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UN National Human Rights Institution**

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**Comprehensive Report
by the Commissioner for Fundamental Rights
on the activities of the OPCAT National Preventive Mechanism
in 2017**



May 2018

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Cover picture: National Prison of Szombathely, the courtyard of the disciplinary section

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Abbreviations

CCB	Civil Consultative Body
Committee (CAT)	Committee against Torture
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRPD	United Nations Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007
Department	OPCAT National Preventive Mechanism Department
ECHR	European Court of Human Rights
ELTE	Eötvös Loránd University
European Convention on Human Rights	European Convention on Human Rights, signed in Rome on November 4, 1950, promulgated by Act XXXI of 1993
FPMI	Forensic Psychiatric and Mental Institution
FPMI Decree	Minister of Justice Decree 13/2014. (XII. 16.) IM on compulsory treatment, temporary compulsory treatment, and the tasks of the Forensic Psychiatric and Mental Institution
HAoS	Hungarian Academy of Sciences
MoHC	Ministry of Human Capacities
MoJ	Ministry of Justice
NPM	National Preventive Mechanism
NUPS	National University of Public Service
Office	Office of the Commissioner for Fundamental Rights
Ombudsman Act	Act CXI of 2011 on the Commissioner for Fundamental Rights
OPCAT	Optional Protocol to the Convention against Torture and other Inhuman or Degrading Treatment or Punishment, promulgated by Legislative Decree CXLIII of 2011
Place of detention	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)
Prison Code	Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offenses

Subcommittee on Prevention of Torture (SPT)	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations
UN Convention against Torture (UNCAT)	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Legislative Decree 3 of 1988
UN Convention on the Rights of the Child	Convention on the Rights of the Child, signed in New York on November 20, 1989, promulgated by Act LXIV of 1991

Introduction

The Commissioner for Fundamental Rights, formerly the Parliamentary Commissioner for Civil Rights, an ombudsman institution responsible to the Parliament, has been regularly visiting, ever since its establishment, state and local institutions where the residents were persons deprived of or restricted in their liberty. The objective of on-site inspections was to learn whether the fundamental rights of persons who are detained in institutions for shorter or longer periods due to their age, state of health, difficult situation, or as a result of a judicial order, are infringed upon.

As a general rule, the Commissioner for Fundamental Rights launches investigations on the basis of submissions;¹ however, in connection with the activities of the authorities,² he may also conduct ex officio proceedings *“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.”*³ The ombudsmen have usually been initiating ex officio inquiries in order to protect the rights of society’s most vulnerable groups whose members are not or only partially able to voice their complaints or submit them to the competent local or state authorities. Hungarian Ombudsmen have been treating detainees as a vulnerable group of society; therefore, they have conducted regular inquiries into their treatment in various places of detention even in the absence of formal submissions.

The Parliament, in recognition of the professional knowledge and practical experience obtained by the Commissioner for Fundamental Rights, responsible solely to it, and his staff, has decided⁴ to entrust the commissioner with the tasks of 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 (hereinafter the “OPCAT”).⁵ In addition to my fundamental-rights-protection activities stipulated in Article 30 of the Fundamental Law, I have been performing these tasks, as the first Hungarian Ombudsman with such a mandate, since January 1, 2015.

In order to perform my tasks related to the National Preventive Mechanism, I regularly examine the treatment of persons deprived of their liberty and held at various places of detention (hereinafter the “place of detention”), specified in Article 4 of the OPCAT, also in the absence of any petition or alleged impropriety.⁶ In performing my tasks related to the National Preventive Mechanism, I have conducted 32 inspections so far, which accounts for a significant part of my activities.

I have regularly published my reports on the unannounced, multidisciplinary visits to various places of detention on the homepage of my Office. The reports by the National Preventive Mechanism have been receiving attention from and processed by not only the printed and electronic press but also the professional circles concerned.

This is for the third time that I am complying with my obligation⁷ to prepare a comprehensive report on the performance of the tasks related to the National Preventive Mechanism.

¹ Section 18, Subsection (1) of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter the “Ombudsman Act”)

² Section 18(1)a–l) of the Ombudsman Act

³ Section 18(4) of the Ombudsman Act

⁴ Section 2(6) of the Ombudsman Act

⁵ Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011

⁶ Section 39/B(1) of the Ombudsman Act

⁷ Section 39/C of the Ombudsman Act

In addition to reporting on the visits performed by the National Preventive Mechanism, this comprehensive report on the performance of these tasks in 2017 is also to inform the reader about the challenges, the dialog with the competent ministries and authorities, as well as the cooperation with non-governmental organizations, foreign partner institutions, and international human rights organizations.

Budapest, May 2018




László Székely

1. The legal background of the operation and the budget 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.⁸

1.1. The Fundamental Law of Hungary

- No one shall be subject to torture, inhuman or degrading treatment or punishment, or held in servitude. /Article III, Paragraph (1) of the Fundamental Law/
- No one shall be expelled or extradited to a State where he or she would be in danger of being sentenced to death, being tortured or being subjected to other inhuman treatment or punishment. /Article XIV, Paragraph (2) of the Fundamental Law/

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.*”⁹ Acts shall be adopted by the Parliament.¹⁰ International treaties containing rules pertaining to fundamental rights and obligations shall be promulgated by an act.¹¹

1.2.1. UN instruments

Pursuant to Article 7 of the **International Covenant on Civil and Political Rights**, adopted by the 21st Session of the UN General Assembly on December 16, 1966, promulgated by Law-decree 8 of 1976,¹² “*no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*”

From the aspect of performing tasks related to the National Preventive Mechanism, Article 10.1 of the Covenant, stipulating 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.

According to Article 37 of the **Convention on the Rights of the Child, signed in New York on November 20, 1989** (hereinafter the “UN Convention on the Rights of the Child”), 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 offenses 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.*”

⁸ See Article 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988

⁹ See Article I(3) of the Fundamental Law

¹⁰ See Article 1(2)b) of the Fundamental Law

¹¹ See Section 9, Subsection (1) of Act L of 2005 on the procedure related to international treaties

¹² Before January 1988, in the field of legislation, the Presidium of the People’s Republic (hereinafter the “Presidium”) had the power of substitution as regards the Parliament, with the exceptions that it could not amend the Constitution or adopt any source of law named “act”. Statutory-level legal sources adopted by the Presidium were called law-decrees. No law-decree may be adopted since the abolishment of the Presidium. Prevailing law-decrees may be amended or repealed only by an act. /See Clause IV/2 of Constitutional Court Decision 20/1994 (IV. 16.) AB/

In Hungary, the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (hereinafter the “UN Convention against Torture”), promulgated by Law-decree 3 of 1988, entered into force on June 26, 1987. The definition of torture was introduced to 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 or from a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him 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.

In addition to the above, 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** (hereinafter the “ill-treatment”)¹³ *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.*”

In accordance with Article 3 of the UN Convention against Torture, “*no State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*”

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, claiming 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 indications that torture is being systematically practiced in the territory of a State Party.¹⁴ Documents published by the Committee, including, in particular, its general comments, the periodic reports of the States Parties,¹⁵ documents generated within the frameworks of the complaints mechanism, and the Committee’s annual reports provide important guidelines to the National Preventive Mechanisms.¹⁶

The **Optional Protocol to the Convention against Torture and other Inhuman or Degrading Treatment or Punishment**, promulgated by Act CXLIII of 2011, is open to accession by only those States that have ratified or acceded to the Convention.¹⁷

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.¹⁸

¹³ See Clause 3, CAT/C/GC/2

¹⁴ See Articles 19 to 22 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

¹⁵ Information on the periodic reports submitted by Hungary may be found at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=HUN&Lang=EN

¹⁶ The documents of the UN Committee against Torture (CAT) may be found at: <http://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>

¹⁷ See Article 27.3 of the OPCAT

¹⁸ See Article 1 of the OPCAT

Pursuant to Article 4(2) of the OPCAT, “*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 OPCAT has established the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the “Subcommittee on Prevention of Torture”). One of the main tasks of 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.¹⁹ From the aspect of the operation of the National Preventive Mechanisms and in addition to the general directives²⁰ of the Subcommittee, the specific directives and recommendations²¹ made in its reports on the Subcommittee’s visits to the States Parties are also applicable.

1.2.2. Instruments of the Council of Europe

Pursuant to Article 3 of the **European Convention on Human Rights, signed in Rome on November 4, 1950**, promulgated by Act XXXI of 1993 (hereinafter the “European Convention on Human Rights”), „*no one shall be subjected to torture or to inhuman or degrading treatment or punishment.*” Unlike the UN instruments, Article 3 of the European Convention on Human Rights does not use the expression “cruel.”

Compliance with the obligations stipulated in the European Convention on Human Rights and its protocols, including the prohibition of torture, inhuman, degrading treatment or punishment, provided for in Article 3, is monitored *mainly* by the European Court of Human Rights (hereinafter the “ECHR”). Pursuant to the European Convention on Human Rights, the ECHR may receive applications from any person, nongovernmental organization or group of individuals claiming to be the victim of a violation of the rights set forth in the Convention within a period of six months after all domestic remedies have been exhausted.²² In addition, any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention by another High Contracting Party.²³ In the course of its proceedings, the European Court shall determine whether the authorities of the state concerned have violated any article of the European Convention on Human Rights.

According to the ECHR’s case-law, ***torture*** means serious and deliberate cruelty that cannot be established in the absence of serious physical and/or mental injuries. ***Inhuman treatment or punishment*** causes, if not actual bodily injury, at least intense physical and mental suffering. ***Degrading treatment or punishment*** is such as to arouse in their victims’ feelings of fear, anguish, and inferiority, capable of humiliating and debasing them and possibly breaking their physical or moral resistance.²⁴

From the aspects of the National Preventive Mechanism’s activities, particularly those, Article-3-related, judgements of the ECHR have relevance which deal with the conditions of detention and issues related to the treatment of persons deprived of their liberty (hygienic conditions, abuse by fellow detainees or the guards, crowdedness, solitary confinement, detention of minors, detention under immigration laws, physical and mental health of the detainees etc.).²⁵

¹⁹ See Article 11 of the OPCAT

²⁰ *Guidelines on national preventive mechanisms: CAT/OP/12/5; Analytical assessment tool for national preventive mechanisms: CAT/OP/1/Rev.1; Compilation of SPT Advices to NPMs.* These documents may be found at: <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Brief.aspx>

²¹ See UN Committee Against Torture (CAT), *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives*, February 26, 2009, CAT/OP/MDV/1, Clause 72. c)

²² Articles 34 and 35 of the European Convention on Human Rights

²³ Article 33 of the European Convention on Human Rights

²⁴ Judgement of the European Court of Human Rights, *Ireland v. the United Kingdom* (January 18, 1978), Clause 167

²⁵ Factsheets on ECHR’s case-law. See at <http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets>

Hungary acceded to the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**, signed in Strasbourg on November 26, 1987, promulgated by Act III of 1995, on November 4, 1993; its provisions are to be observed as of March 1, 1994.²⁶

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the “CPT”) has been established by Article 1 of 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 met the Parliamentary Commissioner for Civil Rights for the first time during its 1999 periodic visit;²⁷ since then, the CPT has visited the ombudsman institution during every visit paid to Hungary.²⁸ I received the delegation of the CPT on October 20, 2017, during its “ad hoc” visit to Hungary.²⁹

Since 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,*”³⁰ the CPT’s reports on its visits to Hungary are of major importance for me. When drafting the National Preventive Mechanism’s first-ever plan of visits, I relied on the conclusions of the CPT’s reports on its visits to Hungary, its recommendations made to the Government, as well as the latter’s response thereto.³¹

The comprehensive standards³² of treating persons deprived of their liberty, worked out 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 centers for refugees) and various vulnerable groups, such as women and juveniles.

1.3. Preventive activities of the National Preventive Mechanism

The “*Commissioner for Fundamental Rights shall perform fundamental rights protection activities*”³³ which also cover the enforcement of the prohibition of torture, inhuman, degrading treatment or punishment.

Pursuant to Article 2.1 of the UN Convention against Torture, “*each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.*” “*No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency,*”³⁴ or “*an order from a superior officer or a public authority*”³⁵ may be invoked as a justification of torture. 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.*”³⁶

²⁶ See Section 3 of Act III of 1995

²⁷ The first Parliamentary Commissioner for Civil Rights (Ombudsman) was inaugurated on July 1, 1995.

²⁸ Information related to the CPT’s visits to Hungary may be found at: <http://www.coe.int/en/web/cpt/hungary>

²⁹ The press release on the CPT’s “ad hoc” visit to Hungary from October 20 through October 26, 2017, may be found at: www.coe.int/en/web/cpt/-/cpt-returns-to-hungary-to-assess-the-situation-of-foreign-nationals-detained-under-aliens-legislati-2

³⁰ Article 31 of the OPCAT

³¹ See CPT/Inf (2014) 13 and CPT/Inf (2014) 14

³² See CPT standards CPT/Inf/E (2002) 1 - Rev. 2015

³³ Article 30(1) of the Fundamental Law

³⁴ Article 2.2 of the CAT

³⁵ Article 2.3 of the CAT

³⁶ Chapter IV, Clause 2.4 of Constitutional Court Decision 36/2000 (X. 27.) AB

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.” By virtue of Article 16 of the UN Convention against Torture, the State Party’s obligation to take effective measures, stipulated in Article 2 of the UN Convention against Torture, shall also cover the prevention of ill-treatment.³⁷

The State Party also has an obligation to prevent torture and ill-treatment, stipulated in Articles 2 and 16 of the UN Convention against Torture, whether committed by public officials, other persons acting in an official capacity or private individuals. It is the responsibility of States Parties to prevent acts of torture and ill-treatment in all contexts of deprivation or restriction of liberty, including, for example, in prisons, hospitals, schools, institutions that engage in providing care for children, older persons, persons with mental illness or persons with disabilities, in military service and in other institutions as well as in contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.³⁸ Prevention extends to any type of treatment of any individual deprived of liberty that, without checks, may lead to torture or any other cruel, inhuman or degrading treatment or punishment.³⁹

Under its obligation to respect and protect fundamental rights, the State shall also provide the conditions necessary for their enforcement of those fundamental rights.⁴⁰ The efficient implementation of the provisions related to the prevention and prohibition of torture and ill-treatment is the State’s responsibility; therefore, the OPCAT also compels the States Parties to provide for the domestic legal conditions of the efficient operation of the National Preventive Mechanisms.⁴¹

Both in his fundamental-rights-protection activities and in performing tasks related to the National Preventive Mechanism, the Commissioner for Fundamental Rights is entitled to review the practical implementation of international treaties constituting part of the domestic legal system. His “*mandate*,”⁴² necessary for the operation of the National Preventive Mechanism, and the required material and procedural legal rules⁴³ are provided for in the Ombudsman Act.

1.4. Costs related to performing the tasks of the NPM in 2017

The administration and preparation related to my tasks are performed by the Office of the Commissioner for Fundamental Rights (hereinafter the “Office”).⁴⁴ The Office has a separate chapter in the central budget adopted by the Parliament.⁴⁵ The costs related to the performance of the tasks of the NPM are borne by my Office.

Expenditure	Amount
Personal allowances (8 persons*)	51,269,299
Contributions	12,130,823
Professional and administrative materials	792,826
IT and communication expenses	1,630,553
Services supporting professional activities	876,722
Delegation expenses	393,725

³⁷ Clause 3 of CAT/C/GC/2

³⁸ Clause 13 of CAT/OP/27/1

³⁹ See Clause 4 of the Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to The Maldives (February 26, 2009)

⁴⁰ See Constitutional Court decision 64/1991 (XII. 10.) AB

⁴¹ See Part IV of the OPCAT

⁴² See Article 19 of the OPCAT

⁴³ See Articles 3, 4, 17, 18, 20–22, and 23 of the OPCAT

⁴⁴ See Section 41(1) of the Ombudsman Act

⁴⁵ See Section 41(4) of the Ombudsman Act

International membership fees	175,865
Maintenance and repair costs	313,751
Public utility fees	810,524
Operational services	5,474,077
VAT	2,348,859
Altogether in HUF	76,217,024**

* During 2017, the Department operated with eight staff members on average. On December 31, 2017, the Department had nine staff members. Personal allowances, contributions and delegation expenses indicate amounts allocated to the Department and registered separately.

