/MDV/1). <https://undocs.org/CAT/OP/MDV/1>

<sup>107</sup> See: SPT: *First Annual Report*, (Clause 12 of CAT/C/40/2). <https://undocs.org/CAT/C/40/2>

<sup>108</sup> CAT *General Comment No. 2* (Clause 13 of AT/C/GC/2). <https://undocs.org/CAT/C/GC/2>

dimensions of the rooms and vehicles used by the detainees, the size of the per capita living space, the conditions of the natural lighting and ventilation, the furnishing, access to drinking water and restrooms, the conditions of spending time in the open air, the washing facilities, the condition of the sanitary units and community rooms, as well as catering.

### **6.3. Vulnerable groups**

In all his activities, thus also during the performance of his tasks as National Preventive Mechanism, the Commissioner for Fundamental Rights has to pay special attention to protecting the rights of children, nationalities living in Hungary, other most vulnerable groups of society<sup>109</sup>, and persons living with disabilities, as well as to facilitating, protecting and monitoring the implementation of the Convention on the Rights of Persons with Disabilities.<sup>110</sup>

According to the definition formulated in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “*the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted [...] for any reason based on discrimination of any kind*”. In its General Comment, the Committee points out that States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, age, religious belief or affiliation, gender, sexual orientation, transgender identity, health status, mental or other disability, political opinion, nationality, etc.<sup>111</sup>

As the protection of minorities, marginalized persons and groups, particularly vulnerable from the perspective of torture is part of the prevention obligations of the State,<sup>112</sup> the NPM pays special attention to monitoring the treatment of minorities, children, the elderly, women, foreigners, young adults, homosexual, bisexual, and transsexual persons, persons living with disabilities, as well as persons deprived of their liberty who are in need of medical care.

### **6.4. Medical care**

In Hungary, “*everyone shall have the right to physical and mental health*”.<sup>113</sup> All “*patients have the right, within the frameworks specified by the law, to proper medical care that is corresponding to their state of health, continuously accessible, and meeting the requirement of equal treatment*”<sup>114</sup>

Medical services available to persons deprived of their liberty, such as medical treatment, nursing, providing an appropriate diet, therapeutic appliances and equipment, rehabilitation or any other special treatment, shall be provided in a way that is generally accessible to the members of society. The barrier-free access to the furnishing and equipment of healthcare institutions, as well as the medical, nursing, and technical staff thereof should also meet the aforementioned requirements.

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<sup>109</sup> See Sections 1(2)a) c) and d) of the Ombudsman Act.

<sup>110</sup> See Sections 1(1)–(3) of the Ombudsman Act.

<sup>111</sup> CAT *General Comment No. 2* (Clause 21 of AT/C/GC/2). <https://undocs.org/CAT/C/GC/2>

<sup>112</sup> CAT *General Comment No. 2* (Clause 21 of AT/C/GC/2). <https://undocs.org/CAT/C/GC/2>

<sup>113</sup> See Article XX, Paragraph 1 of the Fundamental Law.

<sup>114</sup> See Section 7(1) of Act CLIV of 1997 on Health.

### ***6.5. Nutrition***

A proper diet is an immanent element of the detainees' right to health, guaranteed by Article XX of the Fundamental Law of Hungary. Unhealthy diets, overweight and obesity caused by sedentary lifestyle contribute to a large proportion of cardiovascular diseases, type 2 diabetes, and some cancers, which, according to the WHO's data, together are the main causes of death in Europe.<sup>115</sup> According to the visits' findings, the places of detention usually provide the detainees with nutrition meeting the statutory requirements; however, the inadequate composition of the meals and the sedentary lifestyle resulting from detention often lead to obesity and diseases caused by being overweight. The NPM examines the detainees' nutrition with the assistance of a gastroenterologist or a dietitian.

### ***6.6. Activities, free time***

Measures aimed at counterbalancing isolation and meaningless activities caused by the deprivation of liberty are of major importance in all detention sectors. The NPM's inspections pay special attention to the community, cultural, educational, and open-air programmes organized by the places of detention for the persons deprived of their liberty.

### ***6.7. Coercive, disciplinary, and restrictive measures***

Deprivation of liberty and the application of coercive and restrictive measures in themselves affect the enforcement of fundamental rights. The risks emerging therefrom may be mitigated through the adoption of adequate legal regulations and their appropriate implementation.

The visiting delegations also inquire into incidents that have occurred at the given place of detention and the conflict management methods used by its personnel. They examine the types of coercive and disciplinary measures applied by the personnel against persons deprived of their liberty violating the house rules of the given place of detention and the restrictive measures applied in health- and social care institutions, and how they are documented. The inspection of the available documents related to the application of coercive, disciplinary, and restrictive measures, including the notes of the health care personnel, is also aimed at finding out who checks the justification and legality of such measures and in what manner, and if the extent of these measures is in compliance with the prevailing legislation.

### ***6.8. Relations between persons deprived of their liberty and their relations with the personnel of the place of detention***

Balanced personal relations between persons deprived of their liberty and between detainees and the personnel of the given place of detention are one of the most efficient ways to prevent ill-treatment. The visiting delegations inquire into the relations of persons deprived of their liberty using the same premises, paying special attention to gathering information indicative of peer-to-peer abuse among the detainees.

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<sup>115</sup> <http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/nutrition>



*“Mixed-gender staffing is another safeguard against ill-treatment in places of detention.”*<sup>116</sup> As persons deprived of their liberty should only be searched by staff of the same gender and any search which requires a detainee to undress should be conducted out of the sight of custodial staff of the opposite gender,<sup>117</sup> the NPM examines the gender composition of the persons deprived of their liberty, guards, nurses, etc. during every visit.

The findings of the on-site inspections show that the staff of the places of detention, if they are frustrated in the hierarchical structure or continuously dissatisfied with the circumstances and/or conditions of their work, may vent their frustration on their subordinates or on persons deprived of their liberty, being otherwise at their mercy. In order to recognize and/or prevent such situations, the visiting delegations examine whether the staff members of the given place of detention have the proper skills and if they have access to professional training necessary for the prevention of ill-treatment<sup>118</sup>, and how accessible and efficient supervision is. When examining the premises, furnishing, and equipment of the places of detention, the NPM’s staff members also inspect the rooms designated for the personnel, including locker rooms, bathrooms, dining rooms, recreational rooms and restrooms.

### ***6.9. Complaints mechanism***

According to Article 12 of the UN Convention against Torture, *“each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction”*.

In Hungary, everyone has *“the right to submit, either individually or jointly with others, written applications, complaints or proposals to any organ exercising public power”*.<sup>119</sup>

Keeping in mind Article 4(2) of the OPCAT, stipulating that deprivation of liberty means any form of 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 NPM considers places of detention as organs having public power.

One of the most efficient ways of preventing ill-treatment is if the competent authorities, the personnel of the place of detention in particular, learns about the placement- or treatment-related complaints of the persons deprived of their liberty as soon as possible, investigates those grievances within a reasonable period of time, and takes the measures necessary to remedy them.<sup>120</sup>

The visiting delegations gather information as to whether the detainees have received adequate information about the possibility and manner of submitting their complaints. The NPM pays particular attention to ensuring the right to complain for illiterate or non-Hungarian speaking detainees as well as for those with limited communicative skills due to their age or some kind of disability. The NPM examines whether the complaint mechanism available for such detainees and their relatives is suitable for effectively counterbalancing the drawbacks resulting from their limited communicative skills. In consideration of the vulnerable situation of persons living in institutional care and in particular, of their concerns regarding any potential sanctions, it is a basic requirement

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<sup>116</sup> See: Clause 26 of 9th General Report on CPT’s activities [CPT/Inf (99) 12]. <https://rm.coe.int/1680696a73>

<sup>117</sup> See: Clause 23 of 10th General Report on CPT’s activities [CPT/Inf (2000) 13]. <https://rm.coe.int/16806cd373>

<sup>118</sup> See also Articles 10 and 16 of the UN Convention against Torture.

<sup>119</sup> See Article XXV of the Fundamental Law.

<sup>120</sup> See also Articles 13 and 16 of the UN Convention against Torture.

set by the NPM that the complaint mechanism available at the individual places of detention should also ensure the conditions for submitting anonymous petitions.

On the one hand, the visiting delegations review the complaint handling mechanism, including the registration of complaints, the duration of their administration, the manner of remedying them and of providing information about them to the complainants. On the other, they also check at each place of detention whether the detainees or their relatives exercising their right to complain have to fear retaliation.

## 7. Follow-up visit

The follow-up visit is part of the NPM's activities aimed at preventing the ill-treatment of persons deprived of their liberty. The primary objective of the follow-up visit is to get information about the measures aimed at the implementation of the NPM's recommendations.<sup>121</sup> A further objective is to encourage the personnel of the places of detention and the authorities to implement the NPM's recommendations.<sup>122</sup> Follow-up visits provide an opportunity to discuss the findings of the previous visit and, in their light, the practical implementation of the NPM's measures with the personnel of the places of detention.

Since neither the OPCAT nor the Ombudsman Act contains special provisions on follow-up-type visits, the general rules apply.

### 7.1. Selecting the subject of the follow-up visit

By the end of 2019, the NPM had conducted five follow-up visits. The locations for the follow-up visits were selected on the basis of the findings of previous visits, keeping in mind the following criteria.

The reason why the choice fell on the three specific locations – the Juvenile Penitentiary Institution<sup>123</sup>, the Central Holding Facility of the MPHB<sup>124</sup>, and the Central Hospital of the Prison Service<sup>125</sup> – for follow-up visits was that on the first occasion, the visiting delegations found evidence for the ill-treatment of large numbers of detainees or they detected the threat thereof.

The NPM paid two follow-up visits to the Platán Integrated Social Care Institution of Bács-Kiskun County. At the time of the first visit on 23 June 2015, the institution was operating on temporary premises due to refurbishment works.<sup>126</sup> The aim of the first follow-up visit on 16–17 May 2017 was to inspect to what extent the NPM's recommendations made as regards the temporary premises and the treatment of detainees had been implemented after moving back<sup>127</sup> to the permanent premises.<sup>128</sup> The aim of the second follow-up visit on 21–22 October 2019 was to monitor the remedying of the improprieties detected during the previous visits and the implementation of the recommendations.

<sup>121</sup> SPT: *Analytical Self-assessment Tool for National Preventive Mechanisms* (Clause 33 of AT/OP/1/Rev.1).

<https://undocs.org/CAT/OP/1/Rev.1>

<sup>122</sup> See: BIRK Moriz, ZACH Gerrit, LONG Debra, MURRAY Rachel, SUNTINGER Walter: *Enhancing Impact of National Preventive Mechanisms, Strengthening the Follow-up on NPM Recommendations in the EU: Strategic Development, Current Practices and the Way Forward*. Ludwig Boltzmann Institute & University of Bristol, May 2015, p. 10. Available at: [http://www.bristol.ac.uk/media-library/sites/law/hric/2015-documents/NPM%20Study\\_final.pdf](http://www.bristol.ac.uk/media-library/sites/law/hric/2015-documents/NPM%20Study_final.pdf)

<sup>123</sup> See Report No. AJB-1423/2015 on the first visit and Report No. AJB-685/2017 on the follow-up visit.

<sup>124</sup> See Report No. AJB-151/2016 on the first visit and Report No. AJB-496/2018 on the follow-up visit.

<sup>125</sup> See Report No. AJB-1424/2015 on the first visit. On the follow-up visit, see:

[https://www.ajbh.hu/documents/14315/2807447/OPCAT+NMM+utankövető+látogatás+Tökölön\\_honlap\\_rövf\\_hír\\_ENG\\_lekt\\_sgy.pdf](https://www.ajbh.hu/documents/14315/2807447/OPCAT+NMM+utankövető+látogatás+Tökölön_honlap_rövf_hír_ENG_lekt_sgy.pdf)

<sup>126</sup> See Report No. AJB-1686/2015 on the NPM's visit on 23 June 2015.

<sup>127</sup> See Report No. AJB-3772/2017 on the follow-up visit to Platán Integrated Social Care Institution of Bács-Kiskun County.

<sup>128</sup> Regarding the follow-up visit, see the sections of Chapter 9 on Platán Integrated Social Care Institution of Bács-Kiskun County.

### ***7.2. Planning and preparing a follow-up visit***

The follow-up visits are preceded by a written consultation with the detention authority, in the course of which the NPM analyses and evaluates the responses received from the addressees of the recommendations made in the report. If necessary, the NPM also involves in this consultation civil organizations or authorities which should be informed of the fundamental-rights-related improprieties uncovered in order to facilitate their activities aimed at improving detention conditions and the detainees' treatment.

The visiting plan is based on the recommendations made in the report on the previous visit and is aimed at re-examining circumstances causing or potentially leading to fundamental-rights-related improprieties.

### ***7.3. Setting up the follow-up visiting delegation***

When setting up visiting delegations, in addition to maintaining gender balance, ensuring multi-disciplinarity, and involving experts in the field of the protection of national and ethnic minority rights, the NPM also sought to include as many staff members as possible who were familiar with the given place of detention.

### ***7.4. Conducting the follow-up visit***

Follow-up visits are conducted in accordance with the relevant provisions of the Ombudsman Act and the professional rules and methods specified in CFR Instruction 3/2015 (XI. 30.).

The follow-up visit provides an opportunity to pursue the constructive dialogue with the personnel of the given place of detention on the findings of the previous visit, the recommendations of the report prepared thereon, the ways and means of their implementation, and the changes that occurred in the meantime. As a result of the above, the staff members may cooperate more eagerly in the implementation of the recommendations aimed at improving detention conditions and the detainees' treatment.

### *7.5. Concluding the follow-up visit*

Upon completing the follow-up visit, the members of the visiting delegation summarize and share their experience with the staff of the given place of detention, and specify the documents that the personnel of the given place of detention must submit to the NPM. During this feedback session, the members of the visiting delegation share with the management of the place of detention their newly gathered positive and negative experience in connection with the implementation of the recommendations of the previous report, the detainees' treatment, and the detention conditions.

### *7.6. Processing and evaluating the experiences of the follow-up visit*

The members of the visiting delegation process the experience gained and information obtained at the given place of detention. The head of the visiting delegation drafts a short memo for the NPM on the most important findings of the visit as compared to those of the previous inspection, then prepares a short summary report on the visit which is published, both in Hungarian and English, on the NPM's homepage.<sup>129</sup>

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<sup>129</sup> [www.ajbh.hu/OPCAT](http://www.ajbh.hu/OPCAT) and <https://www.ajbh.hu/en/web/ajbh-en/opcat>

## 8. The report of the NPM

The NPM makes reports on the visits he has conducted; *“it shall contain the uncovered facts and the findings and conclusions based on those facts”*.<sup>130</sup> In addition to indicating the location of the visit, the cover of the reports also states that the report is published by the Commissioner for Fundamental Rights while performing his tasks related to the NPM.

### 8.1. Preparation of the report

Pursuant to Article 21(2) of the OPCAT, *“confidential information collected by the national preventive mechanism shall be privileged”*.

The Commissioner for Fundamental Rights, *“in the course of his proceedings, may process – to the extent necessary for those proceedings – all those personal data and data qualifying 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”*.<sup>131</sup>

The members of the visiting delegations forward their partial reports, summarizing their observations, the results of the measurements they have taken and the interviews they have conducted, the pictures taken on site, and the documents obtained in the course of the visit to the head of the visiting delegation; the external experts also submit their opinions. Neither the partial reports nor the expert opinions contain any data suitable for personal identification.

As *“the documents and material evidence obtained in the course of the proceedings of the Commissioner for Fundamental Rights are not public”*,<sup>132</sup> third persons may not have access, either prior to or following the proceedings, to notes taken and the documents obtained during the preparation or the conduct of the visit.

### 8.2. Introduction

This part of the report gives a short introduction of the competence of the NPM, the reasons for and the circumstances of selecting the location, as well as the criteria based on which, pursuant to Article 4(2) of the OPCAT, persons are deprived of their liberty there. It contains the date of the visit, the names and qualifications of the members of the visiting delegation, the positions of the NPM's staff members who are public servants, and the method of the inspection. Since the preventive monitoring visits of the NPM also cover the practice-oriented review of the relevant legal regulations, the introduction also specifies the applied domestic and international sources of law, as well as the list of fundamental rights touched upon by the report.

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<sup>130</sup> See Section 28(1) of the Ombudsman Act.

<sup>131</sup> See Section 27(1) of the Ombudsman Act.

<sup>132</sup> See Section 27(3) of the Ombudsman Act.

### 8.3. Prohibition of sanctions

The report calls attention to the fact that “no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way”.<sup>133</sup>

### 8.4. Facts and findings of the case

From the aspects of performing the tasks related to the NPM, the detailed description of the treatment and conditions observed is of major importance.

The facts of the case include the basic data of the place of detention, as well as the detailed description of the observations, interviews, and documents obtained, on which the NPM bases his findings and measures.<sup>134</sup> The head of the visiting delegation drafts the report using the partial reports prepared by the members of the visiting delegation and the opinions of the external experts. The application of the method of triangulation, i.e. cross-checking information (allegations), provided by various persons, as well as documents, facilitates objectivity.<sup>135</sup>

The findings of the report shall include those aspects of placement conditions and treatment which may lead to an impropriety related to a fundamental right or the threat thereof.<sup>136</sup> Under findings, the NPM also presents those facts and circumstances that indicate that the personnel of certain places of detention have failed to comply or complied belatedly with their obligation to cooperate, stipulated in Section 25(1) of the Ombudsman Act. Under findings, the NPM also has to elaborate whether the fundamental-rights-related impropriety, uncovered during the visit, is the result of the wrong interpretations of the law, a redundant, unclear, or inadequate provision of a piece of legislation, or the absence or the deficiency of the legal regulation on the given issue.<sup>137</sup>

Pursuant to Article 16(1) of the UN Convention against Torture, each State Party “shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in Article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. The UN Convention against Torture does not give a definition of “other acts” of ill-treatment which do not qualify as torture as defined in Article 1. The prohibition of “other acts” compels the National Preventive Mechanism to take action against various types of treatment that fall outside the concept of torture but cause suffering to the persons deprived of their liberty.

The experience gathered from the visits shows that, in the case of detainees, enduring not only treatment and/or placement conditions violating the prohibition of torture and other cruel, inhuman or degrading treatment or punishment but also treatment and/or placement conditions resulting in an impropriety related to fundamental rights may cause serious physical or psychological ordeal. Since the “full respect for the human rights of persons deprived of their liberty” is a common responsibility shared by all<sup>138</sup>, the reports published within the activities of the NPM, in addition to preventing torture and other cruel, inhuman or degrading treatment or punishment,

<sup>133</sup> Article 21(1) of the OPCAT.

<sup>134</sup> See Article 32(1) of CFR Instruction No. 3/2015 (XI. 30.) on the professional rules and methods of the inquiries conducted by the Commissioner for Fundamental Rights (hereinafter: the “CFR Instruction 3/2015 (XI. 30.)”).

<sup>135</sup> SPT: *Analytical Self-assessment Tool for National Preventive Mechanisms* (Clause 26 of CAT/OP/1/Rev.1).  
<https://undocs.org/CAT/OP/1/Rev.1>

<sup>136</sup> See Section 33(1) of CFR Instruction 3/2015 (XI. 30.).

<sup>137</sup> See also Article 11 of the UN Convention against Torture.

<sup>138</sup> See the Preamble of the OPCAT.

also call the attention of those concerned to other fundamental-rights-related improprieties and the threat thereof.

When establishing a fundamental-rights-related impropriety or the threat thereof, the report of the NPM refers, in particular, to the interpretation of the law by the European Court of Human Rights, the CPT, the Committee on the Rights of Persons with Disabilities<sup>139</sup>, the other organs of the UN and the Council of Europe, as well as by the Constitutional Court.

In addition to critical remarks regarding placement and treatment, positive practices observed during the visit are also to be commented on and evaluated in this part of the report.<sup>140</sup>

It is essential that the reports should be concise and to the point. To ensure “*full respect*” for the human rights of persons deprived of their liberty, the report of the NPM strives to elaborate on those aspects of their treatment and placement which may result in a fundamental-rights-related impropriety or the threat thereof.

### ***8.5. Measures taken by the NPM***

Pursuant to Article 19(b) of the OPCAT, the National Preventive Mechanisms shall be granted the power to make recommendations to the “*relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations*”.

This part of the report shall detail those measures that are necessary for remedying fundamental-rights-related improprieties related to the treatment and placement of the detainees, as well as for eliminating circumstances threatening the enforcement of fundamental rights.<sup>141</sup> In every case, the provision of the Ombudsman Act giving grounds to a particular measure has to be indicated.<sup>142</sup>

In addition to preventing torture and other cruel, inhuman or degrading treatment or punishment, the NPM’s recommendations are also aimed at improving the treatment and the conditions of placement of persons deprived of their liberty. Through the measures specified in the reports on the NPM’s visits, the NPM tries not only to prevent torture and other cruel, inhuman or degrading treatment or punishment, but also to prevent and eliminate improprieties related to other fundamental rights of persons deprived of their liberty, as well as treatments and circumstances potentially resulting in the threat thereof.

The report must clearly indicate the fundamental-rights-related impropriety or the circumstance threatening the enforcement of a fundamental right to which the given measure is related.<sup>143</sup> The measures with different addressees and the different measures to the same addressee must be clearly separated.<sup>144</sup>

#### ***8.5.1. Initiative***

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<sup>139</sup> See Article 34 of the CRPD.

<sup>140</sup> See SPT: *Analytical Self-assessment Tool for National Preventive Mechanisms* (Clause 30 of CAT/OP/1/Rev.1). <https://undocs.org/CAT/OP/1/Rev.1>

<sup>141</sup> See Section 34(1) of CFR Instruction 3/2015 (XI. 30.).

<sup>142</sup> See Section 34(3) of CFR Instruction 3/2015 (XI. 30.).

<sup>143</sup> See Section 34(2) of CFR Instruction 3/2015 (XI. 30.).

<sup>144</sup> See Section 34(4) of CFR Instruction 3/2015 (XI. 30.).



If the authority subject to inquiry is able to terminate the impropriety related to fundamental rights within its competence, the NPM may initiate its redress by the head of the authority subject to inquiry. Such an initiative may be made directly by phone, orally or by e-mail. In such cases, the date, method, and substance of the initiative shall be recorded in the case file. Within thirty days of receipt of the initiative, the authority subject to inquiry shall inform the NPM of its position on the merits of the initiative and on the measures taken.<sup>145</sup> If the authority subject to inquiry does not agree with the initiative, it shall, within thirty days of receipt of the initiative, submit the initiative to its supervisory organ together with its opinion thereon. Within thirty days of receipt of the submission, the supervisory organ shall inform the NPM of its position and on the measures taken.<sup>146</sup> Nearly all of the addressees of the 68 initiatives formulated in the reports published in 2019 on the NPM's visits responded on the substance within the time limit prescribed by the law.

### *8.5.2. Recommendation*

If, on the basis of an inquiry conducted, the NPM comes to the conclusion that the impropriety in relation to a fundamental right does exist, in order to redress it he/she may – by simultaneously informing the authority subject to inquiry – address a recommendation to the supervisory organ of the authority subject to inquiry. Within thirty days of the receipt of the recommendation, the supervisory organ shall inform the NPM of its position on the recommendation and on the measures taken.<sup>147</sup> If there is no supervisory organ, the NPM makes a recommendation to the authority inspected.<sup>148</sup> The addressees of the 14 recommendations formulated in the reports published in 2019 on the NPM's visits responded on the substance within the time limit prescribed by the law.

### *8.5.3. Initiation of proceedings by the prosecution*

In order to redress an impropriety related to a fundamental right, the NPM may initiate proceedings by the competent prosecutor through the Prosecutor General. In such a case, the competent prosecutor shall inform the NPM of his/her position on the initiation of proceedings and his/her measure, if any, within sixty days.<sup>149</sup> The NPM did not exercise this power in 2019.

