

OFFICE OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS
THE NATIONAL HUMAN RIGHTS INSTITUTION OF THE UNITED NATIONS
HUNGARY

INTRODUCTION

2019

<http://www.ajbh.hu/en/web/ajbh-en/>

I. INTRODUCTION TO THE INSTITUTION OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS IN HUNGARY

The new constitution (called Fundamental Law) and the new Ombudsman Act, both adopted in 2011 by the Parliament and effective as of 2012, have established the new structural arrangement of the ombudsman institution in Hungary.

The Act on the Commissioner for Fundamental Rights has created a unified ombudsman system in accordance with the Fundamental Law of Hungary. The offices of the special Ombudsmen (Deputy-Commissioners responsible for the Rights of National Minorities and the Interests of Future Generations, respectively) have been integrated into the office of the general Ombudsman. According to the Fundamental Law, the Commissioner for Fundamental Rights is an organ comprising a single person who shall be nominated by the President of the Republic and elected by the Parliament to carry out activities guaranteeing the protection of fundamental rights. The new Act has preserved the achievements in the field of the Ombudsman's protection of rights.

The main task of the Commissioner for Fundamental Rights is to inquire into any improprieties relating to constitutional rights he or she has become aware of and to initiate general or particular measures for their redress. The Commissioner for Fundamental Rights is solely accountable to the Parliament.

The Ombudsman is elected for a six-year term by a majority of two-thirds of the votes of the Members of Parliament at the proposal of the President of the Republic. The Ombudsman may be re-elected for a second term.

II. PROCEDURES CONDUCTED AND MEASURES TAKEN BY THE COMMISSIONER FOR FUNDAMENTAL RIGHTS

The main task of the Commissioner for Fundamental Rights is to inquire into any improprieties relating to constitutional rights he or she has become aware of and to initiate general or particular measures for their redress.

The Ombudsman may select the course of action that he/she deems to be the most appropriate, within the scope allowed by the act that regulates his/her competence. Key measures are:

- To make recommendations to the supervisory organ of the authority subject to inquiry to redress the impropriety,
- To initiate redress of the impropriety by the head of the authority subject to inquiry,
- To initiate proceedings by the Constitutional Court,
- To initiate with the Curia the review of compliance of a local government decree with other laws,

- To initiate proceedings by the competent prosecutor through the Prosecutor General,
- To initiate regulatory offence proceedings or disciplinary proceedings with the organ authorised to conduct such proceedings if he or she considers that there is a well-founded suspicion that a regulatory offence or a disciplinary offence has been committed, while in the case of detecting a crime, he or she is obliged to initiate such proceedings.
- To 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 rule of law or the public law instrument for the regulation of organisations,
- To submit, as an ultimate measure, the case to the Parliament as part of the annual report.

Section 18 of the Act CXI of 2011 on the Commissioner for Fundamental Rights states that anyone may turn to the Commissioner if, in his or her judgment, the activity or omission of any **authority** infringes a fundamental right of the person submitting the petition or if an imminent danger thereof exists, 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 or her.

Such authorities include, for example:

- ❖ public administration organs;
- ❖ local governments;
- ❖ nationality self-governments;
- ❖ public bodies with mandatory membership;
- ❖ the Hungarian Defense Forces;
- ❖ law enforcement organs;
- ❖ any other organ with public administration competence, acting in this capacity;
- ❖ investigation authorities or investigation organs of the Prosecution Service;
- ❖ notaries public;
- ❖ bailiffs at county courts;
- ❖ independent bailiffs; or
- ❖ organs performing public service

If a legally binding or final administrative decision has been adopted on a case, it is possible to file a petition to the Commissioner for Fundamental Rights within one year from the announcement of such decision.

Regardless of their form of organization, organs performing public services shall be the following:

- organs performing state or local government tasks and/or participating in the performance thereof,
- public utility providers,
- universal providers,
- organizations participating or acting as an intermediary in granting state or European Union subsidies,
- organizations performing activities described in a legal regulation as public service, and
- organizations performing a public service which is described in a legal regulation as mandatory.

The organs performing public services may only become subject to inquiry in relation to such activities.

The Commissioner for Fundamental Rights, the Deputy Commissioner for Future Generations, as well as the Ombudsman for the Rights of National Minorities monitor the enforcement of the interests of future generations and the rights of national minorities living in Hungary.

The Commissioner for Fundamental Rights may not inquire into the activities of:

- the Parliament,
- the President of the Republic,
- the Constitutional Court,
- the State Audit Office,
- the courts and
- the Prosecution Service (except for the investigation office of the Prosecution Service).

If, on the basis of the petition, it may be presumed that – with the exception of these organs – the activity or omission of the organ not qualifying as authority gravely infringes the fundamental rights of a larger group of natural persons, the Commissioner for Fundamental Rights may proceed exceptionally.

Cases where the Ombudsman cannot help:

- ❖ If a period exceeding one year has elapsed since the announcement of a legally binding or final administrative decision on the case,
- ❖ If the proceedings began before 23 October, 1989,
- ❖ If an administrative procedure has been launched against the administrative decision, or a final court decision has been rendered,
- ❖ If an administrative procedure has been launched against the decision, or a final court decision has been rendered,
- ❖ If the person filing the petition has not revealed his or her identity, the inquiry cannot be conducted (No one shall suffer a disadvantage for turning to the Commissioner for Fundamental Rights.)