** The NPM's budget was **HUF 69,647,352** in 2015 and **HUF 63,760,490** in 2016.

2. Staff members participating in performing tasks related to 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 my tasks related to the NPM, I may act in person or by way of the members of my staff authorized by me. Staff members authorized by me shall have the investigative powers of the NPM,⁴⁶ and the obligation for cooperation of the authorities concerned as well as their management and staff pursuant to Section 25 shall be complied with also in their respect.⁴⁷

To perform tasks related to the NPM, I have to authorize, on a permanent basis, at least eleven public servants from among the staff members of my Office. The “authorized public servant staff members shall be experts with a graduate degree and have outstanding knowledge in the field of the treatment of persons deprived of their liberty or have at least five years of professional experience.” 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 authorized public servant staff members, the number of the representatives of either sex may exceed that of the other by one at the most.”⁴⁸

The staff members of my Office permanently authorized to perform tasks related to the NPM⁴⁹ carry out their activities within a separate organizational unit, the OPCAT National Preventive Mechanism Department.⁵⁰ On January 1, 2017, the Department started to work with two psychologists and six lawyers on board. The Department’s gender composition is in compliance with the provisions of the Ombudsman Act.

In 2017, while performing the tasks related to the NPM, I had to face two major challenges. On the one hand, due to the lack of applicants, we could not fill the two physician positions stipulated in Section 39/D(4) of the Ombudsman Act. My Office employed the physicians participating in the NPM’s visits on an ad hoc basis, using civil law contracts. On the other hand, staff turnover was rather high among the lawyers participating in the performance of tasks related to the NPM. Two of the six lawyers working in the Department on January 1, 2017, left during the year. The vacated lawyer positions have been filled through an open call for application, in accordance with the Ombudsman Act’s provisions on gender composition.⁵¹

A psychologist has also been added to my staff permanently authorized to perform tasks related to the NPM. Taking over and completing the ongoing tasks of their departing colleagues, filling the vacated positions, and training their newly hired colleagues have placed a heavy burden on the staff members of the Department. Due to the permanently vacant physician and the temporarily vacant lawyer positions, the Department worked, on average, with six public servant staff members during the year.

⁴⁶ See Sections 21, 22, 26, and 27(1)-(2) of the Ombudsman Act

⁴⁷ See Section 39/D(1) of the Ombudsman Act

⁴⁸ See Section 39/D(3) of the Ombudsman Act

⁴⁹ See Section 39/D(3) of the Ombudsman Act

⁵⁰ „Guidelines on national preventive mechanisms”, CAT/OP/12/5, Clause 32

⁵¹ „Guidelines on national preventive mechanisms”, CAT/OP/12/5, Clause 16

In March 2017, Gergely Fliegau, the Head of the Department, was elected member of the CPT by the Committee of Ministers of the Council of Europe.



2.2. External experts

In addition to the public servant staff members, I may also authorize, either permanently or on an ad hoc basis, other experts to contribute to performing the tasks related to the national preventive mechanism.⁵²

In its report on the country visit to Sweden between March 10 and 14, 2008, 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.⁵³

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 CCB, following consultations with the recommending civil organization. My Office employed the non-public-servant experts participating in the NPM’s visits on an ad hoc basis, using civil law contracts. Their activities⁵⁴ and remuneration⁵⁵ were based on civil law contracts and in accordance with the prevailing regulations on forensic experts. 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 my written consent, and not making any statements to the media and/or any third person.

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

In 2017, the following experts contributed to the visits conducted by the NPM:⁵⁶ *Ildikó Hegedűs*, psychiatrist, psychotherapist; *Krisztina Szegedyné Baraczka*, psychiatrist, neurologist, forensic psychiatrist; *Zsolt Petke*, psychiatrist, addictologist; *György Szekeres*, psychiatrist, forensic psychiatrist, medical rehabilitator /psychiatry/; *Ádám Lelbach*, internist, geriatrician, gastroenterologist; *Brigitta Baran*, psychiatrist, neurologist, gerontologist, forensic psychiatrist, psychotherapist, and *Gabriella Hartmann*, dietitian.

⁵² See Section 39/D(3) of the Ombudsman Act

⁵³ See Clause 36 of the Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to Sweden (September 10, 2008) at <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsn8rMyk5N7hzMr42KObabvkcYRKUCd gSxYwGEBEoI7yM6pJ6V4RAqY76uSBiXa85BL0wCe0MxtQsxriqg5%2b16z0YL0pCRIg2niSbiO83VEW>

⁵⁴ See Act XXIX of 2016 on Judicial Experts

⁵⁵ See Minister of Justice Decree 3/1986. (II. 21.) IM on the remuneration of judicial experts

⁵⁶ In accordance with Section 39/D(3) of the Ombudsman Act

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.⁵⁷ However, in my activities aimed at facilitating the enforcement and protection of human rights, I have to cooperate with *"organizations and national institutions aiming at the promotion of the protection of fundamental rights."*⁵⁸

3.1. The tasks of the Civil Consultative Body

The Civil Consultative Body (hereinafter the "CCB"), established to utilize the outstanding practical and/or high-level theoretical knowledge of various organizations registered and operating in Hungary relative to the treatment of persons deprived of their liberty, consisting of four invited members and another four members selected as a result of a public call for application, shall assist the activities of the National Preventive Mechanism with its recommendations and comments.

Members of the CCB selected as a result of a public call for application are the Hungarian Helsinki Committee, the Menedék – Hungarian Association for Migrants, the Hungarian Civil Liberties Union, and the Mental Disability Advocacy Center – MDAC. The organizations 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 shall operate 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 comment on the working methods, reports, information materials, and other publications of the NPM; discuss the training plan designed to develop the skills of staff members authorized to carry out the duties of the National Preventive Mechanism; participate in conferences, workshops, exhibitions, and other events organized by the NPM.⁵⁹

The staff members of the Department drafted the 2017 schedule of visits keeping the CCB's recommendations in mind. The CCB's recommendations were taken into account also in the course of planning the visits and when approving the schedule of visits.

The NPM has to develop coherent and transparent rules of procedure for the employment of external experts with necessary qualifications and practical knowledge.⁶⁰ 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 as external experts to the NPM's visits. When selecting external experts, in addition to the recommendations of the Hungarian Medical Chamber and the Hungarian Psychiatric Association, I also took into account the relevant provisions of the legal regulation on judicial experts.⁶¹ I forwarded the reports on the NPM's visits to the members of the CCB as well.

⁵⁷ See Section 2(6) of the Ombudsman Act

⁵⁸ See Section 2(5) of the Ombudsman Act

⁵⁹ See Section 6 of Directive 3/2014 (November 11) of the Commissioner for Fundamental Rights assisting the National Preventive Mechanism in carrying out its duties on the establishment and rules of procedure of the Civil Consultative Body

⁶⁰ See Paragraph 16(e) of the *Analytical assessment tool for national preventive mechanisms*, (CAT/OP/1/Rev.1) of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the "SPT")

⁶¹ See Act XLVII of 2005 on the activities of judicial experts and the provisions of Minister of Justice Decree 9/2006 IM on the specialties of judicial experts and on the qualification and other professional conditions related to them

In 2017, the CCB had two meetings, on September 5 and November 7.⁶² The latter happened to be the last meeting of the CCB established in 2015 for three years.⁶³ During the meeting, the Head of the Department announced that the Commissioner for Fundamental Rights had published the call for application for the next three-year period.

3.2. The meetings of the CCB

The main topic of the *September 5 meeting of the CCB* was the evaluation of the NPM's activities during the previous year.⁶⁴ The Commissioner for Fundamental Rights informed the participants that, in 2016, the NPM had visited 10 places of detention accommodating 3,061 detainees, published 10 reports containing 239 recommendations. In 144 cases, the NPM made recommendations to the head of the place of detention, in 70 cases to the head of the supervising organ, 24 recommendations concerned legislation.

The Head of the Department informed the participants about the major dialogs conducted with the authorities concerned in the wake of the reports on the 2016 visits. The discussed topics included psychiatric care for children, expansion of the prison hospital in Tököl, restrooms in Kaposvár Prison, suicide prevention and body search in the penitentiary system, problems concerning the Forensic Psychiatric and Mental Institution (hereinafter the "FPMI") (gradual approach, system of guarantees, deinstitutionalization, adaptive leave, stronger involvement of the Ministry of Human Capacities [hereinafter the "MoHC"], catering issues), electronic signaling system in the lock-up facility in Tököl, the detainees' pension and social security, view blockers installed on the cells' windows, the legal frameworks of making phone calls in penitentiary institutions, patients' rights in closed psychiatric wards.

The NPM briefed the members of the CCB on the locations of the visits conducted so far in 2017 and the major inspection criteria.

The next item on the agenda was the discussion of the recommendations made by those CCB members who had been selected as a result of the call for application and which had been presented, in eight points, by Steven Allen, representative of the MDAC, on March 22, 2017, during the visit of the Subcommittee on Prevention.⁶⁵ To the Menedék Association's question regarding the eight recommendations, the potential impact on the relations between the CCB and the NPM from the aspects of the rules of procedure and competences, the Head of the Department explained that the issues raised by the members were outside the rules of procedure regulating the CCB's operation. The Deputy Head of the Department added that the members had submitted their applications being aware of the rules of procedure.

Answering to the question of the representative of the Hungarian Bar Association regarding the possibility to conduct 25 visits and publish the same number of reports, the Deputy Head of the Department pointed out that the capacities at hand would not make it possible. She stressed that the number of reports in itself did not reflect the actual professional work. The draft reports are compiled from several parts and are approved by the Commissioner for Fundamental Rights after their legal review. When evaluating the NPM's performance, one should also take into consideration that nearly one-third of the legislative recommendations requiring thorough dogmatical development are the results of the Commissioner's activities conducted as NPM. These recommendations may touch upon the entire system of deprivation of liberty and detention regimes; some of these required hours-long

⁶² The materials of the September 5 meeting of the CCB are filed in my Office under number AJB-4836/2017, and the materials of the November 7 meeting under number AJB-185/2018. The minutes of the CCB meetings are accessible to the public on the NPM's homepage. <http://www.ajbh.hu/opcat>

⁶³ The first-ever meeting of the CCB was held on November 19, 2014.

⁶⁴ The documents of the November 7 meeting are filed in the Office of the Commissioner for Fundamental Rights under number AJB-4836/2017.

⁶⁵ See Annex 1

consultations with the Government's representatives (e.g., in connection with performing body search in the penitentiary institutions).⁶⁶ The high turnover of staff members with a legal degree also seriously hindered the increase in the number of visits.

The representative of the Hungarian Helsinki Committee found the report impressive and the problems discussed within the framework of the dialog with the authorities relevant. In her view, the NPM works efficiently irrespective of its limited resources. She suggested the inspection of the transit zones as a prospective priority, since the European Court of Human Rights had established the unlawfulness of the detention of foreign nationals in the transit zone on several occasions, and issued provisional rulings in every case. To her knowledge, the conditions in the transit zones were inhuman; there had been cases when someone had not been given anything to eat. Another representative of the HHC pointed out that the Committee's right to visit police lock-ups had ceased to exist; it means that the NPM's responsibility has been increased.

The representative of the Menedék added that, although earlier they had deemed it desirable to conduct 25 visits, if they had to choose, they would prefer quality to quantity as long as it leads to the system's improvement. In his opinion, a consensus had to be reached as regards the minimum number of visits that have to be conducted.

In the view of the Deputy Head of the Department, the importance of the reports' quality is also confirmed by the fact that the Director of the Cseppkő Children's Home had brought a lawsuit against the Commissioner for Fundamental Rights claiming to have suffered pecuniary and non-pecuniary damages as a result of certain conclusions and recommendations contained in the report on the NPM's visit to the institution.⁶⁷ During the visit conducted on March 1 and 2, 2016, the director of the Cseppkő Children's Home hindered the inspection; therefore, in order to conduct the necessary interviews with the children, the NPM had to pay another visit to the institution on April 26, 2016.⁶⁸

The Office of the Commissioner for Fundamental Rights employs the sufficient number of highly educated public servants with a law degree. If there is no expert in the Office, the NPM asks the members of the CCB to make recommendations. On several occasions, the NPM involved experts by experience as well. There were cases, however, when the expert by experience was biased against the place of his former detention and its personnel or when the Hungarian Prison Service Headquarters, for security reasons, refused to let a former convict in. That is why the NPM involves experts by experience mainly during the preparation of visits.

The recommendations of the CCB are always taken into consideration by the NPM. The preparation and the implementation of one-third of the annual schedule of visits are carried out based on the CCB's recommendations. In accordance with the SPT's guidelines, the NPM tries to perform its tasks aimed at preventing torture and ill-treatment in all contexts of deprivation or restriction of liberty, with a view to geographical balance, as well.⁶⁹

The subjects of follow-up inquiries are determined on the basis of the conclusions of earlier visits and the NPM's recommendations. When selecting the locations, the NPM also takes into consideration the number of detainees, as well as the number and content of complaints lodged with the Office of the Commissioner for Fundamental Rights. During follow-up visits, the NPM's primary objective is to check the implementation of recommendations formulated as a result of earlier inspections; however, there may be cases when the NPM has to assess facts and circumstances not detected earlier. In the field of follow-up visits, cooperation with the members of the CCB is exemplary.

⁶⁶ See in Chapter 9 on the dialog with the authorities

⁶⁷ See in Chapter 9 on the dialog with the authorities

⁶⁸ See National Preventive Mechanism Report № AJB-1603/2016

⁶⁹ Clause 13 of CAT/OP/27/1

In connection with the CCB members' suggestion to hold meetings outside the Office of the Commissioner for Fundamental Rights as well, the Deputy Head of the Department pointed out that this issue is regulated by the CCB's Rules of Procedure. These provisions of the Rules of Procedure, challenged by the members of the CCB, can be explained by the fact that, pursuant to the prevailing legal regulations, the Commissioner for Fundamental Rights shall have the powers and competences of the NPM.⁷⁰ The staff members⁷¹ of the Department, as well as the external experts⁷² participating in the visits, perform their tasks upon the NPM's authorization. The NPM may enter the premises of a place of detention only for the purpose specified in the relevant legal regulation.⁷³ Without legal authorization, no place of detention specified in Article 4 of the OPCAT can be compelled to provide a venue for the CCB's meetings and let the members enter its premises. However, holding a meeting in a place of detention would not mean that the participants could inquire into the treatment of its patients.

The representative of the MDAC indicated that they would be happy to provide a venue for an external meeting of the CCB in their new office. The representative of the Menedék Association would support an external meeting if it resulted in increased publicity and positive social return.

Regarding the CCB members' request to present his draft reports to them, the Commissioner for Fundamental Rights reminded the members that, pursuant to the prevailing legal regulations, it is the exclusive competence of the NPM to make recommendations. Prior to their approval and publication, the draft reports are working materials that he may not and will not discuss with the members of the body.

The participants accepted and acknowledged the answers given to the questions formulated by the CCB members selected as a result of a call for application formulated during the March 22, 2017, visit of the SPT's delegation.

Concluding the meeting, the Head of the Department pointed out that the three-year mandate of the CCB would expire on November 19, 2017. The Deputy Head of the Department encouraged the members to think over their experiences gained during the last three years. The NPM would welcome any idea aimed at increasing the efficiency of future cooperation. She also noted that the Commissioner for Fundamental Rights is not legally obliged to establish the CCB, it was a gesture towards civil society organizations that had actively lobbied for Hungary's joining the OPCAT and supported the CFR's candidature for performing the tasks of the National Preventive Mechanism.

The Commissioner for Fundamental Rights confirmed that, upon the expiry of the current CCB, he intended to set up a new one. He was to publish the call for application soon, and he would have evaluated the application by the end of 2017. The new body would operate under the same rules as the current one. He thanked the participants for their contribution to the performance of the tasks of the NPM and indicated that he would be happy to cooperate with the current members in the future as well.

The main topic of the **November 7 meeting of the CCB** was the evaluation of the CCB's activities during the previous three years.⁷⁴ The Commissioner for Fundamental Rights, due to his official engagements, could not participate in the meeting. Miklós Garamvári, Secretary General of the Office of the Commissioner for Fundamental Rights (hereinafter the "Secretary General"), welcomed the members of the Civil Consultative Body. In his personal opinion, the operation of the Civil Consultative Body was successful, correct, constructive, and professional. A significant part of the locations inspected by the NPM was selected based on the Civil Consultative Body's suggestions. Over

⁷⁰ See Section 2(6) of the Ombudsman Act

⁷¹ See Section 39/D(1) of the Ombudsman Act

⁷² See Section 39/D(3) of the Ombudsman Act

⁷³ See Section 39/B(1) of the Ombudsman Act

⁷⁴ The documents of the November 7 meeting are filed in the Office of the Commissioner for Fundamental Rights under number AJB-185/2018.

the last three years, the report on the visit to the Closed Psychiatric Ward of the Psychiatric and Addiction Treatment Center (Merényi Gusztáv Hospital premises) of the Unified Szent István and Szent László Hospital and Outpatient Care Clinic⁷⁵ made the biggest impact. On behalf of the Commissioner for Fundamental Rights, the OPCAT-NPM Department, and himself, he thanked the CCB for their cooperation, expressing his hope that most of them would keep on working together with the NPM in the coming three years as well.