### *8.5.4. Reporting to the National Authority for Data Protection and Freedom of Information*

If, in the course of the inquiry, the NPM notices an impropriety related to the protection of personal data, to the right of access to data of public interest, or to data public on grounds of public interest, he may report it to the National Authority for Data Protection and Freedom of Information.<sup>150</sup> The NPM did not exercise this power in 2019.

### *8.5.5. Legislative initiative*

If, in the interest of eliminating ill-treatment or the threat thereof, the NPM suggests to modify, repeal a piece of legislation or issue a new one, the requested organ shall inform the NPM of its

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<sup>145</sup> See Sections 32(1) and (2) of the Ombudsman Act.

<sup>146</sup> See Section 32(3) of the Ombudsman Act.

<sup>147</sup> See Section 31(1) of the Ombudsman Act.

<sup>148</sup> See Section 31(4) of the Ombudsman Act.

<sup>149</sup> See Section 33(1) of the Ombudsman Act.

<sup>150</sup> See Section 36 of the Ombudsman Act.

position and of any measure taken within sixty days.<sup>151</sup> The NPM made 4 legislative initiatives in 2019.

### ***8.6. Publishing the NPM's reports***

*“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.”<sup>152</sup>*

In every case, the NPM sends the report on its visit to the head of the place of detention concerned, the addressees of the recommendations, and the members of the CCB.

The reports of the NPM have to be published on the Office's homepage in digital format, accessible without restriction, free of charge to anyone.<sup>153</sup> Within a few days after sending the NPM's reports, in Hungarian, to the addressees, the NPM's staff members make them accessible to the public<sup>154</sup>, as well.<sup>155</sup> The NPM's reports shall also be published in the electronic archives within thirty days of their disclosure.<sup>156</sup>

The English translation of the summary of the NPM's reports in 2019 was made available on the NPM's official website within thirty days of the publication of the reports.<sup>157</sup>

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<sup>151</sup> See Section 37 of the Ombudsman Act.

<sup>152</sup> See Section 28(2) of the Ombudsman Act.

<sup>153</sup> See Section 39(1) of CFR Instruction 3/2015 (XI. 30.).

<sup>154</sup> See Section 39(2) of CFR Instruction 3/2015 (XI. 30.).

<sup>155</sup> <https://www.ajbh.hu/hu/opcat-jelentesek>

<sup>156</sup> See Section 39(3) of CFR Instruction 3/2015 (XI. 30.).

<sup>157</sup> <https://www.ajbh.hu/en/web/ajbh-en/opcat-reports-2019>

**Reports published in 2019 during the performance of the NPM's tasks according to places visited**

Number	Name of place of detention	Total number of recommendations	Addressee of measures			
			institution subject to inquiry <sup>158</sup>	supervisory organ <sup>159</sup>	prosecutor <sup>160</sup>	legislator <sup>161</sup>
1.	Psychiatric Ward of the Balassa János Hospital of Tolna County	14	9	4	-	1
2.	County Holding Facility of the Nógrád County Police Headquarters, the custodial units of the Salgótarján Police Department and the Balassagyarmat Police Department	18	12	6	-	-
3.	Chronic Post-care Unit of Facility III of Szeged Strict and Medium Regime Prison	34	29	3	-	2
4.	Visegrád Aranykor Foundation Retirement Home	20	18	1	-	1
<b>Total</b>		<b>86</b>	<b>68</b>	<b>14</b>	<b>-</b>	<b>4</b>

<sup>158</sup> See Section 32(1) of the Ombudsman Act.

<sup>159</sup> See Section 31(1) of the Ombudsman Act.

<sup>160</sup> See Section 33(1) of the Ombudsman Act.

<sup>161</sup> See Section 37 of the Ombudsman Act.

## 9. Persons deprived of their liberty at the places of detention visited by the NPM

### 9.1. Detainees in penal institutions

The NPM paid an unannounced visit to the Chronic Post-care Unit of Facility III of Szeged Strict and Medium Regime Prison (hereinafter referred to as: the "CPU"), where the detainees who suffer from chronic diseases, and are in need of rehabilitation, receive professional in-patient care.<sup>162</sup> At the CPU, which has a capacity of 80 places, there were 64 detainees and occupancy was 80% at the time of the visit.

According to the staff list, the following positions were available for performing the tasks of the CPU: 1 head of unit, 1 head nurse, 6 qualified nurses (1 vacancy), 1 nurse (1 vacancy), 1 pharmacist, 1 analytical laboratory assistant, 2 assistants and 8 general nurses. Another 5 nurses who belonged to Facility III of the Institution also served there, i.e. a total of 26 persons were employed in health care positions.

Many detainees reported that it had been hot in the police wagon in which they had been transported to the Institution. Despite the fact that there were no safety belts in the vehicles, the detainees were made to travel with handcuffs tightly fastened forward. For the summer transport, only detainees with diabetes were allowed to have water with them. The other detainees were given lukewarm water by the guards from a water can, in dirty plastic glasses. The NPM requested the National Commander of the Hungarian Prison Service (hereinafter referred to as: the "National Commander") to take action in order to ensure that the detainees' hands only are fastened as loosely as possible during transportation, that each detainee is provided fresh drinking water in appropriate hygienic conditions, furthermore, to make sure that all the transportation vehicles are supplied with seat belts not only for the detainees but also for the accompanying staff.

In the 4-6-bed wards of the CPU, the size of living space per capita did not reach 6 square metres if 6 patients were placed there. There were not enough showers in the building, ventilation did not function in the lavatories, the toilet lids were broken or missing, and bedsheets were changed less often than required. The NPM asked the commander of the Szeged Strict and Medium Regime Prison to strive to ensure a space of 6 square metres for each detainee, and he made recommendations on establishing the appropriate number of showers and proper ventilation, repairing and replacing the toilet lids, as well as ensuring the change of bedding with due frequency.



**Ward at the Chronic Post-care Unit of Facility III of the Szeged Strict and Medium Regime Prison**

<sup>162</sup> See Report No. AJB-646/2019.

Some of the wards on the first floor of the CPU were isolated by bars, and in the isolated section of the corridor, as many as 14 detainees were placed. Specific instructions referred to three of them, as they posed a danger to the other detainees. The detainees placed in the wards that open onto the isolated section of the corridor were compelled to put up with numerous restrictions, which they took as a punishment. They said that they were only able to reach the staff members, who often made them wait for a long time, by shouting to them, or ringing the signal bells. As the preventive measure applied by the Institution is “detention within detention”, the NPM requested the Minister of Justice to investigate, by involving the Minister of the Interior, whether the possibility, conditions and guarantees of the above-mentioned isolation of some detainees were properly regulated by the effective law. The NPM asked the commander of the Szeged Strict and Medium Regime Prison not to place any detainees in the sector separated by bars until the statutory criteria of such measure are clarified.

The concrete tiles of the path leading up to the exercise area were broken, so the detainees with reduced mobility were only able to get there with serious difficulty, or they could not reach that area at all. A detainee reported that in lack of a sufficient number of staff, who could have accompanied him to the exercise area, the first time that he could take a walk was five months after he had been transported to the Institution. The NPM asked the commander of the Szeged Strict and Medium Regime Prison to endeavour to increase the number of his staff and to take care of the renovation of the road leading up to the exercise area.

The patients of the CPU did not know the patients’ rights representative and the responsibilities of the latter, despite the fact that contact details were displayed on the notice board. The findings of the investigation suggest that the patients’ rights representative was only available to the patients of the CPU at special request. The detainees could not make it to the consultation hours of the patients’ rights representative that were held in Szeged, outside the Institution. In order to remedy the situation, the NPM asked the rights protection commissioner of the Integrated Legal Services Office of the Ministry of Human Capacities to urge the patients’ rights representative to visit the patients at the CPU at least once a month, furthermore, to inform them of how they can turn to the patients’ rights representative, in cooperation with the commander of the Szeged Strict and Medium Regime Prison.

## ***9.2. Police custody***

The NPM paid an unannounced visit to three places of detention in Nógrád County: the County Holding Facility of the Nógrád County Police Headquarters (hereinafter referred to as: the "County Holding Facility"), the Custody Unit of the Salgótarján Police Department, as well as the Custody Unit of the Balassagyarmat Police Department.<sup>163</sup>

There is a capacity of 51 places in the 17 cells of the County Holding Facility. At the time of the visit, there were 12 persons at the place of detention, occupancy was 23.52%. At the time of the visit, one minor was admitted to the Custody Unit of the Salgótarján Police Department, which is in the same building as the County Holding Facility. The average annual utilisation rate was 19.28%. At the time of the visit, no detainee was staying in the Custody Unit of the Balassagyarmat Police Department. The average utilisation rate of the custody unit was 3.1% in the previous year.

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<sup>163</sup> Report No. AJB-1774/2019.

The staff of the County Holding Facility caused an impropriety related to the right to privacy and family life, as well as to contact: whereas the police notified, *ex officio*, the guardian of a detainee under legal age, in compliance with the statutory requirements, they failed to inform his mother, despite the detainee's request.<sup>164</sup> In order to prevent similar situations, the NPM asked the head of the Nógrád County Police Headquarters to take relevant actions.

The detainees were not appropriately informed either at the County Holding Facility, or at the Custody Unit of the Salgótarján Police Department. The written information materials were handed over, and the relevant documents were signed, but in most cases, the detainees were not verbally informed of what they were signing. The foreign language information leaflet that is regularly used for non-Hungarian detainees at the Custody Unit of the Balassagyarmat Police Department contains many references to laws that were overruled several years ago. The NPM asked the head of the Nógrád County Police Headquarters to take action to ensure that appropriate information is provided to the detainees at the police stations that are subordinated to him.

At the County Holding Facility, the level of urgency of the detainees' health-related complaints was always determined by the police staff on duty. It raised concerns that the detainees who reported mental health problems were placed in a common cell. The medical expert who took part in the visit said that the tranquillizers and sleeping pills that were rationed to the detainees by the prison wards at the County Holding Facility without any supervision by doctors were particularly addictive, and their taking may trigger serious side effects. Therefore the NPM asked the head of the Nógrád County Police Headquarters to review the provision of detainees with tranquillizers and sleeping pills.

At the County Holding Facility, the "exercise areas" that were built for ensuring some fresh air time for the detainees were, in fact, closed wings of buildings on the floor of the holding facility where the windows had been replaced by bars. The size and design of these areas did not allow the detainees to exercise outdoors. The NPM asked the head of the Nógrád County Police Headquarters to take action for providing the detainees with an exercise area in the fresh air, which is to be ensured to the detainees by law.



**Corridor of the Holding Facility of the Nógrád County Police Headquarters**

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<sup>164</sup> Pursuant to Section 18(1) of Act XXXIV of 1994 on the Police, which was in effect at the time of the visit, "detainees must be provided an opportunity to notify one of their relatives or a third party on the condition that this does not threaten the aim of the measure. If the detainee is not in the position to enforce this right of his or her, the police shall have the obligation of notification. If the detainee is under legal age, or is under guardianship, his or her statutory representative or guardian shall immediately be notified."

It was not obvious from the reviewed escorting orders of the County Holding Facility what circumstance or behaviour had justified the application of handcuffs and body belts, or the lack of applying such in the latter case. The NPM asked the head of the Nógrád County Police Headquarters to ensure that in the case of the police units under his supervision, the escorting orders clearly specify the reason for the application of the means of restraint in each and every case.

The police wagon type Opel Movano, which was inspected by the visiting group, did not have any safety belts in the compartment seating the detainees. The NPM asked the head of the Nógrád County Police Headquarters to take measures in order to ensure the installation of safety belts in the passenger cabin of the police wagon maintained for the detainees.

At the Custody Unit of the Balassagyarmat Police Department, the members of the staff were not familiar with the rules of the special treatment of expectant mothers. The NPM asked the head of the Balassagyarmat Police Department to ensure that his subordinates master these rules.

At the Custody Unit of the Balassagyarmat Police Department, the doctor on duty examined the detainees in the custody room. During the examination, the escort guard and the coordinating officer were present as well, which jeopardized the enforcement of the prohibition of degrading treatment and the right to personal data. The NPM asked the head of the Balassagyarmat Police Department to ensure that during the medical examinations, special attention is paid to avoiding indecent situations and to preventing that the guards overhear the confidential communication between the doctor and the detainee.

At the Balassagyarmat Police Department, the visiting delegation detected grave negligence regarding the police staff members' clothes, sanitation and the objects required for civilized dining. The NPM asked the head of the police department to remedy these problems, too.

### ***9.3. Social care institutions***

The Visegrád Retirement Home, with a capacity of 50 places, run by the Visegrád Aranykor Foundation operates in a villa in the historic district near the Visegrád Castle, where there were 36 residents (2 men and 34 women) at the time of the NPM's visit.<sup>165</sup> Twenty-five of them were fully or partially independent, while ten had old-age dementia. One visually impaired resident needed special care.

The oldest resident was 88, the youngest was 54; the average age was 75 years. At the time of the visit, one woman lived together with her daughter in the Institution. Seven residents were fully, while nine were partially limited in their capacity, and they were placed under guardianship. The other residents had full legal capacity. Supporters were not assigned to any of the residents. In the case of four residents, the guardian's duties were done by a relative (one of the residents was taken care of by her own mother, who also lived in the Institution), while the other residents had professional guardians. Three persons acted as professional guardians with regard to residents under guardianship living at the Institution.

On the first floor of the building, there is an entrance hall and a manager's room, next to which there is a kitchen. At the same place, there is a spacious, finely furnished dining room, from which

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<sup>165</sup> See Report No. AJB-662/2019.

there is a beautiful view on the River Danube through the glass side wall. In the library behind the entrance hall, there is a television set, and comfortable armchairs next to the books. This room opens onto a bathroom and toilet for residents and a large community room. The majority of the residents' rooms were on the 2nd and 3rd floors of the building, with a view on the hills or the River Danube. Most of the residents lived alone or with one room-mate. There were only two rooms which had three residents each. Some of the rooms also had an own bathroom. The majority of the showers were in good condition.



**View of the River Danube at the Visegrád Aranykor Foundation Retirement Home**

The residents were generally admitted to the Institution at the joint request of the residents and their relatives, since the families could not take continuous care of the elderly persons who had either medical conditions, or were not able to fend for themselves. Typically, it was the relatives who contacted the Institution, but the persons to be taken care of also gave their consent to moving to the Institution. Prior to admission, the staff members of the Institution visited the person to be taken care of in their homes and they documented their individual care needs.

The residents had three meals a day. The number of meals provided by the Institution and the calorie values indicated in the menus did not comply with the requirements set out in EMMI (Ministry of Human Capacities) Decree No. 37/2014 (IV. 30.) on nutritional standards for public catering, which caused an impropriety regarding the right to legal certainty arising from the rule of law as set out in Paragraph (1), Article B) of the Fundamental Law of Hungary. The NPM called the attention of the Institution to the fact that they should ensure the calorie intake defined for each age group of the residents by three main meals and two small meals a day, and that they should indicate this on the menus. The dishes that were tested by the dietitian expert were savoury.

During the consultation hours at the Institution, the physician examined only those residents regarding whom the nurses reported a problem, and he did not pay any attention to those who had no specific symptoms, or a health problem that would have required immediate attention. With regard to the fact that the Institution hosts elderly persons with locomotory or other conditions, most of whom regularly take medication, regular medical check-ups should be ensured to each resident in order to monitor, maintain and improve their condition. The NPM suggested that during his consultation hours, the doctor should regularly check the general medical condition of the other residents, too, besides that of the residents who have specific complaints.

Based on the complaint of one of the residents, there might have been a case of an infectious skin condition called scabies. As a response to the inquiry made by the NPM, the Szentendre District Office of the Government Office of Pest County, as well as the Government Office of the Capital



City Budapest conducted an on-site inspection at the Institution. On the day of the inspection held by the government offices, no scabies-related skin lesions could be detected on the skin of the six affected residents; however, one of the residents seemed to have an older infection, which had been overtreated. The Institution had no nursing professional protocol for this condition, nor did they have any regulations regarding the nursing documentation, so the daily nursing and care records and the logbooks were schematic and incomplete in the case of the residents examined. With a view to remedying these deficiencies, the Government Office formulated actions and proposals for the Institution, the implementation of which was examined in the form of a follow-up inspection by the staff members of the nursing superintendent team. The inappropriate treatment of the skin disease that was experienced by the residents of the Institution, as well as the lack of nursing documentation caused an impropriety regarding the right of the residents to mental and physical health.

Apart from the common singing after breakfast, the Institution did not provide regular activities for the residents, which caused a serious impropriety regarding the residents' right to human dignity.

There were only 4-5 mobile residents who were able to leave the Institution on a regular basis; they were allowed to do so any time on prior notice. Those residents who would have needed help with walking in the fresh air were not able to step out of the building at all. The fact that most of the residents continuously lived in confinement and they were given no help with leaving the building of the Institution and going outdoors, caused a grave impropriety regarding the right of the residents to human dignity, as well as to mental and physical health.

The Institution is headed by a social pedagogue. The nine-member health care staff held the following qualifications: general nurse, nursing assistant, qualified nurse, and nursing practitioner. Four of the staff members working in the above positions held no valid operating permits according to the operations registry of healthcare workers of the National Healthcare Service Centre. In addition to the nurses, two assistant nurses, four social care specialists, one social assistant, one dietitian and three kitchen aids were working at the Institution. One of the four cleaners was employed on a part-time basis. The headcount of nurses and care specialists complied with the headcount standard required for nursing and care homes for the elderly in Annex 2 of SzCsM (Ministry of Social and Family Affairs) Decree No. 1/2000 (I.7.) on the professional tasks and operational conditions of social institutions involved in providing personal care. The NPM called the attention of the head of the Institution to the fact that each member of the professional health care staff should comply with the job requirements of the operations registry of healthcare workers; moreover, the completion of the courses necessary for their further professional training, as well as for achieving the missing credit scores should be ensured.

There was no supervision available for the staff. The difficulties of this job involving a high level of physical and emotional stress are shown by the tendency that, apart from the "core staff" of eight persons, who had been working there for a long time, the new arrivals only stayed for a few months, i.e. there had been a continuous turnover in this part of the staff in the period preceding the visit. The NPM called attention to the fact that supervision must be provided for employees working in physically and mentally demanding jobs of responsibility in order to prevent burnout and to support the mental health of the employees.

#### *9.4. Healthcare institutions*

At the time of the NPM's visit, the Szekszárd-based Balassa János Hospital of Tolna County (hereinafter referred to as: the "Hospital") provided psychiatric care with 89 places. At the time of the visit, there were 61 patients at the acute care and rehabilitation department and 7 patients in the 12-bed daytime sanatorium; occupancy was at 76.4%.<sup>166</sup>

The patients' right to self-determination and legal remedy were violated by the fact that the reason for medical treatment was not indicated in many patient admission forms, and in some other cases, the signatures of the patients and those persons who were authorized to make statements were missing. It was concluded by the NPM that it jeopardizes the enforcement of the patient's right to human dignity, as well as to self-determination if it is not clear prior to a medical intervention whom it was initiated by and whether all the necessary information was provided. The failure to provide information to a patient and the lack of an application, to be signed by at least the guardian, caused an impropriety regarding the right to human dignity. At the initiative of the NPM, the Hospital management called the attention of the staff members concerned to the importance of performing their tasks regarding the regular maintenance of health care documentation without any deficiencies.

The placement conditions of the patients on the renovated first floor were appropriate. In some of the wards of the second floor, patients had limited space to move around. Despite the fact that the Hospital provided numerous opportunities for occupying and developing the patients, and maintained exemplary relations with the NGOs of the city, several patients complained that they could not go outdoors from the second floor of the building. In lack of air-conditioning and shading, tolerating the temperature caused by strong sunshine was difficult not only for the patients, but the staff also struggled with working in such conditions. The lack of safety glasses and/or bars preventing breakout was dangerous for the physical integrity of the detainees. The mixed-gender use of the lavatories jeopardized the right to human dignity, and the lack of basic sanitation products (i.e. toilet paper, hand disinfectants) could potentially lead to infections. The NPM recommended that the Department of Psychiatry organize regular walks and outdoor activities for the acute patients.

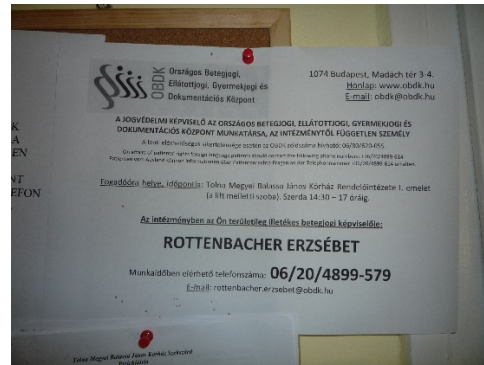
Placing agitated and demented patients in the same ward increased the chances of the eruption of conflicts between the patients. Several patients complained that they had been placed in the same ward with patients with end-stage conditions. The act of changing the diapers of helpless patients in front of other patients violated the decency of both the persons concerned and the eye-witnesses, which caused an impropriety with regard to the right to human dignity.

Some patients complained about the quantity of food. The staff members indicated that a 2017 internal audit report had already established that the quantity of the food provided by the Hospital was low, and the patients of the Department of Psychiatry hardly ever received any extra food from their family. The patients' sense of hunger was only increased by the fact that food was distributed three times a day, so they received their morning and afternoon snacks along with their main meals. Psychiatric patients may feel confused and disoriented in time, thus they cannot be expected to ration the food that they have received.

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<sup>166</sup> Report No. AJB-615/2019.

No patients' rights representative visited the Department of Psychiatry. The NPM asked the Minister of Human Capacities to propose the amendment of Section 9(1) of Government Decree No. 381/2016 (XII.2.) on the Integrated Legal Services Office, to ensure that the right of patients to complain is enforced. The amendment of the law proposed by the NPM is aimed at achieving that the patients' rights representative is obliged to hold consultation hours at predefined times at those inpatient departments which the patients are not allowed to leave of their own will.



**The patients are not allowed to leave Unit 'A' of the Department of Psychiatry, they cannot keep their mobile phones, so they cannot reach the patients' rights representative either, i.e. their right to complain is not ensured.**

The staff members of the Department of Psychiatry were in compliance with the statutory requirements regarding the performance of their tasks. The patients were served by 5 specialist medical doctors, 2 resident medical doctors, 5 psychologists, 3 qualified social workers, 3 health care administrators and 38 nurses. There was only one nurse with a BSc degree at the Department of Psychiatry, and only one quarter of the rest of the staff held qualifications as psychiatric-mental health nurses. In order to preserve the physical and mental well-being of the employees, to reduce the risk of burnout, furthermore, to moderate the high rate of turnover, the management of the Hospital introduced a matrix-type work regime for the employees working at the individual departments, as well as relaxation opportunities, high-standard further training sessions and professional events.



**Relaxation room available for the patients and staff members at the Department of Psychiatry**

## 10. Dialogue about the measures taken by the NPM

Pursuant to Article 22 of OPCAT, “*the competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures*”.

In lack of OPCAT requirements concerning the dialogue between the NPM and the competent authorities, the fundamental principles defined by the Subcommittee on Prevention of Torture shall have governing effect with regard to the above-mentioned question.<sup>167</sup> The NPM

- should maintain a constructive dialogue with the “*governmental authorities and the directors/ managers of the places of detention concerned*” on the possible implementation of the recommendations,<sup>168</sup>
- “*should establish a mechanism for communicating and cooperating with relevant national authorities on the implementation of recommendations*”;<sup>169</sup> including through urgent action procedures,
- The dialogue “*should involve both written and oral exchanges.*”<sup>170</sup>

Although the implementation of the measures proposed by the NPM is not mandatory, the provisions of the Ombudsman Act oblige the addressees of the measures to give meaningful responses to the improprieties exposed during the inspections and the initiatives taken for the elimination of the threat thereof. Engaging in a continuous and constructive dialogue aimed at following up the implementation of recommendations is a statutory obligation of not only the NPM but also the heads of places of detention, authorities and other organs concerned. The dialogue between the NPM and the recommendations’ addressees is conducted by using the report as a platform. The ways of following up recommendations, including the time limits for giving a response, are regulated in detail by the Ombudsman Act.<sup>171</sup>

The major legal guarantee of the dialogue is represented by the requirements set out in Section 38(1) of the Ombudsman Act. Pursuant to the above-mentioned section of the law, the authority subject to inquiry or its supervisory organ fails to form a position on the merits and to take the appropriate measure, or the Commissioner for Fundamental Rights does not agree with the position or the measure taken, he/she shall submit the case to Parliament within the framework of his/her annual report, and may – with the exception of those contained in Subsection (2) – ask Parliament to inquire into the matter. If, according to his/her findings, the impropriety is of flagrant gravity or affects a larger group of natural persons, the Commissioner may propose that Parliament debate the matter before the annual report is put on its agenda. The Parliament shall decide on whether to put the matter on the agenda.

