



DEPUTY COMMISSIONER FOR FUNDAMENTAL RIGHTS
OMBUDSMAN FOR FUTURE GENERATIONS



VISEGRAD
GROUP
OMBUDSMEN
20-22 OCT
2021
HUNGARY

Protecting the Rights of Future Generations in Hungary

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Brief History



- Ombudsman for Future Generations established in 2008 as an independent Ombudsman with own staff of nearly 40 people
- Restructured in 2011 by the Fundamental Law (Commissioner for Fundamental Rights and two Deputies, one for protection of Future Generations, other for protection of National Minorities) with much smaller staff and somewhat different powers but still strong constitutional mandate
- Between 2012 – 2020 dual structure (9 people under direct management and 7 under indirect professional guidance)
- In 2020 integrated into one team of 12 people under direct management of FGO – holistic approach, lawyers, economist, biologist

Constitutional mandate



Three thematic pillars in Fundamental Law:

- ‘**Common heritage of the nation**’ (Art. P) - novelty since 2011
- **Right to physical and mental health** (Art. XX)
- **Right to a healthy environment** (Art. XXI)

Art. P) Common heritage of the nation

“Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations.”

In the practice the “interests of future generations” are understood as issues relating to mainly **environmental protection, nature conservation matters and cultural heritage protection.**

Main functions



- **Investigating** citizens' environmental and mal-administration **complaints**
- Being a „**watchdog**” for any future generations matter deemed significant
- **Ex officio investigations** for exploring systemic problems
- **Regulatory proposals:** commenting on draft bills (through the Commissioner), or initiating legislation on its own
- Initiating (through the Commissioner) constitutional scrutiny of acts before the **Constitutional Court** and scrutiny of local Municipality's acts before the **Supreme Court** for alleged infringements
- Possibility to intervene in court proceedings in the **judicial review of environmental regulatory decisions**
- Providing a neutral **platform for negotiations** between NGOs, governmental stakeholders, professionals, academia regarding significant matters with relevance to future generations
- Permanent invitee in the work of the **National SD Council**, of the **National Environmental Protection Council**, right to be heard at the different committees of the Parliament
- general **awareness raising:** media appearances (tv, radio, online, publications)
- one of the **sustainability institutions** in Hungary in the National SD Council's official list



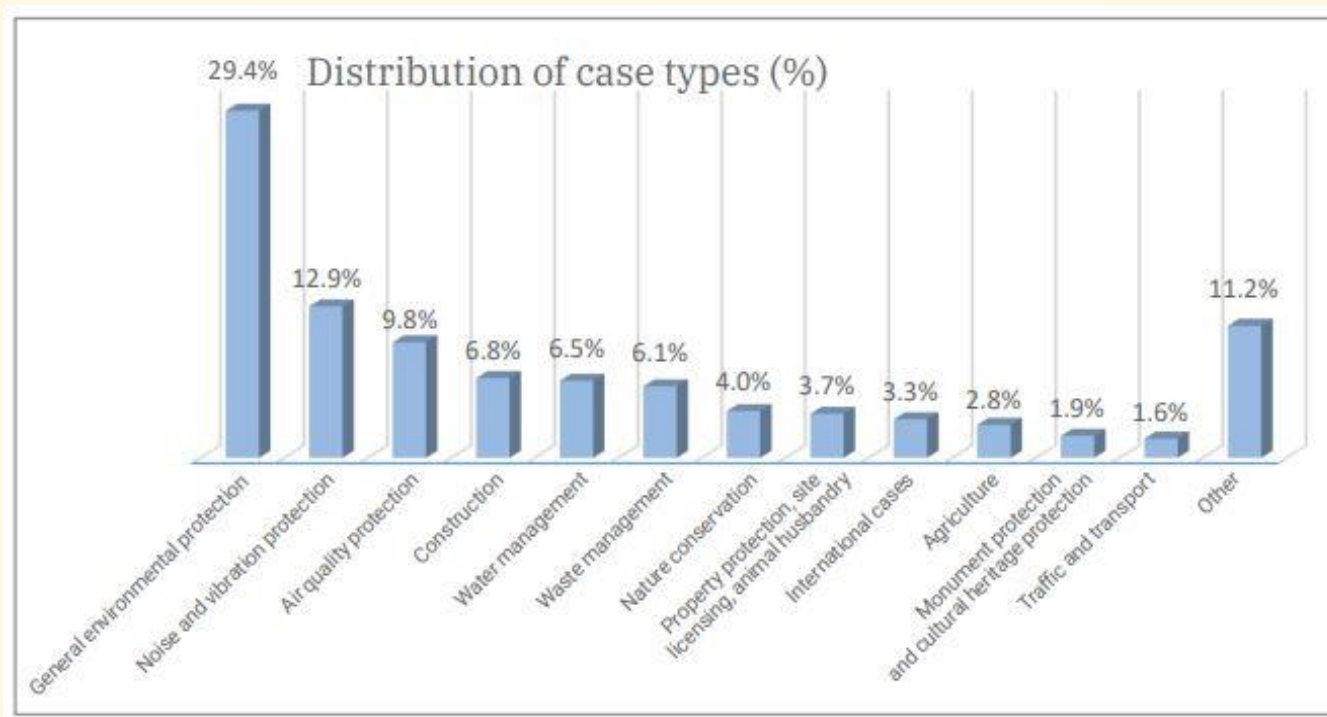
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Annual case load