The Head of the Department mentioned that the NPM had published the call for application for the CCB on October 19, 2017. The deadline for submitting the applications was November 20, 2017.

He informed the participants that, following the previous meeting of the CCB, the NPM had been visited by the staff members of the Central European Regional Representation of the UN High Commissioner for Refugees. The delegation of the Committee against Torture of the Council of Europe (CPT) and staff members of the Office of the UN High Commissioner for Human Rights came to learn about the activities of our Office and the NPM. The Commissioner for Fundamental Rights assured the representatives of all three organizations of our readiness to cooperate. The Commissioner also spoke about the CCB's activities to all three organizations, pointing out that he intended to re-convene the CCB.

He stated that a psychologist would join the Department in early December. Thus the number of public servants permanently authorized to perform tasks related to the NPM would increase from eight to nine.

In connection with the CCB's operation, he noted that the early period of its activities focused on the exchange and discussion of methodological experiences. The consultations between the NPM and the CCB's members had been fruitful all along. Neither the body nor its members are legally authorized to evaluate reports that are not approved yet by the Commissioner for Fundamental Rights. The locations recommended by the members of the CCB were included in 2018 annual schedule of visits.

In 2017, up to the meeting's date, the NPM had visited seven places of detention, two of them within the frameworks of a follow-up inspection; eight reports were being drafted by the Department, and one report was under legal review. Two staff members of the Office had visited the transit zones in Röske and Tompa in order to gather information.

Within the frameworks of the dialog with authorities, the NPM had been conducting negotiations with the Ministry of Human Capacities in connection with the recommendations made in the report on the follow-up visit⁷⁶ to the Juvenile Penitentiary Institution in Tököl. During the negotiations, the NPM stuck to the Mandela Rules which stipulate that detainees shall be educated. Following the visit to Bóly, both the supervisory authority and the institution accepted every recommendation made by the NPM. In connection with the restrictive measures described in the report on Bóly, the MoHC was planning to convene a working group as there was some controversy between the relevant provisions of the Healthcare Act and the Social Act.

The NPM received a letter from Malcolm Evans, country rapporteur of the SPT, and distributed its copies among the participants. Malcolm Evans indicated that the NPM's comprehensive annual report had *"failed to provide information on some organizational questions."*⁷⁷ In the response sent to Malcolm Evans, the NPM pointed out that the relevant information can be found in Chapters 2.1 and 2.2 of the comprehensive report, and requested guidance as regards additional information on *"some organizational questions"* missing from the 2016 comprehensive report, required by the SPT.⁷⁸

⁷⁵ Report № AJB-410/2015

⁷⁶ Report № AJB-685/2017

⁷⁷ The letter by Malcolm Evans, dated October 20, 2016, is registered in my Office under file number AJB-4415-10/2017

⁷⁸ My response, dated November 9, 2017, is registered in my Office under file number AJB-4415-12/2017

In connection with the coordination mechanism stipulated in Article 33 of the CRPD, the Commissioner for Fundamental Rights indicated that he, as an accredited UN National Human Rights Institution, would be happy to perform the tasks thereof as well.

Following the NPM's visit to the Closed Psychiatric Ward of Merényi Hospital, staff members of the Office of the Commissioner for Fundamental Rights contacted the Hungarian Psychiatric Association and came up with the common idea to prepare a brochure, written in plain language, providing useful information both to hospital personnel and to persons living with psycho-social disability. The NPM distributed the draft, the result of their joint efforts that had started in early 2017, among the members of the CCB.

According to the representative of the MDAC, there is some controversy between the state's international legal obligations deriving from the CRPD and the prevailing Hungarian regulations. It is important that persons with psychosocial disabilities who are placed and treated in psychiatric wards against their will should be aware of their rights and the way they can exercise those rights. In her view, the right to receive information and the provision of information on restrictive measures should be mentioned only very briefly; however, emphasizing the statutory prohibition of cage beds as well as the operation of patients' rights representative would be important. As the terminology used in domestic legal regulations is medical in nature, she recommended the involvement of experts by experience in order to find out if it meets the requirement of being easily understandable.

The comments of the representative of the Hungarian Civil Liberties Union focused on comprehensibility, terminology, and the addition of visual elements (demonstrating procedural actions on a timeline would be appropriate). In her view, the report by the Commissioner for Fundamental Rights on the right to legal remedy of persons in emergency and mandatory treatment,⁷⁹ prepared within the frameworks of his fundamental-rights-protection activities, shows that several pieces of information contained in the draft should be known to patients right upon their admission (e.g., on delivering a ruling after conducting a court inspection). The constraints on the length of the leaflet notwithstanding, it should include some practical information (e.g., "May they take away my mobile phone?").

A colleague of the Commissioner for Fundamental Rights explained that their objective was to prepare a publication providing the necessary information using simple, informal language that would be easy to understand. She explained that a psychiatrist, representing several organizations, who participated in the work of the preparatory group insisted on not oversimplifying the language since it could be confusing to those concerned if the healthcare personnel or the court inspection used a terminology different from that of the leaflet. They planned to involve a psychiatric ward where the practical use of the leaflet could be tested. She reminded the participants that, pursuant to the prevailing legal regulations, no institution could be compelled to make the leaflet accessible to the patients; therefore, if the leaflet is not compatible with the expectations of the service providers, or the director of a hospital cannot identify with its contents, it will not be put on display. The leaflet would be published in three versions with different lengths: a short version for the patients, a longer one and an extended version for the healthcare personnel. It would provide an opportunity to disseminate information on the basis of the target audience.

The Head of the Department added that such an information material would be in great need at other places of detention, prisons, and police stations as well.

The representative of the Hungarian Helsinki Committee added that they had examined the language of the information materials distributed in police lock-ups and prisons, and they would prefer the introduction of a shorter, simpler version. Since they could not visit police lock-ups anymore, she suggested that the NPM should pay attention to this issue. In her view, the relationship between the

⁷⁹ Report № AJB-305/2017

CCB and the NPM had been slowly but steadily developing over the past three years. She found it regrettable that the Hungarian Prison Service Headquarters and the National Police Headquarters had terminated their agreement with the Hungarian Helsinki Committee on the regular inspections of places of detention. She suggested that, within the proper legal frameworks, the NPM should involve their highly experienced staff members not only as preliminary experts but also as external expert members of the visiting delegations.

The Head of the Office of the Hungarian Medical Chamber expressed his regret that medical and healthcare students do not receive any law education, as well as his appreciation for the fact that the process related to the patients' rights leaflet had been started. He mentioned that the general public's understanding of a place of detention is a prison; however, it is a much broader concept, it covers any and all places where "people are detained." Education, training, spreading information in this field are important objectives that are fully supported by the Hungarian Medical Chamber. He expressed their gratitude for the opportunity to participate in the CCB's activities, noting that the HMC would like to continue as a member.

The representative of the MDAC welcomed the high level of monitoring that had been reached, in particular in connection with disability-related institutions, as well as the special emphasis that had been placed on the compliance with obligations deriving from international conventions. Cooperation was good in many cases. Since civil organizations have limited access to disability-related and psychiatric institutions, the NPM has played a very important role in calling attention to certain deficiencies. In connection with the CCB's three-year operation, she pointed out that there remained some issues that had not been solved, e.g., the involvement of the civil organizations' experts in the inspections. She pointed out that the legal institution of guardianship, while closely related to the inspected area, is not duly represented in the recommendations given in the NPM's reports.

The representative of the Hungarian Civil Liberties Union thanked the NPM for the three years of joint work and for the openness to communicate. She noted that the number of disabled persons living in detention is increasing in Hungary. She pointed out that the HCLU as a disability organization does not have access to disability institutions, even in the case of persons with HCLU membership. It shows that, in today's Hungary, the institutions providing care to persons with disabilities hermetically separate their patients from the outside world. The Hungarian Civil Liberties Union is also open to cooperating through participating in the visits by the NPM. They had already submitted a proposal for locations to be visited next year and looked forward to working together.

According to the representative of the Hungarian Psychiatric Association, if certain civil organizations have no right to have access to psychiatric and other disabled patients, it not only calls in question their diagnoses and therapies but also makes their long-term placement uncertain. The question is what could be done in the interest of this group of detainees. In connection with the patients' rights leaflet, she expressed her objection to the use of informal language, as it is not common (accepted) vis-à-vis patients. In her opinion, it should be thought over.

One of the Department's staff members pointed out that the NPM dealt a lot with the legal institution of guardianship, including entry to the system, medication, and providing information to the persons under care. However, the inspections confirm that rules may not be dismantled immediately. In her view, supported decision-making, if feasible, may be sufficient instead of guardianship.

The Deputy Head of the Department reminded the participants that the opportunities of cooperation between the NPM and the civil organizations are provided for in the CCB's Rules of Procedure, within the legal frameworks specified by the Ombudsman Act. The more intensive form of cooperation advocated by the civil organizations is more in the spirit of the CRPD than the OPCAT. She noted that if the Commissioner was to perform the tasks of the independent mechanism stipulated in Article 33.2 of the CRPD, opportunities for cooperation in this area between the Commissioner for Fundamental Rights and civil society organizations should be renegotiated in the light of the new tasks.

She pointed out that the NPM had not received yet the report on the visit of the Subcommittee on Prevention. Subject to the report's content, the NPM intends to turn to the Government in connection with the amendment of certain provisions of the Ombudsman Act. Since, due to the application of methods used not only by lawyers but also by experts in other fields, the NPM may conduct more extensive inspections; there are different opinions on the correlation between general fundamental-rights-protection activities and the NPM within the Office. Should the Ombudsman take charge of the tasks of the independent mechanism stipulated in Article 33.2 of the CRPD, these disputes could also be resolved.

She informed the participants about the lawsuit that had resulted from the report on the NPM's visit to the Cseppkő Children's Home and promised to keep the body up-to-date as regards the developments. The SPT expects the NPM to conduct, assess, and substantiate interviews with as many detainees as possible during the visits. The objective of the NPM's investigations is to prevent ill-treatment, not to uncover circumstances conducive to holding certain persons responsible or to conduct evidentiary proceedings. However, the NPM may not make false statements.

The Head of the Department reminded the participants that, pursuant to the OPCAT's Preamble, the experiences of the NPM should be disseminated. The colleagues participating in performing tasks related to the NPM publish the issues and topics that cannot be processed within the reports' frameworks in various professional periodicals and studies. He called the participants' attention to a study on the self-determination of persons with no full legal capacity, published by one of his colleagues in the periodical of the Hungarian Association of Lawyers.⁸⁰ The Department's staff members teach at various institutions, deliver lectures, and many of them possess scientific degrees. The NPM's reports often cite the relevant international standards and the CPT's recommendations as well. Allegation, i.e., the oral statement of a fact is the basis of monitoring. The NPM tries to confirm the information it is given from several sources, through gathering data and documents, obtaining video recordings. As a result, allegations made during the interviews can be confirmed as facts with a high probability – all this in a way ensuring that no one should suffer prejudice.

According to the representative of the Hungarian Helsinki Committee, the comprehensive annual report by the Commissioner for Fundamental Rights on the activities of the NPM in 2016 duly reflected the Helsinki Committee's role. In connection with the concept of allegation, she pointed out that they have come across a case when the experience of probably a single detainee would be presented in the Ombudsman's report as a reasoned assumption by the visiting delegation. In the report on the NPM's visit to the Somogy County Remand Prison,⁸¹ there was a statement that the follow-up visit conducted by the Helsinki Committee could not confirm. In her view, the institutions concerned should be given an opportunity of some form to reflect on the draft report prior to its publishing. The Helsinki Committee provides the institution concerned with an opportunity to respond; its response is also published. She wondered if the NPM deemed it feasible.

The Deputy Head of the Department explained that the organs inspected by the NPM do not have to agree with the conclusions of the NPM. The visiting delegations proceed with extreme caution as far as the detainees' allegations and the conclusions based thereon are concerned. The NPM evaluates the facts and conditions uncovered by the members of the visiting delegations. It is within the discretion of the head of the visiting delegation to determine which of them may or may not be deemed convincing. Submitting the draft report to the institution concerned for preliminary review is a concept completely strange to the reporting activities of the Commissioner for Fundamental Rights; the SPT has no such practice, either. The institutions concerned have the right, ensured by the Ombudsman Act, to respond in writing to the reports and recommendations of the NPM.

⁸⁰ Izsó, Krisztina (2017): A nem teljes cselekvőképességgel rendelkező személyek önrendelkezéséről [*On the self-determination of persons with no full legal capacity*] *Magyar Jog (Volume 64)*, № 9, pp. 553-558

⁸¹ Report № AJB-3865/2016

The Head of the Department found it ethical that the response of the inspected organ would be published together with the Helsinki Committee's report. Austria has a similar practice; however, in practice, it significantly delays the report's publication. In Hungary, as a general rule, the summaries of the inspection reports and the comprehensive annual report have to be published in English as well. Translating the responses of the inspected organs into English would present an even greater challenge to the Office.

The General Secretary thanked those present for their participation and voiced his hope that the NPM could count on their support in the future as well.

3.3. The establishment of the second Civil Consultative Body

The mandate of the CCB, established in 2014 for three years, expired on November 19, 2017. On October 19, 2017, the NPM published a public call for application for the membership of the new CCB on the website and the social media pages of the Office of the Commissioner for Fundamental Rights, as well as in the weekly newsletter prepared and distributed by the Non-profit Information and Training Center Foundation, containing information relevant to the day-to-day operation of civil organizations operating in the country.⁸² The deadline for submitting the applications was November 20, 2017.

In recognition of their prominent expertise in the field of dealing with detainees and our joint work during the last three years, I re-extended my invitation to the Hungarian Medical Chamber, the Hungarian Psychiatric Association, the Hungarian Dietetic Association, and the Hungarian Bar Association.

Responding to my call, by the indicated deadline, four civil society organizations, namely the Cordelia Foundation for the Rehabilitation of Torture Victims, the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union, and the Validity Foundation (formerly the MDAC) had submitted their applications. Since all of them met the criteria specified in the call, they all became members of the new CCB.

3.4. Further cooperation with civil organizations

<i>Name of the civil organization</i>	<i>Form of cooperation</i>
Hungarian Psychiatric Association, Lélekben Otthon Foundation	Preparing a patients' rights leaflet, designing the poster entitled " <i>Why am I here and how long do I have to stay?</i> " for patients in emergency psychiatric care
Adj Hangot Association	Prison radio interview (May 18, 2017)
Unified Social, Health-, and Childcare Institution of Miskolc	Lecture on drug issues in prison (May 21, 2017)
"Terre des hommes-Lausanne" Regional Office in Hungary	Expert interview on juvenile marginalization (August 14, 2017)
Hintalovon Children's Rights Foundation	Expert interview on juvenile marginalization (September 8, 2017)

⁸² The call for application was published in the newsletter on four occasions, on October 26, November 2, November 8, and November 15, 2017

Hungarian Helsinki Committee	Consultation on cooperation opportunities in fieldwork outside the places of detention (October 2, 2017)
Hungarian Helsinki Committee – Project entitled “Investigation of Ill-treatment by the Police in Europe”	Participation in the project’s closing conference, contribution to the publication’s illustration
Feldmár Institution Public Benefit Non-profit LLC	Presentation as prison expert in a conference (October 29, 2017)
ELTE, Faculty of Education and Psychology, Hungarian Psychological Association	Participation at the presentation of Tihamér Bakó, entitled “ <i>Trauma and development</i> ,” organized by the ELTE FEP and the Hungarian Psychological Association (October 15, 2017)
NUPS and Budapest Center for Mass Atrocities Prevention	Participation in the roundtable workshop entitled “ <i>Training in radicalization prevention for the personnel of penitentiary institutions</i> ,” organized by the NUPS and Budapest Center for Mass Atrocities Prevention (November 8, 2017)
Subcommittee on Law enforcement of the HAoS, Science Council on Law enforcement, National Institute of Criminology	Participation in the conference entitled “ <i>Human-centered science – the enforcement of human rights in law enforcement</i> ,” organized by the Subcommittee on Law enforcement of the HAoS, the Science Council on Law enforcement, and the National Institute of Criminology (November 16, 2017)
Hungarian Criminological Association, Hungarian Helsinki Committee	Participation in the meeting of the Hungarian Criminological Association, during which Dávid Víg, head of the Law enforcement Section of the HHC held a presentation under the title “The criminal policy, fundamental rights, and enforcement aspects of confinement for administrative offenses” (December 14, 2017)

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 fulfill 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 December 13, 2016, referring to Article 20(a) of the OPCAT, I sent letters to the heads of the governmental organs concerned, requesting them to provide me with the data, as of December 31, 2016, of all places of detention as defined in Article 4 of the OPCAT.⁸³

All the requested organs complied with my data request. According to the data provided to me, **on December 31, 2016**, in the nearly **4,000** places of detention under Hungarian jurisdiction⁸⁴ with the total capacity of **122,927** detainees, there were **113,388** persons being detained.⁸⁵

Type	Number of places	Capacity	Number of detainees
Social care institutions	1,962	81,404	72,174
Child protection services (including foster families, but excluding children in aftercare)	826	19,721	20,635
Juvenile correctional institutions	5	562	395
Penitentiary system	32	14,530	17,972
Police	1,007	3,241	1,827
Airport Police Directorate (separately)	3	29	14
Healthcare: closed or partially closed wards in psychiatry and addictology	55	2,359	26
Guarded refugee reception centers	3	790	257
Administration of justice (detention rooms on the last business day of December 2016)	152	291	88
Altogether	4,045	122,927	113,388

The aggregate list of places of detention under Hungarian jurisdiction as of December 31, 2016 (except indicated otherwise in the table)

4.1. The 2017 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 December 15, 2016, based on the list of places of detention, and taking into account the recommendations of the CCB, I determined the 2017 schedule of visits of the NPM.⁸⁶ When preparing the schedule of visits, in addition to selecting institutions of different types and geographical locations and with different supervising authorities, my colleagues also tried to take into account the age of detainees and the experiences gained during the visits of previous years.