The Commissioner for Fundamental Rights shall reject the petition if

- it does not meet the requirements,
- it is manifestly unfounded,
- a repeatedly submitted petition does not contain new facts or data on the substance.

The Commissioner for Fundamental Rights may reject the petition if

- it has been submitted anonymously, or
- in his or her judgement the impropriety referred to in the petition is of minor importance.

III. PUBLIC INTEREST DISCLOSURE AND WHISTLE-BLOWER PROTECTION

As of 1 January 2014, it is the duty of the Commissioner for Fundamental Rights to launch inquiries into the practice of the state organs regarding public interest disclosures and citizens may also directly turn to the Commissioner for Fundamental Rights. As one of the institutions with the greatest public trust, the Commissioner has been authorized to establish and operate an electronic system handling and registering public interest disclosures. In order to protect whistle-blowers, they may request that their personal data be accessible only to the Commissioner for Fundamental Rights. In this case, the public interest disclosure will be forwarded in an anonymous form.

IV. NEW POWERS IN CONNECTION WITH THE REVIEW PROCESS OF NATIONAL SECURITY CHECKS

As of 1 January 2015, in accordance with the stipulations of the Act on National Security Services, the Commissioner for Fundamental Rights has got new powers: he may inquire into ordering and conducting a review of national security checks from the aspects of fundamental rights-related improprieties.

The person under review may request the Ombudsman to conduct an inquiry within six months after having learned about the review process. In addition, the Commissioner for Fundamental Rights may also conduct an *ex officio* investigation into the review process practices of the national security services. If the Commissioner discovers any fundamental rights-related improprieties in connection with ordering and conducting such reviews, he shall inform the cabinet minister supervising the national security service concerned and request him to take the necessary measures; in case the Ombudsman does not find those measures appropriate, he shall inform thereof the Parliament's Committee on National Security.

V. INTERNATIONAL ACTIVITY

It was a milestone with regard to our international relations when in May 2011, our institution received National Human Rights Institution (NHRI) 'B' status from the ICC's Committee for Accreditation; as a positive response to the application by the Commissioner.

As a result of the reaccreditation process that commenced in 2013, our institute was awarded NHRI's 'A' status in the fall of 2014.

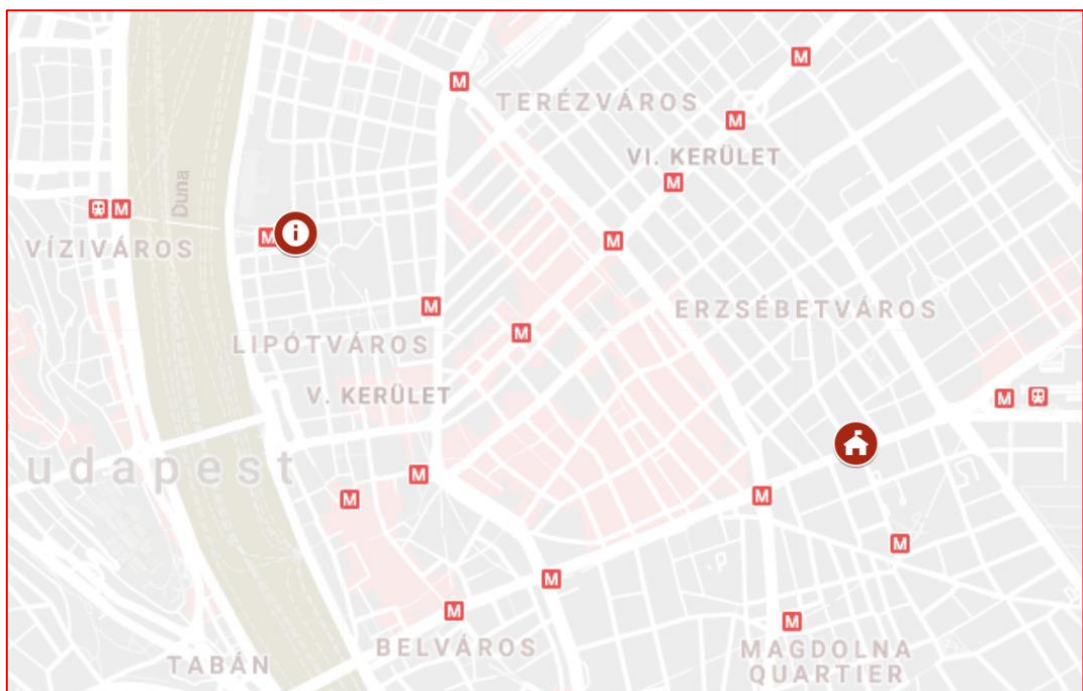
The most important tasks are:

- human rights counselling or consultation either *ex officio*, or on a client's initiative, or commissioned by the government, parliament or a state organ;
- preparation of position papers, recommendations and reports on human rights issues and their presentation to the public;
- recommendation and promotion of the ratification of agreements of international law;
- promoting the adjustment of the domestic legal order to international human rights agreements and the effective implementation of the latter;
- active participation in the compilation of the human rights reports;
- cooperation with international or domestic human rights organizations;
- teaching of and research into human rights;
- calling the attention of society to issues of human rights (particularly those related to discrimination) and to the violations of rights.

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