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Year	No. of cases overall	No. of FG related cases
2017	6520	349
2018	5371	395
2019	6108	502
2020	7309	428
2021. Sept	5214	512



Main legal tools



- **Individual complaints** followed up by enquiries, concluded in a **joint report** signed by both Commissioner and FG Ombudsman
- Flexibility in complex matters:
 - Launching **ex officio investigations** through the Commissioner to explore **systemic problems**, could have various outcomes: legislative proposals, general opinions, public statements
 - **Legislative proposals**:
 - standalone (e.g. groundwater protection, environmental liability, evaluation of ecosystem services) or
 - Could be in the conclusion of the joint reports
 - **General opinions**: in systemic problems (e.g. soil and groundwater protection, SDG implementation, nature conservation restrictions in forestry management, issues of landscape planning)
 - **Public statements**: in other significant matters (e.g. biodiversity, sustainable city planning, nature conservation requirements in mining activities, cultural heritage protection, solar panels and soil protection)

FGO contributes to **constitutional jurisprudence** through its work with the Constitutional Court

- **Nature Conservation Areas:** FGO through an amicus brief contributed to the Constitutional Court's case practice, which ultimately stated that in the case of the privatization of the Natura 2000 areas, some very important statutory safeguards are missing (2017)
- **FGs and Groundwater protection:** legal amendment aimed at allowing GW wells to 80 m below ground without prior authorization. OFG submitted an amicus brief emphasizing dangers to GW resources and human health. Constitutional Court invalidated the amendment, building on the OFG's argumentation. (2018)
- **Institutional structure of environmental and nature protection agencies:** when analyzing the structure of integrated government agencies, using again an amicus brief from the FGO, the Constitutional Court stated that „environmental and nature protection interests should not be subordinated to other interests”. It is essential that the integrated government agencies ensure that environmental and nature protection factors be adequately represented in their complex regulatory practice (2019)
- **Forestry legislation:** FGO through the Commissioner submitted application for constitutional scrutiny relating to certain provisions of the Forestry Act. Echoing a significant part of our concerns, the Constitutional Court annulled most of the problematic provisions in a landmark decision introducing the Public Trust doctrine. , i.e. the state needs to manage the common heritage of the nation for future generation as beneficiaries (2020)

As a result of this cooperation (application for constitutional scrutiny and amicus briefs), constitutional jurisprudence has been enriched with significant legal concepts for the rights of future generations:

- **Precautionary principle:** state bears burden of proof that the condition of environment does not deteriorate as a result of a certain measure
- **Non-regression principle:** level of protection already achieved should not be reduced
- **Necessity and proportionality test:** should be used when reducing level of protection is needed for another fundamental right
- **Intergenerational equity:** to preserve natural resources for future generations, the present generation is bound to preserve the possibility of choice, to preserve the possibility of quality and to preserve the possibility of access
- **Public trust doctrine:** the state needs to manage the common heritage of the nation for future generations as beneficiaries

Other achievements



- **SDGs:** FGO articulated most urgent steps for implementation of environmental and human health related SDGs, also proposing national indicators. A summary was annexed to the Hungarian Voluntary National Review tabled at the UN High Level Political Forum
- **Environmental Liability Regulation:** 2 years of background work for a more effective national ELD scheme, discussions with Ministries, insurance companies, private sectors –introduction of a complex regulatory proposal at a more efficient polluter pays scheme. Ministries have set up an inter sectoral working group involving our experts.
- **Airport noise:** several complaints received regarding unbearable noise around Bp airport, OFG organised roundtable discussion with Ministry and affected stakeholders. Outcome: night-time flights greatly reduced between midnight and 5 am.

International outlook I



Due to **unique mandate**, significant international attention on our work:

- Regularly receiving thematic questionnaires to assist the work of the **UN SR for Human Rights and the Environment** and other international organisations
- **GANHRI and ENNHRI** referenced us as good practices in
 - a project on the right to a healthy environment and the role of National Human Rights Institutions and
 - a guidance for NHRIs to engage with Voluntary National SDG Reviews
- Other countries reaching out to us as **possible model institution** for FG rights, e.g. England, France, Malta, Norway

International outlook II



Topic of rights of future generations is gaining momentum internationally:

United Nations:

- 'Our Common Agenda' report published by the **UN Secretary General** in September 2021 makes several commitments to future generations. The proposals include:
 - establishing a UN Special Envoy for Future Generations
 - publishing a Declaration for Future Generations
 - establishing a Futures Lab
 - hosting a Summit of the Future
- After a decade long effort, the UN Human Rights Council adopted a landmark resolution on 8th October recognizing **the human right to a clean, healthy and sustainable environment**

European Convention of Human Rights:

- Potential future **inclusion of the right to a healthy environment** in the European Convention of Human Rights. It would finally give the European Court of Human Rights “a non-disputable base for rulings concerning human rights violations arising from environment-related adverse impacts on human health, dignity and life”.
- Parliamentary Assembly of the Council of Europe tabled the draft additional protocol to the Convention, now being considered by the Council of Ministers.



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Thank you for time!

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