The locations for the follow-up visits were selected based on the impressions of previous visits, keeping in mind two criteria. On the one hand, follow-up visits were conducted at places of detention where earlier the visiting delegations had detected serious ill-treatment or the threat thereof, affecting a large

⁸³ The letter requesting data services are registered under file number AJB-8858/2016 in my Office.

⁸⁴ On the subject of jurisdiction, see Section 18 of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services

⁸⁵ The data provided to my Office are registered under file number AJB-700/2017

⁸⁶ „Guidelines on national preventive mechanisms”, CAT/OP/12/5, Clause 33

number of detainees.⁸⁷ On the other hand, follow-up visits were paid to institutions that, due to renovation works, had been operating on temporary premises at the time of the first inspection. In these cases, the follow-up visits' objective was to find out to what extent my recommendations made as regards the temporary premises and the treatment of detainees had been implemented after moving back to the permanent premises.⁸⁸

My Office handled the schedule of visits confidentially, my colleagues working at other organizational units could not have access thereto.

4.2. Locations visited by the NPM in 2017

Under Article 19 of the OPCAT, the NPM's task is to regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in Article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.

In 2017, while performing the tasks related to the NPM, I inspected **1,772** detention units at **8** places of detention. The table below shows the names of the places of detention as well as the number of detention units.

Number	Date of the visit 2017	Place of detention		At the time of the visit			Number of interviewees
		name	authorized capacity (persons)	number of detention units inspected	utilization rate (%)	number of detainees	
1	February 8	Central Holding Facility of the MPHQoB	133	133	15.03	20	29
2	March 13-14	Márianosztra Strict and Medium Regime Prison	524	624	119.08	624	117
3	March 28	Budapest Remand Prison, Unit I	153	258	168.63	258	43
4	May 16-17	Platán Integrated Social Institution of Bács-Kiskun County	100	100	94.0	94	61
5	May 31 - June 1	Psychiatric Ward of the Balassa János Hospital of Tolna County	89	89	73.03	65	51
6	September 12-14	Nagymágoecs Castle Home of the Aranyziiget Integrated Retirement Home of Csongrád County	300	302	100.67	302	85
7	October 19	Lock-up Facility of the Fejér County Police Headquarters	34	34	20.58	7	10
8	November 28-30	Szabolcs-Szatmár-Bereg County Remand Prison	142	232	163.38	232	145
	Altogether	Number of the inspected places of detention: 8	1,475	1,772	94.30	1,602	541

⁸⁷ See my report № AJB-685/2017 on the follow-up visit to the Juvenile Penitentiary Institution

⁸⁸ See my report № AJB-3772/2017 on the follow-up visit to the Platán Integrated Social Institution of Bács-Kiskun County

5. The NPM's visits

In order to perform my tasks related to the NPM, I have 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.⁸⁹

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 elements from happening or recurring.⁹⁰

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. The Department forwarded all complaints submitted to the NPM's homepage or to my colleagues during the visits to the competent organizational unit of my Office. Although inquiring into the complaints submitted to the NPM's homepage falls outside the Department's jurisdiction, studying them provides guidelines for selecting the visits' locations and the inspection criteria.

5.1. Planning and preparing the visits

By virtue of the Ombudsman Act, *"the Commissioner for Fundamental Rights shall determine the rules and methods of his inquiries in normative instructions."*⁹¹

The preventive visits by the NPM are conducted in accordance with a schedule of visits approved during the previous year. Upon selecting a place of detention to inspect, I also appoint 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 my earlier recommendations made in reports on earlier visits made within the frameworks of performing my 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 the visit's preparation. The reports of the experts by experience contribute to recognizing facts and circumstances potentially resulting in ill-treatment. My Office handles both the personal data and the reports of the experts by experience confidentially.⁹²

Visits are conducted in accordance with the visiting plan drafted by the head of the visiting delegation and approved by me. 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.

⁸⁹ See Section 39/B(1) of the Ombudsman Act

⁹⁰ *Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to The Maldives* (February 26, 2009), Clause 5

⁹¹ See Section 30 of the Ombudsman Act

⁹² 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 2017, visits were conducted by delegations consisting of four to eight members, appointed by upon the recommendation of the heads of the visiting delegations. In addition to the professional skills of my colleagues, I also took into consideration 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 when selecting the members of the delegation. In addition to maintaining gender balance, I also tried to ensure multidisciplinary and involve experts in the field of protecting national and ethnic minority rights when setting up the visiting delegations.

To perform the tasks related to my general activities aimed at protecting fundamental rights, my Office employs mainly public servants with a law degree. If necessary, lawyers from other organizational units, possessing the professional knowledge required for conducting an effective visit to the place of detention concerned, also participated in the visits. In addition to lawyers, medical, psychological, educational, and dietitian experts also participated in the visits in 2017.

The composition of the NPM's visiting delegations in 2017

Number	Location	Visiting delegation	
		members	external experts
1.	Central Holding Facility of the MPHQoB	4	-
2.	Márianosztra Strict and Medium Regime Prison	6	one psychiatrist one dietitian
3.	Budapest Remand Prison, Unit I	6	on psychiatrist one dietitian
4.	Platán Integrated Social Institution of Bács-Kiskun County	6	one psychiatrist one dietitian
5.	Psychiatric Ward of the Balassa János Hospital of Tolna County	6	one psychiatrist one dietitian
6.	Nagyágocs Castle Home of the Aranysziget Integrated Retirement Home of Csongrád County	8	one geriatrician one dietitian
7.	Lock-up Facility of the Fejér County Police Headquarters	6	one psychiatrist one dietitian
8.	Szabolcs-Szatmár-Bereg County Remand Prison	6	one psychiatrist one dietitian
Altogether		6 on average	seven physicians, seven dietitians

5.2. Conducting the visits

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

Pursuant to Article 20, Paragraphs 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, as Commissioner for Fundamental Rights I may proceed without any restriction. When proceeding in person, I inform the head of the place of detention concerned and the detainees that I am proceeding with the mandate of the NPM. When performing the tasks related to the NPM through my authorized colleagues, they also shall have the rights pursuant to Sections 21, 22 and 26, subsection (1) of Section 27, and Section 39/B, and the obligation for cooperation pursuant to Section 25 shall be complied with also in their respect.⁹³

⁹³ See Section 39/D(1) of the Ombudsman Act

My 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 members of the visiting delegation introduce themselves and inform the management and the detainees that they are proceeding in order to perform tasks related to the NPM. They state the purpose of the visit, present their investigator's photo ID cards and hand over their commission letter signed by me, 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, I call 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.”*⁹⁴

In 2017, all places of detention were visited without prior notification. The timing of the visits was adjusted to the Office's working order. 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 2017, the visits by the NPM were all conducted in accordance with the professional rules and methods specified in CFR Directive 3/2015. (XI. 30.) AJB.⁹⁵

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.⁹⁶

During the visits, my colleagues 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.⁹⁷ The members of the visiting delegation 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 currently staying on the premises.

⁹⁴ Article 21.1 of the OPCAT

⁹⁵ The special professional rules and methods related to the performance of the tasks of the NPM are stipulated in Chapter X of CFR Directive 3/2015. (XI. 30.) AJB.

⁹⁶ See Clause 25 of the SPT's *Analytical assessment tool for national preventive mechanisms*, (CAT/OP/1/Rev. 1).

⁹⁷ See Sections 25(1) and 39/D(1) of the Ombudsman Act

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 usually conducted with no witnesses present; in exceptional cases, members of the security personnel may be present outside hearing distance. The visiting delegations try to conduct tête-à-têtes but, occasionally, group hearings are conducted as well. 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 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. The objective of the members of the visiting delegation is to meet, if possible, all persons deprived of their liberty currently staying on the premises.

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*⁹⁸ to the NPM.

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.⁹⁹

In 2017, I received all the documents required for performing the tasks related to the NPM within the statutory time-limit.

5.2.5. Concluding the visit

The 2017 visits by the NPM lasted between four hours and three days. All the visits were concluded, stressing partnership, by giving feedback to the personnel of the given place of detention.¹⁰⁰

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 what

⁹⁸ See Section 39/E of the Ombudsman Act

⁹⁹ Pursuant to Section 21(1) 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(1)a) 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.”*

¹⁰⁰ See Clause 27 of the SPT’s *Analytical assessment tool for national preventive mechanisms* (CAT/OP/1/Rev. 1.)

additional documents 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 earliest 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.

5.2.6. Processing and evaluating experiences 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 thereto. 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 sanity, 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 preliminary report for me 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 my approval, is published, both in the Hungarian and English languages, on the NPM's homepage.

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.”¹⁰¹

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.¹⁰² I share the Subcommittee’s view that “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.”¹⁰³

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 using medical and psychological methods.

The focal points were determined on the basis of the CPT’s reports on visiting places of detention on the territory of Hungary, the reports of the UN Committee against Torture, the reports of the Subcommittee on Prevention on its country visits, as well as the conclusions of the on-site inspections conducted as part of my 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 a thorough examination of the reception procedure in every place of detention. 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 behavior, the security personnel, and the ways and conditions of keeping in touch with relatives.

6.2. Material conditions of detention

The members of the visiting delegations inspect the premises, equipment, and furnishing of the places of detention. They examine the dimensions of the rooms used by the detainees, the size of the per capita living space, the conditions of the natural lighting and ventilation of the premises, the furnishing, the 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 my activities, I have to pay special attention to protecting the rights of children, nationalities living in Hungary, persons living with disabilities, and other most vulnerable groups of society, as well as to

¹⁰¹ See Article 11 of the UN Convention against Torture

¹⁰² See Clause 5 of the Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives (February 26, 2009)

¹⁰³ See Clause 12 of the SPT’s First annual report

facilitating and monitoring the implementation of the related international treaties.¹⁰⁴ Since this obligation of mine is relevant to performing tasks related to the NPM as well, the visiting delegations pay special attention to the prevention of the ill-treatment of women, young adults, homosexual, bisexual, and transgender persons, 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.”*¹⁰⁵ 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.”*¹⁰⁶

Medical services available to persons deprived of their liberty, such as medical treatment, nursing, providing the 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.

6.5. Nutrition

A proper diet is an immanent element of the detainees’ right to health, guaranteed by Article XX of the Fundamental Law. Unhealthy diets, overweight and obesity caused by sedentary lifestyle contribute to a large proportion of non-communicable diseases, including cardiovascular diseases, type 2 diabetes, and some cancers, which, according to the WHO’s data, together are the main killers in Europe.¹⁰⁷ 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. During the visits, I examine 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 programs 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.

My colleagues also inquire after incidents occurred at the given place of detention and the conflict management methods used by its personnel. They examine how the application of coercive and disciplinary measures 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 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

¹⁰⁴ See Section 1(1)-(3) of the Ombudsman Act

¹⁰⁵ See Article XX(1) of the Fundamental Law

¹⁰⁶ See Section 7(1) of Act CLIV of 1997 on Healthcare

¹⁰⁷ <http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/nutrition>

aimed at finding out who and how checks the justification and legality of such measures and if the extent of these measures is in compliance with the prevailing legal regulations.

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

As 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, my colleagues try to examine such relations in detail in the course of every visit.

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.

„Mixed-gender staffing is another safeguard against ill-treatment in places of detention.”¹⁰⁸ As persons deprived of their liberty should only be searched by staff of the same gender and any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender,¹⁰⁹ my colleagues examine the gender composition of the persons deprived of their liberty, guards, nurses, etc. during every visit..

The findings of the on-site inspections conducted during the twenty-year operation of the ombudsman institution 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, my colleagues examine whether the staff members of the given place of detention have the proper qualifications and if they have access to professional training necessary for the efficient performance of their work, and how accessible and efficient supervision is. When examining the premises, furnishing, and equipment of the places of detention, the visiting delegations also inspect the rooms designated for the personnel, including locker rooms, bathrooms, dining rooms, recreational and restrooms.

6.9. Complaints mechanism

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.”¹¹⁰*

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,”* I consider places of detention as organs exercising public power.

One of the most efficient ways of eliminating or preventing ill-treatment is if the personnel of the place of detention learns about the placement- or treatment-related grievances 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.

Considering the vulnerable situation of persons deprived of their liberty and their worries about possible sanctions, I expect the places of detention to provide the opportunity to submit anonymous petitions. At every place of detention, my colleagues examine the ways the persons deprived of their

¹⁰⁸ See Clause 26, CPT/(99) 12

¹⁰⁹ See Clause 23, CPT/(2000) 13

¹¹⁰ See Article XXV of the Fundamental Law

liberty may lodge their complaints, the way the personnel registers those complaints, and the means the complaints are inquired into and the complainants are informed of the results.

7. 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.”*¹¹¹ In addition to indicating the location, the cover of the reports also states that I have published it not under my general activities aimed at protecting fundamental rights, but in performing my tasks related to the NPM.

7.1. 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.*¹¹²

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 location, 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*,¹¹³ 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.

7.2. 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 my colleagues 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.

7.3. Prohibition of sanctions

In my report, I call 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.”*¹¹⁴

7.4. The 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.

¹¹¹ See Section 28(1) of the Ombudsman Act

¹¹² See Section 27(1) of the Ombudsman Act

¹¹³ See Section 27(3) of the Ombudsman Act

¹¹⁴ Article 21.1 of the OPCAT

The facts of the case include the place of detention's basic data, as well as the detailed description of the observations, interviews, and documents obtained, on which the NPM bases his findings and measures.¹¹⁵ 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. Applying the method of triangulation, i.e., cross-checking information (allegations), provided by various persons, as well as documents, facilitates objectivity.¹¹⁶

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.¹¹⁷ Under findings, I also present those facts and circumstances that indicate that the staff members 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, I also have 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 legal act, or the absence or the deficiency of the given issue's legal regulation.¹¹⁸

Pursuant to Article 11 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 the *"other acts"* of ill-treatment which do not amount to torture as defined in Article 1. The prohibition of *"other acts"* when performing my tasks related to the National Preventive Mechanism compels me to raise my voice against various types of treatment that fall outside the concept of torture but cause suffering to the persons deprived of their liberty.

My experience 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,¹¹⁹ in my reports published within my activities as NPM, in addition to preventing torture and other cruel, inhuman or degrading treatment or punishment, I also consider myself tasked with establishing and preventing other fundamental-rights-related improprieties and the threat thereof.¹²⁰

When establishing a fundamental-rights-related impropriety or the threat thereof, in my argument I refer, in particular, to the interpretation of the law by the Constitutional Court, the European Court of Human Rights, the CPT, the Committee on the Rights of Persons with Disabilities,¹²¹ as well as the other organs of the UN and the Council of Europe.

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.¹²²

¹¹⁵ See Section 32(1) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries

¹¹⁶ See Clause 26 of the SPT's *Analytical assessment tool for national preventive mechanisms*, (CAT/OP/1/Rev. 1).

¹¹⁷ See Section 33(1) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries

¹¹⁸ See also Article 11 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988

¹¹⁹ See the Preamble of the OPCAT

¹²⁰ See Article 30(1) of the Fundamental Law

¹²¹ See Article 34 of the United Nations Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007

¹²² See Clause 30 of the SPT's *Analytical assessment tool for national preventive mechanisms*, (CAT/OP/1/Rev. 1).

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

7.5. 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.¹²³ In every case, the provision of the Ombudsman Act giving grounds to a particular measure has to be indicated.¹²⁴

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 my reports on the NPM’s visits, I try 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.¹²⁵ The measures with different addressees and the different measures to the same addressee must be clearly separated.¹²⁶

7.5.1. Initiative

If the authority subject to inquiry is able to terminate the impropriety related to fundamental rights within its competence, I 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 me of its position on the merits of the initiative and on the measures taken.¹²⁷ 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 me of its position and on the measures taken.¹²⁸ Almost all addressees of the initiatives formulated in my reports on the NPM’s visits in 2017 responded within the period specified by the law.