The NPM first carries on a written dialogue with the addressees of his measures, in which he also involves the supervising authority if necessary. The dialogues may also include oral coordination meetings. Thus, for example, the Minister of Justice, with the participation of the staff members authorized to perform the tasks of the NPM, established an interprofessional work group for the

<sup>167</sup> Paragraph (iii), Section 1, Article 11 of OPCAT.

<sup>168</sup> SPT: *Analytical self-assessment tool for National Preventive Mechanisms* (Clause 34 of CAT/OP/1/Rev.1) <https://undocs.org/CAT/OP/1/Rev.1>

<sup>169</sup> SPT: *Analytical self-assessment tool for National Preventive Mechanisms* (Clause 42 of CAT/OP/1/Rev.1) <https://undocs.org/CAT/OP/1/Rev.1>

<sup>170</sup> SPT: *Analytical self-assessment tool for National Preventive Mechanisms* (Clause 34 of CAT/OP/1/Rev.1) <https://undocs.org/CAT/OP/1/Rev.1>

<sup>171</sup> Sections 31–38 of the Ombudsman Act.

review and remedy of the systemic problems of involuntary treatment,<sup>172</sup> in response to the recommendations made in the report on the NPM's visit to the Forensic Psychiatric and Mental Institution.<sup>173</sup>

### ***10.1. Responses to the initiatives taken after prison visits***

#### *10.1.1. Visit to Facility I of the Budapest Remand Prison<sup>174</sup>*

On its visit to Facility I of the Budapest Remand Prison, the NPM was joined by the SPT's delegation visiting Hungary as an observer.<sup>175</sup> The utilization rate of the Budapest Remand Prison was 168% at the time of the visit.

Several detainees reported that some of their peers had been handcuffed by the wrist to one of the radiators in the corridor. Having examined the spot of the alleged fastening, all that the visiting delegation saw was that the paint was worn off from the pipe of the radiator. In order to clarify the statements made by the detainees, the NPM examined several video recordings made at randomly chosen times. One of these showed a detainee being handcuffed to a radiator in the corridor, then a head protector was put on his head. It was clear from the recording that the sight of a person handcuffed to the radiator for the approximately 30-minute duration of the action did not surprise the other persons passing him by in the corridor at all. In response to the NPM's question, the commander of the Institution said that the prison guards had fastened the detainee visible in the recording to the radiator in order to prevent self-harming behaviour and a potential attack.

Since the subsequent investigation into the matter was beyond the NPM's competence, he turned to the General Prosecutor to request such an investigation. The practice applied in the Institution, i.e. the handcuffing of the detainees to objects, was examined by the Budapest Office of the Prosecutor General, based on the data available of such cases in 2017 and 2018, in the framework of a comprehensive compliance review. The prosecutor's office established that in the period under review, it happened several times that the prison wards handcuffed some detainees to different objects, and during that period they had to wear head protectors. The Budapest Office of the Prosecutor General asked the commander of the Institution to take measures for the termination of this practice, which violated the law.

After receiving the conclusions of the Budapest Office of the Prosecutor General, the NPM proposed that the National Commander of the Hungarian Prison Service terminate the practice of fastening detainees to objects. In his response, the National Commander of the Hungarian Prison Service emphasized that handcuffing any detainee to objects is appropriate only, even in a justified case, if the prevention of the self-harming, attack or escape of the detainee, the breaking of his resistance, or the successful completion of the measure cannot otherwise be ensured. In order to apply a gradual approach and a uniform implementation practice, the organization of the

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<sup>172</sup> Report No. AJB-766/2017.

<sup>173</sup> See: The 2018 Comprehensive Report of the Commissioner for Fundamental Rights on the Activities Performed by the OPCAT National Preventive Mechanism, Chapter 10.2.

<https://www.ajbh.hu/documents/10180/2809026/2018.+évi+átfogó+jelentés+végleges.pdf>

<sup>174</sup> Report No. AJB-501/2018. The documents generated as a result of the dialogue related to the report are filed in the Office under No. AJB-501/2018 and No. AJB-642/2019.

<sup>175</sup> SPT Visit to Hungary undertaken 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism (Clauses 43–48 of CAT/OP/HUN/R.2).

Hungarian Prison Service supplemented the Safety Regulations of the penitentiary institution, and furthermore, promised to make sure that the enforcement of the guarantee elements is controlled.

According to the information provided by the commander of the Institution, the bathrooms were fully refurbished, and the deficiencies in the cells were corrected. In addition to continuous pest control, bedbugs are eradicated in all the cells twice a year. In his response to the recommendation regarding the prevention or exploration of sending or taking prohibited items such as pointed or edged tools to the Institution, the commander indicated that he had had the reception procedure of the detainees reviewed, and this procedure was modified by extending and relocating the detainees' waiting rooms and frisking rooms, as well as by the application of new security techniques, and his staff members now regularly perform safety checks.

The NPM requested the commander of the Institution to ensure that the prison guards use an appropriate tone when talking to the detainees and that they respond to their signals in due time. The commander indicated that the treatment of and communication with the detainees are not only the subject of regular training programmes but they are also in the focus of executive control. As a result of reviewing the activities organized for the detainees, the reintegration officers now plan a wide range of events for the detainees, which require their involvement.

The NPM asked the Minister of Human Capacities, by involving the Minister of Justice and the Minister of the Interior, to inquire into the possibilities of regulating the nutritional provisions regarding food supplied in the framework of organized catering and regular meals, as well as the personal requirements for catering, diet planning and the preparation of dietetic food, and the rules of official control in the form of a decree, in compliance with Note sz), Section 247(2) of Act CLIV of 1997 on Health. In its response, EMMI (the Ministry of Human Capacities) said that the preparation of the decree regulating the catering provided to the inmates had commenced. In the framework of this preparatory work, the Ministry wishes to hold coordination talks on the nutritional standards with the Ministry of the Interior.

#### *10.1.2. Visit to the Chronic Post-care Unit of Facility III of Szeged Strict and Medium Regime Prison<sup>176</sup>*

There were 14 detainees in the wards opening onto the section of the first floor corridor isolated by bars in the Chronic Post-care Unit of Facility III of Szeged Strict and Medium Regime Prison. The NPM asked the Minister of Justice to examine whether the placement of the detainees in the section of the corridor isolated by bars had its statutory conditions and guarantees, furthermore, he asked the commander of the Institution not to place any inmates in that sector until the legal basis of such a measure has been clarified.

The commander of the Institution informed the NPM that he endeavoured to ensure an area for the detainees which is in compliance with the international hospital standards, as long as this does not hinder the treatment of and the care provided to the patients from a medical and health care perspective. An action plan for the correction of the above-mentioned deficiencies has been prepared.

The NPM asked the rights protection commissioner of the Integrated Legal Services Office of the Ministry of Human Capacities to urge that the patients' rights representative visit the CPU at least once a month, furthermore, to inform the detainees of how they can reach the patients' rights representative, in cooperation with the commander of the Institution. The commander of the Institution agreed with the recommendation proposing regular visits by the patients' rights

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<sup>176</sup> Report No. AJB-646/2019. The documents generated as a result of the dialogue related to the report until 31 December 2019 are filed in the NPM's Office under no. AJB-646/2019.

representative. The rights protection commissioner indicated that they would incorporate the monthly visits to the Institution into the professional protocol of the Integrated Legal Services Office.

In the opinion of the Minister of Justice, the statutory conditions for isolating the detainees in the section of the corridor closed by a bar exist, and this measure was regarded as lawful and necessary by the commander of the Institution as well. In the opinion of the commander, there are no statutory obstacles to the installation of bars separating the section of the corridor in question; its use will create further possibilities for the differentiated placement of the inmates. The NPM thinks that the statutory provisions specified as the legal basis for placing the detainees in the sector of the CPU separated by bars are deficient, this is why he considered that the legal regulation should still be reviewed. In his response, the Minister of Justice informed the NPM that, in consequence of the measure taken by the Ministry of the Interior, who is responsible for law enforcement, the placement of the inmates in the section of the corridor separated by bars will depend on the classification of the detainees in security risk groups in the future. In the opinion of the Minister of Justice, it serves as a sufficient guarantee that the decisions on classifying an inmate into a higher security risk group, against which the detainee may apply for legal remedy, should precede their placement in each case. The NPM accepted the response.

The NPM asked the National Commander of the Hungarian Prison Service to take action in order to ensure that in the course of their transportation, the hands of the detainees are fastened only to the necessary extent, that they are provided fresh drinking water, and to make sure that there is a sufficient number of safety belts in all the transportation vehicles for both the detainees and the accompanying staff. The commander of the Institution called the attention of the personnel to the fact that the detainees should be supplied with fresh drinking water during their transportation, for which new water transportation vessels were purchased. The commander thinks that despite the fact that the safety belts are missing from the transportation vehicles, the Institution organized the weekly rounds of the countrywide transportation of the inmates by using vehicles in compliance with the statutory requirements. In the NPM's opinion, should there be an unexpected accident during transportation, the physical integrity of neither the accompanying staff nor the detainees would be properly ensured – this is why *he still maintains his recommendation regarding the installation of safety belts*.

### 10.1.3. Visit to the Márianosztra Strict and Medium Regime Prison <sup>177</sup>

At the time of the visit to the Márianosztra Strict and Medium Regime Prison (hereinafter: the “Strict Regime Prison”), there were as many as 624 detainees in the institution with a holding capacity of 524 detainees. The rate of utilization was 119.08%.

The NPM asked the National Commander of the Hungarian Prison Service to ensure that the Strict Regime Prison provide a living area for the detainees as required by the respective laws<sup>178</sup> and international<sup>179</sup> standards. The National Commander of the Hungarian Prison Service said that the

<sup>177</sup> Report No. AJB-474/2018. The documents generated as a result of the dialogue related to the report are filed in the NPM's Office under No. AJB-474/2018 and No. AJB-168/2019.

<sup>178</sup> Pursuant to Section 121(1) of the Decree of the Minister of Justice No. 16/2014 (XII. 19.) on the Detailed Rules of Confinement Replacing Prison Sentencing, Confinement, Pre-trial Detention and Disciplinary Fines, detainees sharing a cell shall be provided a living space of at least 4 m<sup>2</sup> per person, and according to Subsection (2), “*when calculating the living space, the area occupied by the sanitary facilities (...) must be subtracted from the floor area of the cell or the living quarter*”.

<sup>179</sup> According to Clauses 9 and 10 of the Living space per prisoner in prison establishments: CPT standards [CPT/Inf (2015) 44], the minimum standards should be at least four square metres of living space per person in a multiple-occupancy cell excluding the area taken up by the sanitary units. <https://rm.coe.int/16806ccc449>

organization of the prison service regarded the increase of prison space as a priority task. The overcrowdedness is expected to decrease with the opening of new facilities. The commander of the Strict Regime Prison reported that the lavatories had been isolated in the cells occupied by several inmates. The water pipe system of the Strict Regime Prison does not ensure hot water supply in the cells, but the inmates are allowed to use water heaters. The NPM acknowledges the responses given by the National Commander and the commander of the Strict Regime Prison.

As a result of the 12.5% headcount deficit with regard to the line officers, the number of detainees per capita, as well as the number of overtime hours were high at the Strict Regime Prison. The NPM proposed that the National Commander consider an increase in the number of positions with a view to raising the headcount of the health care staff and the psychologists, and the commander of the Strict Regime Prison ensure the filling of the vacancies. The National Commander mentioned that they were planning to set up departments of psychology and introduce positions of qualified psychological assistants in all the penal institutions of the country. The National Commander endeavours to fill the vacancies by continuous recruiting, as part of which, in addition to the job advertisements posted on the job portals, they also hold career orientation presentations at the trade schools in the neighbourhood of the Strict Regime Prison. In order to retain the staff members, in addition to the continuous improvement of service and work conditions, events meant to raise the morale of the staff are organized.

It raised concerns that when a detainee was placed in a security isolation ward, i.e. in a padded cell for security purposes, the measure was applied by using handcuffs and body belt. The NPM requested the competent public prosecutor, through the Prosecutor General, to investigate into the practice of the joint application of the security isolation ward and further security measures. The investigation conducted by the prosecutor general did not expose any violations of the law.

The self-harming act of a detainee – who had previously been placed in the security isolation ward –, which was committed during the visit, brought to light a systemic problem. Having reviewed the requirements regulating the solitary and isolated confinements, it became obvious that prior to the application of certain types of these placements, the mental and physical conditions of the detainees are not examined at all, and it also raised concerns whether their conditions were appropriately assessed. The NPM asked the Minister of Justice to review this regulation by involving the Minister of the Interior. From the review of the regulation, which was performed with the involvement of the Hungarian Prison Service Headquarters, it was concluded that the problem can be remedied<sup>180</sup> by amending certain BVOP (Hungarian Prison Service Headquarters) special orders, which in fact happened in the first half of 2019.

In connection with the treatment provided to sexual criminals, the NPM underlined that the scope of criminal acts specified as the condition for participation is different for convicts and those held in pre-trial detention.<sup>181</sup> The NPM asked the Minister of Justice to review the statutory regulation

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<sup>180</sup> Special order of the National Commander of the Hungarian Prison Service No. 26/2015 (III.31.) OP on the issuance of the Security Regulations of the prison organization; special order of the National Commander of the Hungarian Prison Service No. 16/2017 (II.6.) OP on the health care services provided to the convicts detained in penal institutions and persons detained under other legal titles; special order of the National Commander of the Hungarian Prison Service No. 25/2017 (II.14.) OP on the administration of the disciplinary cases of the detainees placed in penal institutions; as well as special order of the National Commander of the Hungarian Prison Service No. 27/2017 (II.15.) OP on the tasks related to the prevention of the detainees' suicidal acts.

<sup>181</sup> According to the legislation in force at the time of the visit:

Section 132 of the Prison Code: *“If the convicted person has committed a criminal offence specified in Chapter XIX of the Penal Code against a person under eighteen years of age, or the sexual motive can be established from the circumstances in which the violent crime was committed against a victim under eighteen based on a risk assessment examination, then following the admission of the convicted person, the probability of the convict committing similar crimes after his or her release must be assessed. In case of potential recidivism,*



in cooperation with the Minister of the Interior, and to eliminate any unjustified differences. After this review, the Minister of Justice decided to investigate into the possibilities of the elimination of unjustified differences when the Prison Code is next amended.

The NPM asked the Minister of Human Capacities to review the requirements regarding the catering provided to the detainees, by involving the Minister of the Interior and the Minister of Justice, and that he create the decree-level regulations in compliance with the provisions set out in<sup>182</sup> Section 247(2)sz) of Act CLIV of 1997 on Health. The reasons of the NPM for the modification of the requirements regarding the catering provided to the detainees were accepted by EMMI (the Ministry of Human Capacities) and it was also promised that they would hold further coordination talks with the Ministry of the Interior about the incorporation of the rules set out in the BVOP special order<sup>183</sup> into a ministerial decree.

The NPM asked the managing director of the group of companies that belong to the penal institutions called Bv. Holding Kft.<sup>184</sup> to take the appropriate measures on account of the occasional failure to use protective equipment in the course of the employment of the detainees, as well as the poor conditions experienced in the lavatories and the dining halls. The managing director remedied the problems.

The NPM requested the Commander of the Strict Regime Prison to ensure that the abuse between the detainees be prevented, and the racist utterances by the personnel be eradicated. The action plan prepared by the commander paid special attention to the selection of the persons to be placed in the cells, as well as the separation of the detainees from each other. The management of the Strict Regime Prison draws the attention of the staff members to the right service conduct in order to prevent racist utterances, in the form of regular training and briefing sessions. The commander promised to investigate into violent actions and instances of inappropriate behaviour, and to propose disciplinary and criminal procedures.

Some of the visitors of the detainees were checked by the personnel by exceeding the statutory frameworks of searching clothing, by reviewing the women's underwear in several cases,<sup>185</sup> in consequence of which some visitors stopped coming to the prison. The NPM asked the commander of the Strict Regime Prison to ensure that his staff members manage the entry and search procedures of the visitors in line with the effective requirements, by respecting their human dignity. The commander indicated that his colleagues continue to search the visitors in order to prevent that prohibited objects are taken inside the Institution, if this is signalled by the technical device, but he promised to perform these precautionary actions behind curtains, by adhering to the relevant rules. The annual further training sessions also deal with the rules of access control and the attention of the guards is called to respecting the visitors' human dignity at the briefings held prior to the visits. The NPM accepted the response.

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*participation (on a voluntary basis) in psychotherapy or other trainings reducing the likelihood of repeated infringement must be offered to the convict."*

Section 394(2) of the Prison Code: *"If criminal proceedings were instituted against a pre-trial detainee for a criminal offence under Chapter XIX of the Penal Code participation (on a voluntary basis) in appropriate psychotherapy or other trainings reducing the likelihood of repeated infringement must be offered to the pre-trial detainee."*

<sup>182</sup> The Minister should establish the nutritional provisions regarding food supplied in the framework of organized catering and regular meals, as well as the personal requirements for catering, diet planning and the preparation of dietetic food, and the rules of official control.

<sup>183</sup> Special order of the National Commander of the Hungarian Prison Service No. 35/2015 (IV.28.) OP on the rules of catering and financial management.

<sup>184</sup> See: <https://www.bvholdingkft.hu>

<sup>185</sup> According to the provisions set out in Section 14(3) of Act CVII of 1995 on the Prison Service, it is the clothing and parcels of the person who wish to enter the prison building that can be checked.

The NPM turned to the National Commander of the Hungarian Prison Service to ensure the continuous training of the personnel of the prison service in order to increase their knowledge about suicide, self-harming, psychoactive substances, the prohibition of behaviours involving cruel, inhuman or degrading treatment or punishment, to develop interpersonal communication skills, to improve stress management, furthermore, to prevent burnout. According to the information provided by the National Commander of the Hungarian Prison Service, the Hungarian Prison Service Headquarters put special emphasis on the recommended topics during the centrally organized training programmes. In the course of analysing the case studies, as well as in the institutional-level training programmes, the topics of the proper treatment of the detainees and suicide prevention are of special importance. As a result of the recommendation made by the NPM, formulated in his report on the visit paid to the Szombathely National Prison<sup>186</sup>, the presentation of the relevant provisions of the United Nations Convention against Torture and the UN Convention on the Rights of Persons with Disabilities is also part of the annual training plan of the penal institutions.

### ***10.2. Responses to the measures taken by the NPM following its visits to police detention facilities<sup>187</sup>***

The NPM made an unannounced visit to three police detention facilities: the County Holding Facility of the Nógrád County Police Headquarters, the Custody Unit of the Salgótarján Police Department, and the Custody Unit of the Balassagyarmat Police Department.<sup>188</sup>

At the County Holding Facility and the Custody Unit of the Salgótarján Police Department, the detainees were provided with written information about their rights, obligations and the housing rules of the place in question, and the relevant documents were signed by them, although they were typically not provided with oral information about what they were signing. At the Custody Unit of the Balassagyarmat Police Department, the information leaflets prepared for foreign detainees in other languages contained references to several pieces of legislation which had, in the meantime, been repealed. The Nógrád County Police Headquarters obliged the police officers to supplement the written information, if requested by the detainee, with an oral explanation. The legal references made in the information leaflets prepared in foreign languages have been updated.

At the Nógrád County Police Headquarters, the police officers were informed about the measures to be taken while admitting juvenile detainees, and, following the review of the detainees' access to medicines, their attention was drawn to the proper treatment of detainees with mental issues, as well as to the tasks to be performed relative to the detainees' complaints concerning healthcare issues. In order to acquire and update the knowledge relating to the rules of the special treatment of pregnant women, a training session was organized for the staff of the police station.

Regarding the police officers' presence during the medical examination of detainees, the chief of the Nógrád County Police Headquarters indicated that his staff members had been positioned at the detention unit in a way which, in addition to ensuring respect for the detainees' personal data and the protection of the life and physical integrity of the medical personnel, guarantees their ability to take actions, as well.

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<sup>186</sup> Report No. AJB-793/2017.

<sup>187</sup> See also Chapter 9.2.

<sup>188</sup> Report No. AJB-1774/2019. The documents generated in relation to the report are filed in the Office under No. AJB-1774/2019.

At the County Holding Facility, the size and design of the exercise area established for the detainees' stay outdoors did not ensure a real opportunity for the detainees to exercise in the open air. According to the response given to the NPM's recommendation, the building of a courtyard necessary for the detainees' stay outdoors was not possible owing to the architectural characteristics of the detention facility.

In the second quarter of 2019, a training session, combined with an examination, was organized for the staff of the police station at the Nógrád County Police Headquarters on the rules of the escort of detainees and the application of means of restraint. In response to the NPM's recommendation on the installation of the missing safety seatbelts into the inspected vehicle serving for the transportation of detainees, the head of the Nógrád County Police Headquarters replied that the vehicle would shortly be replaced by a modern one.

At the Balassagyarmat Police Department, serious deficiencies were experienced regarding the police staff's clothing, hygiene and the objects required for their civilized dining. Regarding the establishment of civilized working and dining conditions, the head of the County Police Headquarters informed the NPM that the staff's working and dining conditions had been ensured, i.e. an appropriate changing room, shower, kitchen and canteen had been set up; while maintaining these civilized conditions had become a task of major importance to them.

### ***10.3. Responses to the measures taken by the NPM following its visits to social care institutions***

#### *10.3.1. Visit to the Integrated Social Care Institution of South Borsod<sup>189</sup>*

In its report on the visit to the Integrated Social Care Institution of South Borsod (hereinafter: the "Social Care Institution"), the NPM requested the Directorate-General for Social Affairs and Child Protection as the maintainer of the Social Care Institution to comply with the rules on the size of the per capita personal living space prescribed by law when accommodating residents, and to ensure that more than four persons are placed in the same room only in exceptional cases permitted by law. According to the maintainer, the per capita personal living space prescribed by law could only be provided by reducing the number of residents, but they promised that they would assess the options for installing the statutory number of lavatories. In response to the NPM's initiative on the design of conjugal rooms serving for the joint accommodation of residents having intimate relations with each other, the head of the Social Care Institution replied that the interior design of the building did not allow the establishment of such rooms.

With a view to creating appropriate living conditions for residents living with psycho-social disabilities in line with the provisions of the CRPD, the maintainer considered the options for the Social Care Institution's involvement in the Government's strategic plan regarding de-institutionalization. In its response, the maintainer indicated that the de-institutionalization plan of the Social Care Institution had been prepared for its joining the Government's strategic plan.

The director of the Social Care Institution promised that the adequate quantity and nutrient content of meals served to residents receiving a fluid diet would be supervised, and it would also be ensured that residents on a special diet keep to their diet. The House Rules of the Social Care Institution concerning the application of the means of restraint was reviewed and revised in accordance with the legislation in force, the director of the Social Care Institution promised that in the case of the

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<sup>189</sup> Report No. AJB-2479/2018. The documents generated as a result of the dialogue related to the report until 31 December 2019 are filed in the Office under No. AJB-2479/2018 and No. AJB-659/2019.

use of physical or chemical restrictive measures, the staff would pay special attention to the proper completion of the documentation prescribed by law. The Social Care Institution ensured the possibility for submitting complaints anonymously by making a complaint box available.