¹²³ See Section 34(1) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries

¹²⁴ See Section 34(3) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries

¹²⁵ See Section 34(2) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries

¹²⁶ See Section 34(4) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries

¹²⁷ See Section 32(1)-(2) of the Ombudsman Act

¹²⁸ See Section 32(3) of the Ombudsman Act

7.5.2. 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 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 me of its position on the merits of the recommendation and on the measures taken.¹²⁹ If the authority subject to inquiry has no supervisory organ, I shall address the recommendation to the authority subject to inquiry.¹³⁰ The addressees of the recommendations made in my reports on the NPM's visits in 2017 responded on the substance within the period specified by the law.

7.5.3. Initiation of proceedings by the prosecution

In order to redress an impropriety related to a fundamental right, I may initiate proceedings by the competent prosecutor through the Prosecutor General. Within sixty days, the competent prosecutor shall inform me of his or her position on the initiation of proceedings and his or her measure, if any.¹³¹ In 2017, I exercised this power in my report on the visit to the Forensic Psychiatric and Mental Institution.

7.5.4. Reporting to the National Authority for Data Protection and Freedom of Information

If, in the course of my inquiry, I notice 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, I may report it to the National Authority for Data Protection and Freedom of Information. I did not exercise this power in 2017.

7.5.5. Legislative initiative

If, in the interest of eliminating ill-treatment or the threat thereof, I suggest to modify, repeal a legal rule or issue a new one, the requested organ shall inform me of its position and of any measure taken within sixty days.¹³²

¹²⁹ See Section 31(1) of the Ombudsman Act

¹³⁰ See Section 31(4) of the Ombudsman Act

¹³¹ See Section 33(1) of the Ombudsman Act

¹³² See Section 37 of the Ombudsman Act

7.5.6. Summary

Number by the location of the measures contained in the reports on performing tasks related to the NPM in 2017¹³³

Number	Name of the place of detention	Total number of measures ¹³⁴	Addressee			
			institution subject to inquiry ¹³⁵	supervisory organ ¹³⁶	prosecutor ¹³⁷	legislative initiative ¹³⁸
1.	Sátoraljaújhely Strict and Medium Regime Prison	12	7	4		1
2.	Forensic Psychiatric and Mental Institution	76	42	28	4	2
3.	Bóly-Görcsöny Integrated Social Institution of Baranya County	24	15	6		3
4.	National Prison of Szombathely	35	14	20	-	1
5.	Platán Integrated Social Institution of Bács-Kiskun County (follow-up inquiry)	29	22	7		-
6.	8 th District Police Department of the MPHQoB	8	1	4	-	3
7.	Debrecen Reformatory of the MoHC and its Nagykanizsa Unit	40	29	4		7
	TOTAL	224	130	73	4	17

- In order to redress the ill-treatment of persons deprived of their liberty, I may make a recommendation either to the head of the institution subject to inquiry¹³⁹ or the head of its supervisory organ.¹⁴⁰ While performing tasks related to the NPM in 2017, I requested the heads of the places of detention visited to take measures in **130** cases. I made another **73** recommendations to the heads of the organs exercising supervision over the places of detention visited.
- In order to redress an 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.¹⁴¹ In 2017, I availed myself of this opportunity in connection with **four** issues.
- If an impropriety uncovered during the visits can be attributed to a superfluous, ambiguous or inappropriate provision of a legal rule, or to the lack or deficiency of the legal regulation of the given matter, I may propose to modify, repeal or prepare a legal rule.¹⁴² In 2017, in the wake of the NPM's visits, I made **17** legislative initiatives.¹⁴³
- If, in the course of my inquiry, I notice an impropriety related to the protection in the course of personal data, to the right of access to data of public interest, or to data public on grounds of public interest, I may report it to the National Authority for Data Protection and Freedom of Information.¹⁴⁴ I did not exercise this power in 2017.¹⁴⁵

¹³³ See Sub-chapter 11 of the Ombudsman Act

¹³⁴ Number of recommendations by addressee

¹³⁵ See Section 32(1) of the Ombudsman Act

¹³⁶ See Section 31(1) of the Ombudsman Act

¹³⁷ See Section 33(1) of the Ombudsman Act

¹³⁸ See Section 37 of the Ombudsman Act

¹³⁹ See Section 32(1) of the Ombudsman Act

¹⁴⁰ See Section 31(1) of the Ombudsman Act

¹⁴¹ See Section 33(1)-(2) of the Ombudsman Act

¹⁴² See Section 37 of the Ombudsman Act

¹⁴³ Regarding legislation, see also Sub-chapter 11

¹⁴⁴ See Section 36 of the Ombudsman Act

7.6. 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.”¹⁴⁶

In every case, I send my report on a visit by the NPM to the head of the place of detention concerned, the members of the Civil Consultative Body, and the Hungarian member of the CPT.

I have to publish my reports on my Office's homepage in digital format, accessible without restriction, free of charge to anyone.¹⁴⁷ Within a few days after sending the NPM's reports, in Hungarian, to the addressees, my colleagues make them accessible to the public, as well.¹⁴⁸ The NPM's reports shall be published in the electronic archives within 30 days of its disclosure.¹⁴⁹

Due to the lack of financial resources, I had but one opportunity so far to publish the full English text of a report on the NPM's visit. My Office published the English translation of the summary of the reports on the NPM's visits in 2017 on the official homepage of the NPM.¹⁵⁰

¹⁴⁵ In my report № AJB-151/2016, I requested the National Authority for Data Protection and Freedom of Information to inquire into the lawfulness of handling the health-related data of the detainees placed in the Central Holding Facility of the MPHQoB.

¹⁴⁶ See Section 28(2) of the Ombudsman Act

¹⁴⁷ See Section 39(1) of Normative Instruction 3/2015. (XI. 30) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries

¹⁴⁸ See Section 39(2) of Normative Instruction 3/2015. (XI. 30) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries

¹⁴⁹ See Section 39(3) of Normative Instruction 3/2015. (XI. 30) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries

¹⁵⁰ <http://www.ajbh.hu/en/web/ajbh-en/opcat-reports-2016>

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

In 2017, in performing the tasks related to the National Preventive Mechanism, I prepared the following reports.

Number	Date of the visit	Place of detention		At the time of the visit			Number of interviewees
		name	authorized capacity (persons)	number of detention units inspected*	utilization rate (%)	number of detainees	
1.	February 16-18, 2016	Forensic Psychiatric and Mental Institution	311	311	69.1	215	98
2.	July 19-21, 2016	Sátoraljaújhely Strict and Medium Regime Prison	421	426	101.2	426	84
3.	July 26-28, 2016	National Prison of Szombathely	1,476	1,476	97.0	1,433	116
4.	September 13-14, 2016	Nagykanizsa Unit of the Debrecen Reformatory of the MoHC**	108	108	44.4	48	65
5.	September 26-27, 2016	Debrecen Reformatory of the MoHC**	140	140	83.6	117	68
6.	November 8-9, 2016	Bóly-Görcsöny Integrated Social Institution of Baranya County	235	235	99.6	234	29
7.	December 6, 2016	8 th District Police Department of the MPHQoB	10	10	10.0	1	4
8.	May 16-17, 2017	Platán Integrated Social Institution of Bács-Kiskun County	100	100	94.0	94	61
	Altogether		2,801	2,806	74.9***	2,568	525

* The number of the inspected detention units contains both the authorized and the additionally created units.

** A joint report was prepared on the separate thematic visits to the Debrecen Reformatory of the MoHC and its Nagykanizsa Unit.

*** Average utilization rate at the time of the visits.

8.1. Children deprived of their liberty

Minors deprived of their liberty are more vulnerable than adults, irrespective of the reasons for their detention. Due to the minors' vulnerability deriving from their age, the personnel of places of detention holding minors has to be particularly vigilant to ensure that their physical and mental well-being is adequately protected.¹⁵¹

There is no children's rights ombudsman in Hungary; however, while performing tasks related to the NPM, I have to pay special attention to the protection of the rights of the child. A child „*is a person who has not yet reached 18 years of age, except if such a person becomes an adult earlier pursuant to the laws applicable to him or her.*”¹⁵²

The NPM's visits to places of detention holding children deprived of their liberty focused, on the one hand, on gathering information on intentional abuse and ill-treatment, and, on the other hand, on finding out whether the detention environment is suitable for ensuring and protecting physical and mental well-being.

¹⁵¹ See Clause 20, CPT/Inf (99) 12

¹⁵² See Article 1 of the UN Convention Rights of the child

8.1.1. The central premises and the Nagykanizsa Unit of the Debrecen Reformatory of the Ministry of Human Capacities¹⁵³

Juvenile correctional institutions perform certain law enforcement tasks, provide full-scale care, education, training, and work opportunities to minors taken in pretrial detention or ordered to correctional education by the court, within the frameworks of the child protection system. Juveniles between the ages of 14 and 21 who have committed or are being suspected of a crime may be educated in a reformatory.¹⁵⁴ In the case of some particularly serious crimes, children over 12 years of age can also be punished, provided that, at the time the offense was committed, they were able to understand the consequences of their acts. The aim of correctional education is to eliminate socialization deficiencies potentially leading to the perpetration of a crime and to facilitate successful integration into society. For the aforementioned reasons, in order to allow provisionally freed juveniles to apply for aftercare, I requested the Minister of Justice to consider the amendment of Section 384, Subsection (1) of Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offences (hereinafter the “Prison Code”).

The selection of these locations was motivated by the opening of the Nagykanizsa Unit in late 2015, as a result of which the total capacity of the Hungarian reformatory system had increased by 25 percent. The Nagykanizsa unit is the sole reformatory in Western Hungary. The material conditions of placement in Nagykanizsa were excellent. In Debrecen, the sanitary unit was in need of renovation. The personal items of the detainees could not be seen at either location; the absence of such items was even more apparent in Nagykanizsa due to the bleak decoration. Impersonality was augmented by the prohibition to wear one’s own clothing.



Reformatory, Nagykanizsa Unit

Both locations can provide accommodation for boys sentenced to correctional education and taken in pretrial detention. At the times of the visits, there were 48 juveniles in Nagykanizsa and 117 in Debrecen, which means utilization rates of 44.4% and 83.57%, respectively. In Debrecen 114, in Nagykanizsa 79 professional staff members had direct access to the juveniles. Staff positions were filled at 98% in both institutions. The visiting delegation interviewed altogether 133 persons at the two locations, including 90 juveniles.

Due to the age and co-offender separation rules, only 60% of the newly arrived juveniles could be placed in reception groups. The Professional Program and the practices of the reformatory interpret the provisions on separation by age more restrictively than the prevailing legal regulation. I suggested that the Head of the Reformatory should work out the rules of procedure to support the integration of

¹⁵³ Report № AJB-493/2018

¹⁵⁴ Pursuant to Section 105, Subsection (1) of Act C of 2012 on the Criminal Code, „juvenile offender shall mean any person between the age of twelve and eighteen years at the time of committing a criminal offense.”

However, pursuant to Section 82(1) of the Prison Code, “juvenile offender shall also mean a convict older than eighteen but younger than 21 years of age in juvenile confinement.”

those juveniles who cannot be placed in reception groups, and ensure that detainees under and over 16 years of age be placed in the same group only in exceptional cases, by order of the Head of the Reformatory.

Both institutions had a special group where juveniles were placed temporarily, as a form of punishment, thus the objective of the special group could not be achieved. The improper operation of the special groups, originally created for the education of young people with mental and/or psycho-social disabilities or personality disorder, infringed on the State's obligation to help, by means of separate measures, to achieve equality of opportunity, and the enforcement of the protection of young people living with disabilities by means of separate measures.

The operating orders of the closed and special groups were confused. Although the relevant legal regulations do not provide any opportunity to operate a closed unit within an institution exclusively for juveniles in pretrial detention, there were such groups in the Reformatory. Placement in a closed unit as a form of punishment caused an impropriety related to legal certainty, deriving from the principle of the rule of law, as well as an impropriety related to the right to freedom. I asked the Head of the Reformatory to take measures in order to place juveniles with mental and/or psycho-social or other disabilities in groups matching their condition, whether they were sentenced to correctional education or placed in the institution in pretrial detention. I suggested that the Head of the Reformatory should work out the rules of procedure of placing juveniles in closed groups as a form of disciplinary punishment and operating such groups.

Since there were problems with the operation of the complaints mechanism at both locations, I asked the Head of the Reformatory to inform the juveniles on the possibility to lodge a complaint anonymously, to install complaint boxes, and to work out the relevant rules of procedure.

Participation in education was full at both locations. In addition to classes, individual forms of education and training were also provided. Juveniles over the mandatory school age could participate in formal education on a voluntary basis. I suggested considering the amendment of Section 29, Subsection (2) of Minister of Human Capacities Decree 1/2015 (I. 14.) EMMI on the operation of reformatory institutions so that juveniles without a completed primary education, detained in a reformatory, could be compelled to graduate from primary school irrespective of their age. I requested the Minister of Justice to create a central registry of illiterate detainees and the personalized measures taken by the institutions to eliminate illiteracy.

Comparing the forms of maintaining contact with the outside world with the possibilities authorized in penitentiary institutions, I established that juveniles sentenced to correctional education are at an unjustifiable disadvantage as regards the time limit of phone conversations, which results in an impropriety related to the prohibition of discrimination. I called the attention of the Head of the Reformatory to the fact that increasing the time limit, allowing detainees belonging to a nationality living in Hungary to communicate in their mother tongue would contribute to improving family relations and could become an important milestone in the resocialization of juveniles.

There was a shortage of caretakers and nurses at both locations. Part of the nurses and 30% of the child carers in Debrecen did not have adequate professional qualifications. There were primary school teachers employed as educators at both locations. I pointed out that the education of teachers does not conform to the age-related needs of juveniles living in reformatories. I suggested that the Minister of Human Capacities should consider the amendment of Annex 2 of Minister of Human Capacities Decree 1/2015 (I. 14.) EMMI on the operation of reformatory institutions in order to make primary school teacher qualification insufficient for being employed as teacher-educator in a reformatory.

The experience of my colleagues shows that the staff members of child protection institutions are not provided with an opportunity to discuss cases, and there is no regular supervision or mental health support. Exhausted employees at the risk of burn-out cannot show the required patience and attention

towards the inhabitants of the institutions; the chances of efficiently handling the latter's streaks of aggression towards themselves and their peers are diminished. Applying corporal and collective punishment, using cleaning and copying written texts as forms of punishment, suggested by the notices, rules of conduct, and instructions readable on the notice boards hung on the walls of certain premises of the Reformatory, in addition to being based on elements that are educationally-psychologically and legally unacceptable, result in an impropriety related to the prohibition of degrading treatment or punishment. I recommended to the Reformatory's operator to ensure regular supervision, organize training sessions for the professional staff on prevention, attitude-shaping, and sensitization in the field of accepting vulnerable groups. I suggested to the Head of the Reformatory to remove the notice boards displaying rules and orders that are impossible to comply with and referring to degrading forms of treatment and punishment and to stop using collective, degrading punishment. I also recommended considering adding the prohibition of using work as a sanction to the rules of disciplinary procedure.

8.2. Detainees in penitentiary institutions

8.2.1. Forensic Psychiatric and Mental Institution¹⁵⁵

The FPMI is a special healthcare institution combining, in a unique way, classical psychiatric care and law enforcement. The FPMI operates in three separate buildings on the premises of the Budapest Strict and Medium Regime Prison. The three psychiatric rehabilitation wards in Building I provide care to male and female patients sent in for compulsory treatment or temporary compulsory treatment, and to mentally incompetent detainees. In Building II, the psychiatric and neurological evaluation of persons detained in the penitentiary system, the observation of the mental condition of persons in pretrial detention, as well as the examination and treatment of detainees of diminished capacity or suffering from personality disorder are conducted. Building III of the FPMI is inhabited exclusively by patients under compulsory treatment.

At the time of the visit, there were 215 patients¹⁵⁶ in the institution with the capacity of 311 patients (utilization rate: 69.1%).

The FPMI's wards were, in general, too large and, typically, overcrowded. There were several wards larger than 60 square meters in use. There were up to 15-16 persons treated in those wards. I requested the Director General of the Hungarian Prison Service and the Chief Medical Director of the FPMI to have the large wards remodeled into smaller ones and to provide adequate living space for all detainees.

The number of barrier-free showers and restrooms in the institution was insufficient. There was a "barrier-free" restroom where a wheelchair could not fit in. There were mold growths on the showers' walls, the hot water supply did not work properly, and patients had to stand in a line in front of the restrooms in the morning hours. I requested the Director General of the Hungarian Prison Service and the Chief Medical Director of the FPMI to have the appropriate number of barrier-free restrooms created, the mold growths removed, and an adequate hot water supply system installed.

¹⁵⁵ Report № AJB-766/2017

¹⁵⁶ Section 1 of Minister of Justice Decree 13/2014. (XII. 16.) IM on compulsory treatment, temporary compulsory treatment, and the tasks of the Forensic Psychiatric and Mental Institution (hereinafter the "FPMI Decree") distinguishes between two types of inpatients:

- **patient** is a person whose compulsory treatment or temporary compulsory treatment was ordered by a court, or whose designated place of imprisonment is the FPMI;

- **sent-in patient** is a person whose mental state is observed on the order of the court; an accused who has to spend pretrial detention in the FPMI; a person who, while being subject to a sanction or a measure, is sent in by a physician to the FPMI for examination or treatment; or a convict sentenced to imprisonment whose examination is necessary for making a decision regarding his or her placement in a medical-therapeutic unit.



Ward in the FPMI

The FPMI's catering practices were in compliance neither with the relevant legal regulations on catering in inpatient institutions nor with state of health and lifestyle of the regular and sent-in patients. I requested the Head of the Office of the Chief Medical Officer and the Chief Medical Director to address this problem.

According to the house rules issued for patients under compulsory or temporary compulsory treatment and mentally incompetent patients, the FPMI will provide, upon request, toiletries and other necessities to those without deposited money. According to the Chief Medical Director, detainees receive toiletry packs, lasting for several days, upon their request. The legal regulation providing the basis for this rule¹⁵⁷ stipulates the obligation to provide toiletries and other necessities only to the "convicted." I asked the Chief Medical Director to amend the house rules and distribute toiletry packs on the day of the reception. I requested the Minister of Justice to have the relevant legal regulation amended so that the FPMI should provide toiletries and other necessities not only to convicts but to other detainees as well.

Out of the 178 positions, only 89 were filled. Due to the inadequate working conditions, the threat of burn-out was rather high. Training on international human rights conventions that have been incorporated into domestic law was missing from the training curriculum of the staff. I suggested that the Director General of the Hungarian Prison Service and the Chief Medical Director ensure the provision of training sessions to the medical, psychologist, and nursing staff on the relevant provisions of the UN Convention against Torture, the OPCAT, and the CRPD, as well as on the related working knowledge, organize training sessions for the entire personnel on the needs of patients living with impairment/disability, and take the necessary measures to ensure the proper size and condition of rooms used by the staff.

It gave cause for concern that there were several persons with disabilities¹⁵⁸ in administrative detention in the FPMI who, under the Act on Administrative Offences, should not have been held there.¹⁵⁹ In order to remedy the situation, I initiated proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General.

¹⁵⁷ Section 131(2) of Minister of Justice Decree 16/2014 (December 19) IM on the Detailed Rules of Confinement Replacing Prison Sentencing, Confinement, Pretrial Detention and Disciplinary Fines (hereinafter the MoJ Decree 16/2014. (XII. 19.) IM) states that „convicts with no deposited money shall be provided with basic toiletry items and other necessities specified in Annex 7” (These items include soap, toothbrush, toothpaste, tooth mug, comb (if requested), toilet paper, cotton wool, tampon, sanitary pad, shaving equipment, shampoo).

¹⁵⁸ Section 4, Paragraph a) of Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities defines a person living with disability as „a person who lives, either for a prolonged period or permanently, with a sensory, communication, physical, mental, psycho-social impairment or their combination, which, when interacting with environmental, social, other any other factors, hinders or prevent the given person from efficiently and equally participating in society.”

¹⁵⁹ According to Section 10, Paragraph a) of Act II of 2012 Act II of 2012 on offences, the procedure in relation to offences and the offence record system, „no administrative detention may be ordered if the person subject to proceedings is a person living with disability as defined in the Act on the rights and equal opportunities of persons with disabilities, or receives in-patient care.”

Sent-in patients lived in an extremely unstimulating environment; practically no leisure activities were organized for them. Since the buildings of the FPPI are not barrier-free, not everyone had access to open air. I requested the Director General of the Hungarian Prison Service and the Chief Medical Director to ensure the accessibility of the FPPI's premises and the provision of therapeutic and leisure activities of adequate quantity and quality. I asked the Chief Medical Director to consider introducing, in addition to the existing mixed-gender activities, new, gender-specific activities. I suggested that the Chief Medical Director should make it possible (but not compulsory) for all patients to stay on the open air and to engage in therapeutic, sports and other activities.

In violation of the relevant legal regulations,¹⁶⁰ it was not possible to deliver packages during visiting time. Although patients could initiate outgoing phone calls with the frequency and duration stipulated in the regime rules, they could not, in violation of the law, receive incoming calls.¹⁶¹ In order to redress this unlawful situation, I requested the Director General of the Hungarian Prison Service and the Chief Medical Director to take the necessary measures.

The FPPI failed to duly comply with the Prison Code's provisions on corresponding with the defense counsel and the human rights organizations specified by the law,¹⁶² and the information material entitled "*General information on correspondence*" also failed to duly present them. I also requested the prosecution service to conduct an inquiry into the issues of correspondence and sending packages.

Although the number of admitted patients had not grown, the conditions necessary for terminating compulsory treatment (the protective environment) were less and less ensured. Due to the small number of social care institutions, and in the absence of receiving families, the issue of adaptive leaves for patients under compulsory treatment was not settled; neither was the release of those who did not need such treatment anymore. I requested the Minister of Justice to consider, in cooperation with the Ministers of Interior and Human Capacities, the establishment of an inter-professional working group for remedying the systemic problems uncovered by the visit.

The patients interviewed during the visit did not know the patients' rights representative; there were patients who did not know who the representative was. I asked the Chief Medical Director to include in the house rules the patients' right to turn to the patients' rights representative, and to allow the patients' rights representative to gather information on the premises, interview and consult with the personnel and the patients. I also suggested that the Chief Medical Director should provide the patients' rights representative with a room for performing the representative's tasks. I requested the Director General of the National Center for Patients' Rights and Documentation to ensure that the patients' rights representative of the FPPI performed his/her tasks in accordance with the relevant legal provisions.

The visiting delegation got contradictory information as regards the cases of abuse and the proceedings initiated against the alleged abusers. In my report, I emphasized that the FPPI should do everything in its power in order to prevent torture, inhuman and degrading treatment and punishment, and asked the Chief Medical Director to regularly bring to the attention of the FPPI's nursing and security staff that physically abusing the patients is unacceptable and liable to disciplinary sanctions.

¹⁶⁰ Section 13(3) of the FPPI Decree

¹⁶¹ Pursuant to Section 332(1)c) of the Prison Code, „when maintaining contact with their relatives and persons authorized by the FPPI, patients shall be entitled to [...] receive phone calls once per week, in accordance with the institution's regime, for at least twenty minutes per occasion,” and, pursuant to Section 398(3) of the Prison Code, „in order to exercise the procedural rights of the pretrial detainee, the defense counsel shall be entitled, once a week, in accordance with the house rules of the detention facility, to initiate a phone conversation for the period of one hour”.

¹⁶² Pursuant to Section 174(4) of the Prison Code, „The contents of the convict's correspondence with the authorities, international human rights organizations recognized by an international instrument promulgated by an Act, the Commissioner for Fundamental Rights, the organization or staff of the National Preventive Mechanism, and the convict's defense counsel may not be checked. If there is good reason to believe that the letters received or sent by the convict are not, in fact, sent by the authority, international organization, or defense counsel indicated on the envelop or meant to the addressee, the envelop shall be opened in the convict's presence, simultaneously with recording the procedure. Checking may only serve the identification of the real sender.”

The visiting delegation experienced cases when the personnel demonstrated derogatory, disdainful behavior towards the patients. I pointed out that comments on the personnel's part constituting ill-treatment (referring, e.g., to the patients' perceived or real racial, religious, ethnic background) were unacceptable. I made a recommendation to the Director General of the Hungarian Prison Service and the Chief Medical Director to hold the employees manifesting inappropriate behavior or treatment responsible.

8.2.2. Sátoraljaújhely Strict and Medium Regime Prison¹⁶³

The institution performs the state-mandated tasks related to pretrial detention, strict and medium regime imprisonment of adult males and the operation of a long-term unit. As a special task, the institution provides the conditions for operating a long-term special unit and a drug prevention unit.

At the time of the visit, there were 421 male detainees, including five foreign nationals, held in the institution. Another five detainees were kept at other locations. There were no minors or persons living with disabilities among the detainees. The institution's utilization rate stood at 162%.

There were eight prisoners spending their life sentences without the possibility of conditional release. Six of them were held at the long-term special unit (hereinafter the "LTSU").¹⁶⁴ Another eight prisoners were spending similar sentences with the hope of conditional release in the future. Two of them were held at the LTSU. Another 41 of the prisoners were spending sentences of 20, 19, 18, 16, 15, 14, 12, 11 or 10 years of imprisonment. Twenty-six persons were spending their non-final sentence of imprisonment. Another 16 were in pretrial detention. Five persons were residents of the drug prevention unit.

There were view-blockers installed on the windows facing the street, which, obstructing natural lighting and ventilation, made staying in the cells intolerable in the summer heat. The situation would be a bit improved after replacing the upper third of the blocker with polycarbonates.



View-blockers on the cell windows of the Sátoraljaújhely Strict and Medium Regime Prison

Every cell was equipped with a bed and a hand basin. With the exception of the single cells, the cells were furnished with a locker and a small or large table. In the 26 single and two-bed cells, the toilets were separated from the living space only by a partition. I asked the Minister of Interior to ensure that, at least in the two-bed cells, the toilets were separated from the detainee's living space in a way that would contain noises and odors.

Decisions on placing in and releasing from the LTSU are made by the Reception and Detention Committee (hereinafter the "RDC"). Placement has to be reviewed in every three months and

¹⁶³ Report № AJB-679/2017

¹⁶⁴ Pursuant to Section 105(1) of the Prison Code, „convicts sentenced to life imprisonment or at least fifteen years in prison, whose special treatment and placement in the interest of preparing them for their return or returning them to the community are justified based on their behavior, readiness to cooperate while in prison, attitude towards the regime and security of the institution, may be placed in the long-term special unit (LTSU).”

immediately terminated if its conditions have ceased to exist. Upon reviewing the RDC's decision, I established that the review of placements was formal, the explanatory parts of the decisions were, in most cases, identical. I asked the warden to ensure the individualized and genuine review of placements in the LTSU, as well as the substantial explanation of the decisions.

According to the data gathered during the visit, the diet of a diabetic detainee did not contain enough meat. In order to redress the situation, I suggested that the warden should ensure that all detainees received meals appropriate to their state of health, and pulpy meals were served to those in need.

The institution did not have a full-time physician. The healthcare division was headed, as a substitute, by the head nurse. A psychiatrist would visit the institution on a monthly basis. Detainees with acute health problems received appropriate treatment in the outside hospital. The institution had a full-time counseling psychologist and a part-time clinical psychologist working five hours on Tuesdays and Fridays. I asked the warden to do his best to fill the position of a physician. The monthly visits by the psychiatrist are not sufficient for continuously monitoring the mental health of all detainees. In order to improve the situation, I suggested that the warden should consider the full-time employment of the clinical psychologist working part-time, on a contractual basis.

At the time of the visit, 244 detainees were working in the textile factory of Adorján-Tex LLC on the institution's premises, while 84 detainees were working in budgetary workplaces (e.g., in the kitchen, in the on-site workshop, or in the factory of Prec-Cast LLC, deburring aluminum parts). Most of the detainees complained that their net salaries were not enough even for covering their basic needs. The wage of a detainee is not an income subject to mandatory pension contributions; therefore, their occupational record in prison is not taken into consideration when calculating retirement pension. I made a recommendation to the Minister of Human Capacities and Interior to amend Act LXXXI of 1997 on Social Security Pension Benefits so that the working period of the detainees would qualify as vesting period.

Spending their leisure time in various ways is particularly important for detainees sentenced to life in prison. In the cell block's pottery shop, the detainees make ornamental pieces, memorial plaques, cups. There is a Catholic priest working full-time in the institution. The detainees' religious activities are also assisted by a pastor working part-time, on a contractual basis. Church service is held on Saturdays; ecumenical services are held on major religious holidays, which the family members of the detainees may also attend. The gym is also in the cell block; detainees may train here for a fee or as a form of reward. Regular physical activities may be conducted in the courtyards, where there is some fitness equipment installed. Detainees may play soccer on the grass field equipped with goals. Every cell has a TV set offering a wide choice of channels. The computer in the LTSU may play CDs and DVDs. Detainees may occasionally attend programs outside the institution. Although the visit did not uncover any fundamental-rights-related improprieties regarding leisure activities, I called the warden's attention to the fact that, with a view to the large number of detainees spending a long-term prison sentence, a wide range of optional activities should be provided and, as far as possible, broadened.

The internal reports on peer-to-peer abuse among the detainees described actual bodily harm resulting from beating, blackmail, theft, and robbery (misappropriation of food, tobacco products, personal items, watches), as well as occurrences of sexual abuse. I suggested that the warden should take measures to prevent peer-to-peer abuse.

In the case of detainees imprisoned without the possibility of parole, family ties usually deteriorate and cease to exist; visits become less frequent then stop. In the case of family members, visits are conducted at the long tables arranged in two rows, with the detainees and their visitors sitting on the opposite sides.

The inspection established that the institution had limited contacts between a detainee and his legal representative then rejected his complaint in an ungrounded resolution. I made a recommendation to

the warden about ensuring that the detainees may freely contact, orally, in writing, or in person, the attorney representing them before the European Court of Human Rights.

8.2.3. National Prison of Szombathely¹⁶⁵

The National Prison of Szombathely (hereinafter the “institution”) is one of the largest penitentiary institutions in the country and one of the two domestic penal institutions operated on the basis of a PPP¹⁶⁶ Contract. The contractor, FMZ Savaria Services LLC (hereinafter the “Operator”), is in charge of daily operations, i.e., provisioning, servicing, and maintenance; the State supervises security operations and performs all detention-related regular and special tasks.

On the day of the visit, there were 1,474 detainees registered in the Prison, of whom 1,432 were actually present, accounting for a utilization rate of 97%. The authorized number of the prison service staff is 409, of which 385 positions were filled, i.e., there was a 6% staff shortage.

The shortage of prison service staff resulted mainly from unfilled healthcare personnel and driver positions. Overwork and stress, affecting the personnel, the supervisory staff, in particular, present serious difficulties in performing everyday tasks, which affects the quality of reintegration activities available to detainees, the staff's behavior towards the inmates, and may have an adverse effect on the effectiveness of violence prevention among detainees. I suggested that the warden should take all necessary measures to fill the vacant positions. I requested the Director General of the Hungarian Prison Service to consider increasing the authorized number of staff members in order to reduce the personnel's overworkedness.

Although some of the physician positions were vacant at the Healthcare Unit, medical care provided to the detainees was adequate. It gave cause for concern that, according to some detainees, the attending physician would not prescribe any medication if they had no money on their deposit accounts. I requested the institution's warden to ensure to appropriate provision of medications to the detainees.

It was problematic that neither the text of the House Rules, nor the Prison's actual practices were in compliance with the provisions of the Prison Code on the rules of corresponding with the penal authorities, human rights organizations specified by the law, and defense attorneys.¹⁶⁷ I requested the institution's warden to redress this unlawful situation.

The efficient conduct of suicide prevention activities was hindered by insufficient staffing, uneven distribution of persons belonging to psychological imbalance and suicide risk groups, and by the design of the bathrooms that allowed attempts at suicide by hanging. Although manifestations of self-harming behavior were relatively frequent among the detainees, not all staff members possessed the adequate knowledge of or the skill set necessary to handle such situations. I requested the Director General of the Hungarian Prison Service to ask the Operator to remodel the partition between the shower and the toilet in a way that would prevent attempts at suicide by hanging. I also requested the Director General of the Hungarian Prison Service to ensure the organization of training sessions for prison service personnel on preventing self-mutilation and suicide. In the interest of more efficient suicide prevention, I recommended to the warden to consider increasing the number of staff members working in the cell block and on the premises of the healthcare unit, as well as to provide professional help in trauma handling for staff members witnessing or participating in treating self-harming behavior.