With regard to the provision of the number of nurses and carers corresponding to the norm concerning the number of professional staff stipulated by the law, the director of the Social Care Institution indicated that four social workers and nurses would shortly participate in a nursing training. In response to the NPM's recommendation proposing the employment of a psychologist and a physiotherapist, the director of the Social Care Institution replied that its implementation would depend on the outcome of the consultations carried out with the maintainer.

Responding to the recommendation concerning the continuous supply of occupational wear for the persons carrying out tasks in connection with personal care, the director of the Social Care Institution promised that they would take the necessary steps for its implementation. The director of the Social Care Institution endeavours to implement the recommendation on the organization of recreational programmes for the staff with the support of a foundation.

### *10.3.2. Nagymágocs Castle Home of the AranySZiget Integrated Retirement Home of Csongrád County<sup>190</sup>*

In its report on the visit to the Nagymágocs Castle Home of the AranySZiget Integrated Retirement Home of Csongrád County (hereinafter: the "Institution"), the NPM initiated that the distribution of the residential rooms be structured in a way that each resident would be ensured 6 square metres of personal living space as prescribed by law, while there would be maximum four residents living in the same room. The NPM proposed that the head of the Institution take into consideration, when assigning residents to specific rooms, their wishes concerning the person whom they would like to live with, and inform them in advance about the changes in the distribution of the rooms. According to the response given by the head of the Institution, due to the deficiencies of the historical (listed) building and its number of places, the above recommendation could only be implemented through the Institution's de-institutionalization, for which purpose they were constantly following the respective calls for application. When accommodating residents, the Institution has tried, as far as possible, to encourage the residents' option to choose rooms to the greatest possible extent. A conjugal room has been made available.

The NPM suggested that upon requesting the procedures on the placement under custodianship, the head of the Institution take into consideration that in those cases where no restriction on the capacity to act is necessary, it is possible to assign a supporter. With regard to those residents who had already been placed under custodianship, the NPM proposed that the head of the Institution provide assistance for the request of the termination of the placement under custodianship for all those for whom the maintenance of custodianship in effect is no longer justified due to the improvement in their condition. The Institution promised that they would place higher emphasis on the possibility to assign a supporter, and they would pay extra attention to assisting those residents who would become entitled to request the termination of their placement under custodianship due to the improvement in their condition.

The head of the Institution promised that they would take the residents' various tastes into consideration when composing the menu, and they would also supervise the nutrient content of the meals presented therein. The head of the Institution eliminated the use of "common" pieces of clothing, and ensured that the residents always get back their own clothes after they have been washed.

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<sup>190</sup> Report No. AJB-406/2018. The documents generated as a result of the dialogue related to the report are filed in the Office under No. AJB-406/2018 and No. AJB-421/2019.

The NPM proposed that the head of the Institution ensure the regular medical examination of the residents, as well the regular check-up of the condition of those residents who regularly take antipsychotics or antidepressants by a psychiatrist; and make sure that intramuscular injections are administered only by qualified nurses. The head of the Institution has planned to implement the recommendation concerning the hiring of a second physician by publishing a vacancy notice for the public employee physician position, or, in the case of the failure of the foregoing, by employing more physicians working with an agency contract.

While the Institution has made constant efforts to hire new employees, it has also strived to support its unqualified staff members in getting the appropriate qualifications prescribed by law. Owing to the low headcount of male personnel, the Institution was not able to fully comply with the NPM's recommendation which stated that residents in need of help with their personal hygiene should be bathed by the staff members of the same sex, if possible. The maintainer, after acknowledging the importance of hiring a psychologist, said that the budget of the Institution did not allow it even in the context of an agency contract. With regard to the recommendation on the organization of supervision for the staff, the head of the Institution informed the NPM that their colleagues held case meetings on a regular basis, and both the professional and technical staff had been provided with stress management supervision.

### *10.3.3. Visegrád Aranykor Foundation Retirement Home<sup>191</sup>*

The Retirement Home accepted the NPM's recommendation concerning the observance of the rules of concluding contracts, and in those agreements in which the signature of the resident placed under custodianship affecting the capacity to act was included, but the custodian's signature was missing, the deficiency was remedied by indicating the date of the custodian's signature.

According to the head of the Retirement Home, Decree 37/2014 (IV. 30.) of the EMMI (Ministry of Human Capacities) on the nutritional standards of public catering does not cover the institution, therefore, in his first letter, he did not accept the NPM's recommendation that stated that the residents' age-appropriate calorie intake should be ensured by providing three main meals and two snacks per day, and the calorie values should also be indicated on the menus. In his second letter, the head of the Retirement Home indicated that he had requested the statement of the Department of Methodology of the Directorate-General for Social Affairs and Child Welfare.

The head of the Retirement Home accepted the NPM's recommendation on the regular examination of the medical condition of each resident. To the recommendation of the NPM concerning the organization of the outdoor stay of those residents who are unable to leave the building on their own, the head of the Retirement Home responded that their getting out could be ensured on the terrace, by using wheelchairs. The second letter of the head of the Retirement Home in response to the NPM's recommendation initiating the varied forms of occupying the residents included all the programme options mentioned in the professional report of the Retirement Home (including reading, Bible classes, physical training, watching of request shows, classical music concerts, visits to confectioneries and museums) and holiday-related occasions (including Carnival, Mother's Day, Saint Nicholas Day, Christmas, New Year's Eve).

The Ministry of Human Capacities accepted the NPM's initiative on the amendment of Decree 1/2000 (I. 7.) of the Ministry of Social and Family Affairs on the professional duties of social institutions providing personal care and on the conditions of their operation, according to which

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<sup>191</sup> Report No. AJB-662/2019. The documents generated as a result of the dialogue related to the report until 31 December 2019 are filed in the Office under No. AJB-662/2019.

residential care homes should be required to ensure that those residents who are not bedridden can spend time in the open air on a regular basis. The Ministry of Human Capacities will complete the text of the piece of legislation accordingly at the time of its next amendment.

With regard to the NPM's recommendation concerning the hiring of an exercise therapist and an event organizer, the head of the Retirement Home indicated that, as of 1 January 2019, he employed a mental health specialist for 4 hours a day, who, in addition to organizing other programmes, held daily physical training sessions for the residents. Several residents are visited by a physiotherapist on a regular basis, while the massage of in-patients is provided by a chiropractor.

In response to the recommendation on the conditions for the participation of the staff in compulsory further trainings, the head of the Retirement Home promised that they would ensure the participation in these trainings, as well as the paid absence necessary for being able to attend them for both the healthcare and the social workers. Regarding the recreational programmes of the staff, he indicated that the personnel could also take part in the festive events and programmes of the Home, and he also provided the opportunity for excursions and other programmes, if requested.

#### ***10.4. Responses to the measures taken by the NPM following its visits to healthcare institutions***

The executive medical director of the Balassa János Hospital of Tolna County<sup>192</sup> ensured the personal space of 6 square metres per patient by the placement of a maximum of four beds in each ward. The Hospital created a separate unit for patients with dementia by relying on project no. EFOP-2.2.0-16-2016-00005 entitled “*Pszichiátriai ellátórendszer strukturált fejlesztése keretében a szakellátások minőségének és hozzáférhetőségének javítása*” [Improving the Quality and Accessibility of Specialist Care Within the Framework of the Structured Development of the Psychiatric Care System], and continued the refurbishment of sanitary units, within the framework of which lavatories separated on the basis of gender were set up. The executive medical director ordered the staff members to distribute the morning and afternoon snacks to the psychiatric patients separately from the main meals.

The NPM requested the rights protection commissioner of the Integrated Legal Services Office of the Ministry of Human Capacities to take measures in order to ensure that the patients rights representative be obliged to hold consulting hours at regular intervals in departments providing in-patient care that patients may not leave at their will. In her response, the State Secretary for Healthcare of the Ministry of Human Capacities indicated that due to their legal status and their reduced cognitive abilities, in-patients receiving acute care in a psychiatric department could exercise their right to complain only with the assistance of their relatives or the nursing staff during the period of their treatment. The NPM acknowledged the response of the State Secretary by adding that the conditions for the direct exercise of the right to complain would hopefully be provided shortly.

According to the Register kept by the National Healthcare Service Centre (hereinafter: the “NHSC”), the validity of the professional qualification of the head physician of the hospital department expired nearly two years before the NPM's visit. The NPM requested the Director-General of the NHSC to take measures in order to ensure that the medical staff with a professional

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<sup>192</sup> Report No. AJB-615/2019 on the NPM's visit to the Closed Unit of the Psychiatric Department of the Balassa János Hospital of Tolna County. The documents generated as a result of the dialogue related to the report are filed in the Office under No. AJB-615/2019.

qualification that had already expired according to the data kept in the Register do not perform tasks subject to professional qualifications independently. In his information provided to the NPM, the Director-General indicated that the NHSC would notify the persons concerned six months before the date of expiry kept in the operational register, but he had no right to sanction. However, the NHSC, in its capacity as the maintainer, should formulate control mechanisms or rules of procedure that would result in the better identification of healthcare workers without a valid operating licence.

## 11. Legislation-related activities of the NPM

Pursuant to Article 19 of the OPCAT, the NPM shall be granted power to submit “*proposals and observations*” concerning “*existing or draft legislation.*”

### 11.1. *Proposals in the NPM’s reports*

Preventive monitoring visits also cover the practice-oriented review of legal regulations applicable to the operation of the given place of detention; therefore, the NPM, primarily through presenting his observations and impressions from his visits, and via his legislative proposals based on their critical evaluation, promotes domestic legislation.<sup>193</sup> If instances of ill-treatment or the threat thereof uncovered during the visits can be attributed to a superfluous, ambiguous or inappropriate provision of a piece of legislation, or to the lack or deficiency of the legal regulation of the given matter, the NPM may propose that the piece of legislation in question be modified, repealed or prepared.<sup>194</sup>

In his reports on the NPM visits published in 2019, the Commissioner for Fundamental Rights made 4 legislative proposals.

### 11.2. *Ex-post review of norms*

If, in the course of its inquiries, the NPM finds that a fundamental rights-related impropriety is caused by a conflict between a self-government decree and another legal regulation, it may request the Curia to review the self-government decree’s compatibility with the other legal regulation.<sup>195</sup> If a legal regulation is in violation of the Fundamental Law or an international treaty, the NPM may request the Constitutional Court to review it.<sup>196</sup>

In 2019, as part of fulfilling his responsibilities as the NPM, the Commissioner for Fundamental Rights did not request an ex-post review of norms either from the Curia or the Constitutional Court.

### 11.3. *Powers related to draft legislation*

Pursuant to Section 2(2) of the Ombudsman Act, the Commissioner for Fundamental Rights shall give an opinion on the draft legal rules affecting his tasks and competences, and may make proposals for the amendment or making of legal rules affecting fundamental rights and/or the expression of consent to be bound by an international treaty.

In order to let the National Preventive Mechanism exercise his power to make proposals, the State has to submit, ex officio, in their preparatory phase, all draft legislation concerning detention conditions to the National Preventive Mechanism.<sup>197</sup>

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<sup>193</sup> In his reports published in 2018, the NPM made altogether 17 legislative recommendations.

<sup>194</sup> See Section 37 of the Ombudsman Act.

<sup>195</sup> See Section 34/A(1) of the Ombudsman Act.

<sup>196</sup> See Section 34 of the Ombudsman Act.

<sup>197</sup> See Article 19(c) of the OPCAT.



According to the Act on law-making, the party drafting legislation shall ensure that any and all organizations empowered by the law to review draft legislation concerning their legal status or competence may exercise their rights.<sup>198</sup> The parties responsible for preparing legal regulations usually submit their drafts to the NPM in order to prove that they have complied with the proposals of the NPM to modify, repeal or prepare legal rules specified in its reports. The Commissioner for Fundamental Rights reviews draft legislation in a complex way, i.e. on the basis of both his experience obtained during the visits conducted in his capacity as the NPM and the conclusions of his investigations conducted in his general competence. In the course of a review, special attention shall be paid to finding out whether the proposed text of the norm is suitable for remedying the treatment criticised in the report and for preventing it from recurring in the future.

In the case of legislative concepts and draft bills relative to the application of which he has no investigative experience, the Commissioner for Fundamental Rights draws the attention of those responsible for the codification to the risks of ill-treatment and to the measures required for the prevention thereof. When reviewing draft legislation, the NPM, depending on its future visits and the conclusions of its future investigations, reserves the right to initiate the amendment or annulment of regulations which will have in the meantime entered into force.

The organs responsible for drafting and preparing legislation requested the Commissioner for Fundamental Rights to review **108** draft bills in 2019.<sup>199</sup> The remarks of the Commissioner for Fundamental Rights on the draft bills are not compelling; however, their fundamental rights protection approach may facilitate efficient codification and the elimination of eventual deficiencies or contradictions.

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<sup>198</sup> See Section 19(1) of Act CXXX of 2010 on law-making.

<sup>199</sup> In his capacity as NPM, the Commissioner for Fundamental Rights reviewed 212 draft bills in 2016, 219 in 2017, and 154 in 2018.

## 12. The NPM's international relations

In 2019, the Commissioner for Fundamental Rights and the staff members of the OPCAT NPM Department attended bilateral meetings and numerous conferences held with the participation of domestic and international organizations in which they discussed the NPM's activities.

### *12.1. Relations between the NPM and the Subcommittee on Prevention of Torture*

The Subcommittee on Prevention of Torture paid an ordinary visit to Hungary between 21 and 30 March 2017. The Commissioner for Fundamental Rights displayed the SPT's report<sup>200</sup> on the visit addressed to the National Preventive Mechanism on his Office's homepage, and responded<sup>201</sup> to the observations and recommendations of the SPT within the given time limit.

After the publication of the report<sup>202</sup>, it became possible for the NPM to apply for the fund specified in Article 26(1) of the OPCAT<sup>203</sup> in order to facilitate the implementation of the recommendations made by the SPT. The application submitted by the NPM under the title "*Interview Techniques, South-East Europe OPCAT NPM Workshop 2020 – Office of the Commissioner for Fundamental Rights (OCFR)*" was successful. The Subcommittee on Prevention of Torture supports the organization of the workshop by contributing to its costs with 10,249 USD.

### *12.2. The NPM's relations with the national preventive mechanisms of other countries*

#### *12.2.1. South-East Europe NPM Network*

The NPM has participated in the activities of the South-East Europe NPM Network (hereinafter: the "SEE Network"), whose members can more efficiently perform the task of preventing ill-treatment in cooperation with each other and by sharing their professional experience, as an observer since 2014 and as a full member since 21 April 2016.

At the 1st annual meeting of the SEE Network in 2019, which was held in Skopje, North Macedonia on 11–12 June on the topic of "*NPM Policy on Reprisals*", the participants shared their experience on the enforcement of the prohibition set out in Article 21(1) of the OPCAT.<sup>204</sup> The participants of the event presented the possible forms of reprisal that they had already experienced, as well as the possible ways of their effective prevention and management. The representative of the Subcommittee on Prevention of Torture informed the participants about the means available for the Subcommittee to provide assistance to the national preventive mechanisms in preventing and managing reprisals.

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<sup>200</sup> The unofficial Hungarian translation of report No. CAT/OP/HUN/R.2 is available at:

<https://www.ajbh.hu/documents/10180/1787026/CAT-OP-HUN-R2+HUN.pdf/>

The original English version is available at:

<https://www.ajbh.hu/documents/14315/2605713/CAT-OP-HUN-R2+ENG.pdf>

<sup>201</sup> The response of the NPM to report No. CAT/OP/HUN/R.2 is available at:

[https://www.ajbh.hu/documents/14315/2842034/SPT\\_response\\_EN.pdf](https://www.ajbh.hu/documents/14315/2842034/SPT_response_EN.pdf)

<sup>202</sup> In accordance with Article 16(2) of the OPCAT.

<sup>203</sup> The application criteria are available at:

<https://www.ohchr.org/EN/HRBodies/OPCAT/Fund/Pages/Applications.aspx>

<sup>204</sup> According to Article 21(1) of the OPCAT, "*No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.*"

At the 2nd annual meeting of the SEE Network in 2019, which was held in Skopje, North Macedonia on 2–3 October on the topic of “*Special Needs of Juveniles in Places of Detention*”, the participants adopted a statement, according to which the primary objective of the members of the SEE Network is to formulate recommendations which enforce the best interests of children through child-friendly justice.

### *12.2.2. Conferences*

On 12–13 February 2019, two staff members of the Department attended a workshop entitled “*Strengthening the Rights of Suspects and Accused in Criminal Proceedings – the Role of National Human Rights Institutions*” in Budapest, which was organized by the Ludwig Boltzmann Institute of Human Rights, the Hungarian Helsinki Committee, the Helsinki Foundation for Human Rights (Poland) and the Peace Institute (Slovenia).

On 24 October 2019, a staff member of the Department participated in a conference entitled “*Developing Guidance for NHRIs to Strengthen Procedural Safeguards*” in Vienna, which was organized by the Ludwig Boltzmann Institute of Human Rights, the Hungarian Helsinki Committee, the Helsinki Foundation for Human Rights (Poland) and the Peace Institute (Slovenia).

### *12.2.3. Bilateral relations*

On 2 December 2019, the Commissioner for Fundamental Rights travelled to Vienna, where he was received by President of the Austrian Ombudsman Board, a body performing activities as a National Preventive Mechanism, and Secretary General of the International Ombudsman Institute (IOI) Mr. Werner Amon and Member of the Austrian Ombudsman Board Mr. Walter Rosenkranz at the headquarters of the Board.

## ***12.3. International activities***

On 30 January 2019, two staff members of the Department attended the meeting held on the occasion of the visit paid by the delegation of the Committee on the Rights of Persons with Disabilities<sup>205</sup> at the Office.

On 5 February 2019, Human Rights Commissioner of the Council of Europe Ms. Dunja Mijatović paid a visit to the Office. The Head of Department gave a briefing about the experience of the NPM’s visits to the Károlyi István Child Care Centre in Fót.

The Head of Department, as an independent member delegated by Hungary, took part in the plenary sessions of the CPT on March 4–8, July 1–5 and 4–8 November 2019, and he also participated in the delegation meeting held between 30 January and 1 February 2019 on the country visits of the Committee to Georgia and the Russian Federation. The Head of Department, as a member of the CPT’s delegation, took part in the body’s country visit to Denmark on 2–12 April 2019, and attended the delegation meeting of this visit on 23–24 September 2019.

Between 4 and 6 November 2019, the Deputy Head of Department attended the festive conference organized on the occasion of the 30th anniversary of the CPT and its accompanying professional events in Strasbourg. The topic of the conference of 4 November 2019 was the safeguards of police

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<sup>205</sup> See Article 34 of the CRPD.

custody, in connection with which the Deputy Head of Department presented the working methods used by the Hungarian NPM. On 5 November 2019, the Deputy Head of Department informed the participants of the consultation organized by the civil society organization called “Association for the Prevention of Torture” that the Commissioner for Fundamental Rights, when performing his activities as National Preventive Mechanism, seeks to exercise his powers as widely as possible. In line with the expectations of the Subcommittee on Prevention of Torture, the Hungarian NPM regularly visits non-traditional places of detention (homes for the elderly, children’s homes, places of house arrest, psychiatric institutions, etc.) as well.

### 13. Media and dissemination

In addition to conducting visits, the NPM's tasks also include the publication of his opinion, conclusions, and any other relevant information that may contribute to raising social awareness.<sup>206</sup> The Commissioner for Fundamental Rights complies with this obligation primarily through displaying these information at the NPM interface<sup>207</sup> of his Office's homepage.

It remains important that the leaflets containing the key information about the activities of the NPM be available at the places of detention. The leaflets contain information for the penitentiary system, the police, the psychiatric system and the children.<sup>208</sup>

#### 13.1. Media

In 2019, the Office registered 37 independent appearances in the media in connection with the reports published as part of the activities performed by the NPM.

#### Press coverage of the NPM's activities in 2019

<i>Topic of media appearances</i>	<i>Number of independent media appearances</i>
<b>On the NPM in general</b>	3
<b>Visegrád Aranykor Foundation Retirement Home</b>	20
<b>Facility I of Budapest Remand Prison</b>	11
<b>Chronic Post-care Department of Facility III of the Szeged Strict and Medium Regime Prison</b>	2
<b>Balassagyarmat Police Department</b>	1
<b>Total</b>	<b>37</b>

The NPM's visit to the Visegrád Aranykor Foundation Retirement Home received detailed media coverage. It appeared in several news even before the publication of the NPM's report that those residents who had talked to the colleagues of the NPM had been "thrown out" from the Retirement Home.<sup>209</sup> Afterwards, it was also covered by the press that the staff members of the Retirement Home "did not want to let the colleagues of the Ombudsman enter the institution", who wanted to examine whether everything is operating there in a lawful way;<sup>210</sup> it also appeared that almost half of the medical staff had worked in the institution without a licence; some of the residents could

<sup>206</sup> SPT: *Analytical Self-assessment Tool for National Preventive Mechanisms*, (Clause 9(b) of CAT/OP/1/Rev.1) <https://undocs.org/CAT/OP/1/Rev.1>

<sup>207</sup> <https://www.ajbh.hu/opcat>

<sup>208</sup> [https://www.ajbh.hu/opcat-rovid-tajekoztatas-fogvatartottak-szamara; English version available at: http://www.ajbh.hu/documents/14315/1887891/OPCAT-NeMM\\_ENG+%282019%29.pdf/](https://www.ajbh.hu/opcat-rovid-tajekoztatas-fogvatartottak-szamara;English%20version%20available%20at%20http://www.ajbh.hu/documents/14315/1887891/OPCAT-NeMM_ENG+%282019%29.pdf/)

<sup>209</sup> *Esti Újság*: "Kidobta a lakóit a visegrádi idősek otthona, mert beszéltek az ombudsmannak." [Residents Have Been Dismissed From the Retirement Home in Visegrád as a Consequence of Talking to the Ombudsman.], [appearance: 13 February 2019] <https://estiujsg.hu/belfold/kidobta-a-lakoit-a-visegradi-idosek-otthona-mert-beszelttek-az-ombudsmannak> [downloaded on: 4 February 2020]

<sup>210</sup> *24.hu*: "Nem akarták az ombudsman munkatársait sem beengedni." [Colleagues of the Ombudsman Not Allowed to Enter.], [appearance: 4 November 2019] <https://24.hu/belfold/2019/11/04/visegrad-idosek-otthona-ombudsman> [downloaded on: 4 February 2020]

not even remember when they had been seen by a doctor for the last time; and many of them had not been outdoors for years.<sup>211</sup>

The NPM's report<sup>212</sup> on his visit to Facility I of the Budapest Remand Prison, which was published in 2018, also appeared in the press. The media reported about the fact that 258 detainees had been placed in the authorized 153-person Facility I of the Budapest Remand Prison at the time of the NPM's visit; and it also reported about the dangerous condition at the showers, and the shortage of staff.<sup>213</sup> Several detainees claimed that sometimes they had been handcuffed to the radiator, which was evidenced by a video recording. One of the inmates had been handcuffed to the radiator for almost half an hour, and a face shield had been put on his head. The governor of the Institution said that it had been necessary to prevent self-harming behaviour and a possible attack. The Commissioner for Fundamental Rights turned to the Prosecutor General.<sup>214</sup>

According to the news on the NPM's visit to the Chronic Post-care Unit of Facility III of the Szeged Strict and Medium Regime Prison<sup>215</sup> that appeared in the press, "several detainees complained about the fact that they can purchase bottled water from the prison canteen in such a limited quantity that does not last until the next shopping opportunity". The management of the Institution is aware of this problem but they reckon that it is not advisable to increase the quantity of bottled water available for purchase since there are inmates who take away the valuables of their fellow inmates. The NPM takes the view that it causes an impropriety in relation to the right to human dignity if the detainees are allowed to keep only a limited quantity of drinking water in their living quarter.<sup>216</sup>

According to the news on the NPM's visit to the Balassagyarmat Police Department<sup>217</sup>, it causes data protection-related problems that while the staff members of the Police Department use the programme named "Robotzsaru Neo", which they consider to work satisfactory, "...they have old computers which are equipped with the Windows XP operating system."<sup>218</sup>

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<sup>211</sup> *HVG*: "Többeket kiraktak egy nyugdíjas otthonból, mert szóba álltak az ombudsman munkatársaival." [Several Residents Have Been Sent Away from the Retirement Home as a Consequence of Talking to the Colleagues of the Ombudsman], [appearance: 13 February 2019] [https://hvg.hu/itthon/20190213\\_nyugdijasotthon\\_ajbh\\_ombudsman\\_legfobb\\_ugyesz\\_kormanyhivatal\\_kuratorium](https://hvg.hu/itthon/20190213_nyugdijasotthon_ajbh_ombudsman_legfobb_ugyesz_kormanyhivatal_kuratorium) [downloaded on: 4 February 2019]

<sup>212</sup> Report No. AJB-501/2018.