¹⁶⁵ Report № A/B-793/2017

¹⁶⁶ PPP=Public Private Partnership, i.e., cooperation between the private and public spheres

¹⁶⁷ Pursuant to Prison Code Section 174(4), „*The contents of the convict's correspondence with the authorities, international human rights organizations recognized by an international instrument promulgated by an Act, the Commissioner for Fundamental Rights, the organization or staff of the National Preventive Mechanism, and the convict's defense counsel may not be checked. If there is good reason to believe that the letters received or sent by the convict are not, in fact, sent by the authority, international organization, or defense counsel indicated on the envelop or meant to the addressee, the envelop shall be opened in the convict's presence, simultaneously with recording the procedure. Checking may only serve the identification of the real sender.*”

While, pursuant to Section 247(2)sz) of Act CLIV of 1997 on Healthcare, the competent Minister should issue a decree *“on the nutritional standards of foodstuff provided within the framework of organized catering of regular meals, the personal conditions of catering, and preparing dietetic meals, and the rules of official control,”* the MoHC Decree on public catering does not cover regular, organized catering for penitentiary institutions.¹⁶⁸ To enforce the detainees’ right to health, I requested the Minister of Human Capacities to consider to extend the effect of the Decree on mass catering onto penitentiary institutions.

Reintegration activities provided by the institution (work, education, organized free time activities) did not meet the detainees’ requirements. The increased difficulty of access to these activities by inmates belonging to special detainee groups (juveniles, women, foreigners) resulted in discrimination. I requested the Director General of the Hungarian Prison Service to ask the Operator to expand the scope of reintegration activities available to the detainees. I suggested that the warden of the institution should ensure the conditions of efficient communication between the personnel and the foreign detainees. I initiated the organization of reintegration programs taking into account the special needs of juvenile detainees. I called on the warden to ensure equal participation for female detainees in reintegration activities, including locations outside the cell blocks.

It was particularly worrisome that even members of the medical staff did not have a clue who should be considered and treated as a disabled person under the prevailing legal regulations. The institution did not have any information regarding the identities and the special needs of the detainees living with disabilities. It cast serious doubt on whether the protection of the special rights of persons living with disabilities could be ensured in practice. I requested the Director General of the Hungarian Prison Service to organize training sessions, including practical training, for prison service personnel on the relevant provisions of the CRPD. I made a recommendation to the warden to identify detainees living with disabilities and assess their special requirements.

8.3. Police custody

8.3.1. The custody unit of the 14th District Police Department of the Metropolitan Police Headquarters of Budapest¹⁶⁹

Upon taking into custody, the police may restrict someone’s personal liberty only for the necessary period, not longer than eight hours. If the objective of police custody is not reached, the head of the competent police organ may extend this period, if justified, on one occasion, by four hours. The period of police custody shall be counted from the beginning of the police measure.¹⁷⁰

The custody unit of the 14th District Police Department of the Metropolitan Police Headquarters of Budapest (hereinafter the “Police Department”) with a capacity of 10 arrestees, located on the first floor of Building B, consists of three custody rooms, a staff recreational room, a hallway, a cold food storage / finishing kitchen, two lavatories and restrooms. The width of the benches the custody rooms were equipped with would make them rather uncomfortable for a larger man wanting to have a good night’s rest; however, the furnishing was suitable for a custody period shorter than 12 hours.¹⁷¹ Arrestees are separated by age, gender, smoking habits and cases. If more than ten arrestees are in the building of the Police Department, they stay in the hallways guarded by policemen until they are taken

¹⁶⁸ Minister of Human Capacities Decree 37/2014. (IV. 30.) EMMI on the nutritional standards of public catering “Section 1(1) – The scope of this Decree shall cover: a) service providers, as well as educational institutions under the Act on National Public Education and inpatient care institutions (hereinafter together the “institutions”) providing basic social services and special care, as well as child protection services, b) all institutions, organs, organizations, economic associations, and natural persons providing public catering service through their own, operating service kitchen.”

¹⁶⁹ Report № AJB-1522/2018

¹⁷⁰ The ruled of police custody are stipulated in Section 33 of the Police Act

¹⁷¹ Clause 42, CPT/Inf (92) 3

to the custody rooms or elsewhere. Should an expecting woman or a woman with a child be arrested, they are placed not in a custody room but in the hallway of the reception area or in the adjacent room.



Custody room at the Police Department

The number of guards on duty in the custody unit depended on the number of persons taken into custody. There was one guard on duty at the time of the visit who explained that when he had to go to the restroom, the duty officer would send a replacement. He had his meals in the duty room while monitoring the displays. The guard was not armed. He was equipped with a nightstick, handcuffs, and a gas spray.

At the time of the visit, there was only one arrestee (hereinafter the “man”) in the custody unit, who stated that he had been informed by the arresting officer about the reason of his arrest on the street while being taken into custody. The policemen also told him that he would be taken before the court within 72 hours.

Immediately upon arriving at the Police Department, the man had to name the person he wanted to be notified. Although, pursuant to Section 18, Subsection (1) of Act XXXIV of 1994 on the Police (hereinafter the “Police Act”), the person taken into custody should have had the privilege to notify his next of kin, notifying relatives would be the duty officer’s responsibility. The duty officer dialed the number given by the man, then informed him that his family had been notified of the fact of his arrest and on the place where he was being held in custody. When placed in the custody room, the man first had to make a statement regarding any injuries he might have, then he was informed about administrative detention and his right to lodge a complaint. One hour after being placed in the custody room, he was interviewed in an office and briefed on his rights. He had to state whether he wanted a lawyer.

The deprivation of liberty of the man taken into custody, i.e., his detention under Section 97h) of the Police Act, started not at his arrival at the Police Department but in the moment when the police patrol told him that he would be arrested for an administrative offense. Although, in my report № AJB-151/2016, I had already pointed out that the person taken into custody is entitled to notify, without delay, his relative or a third person as of the first moment of his being in custody,¹⁷² the arrest report did not contain any reference to having briefed the man on his aforementioned right or having ensured the conditions therefor.

At the time of his reception, the search of the man’s clothing, during which he had to hand over his shoelaces and the string holding his pants, was conducted by persons of the same gender.¹⁷³ He was given a copy of the list of his personal items taken into deposit. The man said that he had been asked if

¹⁷² Clauses 23 and 30 of CPT/Inf (2001) 2; Clause 22 of CPT/Inf (2014) 13

¹⁷³ Section 31(7) of Minister of Interior Decree 30/2011. (IX. 22.) BM on the Staff Regulations of the Police (hereinafter the “Staff Regulations”)

he wanted to eat upon his arrival at the Police Department. He also had to state if he had any special requirements in connection with his health condition, diet, or religious belief. Since he was very distressed in this—unusual to him—situation, he gave a negative answer. He told the visiting delegation that the policemen had listened to all of his questions and given him substantive answers. He had no complaint whatsoever about his arrest, conditions of custody, treatment, or the policemen's behavior.

Between October 1 and December 6, 2016, arrestees lodged complaints with the Police Department about the conditions of their placement on six occasions. In four cases, they complained about the degrading stripping in the custody room; in the other two cases, they complained about the unjustified arrest and its duration, as well as about the lack of food and something to drink. According to the complaints about stripping, after their arrest, the detainees, one by one, had to take off their clothes, drop their pants, squat on their heels and cough, as a result of which their private parts and anuses would become visible to the person conducting the inspection. They felt aggrieved at this situation they found degrading and humiliating. It is clear that the objective of making the naked complainants squat on their heels was to find objects hidden not in their clothes but on their body, between their legs, in their private parts, or in their anuses; the policemen conducting the inspection acted in excess of their power, they submitted the arrestees to a body search not applicable in the case of persons taken into police custody. Searching not only the clothes of the arrestees but also their uncovered bodies, including their private parts and anuses,¹⁷⁴ the staff members of the Police Department conducting the inspection applied the much stricter rules of lock-up reception¹⁷⁵ instead of the rules of taking into custody.¹⁷⁶ The method of executing a measure with no legal foundation, especially making the complainants squat on their heels with their lower body uncovered, induced shame in the persons concerned, resulting in an impropriety related to the prohibition of degrading treatment and the right to personal security.

Pursuant to Articles 10 and 16 of the UN Convention against Torture, each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of all personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. According to the staff members of the Police Department, they had no training sessions whatsoever on the treatment and human rights of detainees, managing conflicts and aggression. They had monthly, four-hour training sessions held by a tactical instructor on the application of means of restraint, securing a location, using collective force, and narcotic drugs.

In my report, I requested the Commander of the Metropolitan Police Headquarters of Budapest to ensure that persons taken into custody by the staff of the Police Departments under his supervision could notify themselves their relatives and that the rules of lock-up reception should not be applied in their cases. I also suggested that the Metropolitan Police Headquarters of Budapest should organize training sessions on the treatment and human rights of detainees, managing conflicts and aggression for the staff of the Police Departments under his supervision.¹⁷⁷

¹⁷⁴ I elaborated on my concerns about inspecting body cavities making the subject squat in my report № AJB-3685/2016

¹⁷⁵ See Section 18 Subsections (4)-(6) of the Police Act

¹⁷⁶ See Section 31(7) of the Staff Regulations

¹⁷⁷ The report is registered in my Office under file number AJB-1522/2018

8.4. Social care institutions

8.4.1. *Bóly-Görcsöny Integrated Social Institution of Baranya County*¹⁷⁸

The Bóly-Görcsöny Integrated Social Institution of Baranya County (hereinafter the “institution”) provides long-term residential care to persons living with disabilities whose education and care can be ensured only in institutional frameworks. At the time of the visit, there were 35 minors and 200 adults with intellectual disability living in the institution with the capacity of 235.

Pre-placement reports were made before placing the children in the institution; however, in the case of minors with no legal capacity, the documentation contained no records of interviewing the children regarding their placement in the institution. I called attention to the fact that, pursuant to Article 12 of the United Nations Convention on the Rights of the Child, States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. I requested the head of the institution to hear all minors with no legal capacity and persons under guardianship invoking fully limited legal competency upon their admission to the institution and to enclose these interviews’ records with the contract on the provision of care.

When the residents reach legal age, the institution automatically requests the Guardianship Authority to launch guardianship proceedings. Relatives may act as guardians if they are willing to do so. In other cases, the Authority assigns a professional guardian. In connection with placing in charge of a guardian, I requested the Minister of Human Capacities to call the Government Offices’ attention to the fact that, in the case of persons over 18 years of age living in a residential institution, they have to inform the parties that, in cases when the restriction of legal capacity is not justified, it is possible, upon request, to nominate a supporter.

During the elections, the institution failed to provide the opportunity to vote to those whom the court, their restricted legal capacity notwithstanding, had not stripped of their right to vote. I asked the head of the institution to ensure, during general elections and referendums, the possibility to vote, using a mobile ballot box, to those residents who want to exercise their right to vote.

There were apparently few personal items in the residents’ rooms. The shelves were empty except for some soft toys. I also pointed out that, in addition to the small living space, the residents’ private sphere was also compromised by the lack of personal items. I requested the head of the institution to make the residents’ immediate environment more personal, to encourage them, through the caretakers, to put items on the shelves to make their surroundings cozier.



Residential room in the institution

¹⁷⁸ Report № AJB-1383/2017

As of September 30, 2016, of the 150 authorized positions, 13 were vacant on the institution's main premises, 12 of them professional caretaker positions. In September 2016, two professional and four technical staff members left, and only one professional and three technical workers were hired. The institution did not have a resident physician. I asked the head of the institution to make a public call for application for the position of a physician.

As the number of movement psychotherapists and activity-organizers did not reach the number recommended by the law for residential institutions providing personal care, I suggested that the institutions should hire more movement psychotherapists and developmental pedagogues. I requested the Minister of Human Capacities to consider making the staff number standards, recommended in Annex 2 of Minister of Health, Social and Family Affairs Decree 1/2000 (I. 7.) SzCsM for residential institutions providing personal care, mandatory as regards the movement psychotherapists and activity-organizers.

Although there were male nurses working with the male residents in every unit of the institution, bathing was mainly done by the female nurses. I asked the head of the institution to ensure the proper number of male nurses among the staff.

Taking into account the size of the rooms and the number of residents placed therein, the statutory minimum living space of six square meters was not guaranteed in every room. The nine, ten, eleven, or even twelve beds in the overcrowded rooms practically left no living and moving space for the residents and their visitors. I requested the institution's supervisory authority, the General Directorate of Social Affairs and Child Protection to organize the rooms in a way that would ensure the statutory minimum 6 m² per capita living space for every resident.

The residents were rarely visited. There were only a few of them who would receive visitors every second week or once a month. Contacts with the guardians were not regular, either. One of the residents explained that his guardian would contact him on his birthday, name day, on Easter and Christmas days. I asked the head of the institution to get in touch with the guardians and request them to make regular visits.

One of the residential rooms was used as conjugal room: the inmates spending the night there would pack away their things for the day. The staff confirmed that the residents used to regularly masturbate in front of each other in the large rooms; on one occasion, one of the members of the visiting delegation witnessed such an incident. I requested the head of the institution to designate a room exclusively for the purpose of conjugal room.

To facilitate exercising the right to complain anonymously, I requested the head of the institution to have a complaint box installed in a visible place. I asked the Integrated Legal Protection Service to ensure that the patients' rights representative, when visiting the institution, would encourage the residents to voice their desires, wishes, and complaints in order to improve their immediate environment.

8.4.2. *Platán Integrated Social Institution of Bács-Kiskun County*¹⁷⁹

My colleagues authorized to perform tasks related to the National Preventive Mechanism visited the then Platán Residential Home operated by the Directorate of Health and Social Care Institutions (hereinafter the "institution") for the first time on June 23, 2015. At the time of the first visit, due to some renovation works, the institution operated on temporary premises. In my report on the visit¹⁸⁰ (hereinafter the "2015 Report"), I made several recommendations to the institution and its then supervisory authority. The objective of the follow-up visit was to examine how my recommendations

¹⁷⁹ Report № AJB-3772/2017

¹⁸⁰ Report № AJB-1686/2015

concerning the conditions and issues of treatment on the temporary premises had been implemented by the institution and its new supervisory authority, the General Directorate of Social Affairs and Child Protection after moving back to the permanent premises.

At the time of the visit, the institution with the capacity of 100 provided care to 94 persons living with disabilities. The residents have practically no hope to move out of the institution and start an independent life. Two residents died, and one was transferred to another institution in 2016. Up to the date of the visit in 2017, three residents died.

There were one interim head of the institution and one head of the nursing section, four developmental pedagogues, two social and mental health workers, two activity-organizers, one leisure-time organizer, 22 caretakers, eight nurses, one material manager, and one laundry worker employed in the institution.

In my 2015 Report, I requested the head and the supervisory authority of the institution to ensure the statutory minimum living space (at least six square meters per resident). The follow-up visit established that this requirement was not met even after moving back to the permanent premises. I requested the new supervisory authority, the General Directorate of Social Affairs and Child Protection to ensure at least six square meters of living space per resident in the residential rooms.

The institution had fewer bathtubs and showers than specified by the relevant legal regulation. The statutory minimum number of toilets was not ensured to the male residents, either. I requested the institution's supervisory authority to renovate the sanitary unit in order to ensure the statutory number of bathtubs, showers, and toilets for both sexes.

Through the eye-level, transparent glass inserts of the bathroom doors, one could look into the bathrooms. The staff could not make sure that female and male residents would be bathed exclusively by female and male nurses, respectively. I asked the head of the institution to ensure that no one could look into the bathrooms from the hallway. I suggested to install partitions between the bathtubs and that the personnel should try and ensure that residents would be bathed by nurses of the same sex.

The daily menus did not indicate either the calorie values of the meals or the list of macronutrients; the menus were not displayed so that the residents could see them. I asked the head of the institution to ensure that calories and nutrients were taken into account when preparing the menu (including the menu for residents on special diet) and that the menu was displayed in a visible place. Several of the residents were on special diet, some of them received, in addition, formula. There was a resident who accepted only a few spoonfuls of food; he was skinny and weak. One of the residents with diabetes would have hypoglycemic attacks if he did not eat enough. In my report, I pointed out that special attention must be paid to the nutrient content of the special diets of diabetic, emaciated, and formula-fed residents. I asked the head of the institution to ensure that the raw material chart was updated in order to guarantee that residents on special diet received the necessary nutrients. Since neither the taste nor the consistency of the dishes tried by the members of the visiting delegation was acceptable, I asked the head of the institution to take the necessary measures to have both the consistency and the taste of meals improved.

In my 2015 Report, I recommended the regular health checks of the residents, with special attention to the residents with psycho-social disability. The follow-up visit established that the general practitioner did not see all residents on a regular basis and the psychiatrist did not check regularly the condition of the residents taking antipsychotics or antidepressants. I reiterated my request to the head of the institution to ensure that the GP and the psychiatrist regularly examined all residents, and to monitor the documentation of their state of health and medication. As the majority of residents had bad teeth, I also asked the head of the institution to ensure the immediate provision of dental check-ups and dental care.