<sup>213</sup> *444.hu*: Márk Herczeg: "Ombudsman egy budapesti börtönről: túlszűfolttság, elhanyagolt környezet, megaláztatás és legális hangulatjavítók." [Ombudsman About a Prison in Budapest: Overcrowding, Neglected Environment, Humiliation and Legal Mood-altering Drugs.], [appearance: 8 January 2019] <https://444.hu/2019/01/08/ombudsman-egy-budapesti-bortonrol-tulzsufoltsg-elhanyagolt-kornyezet-megalaztat-as-legalis-hangulatjavitok> [downloaded on: 6 February 2020]

<sup>214</sup> *Népszava*: Dániel Juhász: "A radiátorhoz bilincseltek és ráhúztak egy fejtámlát" [Handcuffed to the Radiator, with a Face Shield on His Head], [appearance: 8 January 2019] [https://nepszava.hu/3020902\\_a-radiatorhoz-bilincseltek-es-rahuztak-egy-fejvedot](https://nepszava.hu/3020902_a-radiatorhoz-bilincseltek-es-rahuztak-egy-fejvedot) [downloaded on: 12 February 2020]

<sup>215</sup> See Report No. AJB-646/2019.

<sup>216</sup> *Szeged.hu*: "Arzénos víz miatt figyelmeztet az ombudsman a szegedi börtön gyengélkedőjén." [Ombudsman Warns of Arsenic Content of Drinking Water at the Infirmary of the Prison in Szeged.], [appearance: 5 June 2019] <https://szeged.hu/hirek/28979/arzenos-viz-miatt-figyelmeztet-az-ombudsman-a-szegedi-borton-gyengelkedojen> [downloaded on: 6 February 2020]

<sup>217</sup> Report No. AJB-1774/2019.

<sup>218</sup> *itcafe.hu*: Pál Dajkó: "A Windows XP és a magyar rendőrség" [The Windows XP and the Hungarian Police], [appearance: 17 July 2019] [https://itcafe.hu/hir/windows\\_xp\\_rendorseg.html](https://itcafe.hu/hir/windows_xp_rendorseg.html) [downloaded on: 6 February 2020]

## 13.2. Dissemination

The NPM's activities were described in the relevant academic literature as well. One<sup>219</sup> of the studies focused on the on-site inspections carried out in juvenile penitentiary institutions, while another one<sup>220</sup> proposed that the institutions for the detention of foreign people be visited more frequently. Regarding the tasks of the Commissioner for Fundamental Rights relating to the protection of children's rights, one of the studies highlighted the importance of the NPM's visits to institutions belonging to the child protection services.<sup>221</sup> An article about the need for formal partnership between civil society organizations and national preventive mechanisms, which was published on the homepage of the University of Western Australia, mentioned the Hungarian NPM as a good example.<sup>222</sup>

Purposeful dissemination is an obligation of the NPM. Educating the professionals of the future is an efficient means of disseminating knowledge. The staff members of the Department perform educational tasks in domestic higher education institutions, they deliver lectures, and publish articles in professional periodicals.

### 13.2.1. Educational activities

<i>Subject</i>	<i>Institution</i>
Seminar on Civil Law	Faculty of Law and Political Sciences of Eötvös Loránd University of Science
Chapters from the Results of Critical Criminology	Graduate School of Law Enforcement, NUPS (National University of Public Service)
Penology and Social Sciences Research in Prison	Graduate School of Law Enforcement, NUPS (National University of Public Service)

<sup>219</sup> Orsolya Czenczer: "Az alapvető jogok biztosának a Nemzeti Megelőző mechanizmus keretében végzett vizsgálatai egy bvs szemével – különös tekintettel a fiatalkorúak szabadságvesztés büntetési intézeteiben végzett vizsgálatokra." [The Investigations of the Commissioner for Fundamental Rights Conducted as Part of the Activities of the National Preventive Mechanism, Observed With the Eyes of a Person from the Penitentiary System – With Special Regard to the Investigations Carried out in Juvenile Penitentiary Institutions.] In: Miskolci Jogi Szemle, vol. XIV (2019), second special issue, first volume, pp. 135–146., [https://www.mjsz.uni-miskolc.hu/files/6546/16\\_czenczerorsolya\\_r%C3%B6rdelt.pdf](https://www.mjsz.uni-miskolc.hu/files/6546/16_czenczerorsolya_r%C3%B6rdelt.pdf) [downloaded on: 6 February 2020]

<sup>220</sup> Judit Tóth: "A hazai menekültség emberi jogi mérlege." [The Human Rights Record of the National Asylum System.] In: Renáta Kálmán – Réka Brigitta Szaniszló (eds.): Álom és valóság – Az emberi jogok teoretikus és gyakorlati megközelítésben. Collection of studies for the conference organized by the Department of Constitutional Law of the Faculty of Law and Political Sciences of the University of Szeged on 25 April 2019, pp. 85–97., [https://arsboni.hu/wp-content/uploads/2019/10/Arsboni\\_folyoirat\\_2018\\_3\\_4.pdf](https://arsboni.hu/wp-content/uploads/2019/10/Arsboni_folyoirat_2018_3_4.pdf) [downloaded on: 6 February 2020]

<sup>221</sup> Melitta Hörömpő: "A családból való kiemelés elmélete és gyakorlati megvalósulása." [The Theory and Practice of Taking Children Away from their Family.] In: Renáta Kálmán – Réka Brigitta Szaniszló (eds.): Álom és valóság – Az emberi jogok teoretikus és gyakorlati megközelítésben. Collection of studies for the conference organized by the Department of Constitutional Law of the Faculty of Law and Political Sciences of the University of Szeged on 25 April 2019, pp. 59–71., [https://arsboni.hu/wp-content/uploads/2019/10/Arsboni\\_folyoirat\\_2018\\_3\\_4.pdf](https://arsboni.hu/wp-content/uploads/2019/10/Arsboni_folyoirat_2018_3_4.pdf) [downloaded on: 6 February 2020]

<sup>222</sup> Steven Caruna: OPCAT Series: The Need for Formal Partnerships between Civil Society and the National Preventive Mechanism, <http://www.news.uwa.edu.au/2019121611777/uwa-public-policy-institute/opcat-series-need-formal-partnerships-between-civil-societ> [downloaded on: 10 February 2020]

Prison Sociology	Master course in Criminology, Faculty of Law and Political Sciences of Eötvös Loránd University of Science
Criminal Psychology	Master course in Criminology, Faculty of Law and Political Sciences of Eötvös Loránd University of Science
Macro-level, Multidisciplinary Approach to Social Issues I Violence	Institute of Mental Health, Faculty of Health and Public Services, Semmelweis University
Unaccompanied Minors in Hungary	ELTE Institute for Postgraduate Legal Studies, LL. M. programme in children's rights
Socially Efficient Attitude – Skill Development Training for Foster Parents	Training programme of the Maltese Family House Foster Network and General Directorate of Social Affairs and Child Protection
The Operation of the OPCAT NPM	Trainee programme of the Office of the Commissioner for Fundamental Rights for law students

### 13.2.2. Publications

- Margit Katalin Haraszti: *Adalékok a kínzás fogalmi elemeinek meghatározásához és értelmezéséhez*. In: Magyar Jog, issue 2019/12, pp. 714–725.
- Margit Katalin Haraszti: *Az embertelen és a megalázó bánásmód vagy büntetés definiálásának és értelmezésének irányai*. In: Közjogi Szemle, issue 2019/4, pp. 1–10.<sup>223</sup>
- Katalin Haraszti: *Immigration Detention and Effective Alternatives*. In: South-East Europe National Preventive Mechanisms Network Meeting – Immigration Detention and Effective Alternatives. Presentations of the participants. Protector of Human Rights and Freedom, Montenegro, pp. 22–25 (*in English and Montenegrin language*).<sup>224</sup>
- Krisztina Izsó: *A korlátozó intézkedésekre vonatkozó jogi szabályozás fogyatékosai, figyelemmel néhány ombudsmani vizsgálat tapasztalataira*. In: Közjogi Szemle, issue 2019/3, pp. 27–33.
- Krisztina Izsó: *Katharina Boele-Woelki – Diego P. Fernandez Arroyo (eds.): The Past, Present and Future of Comparative Law – Le passé, le présent et le futur du droit comparé (Review)*. In: Állam- és Jogtudomány, issue 2019/1, pp. 111–117.<sup>225</sup>
- Krisztina Izsó: *A gyermek önrendelkezése – egy ombudsmani jelentés margójára*. In: Magyar Jog, issue 2019/3, pp. 133–139.
- Krisztina Izsó – István Sárközy: *NPM Policy on Reprisal, Relevant Legal Rules and Experience of Visits*. In: 1st Meeting of the South-East Europe NPM Network in 2019, Skopje. Ombudsman Office of the Republic of North Macedonia; pp. 34–38 (*in Macedonian language*); pp. 101–105 (*in Albanian language*); pp. 166–171 (*in English language*).

<sup>223</sup> Available at:

[https://hvgorac.hu/tallozo/Haraszti\\_Margit\\_Katalin\\_Az\\_embertelen\\_es\\_a\\_megalazo\\_banasmod\\_vagy\\_buntetes\\_de\\_finialasanak\\_es\\_ertelmezesenek\\_iranyai](https://hvgorac.hu/tallozo/Haraszti_Margit_Katalin_Az_embertelen_es_a_megalazo_banasmod_vagy_buntetes_de_finialasanak_es_ertelmezesenek_iranyai)

<sup>224</sup> Available at: [http://www.ombudsman.co.me/docs/1571738195\\_2-publikacija---zbirka-izlaganja.docx](http://www.ombudsman.co.me/docs/1571738195_2-publikacija---zbirka-izlaganja.docx)

<sup>225</sup> Available at: <https://jog.tk.mta.hu/uploads/files/2019-01-rec2.pdf>



## 13.2.3. Presentations on the OPCAT NPM

<i>Title of presentation</i>	<i>Event</i>	<i>Date</i>
László Székely: “ <i>A Nemzeti Megelőző Mechanizmus megalapítása és működésének tapasztalatai</i> ” [The Establishment and the Operational Experience of the National Preventive Mechanism]	Academic session of the Hungarian Criminological Association	21/02/2019
Rita Rostás: “ <i>OPCAT tapasztalatok a gyermekvédelem intézményeiben</i> ” [OPCAT Experience in Child Protection Institutions]	Conference entitled “ <i>30 éves a Gyermekjogi Egyezmény</i> ” [30th Anniversary of the Convention on the Rights of the Child], Faculty of Law and Political Sciences, University of Szeged	15/04/2019
Gergely Fliegauf: “ <i>Mit jelent a büntetlenség vagy büntethetlenség (impunity) a fogvatartási helyeken?</i> ” [What Does Impunity Mean in Places of Detention?]	Professional conference entitled “ <i>Tradíció és innováció a bűnügyi tudományokban</i> ” [Tradition and Innovation in Criminal Sciences], Criminal Division of Óriás Nándor College for Advanced Studies of the Faculty of Law and Political Sciences of the University of Pécs	17/04/2019
Rita Rostás: “ <i>A Nemzeti megelőző mechanizmus tapasztalatai a gyermekvédelem intézményeiben</i> ” [The Experience of the National Preventive Mechanism in Child Protection Institutions]	“ <i>Gyerekek a társadalom peremén</i> ” [Children on the Margin of Society] – 6th Cohabitation, cooperation and tolerance event organized on the occasion of the 150th anniversary of the Budai Képző (The Buda Teachers’ Training College), Faculty of Primary and Pre-School Education, ELTE	10/05/2019
Krisztina Izsó and István Sárközy: “ <i>NPM Policy on Reprisal, Relevant Legal Rules and Experience of Visits</i> ”	1st Meeting of the South-East Europe NPM Network in 2019, Skopje, North Macedonia	11/06/2019– 12/06/2019
Gergely Fliegauf: “ <i>Special Needs of Juveniles in Places of Detention</i> ”	2nd Meeting of the South-East Europe NPM Network in 2019, Skopje, North Macedonia	01/10/2019
Gergely Fliegauf: “ <i>OPCAT NMM látogatások fogvatartási helyeken, pszichológiai vonatkozások</i> ” [OPCAT NPM Visits in Places of Detention, Psychological Aspects]	Scientific Students' Associations, Faculty of Law and Political Sciences of the Károli Gáspár University of the Reformed Church in Hungary	11/11/2019
Gergely Fliegauf: “ <i>OPCAT NMM látogatások fogvatartási helyeken – pszichológiai és társadalomtudományi vonatkozások, tapasztalatok</i> ” [OPCAT NPM Visits in Places of Detention – Psychological and Social Science-related Aspects and Experience]	“ <i>Büntetés mint következmény, a büntetés következménye</i> ” [Penalty as a Consequence – The Consequences of a Penalty], Professional day of the Debrecen Regional Court’s Working Group on Child-centred Justice	13/11/2019
Katalin Haraszti: “ <i>Kínzás, valamint a kegyetlen, embertelen vagy megalázó bánásmód vagy büntetés tilalma</i> ” [The Prohibition of Torture and Cruel, Inhuman, and Degrading Treatment or Punishment]	Department of Constitutional Law of the Faculty of Law and Political Sciences of the University of Szeged	21/11/2019

## 13.2.4. Participation of the staff members of the Department in professional events

<i>Event</i>	<i>Date</i>
Specialist training programme for psychologists on Disaster and Crisis Management, Faculty of Education and Psychology, ELTE	February–December 2019
Section meeting entitled “ <i>Családban marad? A hozzátartozók sérelmére elkövetett bűncselekmények a legújabb empirikus kutatások tükrében</i> ” [It Stays in the Family? Criminal Offence Committed Against Relatives in Light of the Latest Empirical Studies] organized by the Section of Victimology of the Hungarian Criminological Association and the Faculty of Law Enforcement of the National University of Public Service	22/02/2019
International conference organized by the Constitutional Court entitled “ <i>Constitutional EUidentity 2019 Unity in Diversity – Common and Particular Values</i> ”	08/03/2019
The introduction of Barnahus and training on child-friendly hearings, European Regional Office of Terre des Hommes	02/04/2019–04/04/2019
Panel discussion entitled “ <i>Politikáról jól vagy semmit? Gyermek a politika célkeresztjében</i> ” [Don’t Speak Ill of Politics? Children in the Bull’s Eye of Politics]	07/05/2019
Scientific and expert conference on the nearly one-year practice of arrest and the appointment of public defenders organized by the Hungarian Helsinki Committee	27/05/2019
Conference entitled “ <i>A magyar nemzeti emberi jogi intézmény szerepe a gyanúsítottak és vádlottak jogainak érvényesítésében, különös tekintettel a védőbőz való jogra</i> ” [The Role of the Hungarian National Human Rights Institution in the Enforcement of the Rights of the Suspected and the Accused, in Particular Their Right to a Public Defender] organized by the Hungarian Helsinki Committee	29/05/2019
Presentation of child psychiatrist and member of the Advisory Board of the European Association for Forensic Child and Adolescent Psychiatry Dr. Gyula Sófi entitled “ <i>A pszichopátia developmentális pszichiátriai szempontjairól</i> ” [The Developmental Psychiatric Aspects of Psychopathy]	14/10/2019
Academic session entitled “ <i>Alternatív végrehajtási lehetőségek a büntetés-végrehajtásban</i> ” [Alternative Implementation Options in Law Enforcement] organized by the Hungarian Criminological Association	17/10/2019
“ <i>A bizalom rehabilitációja</i> ” [The Rehabilitation of Trust] – the Rehabilitation Team Members’ Forum at the National Institute of Medical Rehabilitation	19/11/2019

## 14. Summary

The NPM's most important task is to regularly examine the treatment of persons deprived of their liberty in places of detention as defined in Article 4 of the OPCAT, with a view to preventing torture and other cruel, inhuman or degrading treatment or punishment, even in lack of petitions or detected improprieties.<sup>226</sup> The ultimate goal of the NPM's visits is to persuade the respective authorities and institutions to improve the effectiveness of their measures aimed at the prevention of ill-treatment.

When performing the tasks of the NPM, the Commissioner for Fundamental Rights may proceed, either personally, or through his colleagues authorized by him to carry out the tasks related to the NPM. In 2019, the Office of the Commissioner for Fundamental Rights faced two major challenges while performing the tasks related to the NPM. On the one hand, due to the lack of applicants, the two physician positions stipulated in Section 39/D(4) of the Ombudsman Act could not be filled. The physicians participating in the visits were employed on the basis of civil law contracts. On the other, the Office's relocation to temporary premises was a major challenge as well. For the duration of the refurbishment of the new facility, the Office has temporarily moved to an office complex situated in one of the hotspots of Budapest.

On average, the Department worked with nine public servant staff members. Visits were carried out by visiting delegations consisting of five to seven members. The visiting delegations of a multidisciplinary composition, in addition to maintaining gender balance, included experts in the field of protecting the rights of national and ethnic minorities.

Although the Commissioner for Fundamental Rights has to perform the tasks of the NPM independently, he received valuable support from the members of the Civil Consultative Body, consisting of organizations registered and operating in Hungary, with outstanding practical and/or high-level theoretical knowledge relative to the treatment of persons deprived of their liberty. More than one-third of the places of detention in the NPM's annual schedule of visits have been chosen on the recommendation of the members of the CCB.<sup>227</sup>

Using the data received from the competent governmental organs, the colleagues of the Department updated, as of 31 December 2018, the list of places of detention as defined in Article 4 of the OPCAT. Based on the data at the NPM's disposal, on 31 December 2018, there were **137,544 detention units** at the **3141 places of detention under Hungarian jurisdiction**.

In 2019, the NPM inspected a total of **3162 detention units at 10 places of detention**. The average utilization rate of these detention units stood at 69.2%. The visiting delegations observed the highest utilization rate, standing at 128%, at the Bács-Kiskun County Remand Prison.

Although there had been no prior notifications, the visiting delegations were given access to almost all the places of detention without delay. The visiting delegation's objective was to meet, if possible, all persons deprived of their liberty present at the given place of detention at the time of the visit. The visiting delegations inspected the premises of the places of detention, their furnishing and equipment, as well as the documents related to the number, treatment, and conditions of placement of the detainees, made photocopies of some of the documents, reviewed the activities of the

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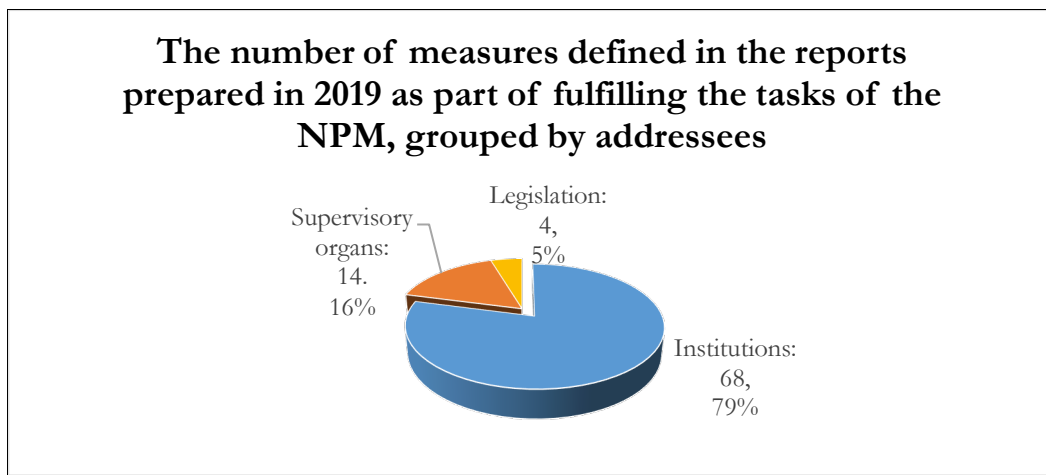
<sup>226</sup> See Section 39/B(1) of the Ombudsman Act.

<sup>227</sup> SPT Visit to Hungary undertaken 21 to 30 March 2017: observations and recommendations addressed to the national preventive mechanism (Clause 31 of CAT/OP/HUN/R.2).  
<https://www.ajbh.hu/documents/14315/2605713/CAT-OP-HUN-R2+ENG.pdf>

persons deprived of their liberty and conducted interviews with the detainees and the staff members as well. The staff members of the places of detention complied with their obligation to cooperate in performing the tasks of the NPM.

The visiting delegations did not detect any circumstances indicative of intentional abuse potentially resulting in severe physical or psychological trauma committed by the staff of the places of detention.

In the reports on his visits published as part of his activities performed as the NPM, the Commissioner for Fundamental Rights recommends taking measures aimed at eliminating and preventing the recurrence of the ill-treatment of persons deprived of their liberty. In 2019, the NPM proposed a total of **86** measures. Most frequently, in **68** cases, the NPM made recommendations to the heads of the places of detention<sup>228</sup>, in another **14** cases to the heads of the supervisory organ of the institution subject to inquiry<sup>229</sup>, and on **4** occasions, he made recommendations regarding law-making<sup>230</sup>.



The addressees of the measures studied the recommendations of the NPM, and responded on the substance within the period specified by the law. If formulating their position or implementing the NPM's recommendation did not seem possible within the deadline stipulated in the relevant provision of the Ombudsman Act, the addressees notified the NPM thereof before the deadline and requested its extension.

Maintaining a continuing and constructive dialogue serving the monitoring of the implementation of these measures is a statutory obligation of not only the NPM but also the management of the places of detention, authorities, and other organs concerned. The dialogue between the NPM and the recommendations' addressees is conducted by using the report as a platform. The ways of following up recommendations, including the time limit for responding, are regulated in detail by the law.<sup>231</sup>

Under these provisions, if the authority subject to inquiry or its supervisory organ fails to form a position on the merits and to take the appropriate measure, or the NPM does not agree with the position or the measure taken, he may submit the case to the Parliament within the framework of

<sup>228</sup> Section 32(1) of the Ombudsman Act.

<sup>229</sup> Section 31(1) of the Ombudsman Act.

<sup>230</sup> Section 37 of the Ombudsman Act.

<sup>231</sup> Sections 31 through 38 of the Ombudsman Act.

his annual report, and ask the Parliament to inquire into the matter. If the impropriety is of flagrant gravity or affects a larger group of natural persons, the NPM may propose that the Parliament put the debate of the matter on its agenda before the annual report is submitted. The Parliament shall decide on whether to put the matter on the agenda.

**The authorities or their supervisory organs under review gave meaningful responses to the measures that the NPM had defined in its reports in 2019 and no such grave infringements were uncovered by these visits for remedying which the NPM should have turned to the National Assembly.**

The NPM maintains a dialogue with the addressees of his measures mainly in writing, involving, as necessary, the supervisory organs as well. There is no legal obstacle to holding oral consultations within the framework of the dialogue.

Another form of dialogue is the follow-up visits, in the course of which the NPM tries to double-check the recommendations made in the report on the previous visit, as well as to re-examine the most problematic areas. Follow-up visits provide an opportunity to discuss the findings of the previous visit and, in their light, the practical implementation of the NPM's measures with the personnel of the places of detention. In 2019, the NPM paid a follow-up visit to the Platán Integrated Social Care Institution of Bács-Kiskun County.<sup>232</sup>

The NPM's operational costs in 2019 amounted to HUF **87,469,230**, which amount was allocated by the NPM's Office from its budget provided by the Parliament.

The Subcommittee on Prevention of Torture paid an ordinary visit to Hungary between 21 and 30 March 2017. After the publication<sup>233</sup> of the report<sup>234</sup> on the visit, it became possible for the NPM to apply for the fund<sup>235</sup> specified in Article 26(1) of the OPCAT in order to facilitate the implementation of the recommendations made by the SPT. The application submitted by the NPM under the title "*Interview Techniques, South-East Europe OPCAT NPM Workshop 2020 – Office of the Commissioner for Fundamental Rights (OCFR)*" was successful. The Subcommittee on Prevention of Torture supports the organization of the workshop by contributing to its costs with 10,249 USD.

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<sup>232</sup> [http://www.ajbh.hu/documents/10180/2953404/Platan\\_3+-+rovid+hír.pdf/](http://www.ajbh.hu/documents/10180/2953404/Platan_3+-+rovid+hír.pdf/)

<sup>233</sup> Under Article 16(2) of the OPCAT.

<sup>234</sup> The observations and recommendations of the Subcommittee on Prevention of Torture addressed to the NPM, as well as the NPM's responses thereto are available at: <http://www.ajbh.hu/en/web/ajbh-en/opcat-spt-npm-relations>

<sup>235</sup> The application criteria are available at: <https://www.ohchr.org/EN/HRBodies/OPCAT/Fund/Pages/Applications.aspx>

## Annex – Text of the Ombudsman Act

### The Ombudsman Act Act CXI of 2011 on the Commissioner for Fundamental Rights<sup>1</sup>

In the interest of ensuring the effective, coherent and most comprehensive protection of fundamental rights and in order to implement the Fundamental Law, Parliament hereby adopts the following Act pursuant to Paragraph (5) of Article 30 of the Fundamental Law:

#### *Chapter I*

#### *General provisions*

1. The tasks and competences of the Commissioner for Fundamental Rights and of his/her Deputies

**Section 1** (1)<sup>2</sup> The Commissioner for Fundamental Rights shall – in addition to his/her tasks and competences specified in the Fundamental Law – perform the tasks and exercise the competences laid down in this Act.

(2) In the course of his/her activities the Commissioner for Fundamental Rights shall pay special attention, especially by conducting proceedings *ex officio*, to the protection of

- a)* the rights of the child,
- b)* the values determined in Article *P* of the Fundamental Law (hereinafter referred to as “the interests of future generations”),
- c)* the rights determined in Article XXIX of the Fundamental Law (hereinafter referred to as “the rights of nationalities living in Hungary”), and
- d)* the rights of the most vulnerable social groups.

(3)<sup>3</sup> In the course of his/her activities the Commissioner for Fundamental Rights shall – especially by conducting proceedings *ex officio* – pay special attention to assisting, protecting and supervising the implementation of the Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007.

**Section 2** (1)<sup>4</sup> The Commissioner for Fundamental Rights shall survey and analyse the situation of fundamental rights in Hungary, and shall prepare statistics on those infringements of rights in Hungary which are related to fundamental rights. At the request of the Commissioner for Fundamental Rights, the public administration organ monitoring the enforcement of the requirement of equal treatment, the National Authority for Data Protection and Freedom of Information, and the Commissioner for Educational Rights shall supply aggregate data not containing personal data for the purpose of statistical reports.

(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.

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<sup>1</sup> Promulgated on 26 July 2011.

<sup>2</sup> Shall enter into force with the text specified in Section 6(1) of Act CXLIII of 2011.

<sup>3</sup> Shall enter into force with the text specified in Section 6(2) of Act CXLIII of 2011.

<sup>4</sup> Amended by: Section 1 of Act CLXXXVI of 2012, Section 22(6) of Act LXXXIII of 2013, and Section 146(a) of Act CIX of 2019

(3)<sup>5</sup> The Commissioner for Fundamental Rights may initiate at the Constitutional Court the review of legislation as to their conformity with the Fundamental Law, the interpretation of the Fundamental Law and, within thirty day after their promulgation, the review of the adherence to the procedural requirements stipulated by the Fundamental Law as regards the adoption and promulgation of the Fundamental Law and its amendments.

(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.

(5)<sup>6</sup> 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.

(6)<sup>7</sup> The Commissioner for Fundamental Rights shall perform the tasks related to the National Preventive Mechanism pursuant to Article 3 of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011.

(7)<sup>8</sup> With a view to the adherence to fundamental rights and a more efficient protection thereof, the Commissioner for Fundamental Rights may propose that the national police chief of Hungary, the director general of the organ in charge of internal crime prevention and criminal investigation, the director general of the counter-terrorism unit, and the director general of the Hungarian immigration office issue, amend or repeal an instruction.

**Section 3** (1) The Deputy Commissioner for Fundamental Rights responsible for the protection of the interests of future generations shall monitor the enforcement of the interests of future generations, and

*a)*<sup>9</sup> shall regularly inform the Commissioner for Fundamental Rights, the institutions concerned and the public of his/her experience regarding the enforcement of the interests of future generations,

*b)*<sup>10</sup> shall draw the attention of the Commissioner for Fundamental Rights, the institutions concerned and the public to the danger of infringement of rights affecting a larger group of natural persons, the future generations in particular,

*c)* may propose that the Commissioner for Fundamental Rights institute proceedings ex officio,

*d)* shall participate in the inquiries of the Commissioner for Fundamental Rights,

*e)* may propose that the Commissioner for Fundamental Rights turn to the Constitutional Court,

*f)*<sup>11</sup> shall monitor the implementation of the sustainable development strategy adopted by the Parliament,

*g)*<sup>12</sup> may propose the adoption and amendment of legislation on the rights of future generations, and

*h)*<sup>13</sup> shall promote, through his/her international activities, the presentation of the merits of domestic institutions related to the interests of future generations.

(2) The Deputy Commissioner for Fundamental Rights responsible for the protection rights of nationalities living in Hungary shall monitor the enforcement of the rights of nationalities living in Hungary, and

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<sup>5</sup> Established by: Section 1 of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>6</sup> Established by: Section 2 of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>7</sup> Enacted by: Section 8 of Act CXLIII of 2011. Effective: as of 1 January 2015.

<sup>8</sup> Enacted by: Section 139 of Act CIX of 2019. Effective: as of 1 January 2020.

<sup>9</sup> Established by: Section 3(1) of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>10</sup> Established by: Section 3(1) of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>11</sup> Enacted by: Section 3(2) of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>12</sup> Enacted by: Section 3(2) of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>13</sup> Enacted by: Section 3(2) of Act CCXXIII of 2013. Effective: as of 19 December 2013.

*a)*<sup>14</sup> shall regularly inform the Commissioner for Fundamental Rights, the institutions concerned and the public of his/her experience regarding the enforcement of the interests of nationalities living in Hungary,

*b)*<sup>15</sup> shall draw the attention of the Commissioner for Fundamental Rights, the institutions concerned and the public to the danger of infringement of rights affecting the nationalities living in Hungary,

*c)* may propose that the Commissioner for Fundamental Rights institute proceedings ex officio,

*d)* shall participate in the inquiries of the Commissioner for Fundamental Rights,

*e)* may propose that the Commissioner for Fundamental Rights turn to the Constitutional Court,

*f)*<sup>16</sup> shall review the Government's social inclusion strategy and monitor the implementation of its objectives concerning nationalities living in Hungary,

*g)*<sup>17</sup> may propose the adoption and amendment of legislation on the rights of nationalities living in Hungary, and

*h)*<sup>18</sup> shall promote, through his/her international activities, the presentation of the merits of domestic institutions related to the interests of the nationalities living in Hungary.

(3) If a Deputy Commissioner for Fundamental Rights proposes within his/her competence pursuant to Point *a)* of Subsection (1) or Point *a)* of Subsection (2) that the Commissioner for Fundamental Rights institute proceedings ex officio or turn to the Constitutional Court, the Commissioner for Fundamental Rights shall be bound to act accordingly or to inform Parliament in the annual report of the reasons for his/her refusal to do so.

(4)<sup>19</sup> In the course of their activities, the Deputy Commissioner for Fundamental Rights responsible for the protection of the interests of future generations may use the title of "Ombudsman for Future Generations", and the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary may use the title of "Ombudsman for the Rights of National Minorities".

## *Chapter II*

### *The mandate of the Commissioner for Fundamental Rights and of his/her Deputies*

#### 2. The election of the Commissioner for Fundamental Rights and of his/her Deputies

**Section 4** (1) Parliament shall elect the Deputy of the Commissioner for Fundamental Rights responsible for the protection of the interests of future generations and the Deputy of the Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary at the proposal of the Commissioner for Fundamental Rights.

(2) Employer's rights regarding the Deputies of the Commissioner for Fundamental Rights – with the exception of those pertaining to the establishment and termination of the mandate – shall be exercised by the Commissioner for Fundamental Rights.

**Section 5** (1) Any Hungarian citizen may be elected Commissioner for Fundamental Rights or his/her Deputy if he/she has a law degree, has the right to stand as a candidate in the elections of Members of Parliament, and meets the requirements laid down in this Section.

(2) Parliament shall elect the Commissioner for Fundamental Rights from among those lawyers who have outstanding theoretical knowledge or at least ten years of professional experience, have reached the age of thirty-five years and have considerable experience in conducting or supervising proceedings concerning fundamental rights or in the scientific theory of such proceedings.

(3) Parliament shall elect the Deputy of the Commissioner for Fundamental Rights responsible for the protection of the interests of future generations from among those lawyers who have

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<sup>14</sup> Established by: Section 4(1) of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>15</sup> Established by: Section 4(1) of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>16</sup> Enacted by: Section 4(2) of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>17</sup> Enacted by: Section 4(2) of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>18</sup> Enacted by: Section 4(2) of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>19</sup> Enacted by: Section 5 of Act CCXXIII of 2013. Effective: as of 19 December 2013.



reached the age of thirty-five years, have outstanding theoretical knowledge or at least ten years of professional experience, and have considerable experience in conducting or supervising proceedings affecting the rights of future generations or in the scientific theory of such proceedings.

(4) Parliament shall elect the Deputy of the Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary from among those lawyers who have reached the age of thirty-five years, have outstanding theoretical knowledge or at least ten years of professional experience, and have considerable experience in conducting or supervising proceedings affecting the rights of nationalities living in Hungary or in the scientific theory of such proceedings.

(5)<sup>20</sup> No one may become Commissioner for Fundamental Rights or his/her Deputy who – in the four years preceding the proposal for his/her election – has been a Member of Parliament, nationality spokesperson, Member of the European Parliament, President of the Republic, Member of the Government, state secretary, member of a local government body, mayor, deputy mayor, member of a nationality self-government, notary, professional member of the Hungarian Defence Forces, professional member of the law-enforcement organs or of organs performing law-enforcement tasks, or the officer or employee of a political party.

**Section 6** (1) The President of the Republic shall make a proposal for the person of the Commissioner for Fundamental Rights between the ninetieth day and the forty-fifth day preceding the expiry of the mandate of the Commissioner for Fundamental Rights.

(2) If the mandate of the Commissioner for Fundamental Rights has terminated for a reason specified in Points *b*) to *g*) of Subsection (1) of Section 16, the President of the Republic shall make a proposal for the person of the Commissioner for Fundamental Rights within thirty days of the termination of the mandate.

(3) If the proposed person is not elected by Parliament, the President of the Republic shall make a new proposal within thirty days at the latest.

(4) The person proposed for Commissioner for Fundamental Rights shall be given a hearing by the committee of Parliament competent in the tasks of the Commissioner for Fundamental Rights.

(5) The Commissioner for Fundamental Rights may be re-elected once.

**Section 7** (1) The Commissioner for Fundamental Rights shall make a proposal for the person of a Deputy Commissioner for Fundamental Rights between the ninetieth day and the forty-fifth day preceding the expiry of the mandate of the Deputy Commissioner for Fundamental Rights.

(2) If the mandate of a Deputy Commissioner for Fundamental Rights has terminated for a reason specified in Points *b*) to *g*) of Subsection (1) of Section 17, the Commissioner for Fundamental Rights shall make a proposal for the person of the Deputy Commissioner for Fundamental Rights within thirty days of the termination of the mandate.

(2a)<sup>21</sup> If the mandates of the Commissioner for Fundamental Rights and his/her Deputy terminate at the same time, the newly elected Commissioner for Fundamental Rights shall make a proposal for the person of the Deputy Commissioner for Fundamental Rights within thirty days of his/her election.

(3) If the person proposed for Deputy Commissioner for Fundamental Rights is not elected by Parliament, the Commissioner for Fundamental Rights shall make a new proposal within thirty days at the latest.

(4) The Commissioner for Fundamental Rights shall – before making his/her proposal for the person of the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of the nationalities living in Hungary – request an opinion from the national nationality self-governments.

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<sup>20</sup> Shall enter into force with the text specified in Section 410(1) of Act CCI of 2011. Amended by: Section 158(28) of Act XXXVI of 2012.

<sup>21</sup> Enacted by: Section 6 of Act CCXXIII of 2013. Effective: as of 19 December 2013.

(5) The person proposed for Deputy Commissioner for Fundamental Rights shall be given a hearing by the committee of Parliament competent in the tasks of the Deputy Commissioner for Fundamental Rights.

(6) The Deputy Commissioner for Fundamental Rights may be re-elected once.

### 3. Conflict of interests

**Section 8** (1) The mandate of the Commissioner for Fundamental Rights and of his/her Deputies shall be incompatible with any other state, local government, social or political office or mandate.

(2)<sup>22</sup> The Commissioner for Fundamental Rights and his/her Deputies may not pursue any other gainful occupation, nor accept pay for their other activities, with the exception of scientific, educational, artistic activities, activities falling under copyright protection, proof-reading or editing activities, or having a foster parent's employment relationship.

(3) The Commissioner for Fundamental Rights and his/her Deputies may not be executive officers of a business undertaking, members of its supervisory board or such members of a business undertaking as have an obligation of personal involvement.

### 4. Declaration of assets

**Section 9** (1) The Commissioner for Fundamental Rights and his/her Deputies shall make a declaration of assets, identical in contents to those of Members of Parliament, within thirty days of their election, then each year by 31 January and within thirty days of the termination of their mandates.

(2) The Commissioner for Fundamental Rights and his/her Deputies shall attach to their own declarations of assets the declarations of assets of their spouses or partners and children living in the same household (hereinafter referred to together as "family members"), the contents of which shall be identical to those of the Commissioner for Fundamental Rights and his/her Deputies.

(3) In the event of failure to make a declaration of assets, the Commissioner for Fundamental Rights and his/her Deputies may not – until submission of the declaration of assets – perform the tasks deriving from their mandate, and may not receive remuneration.

(4) With the exception of the declarations of assets of family members, the declarations of assets shall be public, and an authentic copy thereof – with the exception of the personal data of family members – shall be published without delay by the Secretary General of the Office of the Commissioner for Fundamental Rights (hereinafter referred to as "the Office") on the website of the Office. The declarations of assets may be removed from the website after a period of one year following the termination of the mandate of the Commissioner for Fundamental Rights or of his/her Deputies.

(5) The declarations of assets shall be processed by the Secretary General of the Office.

(6) Only the members of the Conflict of Interests Committee of Parliament (hereinafter referred to as "the Conflict of Interests Committee") may have access to the declarations of assets of family members in proceedings related to the declaration of assets of the Commissioner for Fundamental Rights or of his/her Deputies.

(7) Anyone may initiate proceedings related to the declaration of assets of the Commissioner for Fundamental Rights or of his/her Deputies by the chairman of the Conflict of Interests Committee with a statement of facts specifically indicating the contested part and content of the declaration of assets. If such initiative does not meet the requirements contained in this subsection, if it is manifestly unfounded or if a repeatedly submitted initiative does not contain new facts or data, the chairman of the Conflict of Interests Committee shall reject the initiative without conducting proceedings. The veracity of those contained in the declaration of assets shall be checked by the Conflict of Interests Committee.

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<sup>22</sup> Established by: Section 78 of Act CI of 2014. Effective: as of 1 January 2015.

(8) In the course of the proceedings related to the declaration of assets, at the invitation of the Conflict of Interests Committee, the Commissioner for Fundamental Rights or his/her Deputies shall declare without delay and in writing the supporting data on property, income and interest relations indicated in their own declaration of assets and in those of their family members. Such supporting data may be accessed only by members of the Conflict of Interests Committee. The chairman of the Conflict of Interests Committee shall inform the Speaker of Parliament of the outcome of the check and the latter shall inform Parliament at its next sitting of the facts established by the Conflict of Interests Committee.

(9) The supporting data submitted by the Commissioner for Fundamental Rights or his/her Deputies shall be deleted on the thirtieth day following the termination of the proceedings related to the declaration of assets. The Secretary General of the Office shall keep the declaration of assets of a former Commissioner for Fundamental Rights and of his/her former Deputies, as well as of their family members, for a period of one year following the termination of their mandates.

#### 5. The legal status and remuneration of the Commissioner for Fundamental Rights and of his/her Deputies

**Section 10** (1) The Commissioner for Fundamental Rights and his/her Deputies shall take office upon the expiry of the mandate of their predecessors or, if they are elected after the termination of the mandate of their predecessors, upon their election.

(2) After their election, the Commissioner for Fundamental Rights and his/her Deputies shall take an oath before Parliament.

**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.

**Section 12** (1)<sup>23</sup> The Commissioner for Fundamental Rights shall be entitled to a salary two and a half times bigger than that of a Member of Parliament as defined by Act XXXVI of 2012.

(1a)<sup>24</sup> In addition to the salary defined in Subsection (1), the Commissioner for Fundamental Rights shall be entitled to allowances identical to those of a Minister.

(2)<sup>25</sup> The Deputy Commissioners for Fundamental Rights shall be entitled to a salary identical to the upper limit of that of a deputy state secretary according to the Pay Scale in Point I of Annex 1 of Act CXXV of 2018 on Governmental Administration.

(2a)<sup>26</sup> In addition to the salary defined in Subsection (2), the Deputy Commissioners for Fundamental Rights shall be entitled to allowances identical to those of a state secretary.

(3) The Commissioner for Fundamental Rights and his/her Deputies shall be entitled to forty working days of leave per calendar year.

**Section 13** (1) From the point of view of entitlement to social security benefits, the Commissioner for Fundamental Rights and his/her Deputies shall be considered insured persons employed in a public service legal relationship.

(2) The term of office of the Commissioner for Fundamental Rights and of his/her Deputies shall be considered as time served in a public service legal relationship with an administrative organ.

#### 6. Immunity

**Section 14** (1) 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.

<sup>23</sup> Established by: Section 140(1) of Act CIX of 2019. Effective: as of 1 January 2020.

<sup>24</sup> Enacted by: Section 140(1) of Act CIX of 2019. Effective: as of 1 January 2020.

<sup>25</sup> Established by: Section 140(2) of Act CIX of 2019. Effective: as of 1 January 2020.

<sup>26</sup> Enacted by: Section 140(2) of Act CIX of 2019. Effective: as of 1 January 2020.

## 7. Deputising for the Commissioner for Fundamental Rights

**Section 15** If the Commissioner for Fundamental Rights is prevented from acting or the office is vacant, the powers of the Commissioner for Fundamental Rights shall be exercised by the Deputy designated by him/her, or, in the absence of a designated Deputy, by his/her Deputy who is senior in age.

### 8. Termination of the mandates of the Commissioner for Fundamental Rights and of his/her Deputies

**Section 16** (1) The mandate of the Commissioner for Fundamental Rights shall terminate

- a)* upon expiry of the term of his/her mandate,
- b)* upon his/her death,
- c)* upon his/her resignation,
- d)* if the conditions necessary for his/her election no longer exist,
- e)* upon the declaration of a conflict of interests,
- f)* upon his/her dismissal, or
- g)* upon removal from office.

(2) The termination of the mandate of the Commissioner for Fundamental Rights pursuant to Points *b)* and *c)* of Subsection (1) shall be established by the Speaker of Parliament. Termination pursuant to Points *d) to g)* of Subsection (1) shall be decided by Parliament.

(3) Resignation from office shall be communicated in writing to the Speaker of Parliament. The mandate of the Commissioner for Fundamental Rights shall terminate on the date indicated in the resignation, or, in the absence thereof, on the day of the communication of the resignation. No statement of acceptance shall be necessary for the validity of the resignation.

(4) If the Commissioner for Fundamental Rights fails to terminate a conflict of interests within thirty days of his/her election, or if in the course of the exercise of his/her office a conflict of interests arises, Parliament shall – at the written motion of any Member of Parliament, after obtaining the opinion of the Conflict of Interests Committee – decide on the declaration of a conflict of interests within thirty days of receipt of the motion. No conflict of interests shall be established if, during the conflict of interests proceedings, the Commissioner for Fundamental Rights terminates the reason for the conflict of interests.

(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.

(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 office may be submitted by the Conflict of Interests Committee after examination of the reasons justifying the removal.

**Section 17** (1) The mandate of the Deputy Commissioner for Fundamental Rights shall terminate

- a)* upon expiry of the term of his/her mandate,
- b)* upon his/her death,
- c)* upon his/her resignation,
- d)* if the conditions necessary for his/her election no longer exist,
- e)* upon the declaration of a conflict of interests,
- f)* upon his/her dismissal, or
- g)* upon removal from office.

(2) The termination of the mandate of the Deputy Commissioner for Fundamental Rights pursuant to Points *b)* and *c)* of Subsection (1) shall be established by the Speaker of Parliament. Termination pursuant to Points *d)* to *g)* of Subsection (1) shall be decided by Parliament.

(3) A Deputy Commissioner for Fundamental Rights shall communicate his/her resignation from office in writing to the Speaker of Parliament through the Commissioner for Fundamental Rights. The mandate of the Deputy Commissioner for Fundamental Rights shall terminate on the date indicated in the resignation, or, in the absence thereof, on the day of the communication of the resignation. No statement of acceptance shall be necessary for the validity of the resignation.

(4) If the Deputy Commissioner for Fundamental Rights fails to terminate a conflict of interests within thirty days of his/her election, or if in the course of the exercise of his/her office a conflict of interests arises, Parliament shall – at the written motion of any Member of Parliament, after obtaining the opinion of the Commissioner for Fundamental Rights and the Conflict of Interests Committee – decide on the declaration of a conflict of interests within thirty days of receipt of the motion. No conflict of interests shall be established if, during the conflict of interests proceedings, the Deputy Commissioner for Fundamental Rights terminates the reason for the conflict of interests.

(5) The mandate of the Deputy Commissioner for Fundamental Rights may be terminated by dismissal if, for reasons not imputable to him/her, the Deputy 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 the Commissioner for Fundamental Rights or any Member of Parliament. In the event of dismissal, the Deputy Commissioner for Fundamental Rights shall be entitled to three months' additional salary.

(6) The mandate of the Deputy Commissioner for Fundamental Rights may be terminated by removal from office if, for reasons imputable to him/her, the Deputy 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 office may be submitted by the Commissioner for Fundamental Rights or the Conflict of Interests Committee after examination of the reasons justifying the removal.

### *Chapter III*

#### *Proceedings and measures of the Commissioner for Fundamental Rights*

##### 9. Proceedings of the Commissioner for Fundamental Rights

**Section 18** (1) Anyone may turn to the Commissioner for Fundamental Rights if, in his/her judgment, the activity or omission of

- 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)* <sup>27</sup>
- k)* an independent bailiff, or
- l)* an organ performing public services

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<sup>27</sup> Repealed by: Section 23 of Act LXXXI of 2019. Inoperative: as of 1 January 2020.

(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 judicial review of an administrative decision, or that no legal remedy is available to him/her.<sup>28</sup>

(2) Regardless of their form of organisation, organs performing public services shall be the following:

- a) organs performing state or local government tasks and/or participating in the performance thereof,
- b) public utility providers,
- c) universal providers,
- d) organisations participating in the granting or intermediation of state subsidies or European Union funds,
- e) organisations performing activities described in legislation as public service, and
- f) organisations performing a public service which is prescribed in legislation and is to be compulsorily received.

Inquiries into an organ performing public services may be carried out only in connection with its public service activities.

(3) The Commissioner for Fundamental Rights, with the exceptions specified in Section 2, Subsection (3), may not conduct inquiries into the activities of

- a)<sup>29</sup> – with the exceptions provided in Section 2, Subsection (3) – the Parliament,
- b) the President of the Republic,
- c) the Constitutional Court,
- d) the State Audit Office,
- e) the courts, and
- f) the Prosecution Service, with the exception of its investigative service.

(4) The Commissioner for Fundamental Rights may conduct ex officio proceedings in order to have such improprieties terminated as are related to fundamental rights and which have arisen in the course of the activities of the authorities. Ex officio proceedings may be aimed at conducting an inquiry into improprieties affecting not precisely identifiable larger groups of natural persons or at conducting a comprehensive inquiry into the enforcement of a fundamental right.

(5)<sup>30</sup> If a final administrative decision has been taken in the case, a petition may be filed with the Commissioner for Fundamental Rights within one year of the notification of the decision.

(6) The Commissioner for Fundamental Rights may only inquire into proceedings that were started after 23 October 1989.

(7)<sup>31</sup> The Commissioner for Fundamental Rights may not proceed in cases where administrative proceedings have been initiated for the review of the decision or where a final court decision has been rendered.

(8) The identity of the person who has filed the petition may only be revealed by the Commissioner for Fundamental Rights if the inquiry could not be conducted otherwise. Upon the request of the person filing the petition, the Commissioner for Fundamental Rights shall not reveal his/her identity. No one shall suffer any disadvantage for turning to the Commissioner for Fundamental Rights.

**Section 19** The proceedings of the Commissioner for Fundamental Rights shall be free of charge; the costs of inquiries shall be advanced and borne by the Office.

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<sup>28</sup> Amended by: Section 365(a) of Act L of 2017.

<sup>29</sup> Established by: Section 10(2) of Act CXXXI of 2013. Effective: as of 1 August 2013.

<sup>30</sup> Amended by: Section 365(b) of Act L of 2017.

<sup>31</sup> Amended by: Section 365(c) of Act L of 2017.

**Section 20** (1) The Commissioner for Fundamental Rights shall – with the exceptions specified in Subsections (2) and (3) – conduct an inquiry on the basis of the petition submitted to him/her, and shall take the measure specified in this Act.

(2) The Commissioner for Fundamental Rights shall reject the petition if

- a)* it does not meet the requirements specified in Subsections (1), (3) or (5) to (7) of Section 18,
- b)* it is manifestly unfounded,
- c)* a repeatedly submitted petition does not contain new facts or data on the substance, or
- d)* the person submitting the petition has requested that his/her identity not be revealed and without this the inquiry cannot be conducted.

(3) The Commissioner for Fundamental Rights may reject the petition if

- a)* it has been submitted anonymously, or
- b)* in his/her judgment the impropriety referred to in the petition is of minor importance.

(4) Reasons shall be given in every case when petitions are rejected. The Commissioner for Fundamental Rights shall notify the petitioner of the rejection of his/her petition.

(5) If the competent organ can be identified on the basis of the available data, the Commissioner for Fundamental Rights shall transfer petitions relating to matters not falling within his/her competence to the competent organ and simultaneously inform the petitioners thereof. If the Commissioner for Fundamental Rights establishes that on the basis of a petition not falling within his/her competence there is a possibility to institute court proceedings, he/she shall inform the petitioner thereof.

#### 10. Inquiries of the Commissioner for Fundamental Rights

**Section 21** (1) In the course of his/her inquiries the Commissioner for Fundamental Rights

- 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.

(2) The request of the Commissioner for Fundamental Rights pursuant to Points *a)* and *b)* of Subsection (1) shall be complied with within the time-limit set by the Commissioner. The time-limit may not be shorter than 15 days.

**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

- a)* may enter the premises of the authority subject to inquiry, unless provided otherwise by a legal regulation,
- b)*<sup>32</sup> 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.

(2)<sup>33</sup> In the course of an on-site inspection of the Commissioner for Fundamental Rights or of members of his/her staff authorised to conduct the inquiry, the rules of entry into, stay in and exit from the zones serving the operation of the national defence organisation, the law-enforcement organs, the organs of the National Tax and Customs Administration performing customs authority tasks, the Directorate General for Criminal Affairs of the National Tax and Customs Administration and its regional organs conducting investigative activities shall be regulated by the Minister responsible for national defence, the Minister responsible for directing the law-enforcement organ or the Minister supervising the National Tax and Customs Administration.

(3) No legal regulation pertaining to entry into the premises of the authority subject to inquiry may obstruct on-site inspection in substance.

<sup>32</sup> Shall enter into force with the text amended by Section 7(a) of Act CXLIII of 2011.

<sup>33</sup> Established by: Section 34 of Act CV of 2019. Effective: as of 1 January 2020.

(4) Any employee of the authority subject to inquiry may refuse to answer the questions during the hearing if

*a)* the person who is affected by the petition forming the basis of the inquiry conducted by the Commissioner for Fundamental Rights is his/her relative within the meaning of the Code of Civil Procedure, or

*b)* by giving an answer he/she would accuse himself or herself or his/her relative within the meaning of the Code of Civil Procedure of the perpetration of a criminal offense, concerning the questions relating thereto.

**Section 23** (1) In the course of his/her inquiry affecting the Hungarian Defence Forces, the Commissioner for Fundamental Rights may not inspect

*a)* documents related to inventions, products or defence investments of outstanding importance for the national defence of Hungary, or documents on the development of national defence capabilities that contain essential information thereon,

*b)* documents containing a battle order extract of the Hungarian Defence Forces up to the level of divisions, or documents containing aggregate data on the formation, maintenance and deployment of stocks of strategic material,

*c)* documents containing the plans on the use of the Hungarian Defence Forces under a special legal order,

*d)* documents on the protected command system of the higher state and military leaders,

*e)* documents concerning the military preparedness, alert and sales system of the Hungarian Defence Forces, compiled documents on mobilisation readiness and the level of combat readiness of the Hungarian Defence Forces, aggregate military preparedness plans of the military districts and of military organisations of the same or of a higher level or related documents on the whole organisation,

*f)* aggregate plans of the organisation of communications of the Ministry directed by the Minister responsible for national defence and of the Hungarian Defence Forces, key and other documentation of the special information protection devices introduced or used,

*g)* the detailed budget, calculations or development materials of the Hungarian Defence Forces,

*h)* international cooperation agreements and plans, or data of military hardware that are classified by common accord as 'top secret' data by the parties to the international cooperation, or

*i)* documents relating to devices of strategic reconnaissance and to the functioning thereof, or documents containing aggregate data on the protection of the Hungarian Defence Forces against reconnaissance.

(2) In the course of his/her inquiry affecting the national security services, the Commissioner for Fundamental Rights may not inspect

*a)* registers for the identification of individuals cooperating with the national security services,

*b)* documents containing the technical data of devices and methods used by the national security services for intelligence information gathering, or documents making it possible to identify the persons using them,

*c)* documents relating to encryption activities and encoding,

*d)* security documents relating to the installations and staff of the national security services,

*e)* documents related to document security and technological control,

*f)* documents access to which would make possible the identification of the source of information, or

*g)* documents access to which would infringe the obligations undertaken by the national security services towards foreign partner services.

(3) In the course of his/her inquiry affecting the police, the Commissioner for Fundamental Rights may not inspect

*a)* international cooperation agreements and plans concluded with police organs of other countries or with international organisations, joint measures taken in the course of international



cooperation, or data and information originating from the cooperation and put at the disposal of an organ of the police, if the contracting parties have requested their protection as classified data,

*b)* classified agreements related to international relations that contain specific commitments for the detection and prevention of international organised crime (including drug trafficking, money laundering and acts of terrorism),

*c)* any document containing data specified in subsection (2) relating to, originating from or pertaining to the cooperation of the national security services with the police,

*d)* safeguarding plans of installations and persons protected by the police, documents and descriptions pertaining to security equipment, guards and posts,

*e)* documents enabling the identification of a private person covertly cooperating with the police, except when that person has suffered the infringement of rights and he himself or she herself requests the inquiry thereof,

*f)*<sup>34</sup> documents containing technical data relating to the functioning and operation of equipment and methods used by the police for intelligence information gathering or documents enabling the identification of persons using such equipment and methods,

*g)* documents of the police relating to encoded communications of the police or documents containing aggregate data relating to frequency records for government purposes,

*h)*<sup>35</sup> personal data of witnesses, if the closed processing thereof has been ordered under the Act on Criminal Procedure, or

*i)* cooperation agreements concluded with the Hungarian Defence Forces or the national security services that are classified 'Top secret' data by the parties to the agreement.

(4) In the course of his/her inquiry affecting the organs of the National Tax and Customs Administration performing customs authority tasks or the National Tax and Customs Administration Directorate General for Criminal Affairs, the Commissioner for Fundamental Rights may not inspect

*a)* international cooperation agreements and plans concluded with the customs organs of other countries or international organisations, joint measures taken in the course of international cooperation, or data and information originating from the cooperation and put at the disposal of the relevant organ of the National Tax and Customs Administration, if the contracting parties have requested their protection as classified data,

*b)* classified agreements related to international relations that contain specific commitments for the detection and prevention of international organised crime (including drug trafficking, money laundering and acts of terrorism),

*c)* any document containing data specified in Subsection (2) relating to, originating from or pertaining to the cooperation of the national security services with the relevant organ of the National Tax and Customs Administration,

*d)* safeguarding plans of installations and persons guarded by the National Tax and Customs Administration, documents and descriptions pertaining to security equipment, guards and posts,

*e)* documents relating to encoded communications or containing aggregate data relating to frequency records for government purposes,

*f)* documents enabling the identification of a private person covertly cooperating with the relevant organ of the National Tax and Customs Administration, except when that person has suffered the infringement of rights and he himself or she herself requests the inquiry thereof,

*g)*<sup>36</sup> documents containing technical data relating to the functioning and operation of equipment and methods used by the National Tax and Customs Administration for intelligence information gathering or documents enabling the identification of persons using such equipment and methods,

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<sup>34</sup> Amended by: Section 290(b) of Act CXCVII of 2017.

<sup>35</sup> Amended by: Section 290(c) and Section 291(a) of Act CXCVII of 2017.

<sup>36</sup> Amended by: Section 290(b) of Act CXCVII of 2017.

*b)* documents containing aggregate data relating to the equipment used for intelligence activities by the relevant organ of the National Tax and Customs Administration and to the functioning of such equipment, or

*i)*<sup>37</sup> data of methods used by the relevant organ of the National Tax and Customs Administration in connection with the protection of tax stamps, or documents containing data relating to the traffic of internationally controlled products and technologies, to control plans, to observations and the issuing of search warrants, or to military matters.

(5) In the course of his/her inquiries affecting the investigative organ of the Prosecution Service, the Commissioner for Fundamental Rights may not inspect

*a)*<sup>38</sup> personal data of witnesses, if the closed processing thereof has been ordered under the Act on Criminal Procedure,

*b)* documents of the investigative organ of the Prosecution Service originating from intelligence information gathering,

*c)*<sup>39</sup> any document specified in Subsection (2) to (4), in relation to organs gathering intelligence information or applying covert operative means, relating to, originating from or pertaining to the cooperation of the investigative organ of the Prosecution Service with organs gathering intelligence information, or

*d)* documents enabling the identification of a private person covertly cooperating with the police, except when that person has suffered the infringement of rights and he himself or she herself requests the inquiry thereof.

(6) In the course of his/her inquiry affecting the tasks of the National Security Authority, specified in the Act on the Protection of Classified Information, the Commissioner for Fundamental Rights may not inspect documents relating to the professional direction, authorisation or supervision of encoding activities.

(7) If, in order to ensure the complete clarification of a case, the Commissioner for Fundamental Rights considers it necessary that the documents specified in Subsections (1) to (6) also be inspected, he/she may request the competent Minister to have those documents inspected. The competent Minister shall make the inquiry or shall have it made and inform the Commissioner for Fundamental Rights on the outcome of the inquiry within the time-limit set by the Commissioner. The time-limit may not be shorter than thirty days.

**Section 24** (1) If there are substantiated grounds to believe that if the measure of the Commissioner for Fundamental Rights is delayed, the fundamental rights of a larger group of natural persons will be seriously infringed, the person conducting the inquiry on the basis of the authorisation of the Commissioner for Fundamental Rights may draw the attention of the head of the authority subject to inquiry to the danger of infringement and shall simultaneously initiate a measure of the Commissioner for Fundamental Rights. Such indication of danger shall be recorded in the case file.

(2)<sup>40</sup> If, in the course of his/her inquiry, certain circumstances come to the attention of the Commissioner for Fundamental Rights from which circumstances one may conclude that a coercive measure has been unlawfully ordered, he/she shall immediately inform the competent prosecutor through the Prosecutor General. If the coercive measure has been ordered by the Prosecution Service, the Commissioner for Fundamental Rights shall inform the court as well.

**Section 25** (1) In the interest of conducting and planning the inquiries of the Commissioner for Fundamental Rights, the authority subject to inquiry, the head of the authority subject to inquiry, the head of the supervisory organ of the authority subject to inquiry, the head of the organ otherwise authorised by legislation to conduct inquiries and the employees of the authority subject

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<sup>37</sup> Established by: Section 166 of Act LXVIII of 2016. Effective: as of 1 July 2017.

<sup>38</sup> Amended by: Section 290(c) and Section 291(a) of Act CXCVII of 2017.

<sup>39</sup> Established by: Section 289(1) of Act CXCVII of 2017. Effective: as of 1 July 2018.

<sup>40</sup> Amended by: Section 290(d) of Act CXCVII of 2017.

to inquiry shall cooperate with the Commissioner for Fundamental Rights in the cases determined in Subsection (1) of Section 21.

(2) If the authority subject to inquiry, without a well-founded reason, fails to comply or complies only belatedly with its obligation to cooperate, the Commissioner for Fundamental Rights shall mention this fact in his/her report, and make special mention thereof in his/her annual report.

**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.

(2) In a case under inquiry, the Commissioner for Fundamental Rights may request a written explanation, declaration, information or opinion from the organisation, person or employee of the organisation having the obligation to cooperate.

(3) If the organisation or person having the obligation to cooperate, without a well-founded reason, fails to comply or complies only belatedly with its obligation to cooperate, the Commissioner for Fundamental Rights shall mention this fact in his/her report, and make special mention thereof in his/her annual report.

**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 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.

(2) In the course of his/her proceedings the Commissioner for Fundamental Rights may become acquainted with the classified data necessary for the conduct of the inquiry, may prepare extracts or make copies thereof, and may keep the classified data in his/her possession.

(3) The documents and material evidence obtained in the course of the proceedings of the Commissioner for Fundamental Rights shall not be public.

(4)<sup>41</sup>

**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.

(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.

(3)<sup>42</sup> The report of the Commissioner for Fundamental Rights relating to the activities of organs authorised to use covert operative means and methods may not contain any data from which one could draw conclusions on intelligence information gathering activities or the use of covert operative means in the given case.

(4) There shall be no legal remedy against decisions of the Commissioner for Fundamental Rights rejecting a petition or against the reports of the Commissioner.

**Section 29** The Commissioner for Fundamental Rights shall inform the petitioner about the outcome of the inquiry and about any measure taken.

**Section 30** The Commissioner for Fundamental Rights shall determine the rules and methods of his/her inquiries in normative instructions.

## 11. Measures of the Commissioner for Fundamental Rights

**Section 31** (1) If, on the basis of an inquiry conducted, the Commissioner for Fundamental Rights comes to the conclusion that the impropriety in relation to a fundamental right does exist, in order to redress it he/she may – by simultaneously informing the authority subject to inquiry – address a recommendation to the supervisory organ of the authority subject to inquiry. Within thirty days of receipt of the recommendation, the supervisory organ shall inform the Commissioner

<sup>41</sup> Repealed by: Section 69(3) of Act CXXI of 2016. Inoperative: as of 1 January 2017.

<sup>42</sup> Established by: Section 289(2) of Act CXCVII of 2017. Effective: as of 1 July 2018.

for Fundamental Rights of its position on the merits of the recommendation and on the measures taken.

(2) If the supervisory organ does not agree with those contained in the recommendation, within fifteen days of receipt of the communication thereof, the Commissioner for Fundamental Rights shall inform the supervisory organ of the maintenance, amendment or withdrawal of his/her recommendation.

(3) If the Commissioner for Fundamental Rights modifies the recommendation, it shall be considered as a new recommendation from the point of view of the measures to be taken.

(4) If the authority subject to inquiry has no supervisory organ, the Commissioner for Fundamental Rights shall address the recommendation to the authority subject to inquiry.

**Section 32** (1) If, according to the available data, the authority subject to inquiry is able to terminate the impropriety related to fundamental rights within its competence, the Commissioner for Fundamental Rights may initiate redress of the impropriety by the head of the authority subject to inquiry. Such initiative may be made directly by phone, orally or by e-mail; in such cases the date, manner and substance of the initiative shall be recorded in the case file.

(2) Within thirty days of receipt of the initiative, the authority subject to inquiry shall inform the Commissioner for Fundamental Rights of its position on the merits of the initiative and on the measures taken; if the initiative concerns an activity which is harmful for the environment, the authority subject to inquiry shall immediately inform the Commissioner for Fundamental Rights.

(3) If the authority subject to inquiry – with the exception of the authority specified in Subsection (4) of Section 31 – does not agree with the initiative, it shall, within thirty days of receipt of the initiative, submit the initiative to its supervisory organ together with its opinion thereon. Within thirty days of receipt of the submission, the supervisory organ shall inform the Commissioner for Fundamental Rights of its position and on the measures taken.

(4) For any further proceedings of the supervisory organ and the Commissioner for Fundamental Rights, those contained in Subsections (1) to (3) of Section 31 shall be applicable, as appropriate, subject to the modification that the Commissioner for Fundamental Rights shall inform the supervisory organ of whether he/she maintains the initiative in an unchanged or modified form as a recommendation.

**Section 33** (1)<sup>43</sup> In order to redress the uncovered impropriety related to a fundamental right, the Commissioner for Fundamental Rights may initiate proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General. Within sixty days the competent prosecutor shall inform the Commissioner for Fundamental Rights of his/her position on the initiation of proceedings for the supervision of legality and his/her measure, if any.

(2)<sup>44</sup> If the Commissioner for Fundamental Rights, in the course of his/her proceedings, establishes no impropriety related to a fundamental right but nevertheless becomes aware of a circumstance pointing to an infringement of a legal regulation, he/she may forward the petition to the competent prosecutor through the Prosecutor General.

(3)<sup>45</sup> In the course of the judicial review of an administrative decision relating to the state of the environment, the Commissioner for Fundamental Rights may participate in the proceedings as an intervener.

**Section 34** The Commissioner for Fundamental Rights may turn to the Constitutional Court in accordance with the provisions laid down in the Act on the Constitutional Court.

**Section 34/A**<sup>46</sup> (1)<sup>47</sup> If, in the course of his/her inquiries, the Commissioner for Fundamental Rights finds that an impropriety related to fundamental rights is caused by a conflict between a

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<sup>43</sup> Shall enter into force with the text specified in Section 408 of Act CCI of 2011.

<sup>44</sup> Amended by: Section 291(b) of Act CXCVII of 2017.

<sup>45</sup> Amended by: Section 365(d) of Act L of 2017.

<sup>46</sup> Enacted by: Section 72(1) of Act CCXI of 2012. Effective: as of 1 January 2013.

<sup>47</sup> Amended by: Section 50(a) of Act CXXVII of 2019.

self-government decree and another legal regulation, he may request the Curia to review the self-government decree's compatibility with the other legal regulation.

(2)<sup>48</sup>

**Section 35** (1)<sup>49</sup> If, in the course of his/her inquiry, the Commissioner for Fundamental Rights considers that there is a well-founded suspicion that a crime has been committed, he/she shall initiate criminal proceedings with the organ authorised to start such proceedings. If, in the course of his/her inquiry, the Commissioner for Fundamental Rights considers that there is reasonable suspicion that a regulatory offense or a disciplinary offense has been committed, he/she shall initiate regulatory offense proceedings or disciplinary proceedings with the organ authorised to conduct such proceedings.

(2) Unless a provision of an Act provides otherwise, the organ specified in Subsection (1) shall, within thirty days, inform the Commissioner for Fundamental Rights of its position on the starting of proceedings; where proceedings have been started, the organ shall, within thirty days of the termination of the proceedings, inform the Commissioner for Fundamental Rights of the outcome thereof.

**Section 36** If, in the course of his/her inquiry, the Commissioner for Fundamental Rights notices an impropriety related to the protection of personal data, to the right of access to data of public interest or to data public on grounds of public interest, he/she shall report it to the National Authority for Data Protection and Freedom of Information.

**Section 37** If, according to the Commissioner for Fundamental Rights, the impropriety can be attributed to a superfluous, ambiguous or inappropriate provision of a legal regulation or public law instrument for the regulation of organisations, or to the lack or deficiency of the legal regulation of the given matter, in order to avoid such impropriety in the future he/she may propose that the organ authorised to make law or to issue a public law instrument for the regulation of organisations modify, repeal or issue the legal rule or the public law instrument for the regulation of organisations, or propose that the organ in charge of preparing legal regulations prepare a legal regulation. Within sixty days the requested organ shall inform the Commissioner for Fundamental Rights of its position and of any measure taken.

**Section 38** (1) If the authority subject to inquiry or its supervisory organ fails to form a position on the merits and to take the appropriate measure, or the Commissioner for Fundamental Rights does not agree with the position or the measure taken, he/she shall submit the case to Parliament within the framework of his/her annual report, and may – with the exception of those contained in Subsection (2) – ask Parliament to inquire into the matter. If, according to his/her findings, the impropriety is of flagrant gravity or affects a larger group of natural persons, the Commissioner may propose that Parliament debate the matter before the annual report is put on its agenda. The Parliament shall decide on whether to put the matter on the agenda.

(2) In the case referred to in Subsection (1), if the Commissioner for Fundamental Rights has taken the measure specified in Section 34, or if in the case specified in Section 37 he/she has applied to Parliament, the Commissioner for Fundamental Rights shall report on his/her measure and on the measure of the contacted organ or the failure of the latter to take any measure in his/her annual report.

(3) In the case referred to in Subsection (1), if the uncovering of the impropriety should affect classified data, the Commissioner for Fundamental Rights shall – simultaneously with his/her annual report, or if the impropriety is of flagrant gravity or affects a larger group of natural persons, prior to the submission of the annual report – submit the case to the competent committee of Parliament in a report of a level of classification determined in the Act on the Protection of Classified Information. The committee shall decide on whether to put the matter on the agenda at a sitting in camera.

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<sup>48</sup> Repealed by: Section 50(b) of Act CXXVII of 2019. Inoperative: as of 1 January 2020.

<sup>49</sup> Amended by: Section 290(e) of Act CXCVII of 2017.

11/A.<sup>50</sup> Inquiries into public interest disclosures

**Section 38/A**<sup>51</sup> The Commissioner for Fundamental Rights shall inquire into the practices of authorities specified under Section 18, Subsection (1), Points *a)-k)* in handling public interest disclosures made in accordance with the Act on complaints and public interest disclosures, and, upon request, into the proper handling of certain public interest disclosures.

**Section 38/B**<sup>52</sup> (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**<sup>53</sup> 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**<sup>54</sup> Staff members of the Office performing tasks directly related to public interest disclosures shall carry out their duties in positions falling within the scope of national security checks and requiring a personal security certificate.

11/B.<sup>55</sup> Inquiry into the review process of national security checks

**Section 38/E**<sup>56</sup> (1) In accordance with the stipulations of the Act on National Security Services, the Commissioner for Fundamental Rights may inquire into ordering and conducting a review of national security checks from the aspects of fundamental rights related improprieties.

(2) The restrictions stipulated in Section 23, Subsection (2) shall not affect the proceedings of the Commissioner for Fundamental Rights if consulting a document is essential for the successful conduct of the given proceedings.

(3) Staff members of the Office performing tasks directly related to the review process of national security checks shall carry out their duties in positions falling within the scope of national security checks and requiring a personal security certificate.

## 12. Exceptional inquiry

**Section 39** (1) If, on the basis of the petition, it may be presumed that – with the exception of the organs indicated in Subsection (3) of Section 18 – the activity or omission of the organisation not qualifying as authority gravely infringes the fundamental rights of a larger group of natural persons, the Commissioner for Fundamental Rights may proceed exceptionally (hereinafter referred to as ‘exceptional inquiry’).

<sup>50</sup> Enacted by: Section 21(1) of Act CLXV of 2013. Effective: as of 1 January 2014.

<sup>51</sup> Enacted by: Section 21(1) of Act CLXV of 2013. Effective: as of 1 January 2014.

<sup>52</sup> Enacted by: Section 21(1) of Act CLXV of 2013. Effective: as of 1 January 2014.

<sup>53</sup> Enacted by: Section 21(1) of Act CLXV of 2013. Effective: as of 1 January 2014.

<sup>54</sup> Enacted by: Section 21(1) of Act CLXV of 2013. Effective: as of 1 January 2014.

<sup>55</sup> Enacted by: Section 46 of Act CIX of 2014. Effective: as of 1 February 2015.

<sup>56</sup> Enacted by: Section 46 of Act CIX of 2014. Effective: as of 1 February 2015.

(2)<sup>57</sup> To exceptional inquiries, Subsections (5) to (8) of Section 18, Section 19, Section 20, Subsections (1) and (3) of Section 27, Sections 28 to 30 and Sections 34 to 37 shall be applied.

(3) For the conduct of exceptional inquiries, the organisations not qualifying as authority shall be obliged to cooperate.

(4) In order to conduct an exceptional inquiry, the Commissioner for Fundamental Rights may request a written explanation, declaration, information or opinion from the organisation not qualifying as authority. In case of an activity which is harmful for the environment, the Commissioner for Fundamental Rights may carry out an on-site inspection.

(5) On the basis of the outcome of an exceptional inquiry, the Commissioner for Fundamental Rights may initiate proceedings with the competent authority. On the basis of the above initiative, the authority shall start proceedings without delay.

### *Chapter III/A*<sup>58</sup>

#### *The proceedings and measures of the commissioner for fundamental rights within the framework of the National Preventive Mechanism*<sup>59</sup>

**Section 39/A**<sup>60</sup> If the Commissioner for Fundamental Rights conducts proceedings in the performance of his/her tasks related to the National Preventive Mechanism pursuant to Article 3 (hereinafter referred to as ‘National Preventive Mechanism’) of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment (hereinafter referred to as ‘the Protocol’) promulgated by Act CXLIII of 2011, the provisions of Chapter III shall apply to his/her proceedings with the derogations laid down in this chapter.

**Section 39/B**<sup>61</sup> (1) In order to perform his/her tasks related to the national preventive mechanism, the Commissioner for Fundamental Rights shall regularly examine the treatment of persons deprived of their liberty and held at a place of detention (hereinafter referred to as ‘place of detention’) specified in Article 4 of the Protocol – regardless of Subsections (1) to (7) of Section 18 – also in the absence of any petition or alleged impropriety.

(2) In the course of his/her examination the Commissioner for Fundamental Rights may, in addition to those contained in Subsection (1) of Section 21, request data, information and copies of documents from the authority under inquiry on the number and geographical location of places of detention and on the number of persons deprived of their liberty who are held there, on the treatment of these persons and on the conditions of their detention.

(3) In the course of on-site inspections the Commissioner of Fundamental Rights may

a) enter without any restriction the places of detention and other premises of the authority under inquiry,

b) inspect without any restriction all documents concerning the number and geographical location of places of detention, the number of persons deprived of their liberty who are held there, on the treatment of these persons and on the conditions of their detention, and make extracts from or copies of these documents,

c)<sup>62</sup> hear any person present on the site, including the personnel of the authority under inspection and any person deprived of his/her liberty.

d)<sup>63</sup>

<sup>57</sup> Amended by: Section 69(2) of Act CXXI of 2016.

<sup>58</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January 2015.

<sup>59</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January 2015.

<sup>60</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January 2015.

<sup>61</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January 2015.

<sup>62</sup> Shall become effective with the text amended by Section 9(2) of Act CCXXIII of 2013.

<sup>63</sup> Shall not enter into force by virtue of Section 9(1) of Act CCXXIII of 2013.

(4) The hearing held pursuant to Points *c*) and *d*) of Subsection (3) may not be attended by persons other than the Commissioner for Fundamental Rights and the person who is given a hearing, unless the Commissioner for Fundamental Rights authorises his/her participation.

**Section 39/C**<sup>64</sup> The Commissioner for Fundamental Rights shall each year prepare a comprehensive report on the performance of his/her tasks related to the National Preventive Mechanism, which report shall be published on the website of the Office.

**Section 39/D**<sup>65</sup> (1) In the performance of his/her tasks related to the National Preventive Mechanism, the Commissioner for Fundamental Rights may act in person or by way of the members of his/her staff authorised by him/her to perform the tasks related to the National Preventive Mechanism. Staff members of the Commissioner for Fundamental Rights authorised by him/her to act shall have the rights pursuant to Sections 21, 22 and 26, as well as to Subsection (1) of Section 27, and to Section 39/B, and the obligation for cooperation pursuant to Section 25 shall be complied with also in their respect.

(2) Staff members of the Commissioner for Fundamental Rights authorised by him/her to perform the tasks related to the National Preventive Mechanism may, if they have the personal security clearance certificate of the required level, obtain access to classified data also without the user permission specified in the Act on the Protection of Classified Information.

(3)<sup>66</sup> The Commissioner for Fundamental Rights shall authorise, from among the public servants of the Office of the Commissioner for Fundamental Rights, on a permanent basis, at least eleven staff members to perform the tasks related to the National Preventive Mechanism. The authorised public servant staff members shall be experts with a graduate degree and have an outstanding knowledge in the field of the treatment of persons deprived of their liberty or have at least five years of professional experience. In addition to the public servant staff members, the Commissioner for Fundamental Rights may also authorise, either permanently or on an ad hoc basis, other experts to contribute to performing the tasks related to the National Preventive Mechanism.

(4)<sup>67</sup> Among the public servant staff members authorised to perform the tasks related to the National Preventive Mechanism, there shall be at least one person who has been proposed by the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary, and at least two persons each with a degree in law, medicine and psychology, respectively. Among the authorised public servant staff members, the number of the representatives of either sex may exceed that of the other by one at the most.

**Section 39/E**<sup>68</sup> No one shall suffer any disadvantage for providing information to the Commissioner for Fundamental Rights or to his/her staff members authorised to perform the tasks related to the National Preventive Mechanism.

### *Chapter III/B*<sup>69</sup>

#### *Inquiry into police complaints*<sup>70</sup>

**Section 39/F**<sup>71</sup> In the course of the inquiry into a complaint submitted under Subsection (1) of Section 92 of Act XXXIV of 1994 on the Police (hereinafter referred to as the “Police Act”),

<sup>64</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January 2015.

<sup>65</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January 2015.

<sup>66</sup> Shall become effective with the text amended by Section 9(3) of Act CCXXIII of 2013.

<sup>67</sup> Shall become effective with the text amended by Section 9(4) of Act CCXXIII of 2013.

<sup>68</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January 2015.

<sup>69</sup> Enacted by: Section 141 of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>70</sup> Enacted by: Section 141 of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>71</sup> Enacted by: Section 141 of Act CIX of 2019. Effective: as of 27 February 2020.



(hereinafter referred to as “police complaint”), the provisions of Chapter III shall apply, subject to the derogations set out in this Chapter, to the inquiry of the Commissioner for Fundamental Rights.

**Section 39/G**<sup>72</sup> (1) In the course of his/her inquiry into police complaints, the Commissioner for Fundamental Rights may proceed in person, or by members of his/her staff authorised to conduct an inquiry into police complaints.

(2) Hearings held under Point c) of Subsection (1) of Section 22 shall not be attended by persons other than the Commissioner for Fundamental Rights and the person being heard unless the Commissioner for Fundamental Rights has consented to their presence.

(3) In the course of conducting such an inquiry, staff members of the Commissioner for Fundamental Rights authorised to conduct an inquiry into police complaints may, if they have the required-level personal security clearance certificate, become acquainted with classified data also without the user permission specified in the Act on the Protection of Classified Information.

(4) Those staff members of the Commissioner for Fundamental Rights authorised to conduct an inquiry into police complaints who would be excluded from the administration of the case by the provisions of the Act on Administrative Proceedings shall not take part in the inquiry into the given complaint and/or in the preparation of the report related thereto.

**Section 39/H**<sup>73</sup> (1) The Commissioner for Fundamental Rights may request information on police complaints under Point a) of Subsection (1) of Section 92 of the Police Act, and if the conditions of his/her proceedings are fulfilled, he/she shall inform the complainant and the proceeding police organ about it. The complainant may request within eight days of the receipt of the notification that the national police chief of Hungary, the director general of the organ in charge of internal crime prevention and criminal investigation, the director general of the counter-terrorism unit, and the director general of the Hungarian immigration office assess his/her police complaint after the termination of the proceedings conducted by the Commissioner for Fundamental Rights. The proceeding police authority shall suspend its proceedings upon receiving the notification of the Commissioner for Fundamental Rights.

(2) If the complainant requests within the time limit set out in Subsection (1) that his/her police complaint be assessed by the national police chief of Hungary, the director general of the organ in charge of internal crime prevention and criminal investigation, the director general of the counter-terrorism unit, and the director general of the Hungarian immigration office after the termination of the proceedings conducted by the Commissioner for Fundamental Rights, the police authority shall transfer the police complaint to the Commissioner for Fundamental Rights. If the Commissioner for Fundamental Rights informs the proceeding police authority that the time limit has passed without a result, the police authority shall resume its proceedings.

(3) The national police chief of Hungary, the director general of the organ in charge of internal crime prevention and criminal investigation, the director general of the counter-terrorism unit, and the director general of the Hungarian immigration office shall send a monthly communication to the Commissioner for Fundamental Rights about police complaints under Point a) of Subsection (1) of Section 92 of the Police Act, which shall contain data specified by the Commissioner for Fundamental Rights.

**Section 39/I**<sup>74</sup> Police complaints under Point b) of Subsection (1) of Section 92 of the Police Act may be submitted to the Commissioner for Fundamental Rights within one year of the date of the police action.

**Section 39/J**<sup>75</sup> (1) The Commissioner for Fundamental Rights shall dismiss police complaints under Point b) of Subsection (1) of Section 92 of the Police Act, as well as police complaints transferred to the Commissioner for Fundamental Rights under Subsection (2) of Section 39/H without drafting a report thereon if:

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<sup>72</sup> Enacted by: Section 141 of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>73</sup> Enacted by: Section 141 of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>74</sup> Enacted by: Section 141 of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>75</sup> Enacted by: Section 141 of Act CIX of 2019. Effective: as of 27 February 2020.

- a) the police complaint was submitted late,
- b) it is manifestly unfounded, and making an inquiry is not justified on the grounds thereof,
- c) it is repeatedly submitted and does not contain new facts or data on the substance,
- d) the petitioner of the police complaint requested that his/her identity not be revealed, and the proceedings may not be conducted without this.

(2) The Commissioner for Fundamental Rights shall make a report on the inquiry that he/she has conducted; it shall contain the uncovered facts, and the findings and conclusions based on the facts, as well as the measure taken under Chapter III.

(3) If the inquiry establishes no impropriety related to a fundamental right, or does not affect a matter essential from the perspective of fundamental rights, the Commissioner for Fundamental Rights may dismiss the police complaint by the omission of making a report.

(4) The Commissioner for Fundamental Rights shall send his/her report or his/her dismissal under Subsection (3) to the national police chief of Hungary, the director general of the organ in charge of internal crime prevention and criminal investigation, the director general of the counter-terrorism unit, and the director general of the Hungarian immigration office.

**Section 39/K**<sup>76</sup> (1) In consideration of the report of the Commissioner for Fundamental Rights under Section 39/J, the national police chief of Hungary, the director general of the organ in charge of internal crime prevention and criminal investigation, the director general of the counter-terrorism unit, and the director general of the Hungarian immigration office shall decide about the police complaint through administrative proceedings within thirty-five days. The administrative time limit shall begin on the day following the receipt of the report of the Commissioner for Fundamental Rights.

(2) If the national police chief of Hungary, the director general of the organ in charge of internal crime prevention and criminal investigation, the director general of the counter-terrorism unit, and the director general of the Hungarian immigration office deviate from the report of the Commissioner for Fundamental rights in their respective decisions, they shall justify their derogation.

(3) In the course of actions brought to seek the judicial review of a decision of the national police chief of Hungary, the director general of the organ in charge of internal crime prevention and criminal investigation, the director general of the counter-terrorism unit, or the director general of the Hungarian immigration office under Subsections (1) and (2), the Commissioner for Fundamental Rights may participate in the proceedings as an intervener.

**Section 39/L**<sup>77</sup> (1) After making their decision, the national police chief of Hungary, the director general of the organ in charge of internal crime prevention and criminal investigation, the director general of the counter-terrorism unit, and the director general of the Hungarian immigration office shall publish the report of the Commissioner for Fundamental Rights – with the omission of personal identification data – on their respective websites except if the petitioner has previously objected to such disclosure in his/her police complaint.

(2) By sending their respective decisions, the national police chief of Hungary, the director general of the organ in charge of internal crime prevention and criminal investigation, the director general of the counter-terrorism unit, the director general of the Hungarian immigration office, and the officer of the entity taking a measure shall inform the Commissioner for Fundamental Rights in those matters in which the Commissioner for Fundamental Rights has made a report, or made recommendations for the issuing, amendment, or repeal of an instruction.

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<sup>76</sup> Enacted by: Section 141 of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>77</sup> Enacted by: Section 141 of Act CIX of 2019. Effective: as of 27 February 2020.

## *Chapter IV*

### *The annual report of the Commissioner for Fundamental Rights*

**Section 40** (1) The Commissioner for Fundamental Rights shall submit his/her annual report to Parliament until 31 March of the calendar year following the reporting year.

(2) In his/her annual report the Commissioner for Fundamental Rights shall

*a)*<sup>78</sup> give information on his/her fundamental rights protection activities, presenting in separate chapters his/her activities under the stipulations of Subsections (2) and (3) of Section 1, Subsection (6) of Section 2, and Chapter III/B, respectively, and his/her activities conducted in connection with inquiring into public interest disclosures,

*b)* give information on the reception and outcomes of his/her initiatives and recommendations, and

*c)* evaluate the situation of fundamental rights on the basis of statistics compiled on the infringements related to fundamental rights.

(3) Parliament shall debate the report during the year of its submission.

(4) The report of the Commissioner for Fundamental Rights shall be published on the website of the Office after Parliament has passed a resolution on it.

## *Chapter V*

### *The Office of the Commissioner for Fundamental Rights*

**Section 41** (1) The administration and preparation related to the tasks of the Commissioner for Fundamental Rights shall be performed by the Office.

(2)<sup>79</sup> The Office shall be directed by the Commissioner for Fundamental Rights and managed by the Secretary General. As to the public servants and employees employed by the Office, the provisions of Act CVII of 2019 on Organs with a Special Status and the Status of their Employees shall be duly applied.

(3) The organisational and operational rules of the Office shall be established by way of a normative instruction by the Commissioner for Fundamental Rights.

(3a)<sup>80</sup> Inquiries into petitions relating to police measures and the omission thereof, and the use of coercive instruments and police complaints shall be performed by an independent organisational unit of the Office.

(4) The Office shall have a separate chapter in the central budget and the powers of the head of organ directing the chapter shall be exercised by the Secretary General.

(5) The Commissioner for Fundamental Rights may, in the organisational and operational rules, transfer the right to issue an official copy to the Deputies and, in case of documents not containing any measures, to the Secretary General or a public servant of the Office in an executive position.

**Section 42** (1) Employer's rights over the Secretary General shall be exercised by the Commissioner for Fundamental Rights.

(2)<sup>81</sup> The Secretary General shall be entitled to a salary identical to the upper limit of the pay scale applicable to permanent state secretaries under Act CXXV of 2018 on Government Administration ("Kit.") and allowances identical to those of a permanent state secretary, as well as to forty working days of leave per calendar year.

(2a)<sup>82</sup> The Secretary General shall be aided in his/her work by a Deputy Secretary General. The Deputy Secretary General shall be entitled to a salary identical to the upper limit of the pay scale

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<sup>78</sup> Established by: Section 142 of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>79</sup> Established by: Section 108 of Act CVII of 2019. Effective: as of 1 January 2020.

<sup>80</sup> Enacted by: Section 143 of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>81</sup> Established by: Section 144(1) of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>82</sup> Enacted by: Section 144(1) of Act CIX of 2019. Effective: as of 27 February 2020.

applicable to deputy secretaries of state under “Kit.” and allowances identical to those of a deputy secretary of state, as well as to thirty-five working days of leave per calendar year.

(2b)<sup>83</sup> Employer’s rights over the head of the independent organisational unit under Point a) of Subsection (3) of Section 41 shall be exercised by the Commissioner for Fundamental Rights.

(2c)<sup>84</sup> The head of the independent organisational unit under Point a) of Subsection (3) of Section 41 shall be entitled to a salary and allowances identical to those of a deputy secretary of state, as well as to thirty-five working days of leave per calendar year.

(2d)<sup>85</sup> During his/her activity, the head of the independent organisational unit under Point a) of Subsection (3) of Section 41 shall bear the title of “police complaints director”.

(3)<sup>86</sup> Public servants employed by the Office shall be appointed and dismissed by the Commissioner for Fundamental Rights or, in the case of public servants employed under the provisions of Subsection (4), by either Deputy Commissioner for Fundamental Rights; in other respects, employer’s rights over these public servants shall be exercised by the Secretary General. Public servants employed at the independent organisational unit pursuant to Point a) of Subsection (3) of Section 41 shall be appointed and dismissed – with the consent of the Commissioner for Fundamental Rights – by the head of the independent organisational unit pursuant to Point a) of Subsection (3) of Section 41; in other respects, employer’s rights shall be exercised over them by the Secretary General. The Office shall endeavour to give due representation to women, ethnic, minority and disadvantaged groups in the personnel of the Office.

(4) The authorised number of posts of public servants placed under the direction of the Deputy Commissioners for Fundamental Rights shall be determined in the organisational and operational rules.

## *Chapter VI*

### *Final provisions*

#### 13. Authorising provisions

**Section 43** (1)<sup>87</sup> The Minister responsible for national defence shall be authorised to determine in a decree the rules governing the entry, stay and exit of the Commissioner for Fundamental Rights into, in and from the zones serving the operation of the Hungarian Defence Forces and of the military national security services.

(2) The Minister responsible for directing the law-enforcement organ shall be authorised to determine in a decree the rules governing the entry, stay and exit of the Commissioner for Fundamental Rights into, in and from the zones serving the operation of the law-enforcement organ.<sup>88</sup>

(3)<sup>89</sup> The Minister supervising the National Tax and Customs Administration shall be authorised to determine in a decree the rules governing the entry, stay and exit of the Commissioner for Fundamental Rights into, in and from the zones serving the operation of the organs of the National Tax and Customs Administration performing customs authority tasks, the Directorate General of Criminal Affairs of the National Tax and Customs Administration and its lower and middle-level organs.

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<sup>83</sup> Enacted by: Section 144(1) of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>84</sup> Enacted by: Section 144(1) of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>85</sup> Enacted by: Section 144(1) of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>86</sup> Established by: Section 144(2) of Act CIX of 2019. Effective: as of 27 February 2020.

<sup>87</sup> Amended by: Section 5(2) of Act CLXXI of 2011.

<sup>88</sup> See: BM (Ministry of the Interior) decree No. 62/2012 (11 December), HM (Ministry of Defence) decree No. 18/2018 (15 December).

<sup>89</sup> Amended by: Section 53(b) of Act CXCI of 2015.

## 14. Provision on entry into force

**Section 44** The present Act shall enter into force on 1 January 2012.

## 15. Transitional provisions

**Section 45** (1) The Commissioner for Fundamental Rights shall be the legal successor of the Parliamentary Commissioner for Civil Rights, the Parliamentary Commissioner for National and Ethnic Minority Rights and the Parliamentary Commissioner for Future Generations.

(2) The present Act shall not affect the mandate of the Parliamentary Commissioner for Civil Rights who is in office at its entry into force, with the proviso that

- a)* the designation of his/her office shall be Commissioner for Fundamental Rights,
- b)* the provisions contained in Section 8, Section 9, and Sections 11 to 16 shall be applicable to his/her mandate, and
- c)* after the expiry of his/her mandate, he/she may be elected once Commissioner for Fundamental Rights.

(3) As of the entry into force of the present Act, the Parliamentary Commissioner for National and Ethnic Minority Rights in office shall become Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary; the Parliamentary Commissioner for Future Generations in office shall become Deputy Commissioner for Fundamental Rights responsible for the protection of the interests of future generations; the provisions of the present Act relating to the Deputy Commissioners for Fundamental Rights shall be applicable to their mandate, with the proviso that

- a)* their mandate may terminate pursuant to Points *b)* to *g)* of Subsection (1) of Section 17, or upon termination of the mandate of the Commissioner for Fundamental Rights, and
- b)* after the expiry of their mandate, they may be elected once Deputy Commissioner for Fundamental Rights.

(4) The Office shall be the legal successor of the Office of the Parliamentary Commissioner.

(5) As of the entry into force of this Act, the designation of the head of the Office of the Parliamentary Commissioner shall be Secretary General.

(6)<sup>90</sup>

**Section 45/A**<sup>91</sup> Section 34/A of the present Act, established by Act CCXI of 2012 on the amendment of certain justice-related acts, shall also be applicable in handling cases still running on 1 January 2013.

**Section 45/B**<sup>92</sup> If the Commissioner for Fundamental Rights had not taken on the electronic administration of affairs under Section 108, Subsection (2) of Act CCXXII of 2015 on the General Rules for Electronic Administration and Trust Services by 1 January 2018, it is Subsection (2) of Section 39, and Subsection (4) of Section 27 of this Act, effective until 31 December 2016, that shall be applicable, with regard to electronic communication, until 31 December 2017.

**Section 45/C**<sup>93</sup> The Independent Police Complaints Board shall cease to exist on 27 February 2020, and its tasks and competences shall be taken over by the Commissioner for Fundamental Rights.

<sup>90</sup> Repealed by: Section 146(b) of Act CIX of 2019. Inoperative: as of 27 February 2020.

<sup>91</sup> Enacted by: Section 72(2) of Act CCXI of 2012. Effective: as of 1 January 2013.

<sup>92</sup> Enacted by: Section 69(1) of Act CXXI of 2016. Effective: as of 1 January 2017.

<sup>93</sup> Enacted by: Section 145 of Act CIX of 2019. Effective: as of 27 February 2020.

## 16. Compliance with the requirement of the Fundamental Law on cardinality

**Section 46**<sup>94</sup> Subsection (3) of Section 2 of this Act shall qualify as cardinal pursuant to Point *g*) of Paragraph (2) of Article 24 of the Fundamental Law.

## 17. Amending provisions

**Section 47**<sup>95</sup>

**Section 48** (1)–(3)<sup>96</sup>

(4)<sup>97</sup>

(5)–(16)<sup>98</sup>

## 18. Repealing provisions

**Sections 49–50**<sup>99</sup>

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<sup>94</sup> Established by: Section 8 of Act CCXXIII of 2013. Effective: as of 19 December 2013.

<sup>95</sup> Repealed by: Section 12 of Act CXXX of 2010. Inoperative: as of 2 January 2012.

<sup>96</sup> Repealed by: Section 12 of Act CXXX of 2010. Inoperative: as of 2 January 2012.

<sup>97</sup> Shall not enter into force by virtue of Section 410(2) of Act CCI of 2011.

<sup>98</sup> Repealed by: Section 12 of Act CXXX of 2010. Inoperative: as of 2 January 2012.

<sup>99</sup> Repealed by: Section 12 of Act CXXX of 2010. Inoperative: as of 2 January 2012.