In my 2015 Report, I requested the head of the institution to revise the house rules and the protocol for restrictive measures. The issues listed in the report had been redressed only partially, the newly drafted house rules contained new deficiencies pointing beyond the old ones. I reiterated my request to the head of the institution to have the protocol for restrictive measures revised.

The 2015 visit did not find anything “unusual” as regards the frequency of the ad hoc administration of psychiatric drugs. The expert physician participating in the follow-up inspection established that the administration of drugs in the institution, *“prescribing medication in quantities for specific sets of symptoms was unacceptable.”* The residents sleeping during the day regularly received “*Mixtura chloralo-bromata,*” a preparation that had not been in use by the modern psychiatric profession for decades. As a result of the simultaneous application of strong drugs, some of the residents were strongly sedated, slept through the day, could not be woken. I requested the head of the institution to immediately revise the administration of drugs (simultaneous application of drugs with similar effect) and to stop using the bromide, long abandoned by modern psychiatry. The interviews with the residents suggest that they did not know what drugs they had been taking. There was no conjugal room in the institution; therefore, I asked the head of the institution to designate a room that could be used by the residents, even if not in conjugal community, to get intimate with one another. I requested the head of the institution to take the necessary measures in order to brief the residents, in a way understandable to them, on their illness and the drugs they take, including the use of contraceptives.

Since 2015, the outside programs, joint field trips had become less frequent; the residents had not taken part in such activities for more than six months. Therefore, I requested the head of the institution to organize various programs, field trips for the residents. I pointed out to the staff members of the institution that being allowed to decide what to wear would be a positive experience for the residents. I asked the head of the institution to involve the residents in deciding on their attire for the day. In his response, the head of the institution informed me that they were trying to teach the residents to select clothes appropriate for the season and the outside weather.

There was no complaint box in the institution. I requested the head of the institution to have a complaint box installed to provide the residents and their relatives with the opportunity to lodge their complaints about the circumstances in the institution anonymously.

In my 2015 Report, I requested the supervisory authority to facilitate the residents’ reintegration into mainstream society. I requested the supervisory authority to take measures in order to make those community-based services available to persons living with disabilities leaving the institution that would allow them to receive appropriate care near their homes. The follow-up inspection established that the management had neither supported the residents’ transfer to residential homes nor provided appropriate assistance to their starting a more independent life. I suggested that the head of the institution, in accordance with Article 19 of the CRPD, should support the residents in creating a more independent life, including, in particular, their transfer to in-home support and reintegration into mainstream society.

The follow-up visit established that the institution and its supervisory authority had implemented most of the recommendations made in the 2015 Report. According to the management, the failure of their full implementation is the result of the change in the supervisory authority. In my opinion, neither the change in the supervisory authority nor the return to the original premises provides an adequate explanation for the fact that most of the improprieties found in 2015 still existed, some of them had even become more serious.

9. Dialog about the measures taken by the NPM

Under Article 22 of the 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.”*

As regards the dialog between the NPM and the competent authorities, in the absence of relevant OPCAT provision, the basic principles defined by the Subcommittee on Prevention shall apply.¹⁸¹ The NPM

- should maintain a dialog with *“both governmental authorities and institution directors/managers regarding the implementation of recommendations;”*¹⁸²
- should establish *“sustainable lines of communication”* and *“a mechanism for communicating and cooperating with relevant national authorities on the implementation of recommendations;”*¹⁸³
- should maintain a dialog that involves *“both written and oral exchanges.”*¹⁸⁴

Although the implementation of the measures recommended by the NPM is not mandatory, the Ombudsman Act compels the measures’ addressees to respond on the substance of the recommendations aimed at eliminating the improprieties, or the threat thereof, uncovered during the inspection. Maintaining continuing and constructive dialog 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 dialog between the NPM and the addressees of the recommendations is conducted on the basis of the report. The Ombudsman Act regulates in detail the method of monitoring, including the deadlines for responding.¹⁸⁵

I maintain a dialog with the addressees of my measures mainly in writing, involving, as necessary, the supervisory organs, as well. There is no legal obstacle to hold oral consultations within the framework of the dialog. During the constructive talks held on January 17, 2016, with the participation of the representatives of my Office, the Ministry of Interior, the Ministry of Human Capacities, the Hungarian Prison Service Headquarters, and the Office of the Prosecutor General, my colleagues explained in detail the reasons for amending the legal regulations on conducting body search in penitentiary institutions.¹⁸⁶ Acting on my recommendation made in the report on the visit to the Forensic Psychiatric and Mental Institution, the Minister of Justice set up an inter-professional working group, with the participation of my colleagues authorized to perform tasks related to the NPM, for reviewing and redressing the systemic problems of compulsory treatment. The working group had two meetings in 2016.¹⁸⁷

The civil suit, brought in connection with certain conclusions of my report on the visit to the Cseppekő Children’s Home for damaging the reputation of the Children’s Home, is another form of the dialog between the NPM and the place of detention.¹⁸⁸

The provisions of Section 38(1) of the Ombudsman Act constitute the most important legal guarantees of the dialog. 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 I do not agree with the position or the measure taken, I may submit the case to Parliament within the framework of my annual report,

¹⁸¹ Article 11.1(iii) of the OPCAT

¹⁸² Clause 22 of the SPT’s *Analytical self-assessment tool for National Prevention Mechanisms (NPM)*, CAT/OP/1

¹⁸³ Clauses 30 and 31 of the SPT’s *Analytical self-assessment tool for National Prevention Mechanisms (NPM)*, CAT/OP/1

¹⁸⁴ Clause 22 of the SPT’s *Analytical self-assessment tool for National Prevention Mechanisms (NPM)*, CAT/OP/1

¹⁸⁵ Sections 31 through 38 of the Ombudsman Act

¹⁸⁶ See the part of this chapter on the law amendment recommended in my report on the visit to the Somogy County remand prison.

¹⁸⁷ See the part of this chapter on the working group for reviewing and redressing the systemic problems of compulsory treatment.

¹⁸⁸ See the part of this chapter on the Cseppekő Children’s Home.

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

The inspected authorities and/or their supervisory organs responded on the substance of the recommendations made in my reports prepared in 2017, and the NPM's visits did not find any violation of the law that would have prompted me to turn to the Parliament.

The authorities' response to the major measures by the NPM¹⁸⁹

9.1. Visit to the Cseppkő Children's Home

My colleagues authorized to perform tasks related to the NPM made preventive visits to the Cseppkő Children's Home (hereinafter the "children's home") on March 1-2 and April 26, 2016. I sent out the report on the visits, containing 17 recommendations, to the director of the children's home and all those concerned on October 6, 2016.¹⁹⁰

My Office put on file the director's letter responding to the report's conclusions and describing the implementation of the measures recommended by me on November 15, 2016.¹⁹¹ In my letter dated December 13, 2016, I acknowledged the report on the measures taken by the director; however, I reiterated a number of my earlier recommendations, e.g., on preventing unjustified absence from school, on the participation of the children's home's psychologists in preparing individual plans for education and care, as well as on involving the guardians and, if feasible, the parents of as many children as possible in the planning process.¹⁹²

In his letter dated January 5, 2017, the director claimed that the report's conclusions indicated by him are damaging to the children's home's reputation, and asked me to remove them from the report.¹⁹³ On January 30, 2017, I informed the director that it was not in my power to remove any conclusions from the report.¹⁹⁴ In my response, I tried to elaborate on some conclusion clearly misinterpreted by him and called his attention to the fact that the visits by the NPM were not aimed at destroying the reputation of the children's home. The recommendations made in my report served the protection of the best interest of children living in the fireworks of the child protection services, including those in the children's home.

In his letter dated November 30, 2017, the director requested me to make available to him all documents (notes, minutes of the interviews, etc.) generated during the visits to the children's home. With a view to the prohibition of sanctions, stipulated in Article 21 of the OPCAT, I refused to comply with his request.¹⁹⁵

Upon receiving my refusal, the director of the children's home brought a lawsuit claiming that certain conclusions of the report on the visits to the children's home were defaming. In his statement of claim, he requested the Court to establish that the NPM, "*in its report published on November 14, 2016, claiming that children lived in overcrowded conditions in the children's home operated by the petitioner, where incidents of drug use, child prostitution, child abuse by the educators happen, and physical, psychological, and sexual abuse is rampant, had violated the petitioner's right to reputation.*" He also requested the Court to order my Office, in addition to removing the contested conclusions, to pay three million Forints in tort damages and 1.3 million Forints for material damage, as well as their incidentals, and to publicly apologize.

¹⁸⁹ Responses put on file between January 1 and December 31, 2017.

¹⁹⁰ Report № AJB-1603/2016

¹⁹¹ File № AJB-1603-59/2016

¹⁹² File № AJB-1603-66/2016

¹⁹³ File № AJB-662-1/2017

¹⁹⁴ File № AJB-662-2/2017

¹⁹⁵ See also Section 27(3) of the Ombudsman Act

The Court of First Instance rejected the claim. In the explanatory part of the ruling, the Court pointed out that the NPM's report is not subject to appeal. Should the party concerned disagree with its contents, he/she/it may explain his/her/its position in a form provided for by the Ombudsman Act. In the Court's opinion, *“the fact that the NPM's proceedings have led to conclusions unfavorable for the petitioner, does not entitle the petitioner to demand a new report favorable for him or to ask the Court to establish the unlawfulness of the unfavorable conclusions.”*¹⁹⁶

9.2. Visit to the Bóly-Görcsöny Integrated Social Institution of Baranya County

The Bóly-Görcsöny Integrated Social Institution of Baranya County (hereinafter the “institution”) provides long-term residential care to persons living with disabilities whose education and care can be ensured only in institutional frameworks. At the time of the visit, there were 35 minors and 200 adults with intellectual disability living in the institution with the capacity of 235.¹⁹⁷

In the case of minors with no legal capacity, there was nothing in the institution's documents indicating that, pursuant to Article 12 of the UN Convention on the Rights of the Child, the children had been interviewed in connection with their placement. I requested the head of the institution to hear all minors with no legal capacity and persons under guardianship invoking fully limited legal competency upon their admission to the institution and to enclose these interviews' records with the contract on the provision of care. The head of the institution informed me that, in the future, he would interview all persons under guardianship invoking fully limited legal competency and minors with no legal capacity during their admission to the institution.

I requested the head of the institution to provide a mobile ballot box to those residents who would like to exercise their right to vote. In his letter, the head of the institution informed me that they would provide all assistance to those who would like to exercise their right to vote.

The institution had no in-house physician, and the number of movement psychotherapists and activity-organizers did not reach the number recommended by the law for residential institutions providing personal care, either. Although there were male nurses working in every unit of the institution, male residents were bathed mainly by female nurses. In his response, the head of the institution informed me that he could ensure the provision of medical care only on a contractual basis; the physician contracted by the institution was, at the same time, the general practitioner of the residents. He could employ more movement psychotherapists depending on the possibilities, and he was trying to hire more male nurses.

I requested the Minister of Human Capacities to consider making the staff number standards for movement psychotherapists and activity-organizers, stipulated in Annex 2 of Minister of Health, Social and Family Affairs Decree 1/2000. (I. 7.) SzCsM for residential institutions providing personal care, mandatory instead of recommended. Following the visit, the MoHC informed me that making decisions as to whether and in what number it is necessary to hire people in order to fulfill certain positions falls under the competency of the head of the institution, not the legislator.

I requested the institution's supervisory authority, the General Directorate of Social Affairs and Child Protection to organize the rooms in a way that would ensure the statutory minimum 6 m² per capita living space for every resident. In its response, the supervisory authority informed me that the professional preparation of joining in the project EFOP-2.2.5 (continuation of Project EFOP-2.2.2) is underway; the objective is to replace the castle building giving home to the institution and to introduce a supported form of accommodation for the residents.

¹⁹⁶ Ruling № 71.P.22.475/2017/17 of the Budapest-Capital Regional Court, dated March 6, 2018, put on file in my Office under № AJB-3246/3/2018

¹⁹⁷ See also in section 8.4.1. above

In my report, I pointed out that the residents' private sphere was compromised also by the lack of personal items. The head of the institution informed me that his colleagues try to make the living environment cozier, and they also help the residents' similar efforts.

At the time of the visit, one of the residential rooms was designated as conjugal room: the residents spending the night there would pack away their things for the day. The head of the institution informed me that a room had been designated exclusively for this purpose.

I asked the head of the institution to get in touch with the guardians and request them to make regular visits. The head of the institution informed me that they intend to maintain regular contact with the guardians through inviting them to various programs and to more events than before.

I requested the head of the institution to have a complaint box installed in an easily visible place. The head of the institution informed me that they had placed complaint boxes in every care unit, as well as on the scene of the developmental activities.

I asked the Integrated Legal Protection Service to ensure that the patients' rights representative, when visiting the institution, would encourage the residents to voice their desires, wishes, and complaints. In its response, the Integrated Legal Protection Service assured me that they pay special attention to residents who are vulnerable due to the state of their physical or mental health.

9.3. Visit to the Somogy County Remand Prison

My colleagues authorized to perform tasks related to the NPM paid an unannounced visit to the Somogy County Remand Prison on June 24-25, 2016.¹⁹⁸ After the departure of their visitors, the detainees of the institution had to strip naked in the presence of the guards and the other detainees, pull back the foreskin from their sexual organ, then squat on their heels. The objective of inspecting part of the penis covered by the foreskin and making the detainees squat on their heels was to enable the guards to check whether the detainees had hidden forbidden objects and/or psychotropic drugs between their legs or in their private orifices.

The Prison Code regulates the search of the convict's body and clothes in three stages. First, frisking the convicts and checking their clothes, which may be done only by a person of the same sex (except when the clothes are checked using a technical device);¹⁹⁹ second, inspection of the body orifices, which may be done only by a physician;²⁰⁰ and third, as an exception to the second, inspection of the oral cavity, which may be done by prison service personnel of the opposite gender as well. The Prison Code did not define body orifice; therefore, it was up to discussion whether inspecting part of the penis covered by the foreskin and searching for forbidden objects hidden between the legs or in the rectum may be done only by a physician, or it may be done by the members of the security personnel in the presence of other detainees, as well. In my view, this unclear legal situation threatened the enforcement of the prohibition of degrading treatment. To eliminate this impropriety, I recommended the amendment of the Prison Code and its implementing regulations.

Instead of amending the Prison Code, the Minister of Justice suggested reaching a consensus regarding acceptable practices. In my response, I pointed out that, based on the taxonomic and logical interpretation of Section 151 of the Prison Code and Section 59 of Minister of Justice Decree 16/2014. (XII. 19.) IM, the provisions on body search are not clear. I also pointed out that neither the practices of the penitentiary system nor the teaching materials used in training penitentiary service personnel are in compliance with the prevailing legal regulations.

¹⁹⁸ Report № AJB-3865/2016

¹⁹⁹ Section 151(1) of the Prison Code

²⁰⁰ Section 151(3) of the Prison Code

On January 17, 2017, the Ministry of Justice convened a consultation on the methods of body search in the penitentiary system and on implementing the NPM's recommendations. During the consultation held in the building of the Ministry of Justice, in addition to my colleagues authorized to perform tasks related to the NPM, the representatives of the Ministry of Interior, the Ministry of Human Capacities, the Hungarian Prison Service Headquarters, and the Office of the Prosecutor General explained their positions. As a result, the representative of the Ministry of Justice promised that the Ministry would propose the amendment of the Prison Code's concept of body search, and consider the regulation of the methods of inspecting "private parts."

The provisions of the Prison Code were amended as follows:²⁰¹

Text of the Prison Code	
before the amendment	after the amendment
Section 151 – Convicts may be frisked, and their clothes may be searched only by a person of the same sex, with the exception of a physician assisting the search or when the search is done using a technical device.	Section 151 – Frisking means the search of the convicts' body and clothes, and the examination of their personal items. Frisking may be conducted only by a person of the same sex, with the exception of a physician and healthcare personnel assisting the frisking or when the search of clothes is done using a technical device.

Minister of Justice Decree 16/2014. (XII. 19.) IM was complemented by the Minister of Justice in accordance with the NPM's recommendation. Pursuant to Section 59(3), "*orifices of the lower body may be inspected only by a physician or the healthcare personnel.*"²⁰²

9.4. Visit to the Forensic Psychiatric and Mental Institution

The FPMI is a specific healthcare institution combining, in a unique way, classical psychiatric care with the tasks of the penitentiary system. The visiting delegation inspected the FPMI between February 16 and 18, 2017. At the time of the visit, there were 215 patients in the institution, which meant a 69.1% utilization rate.²⁰³

The rooms in the FPMI were, in general, large. Among those in use, some were even larger than 60 square meters; 15-16 patient were treated in them. The rooms were typically overcrowded. The number of barrier-free showers and restrooms in the institution was insufficient, there were mold growths on the showers' walls, and the hot water supply did not work properly, either. The lack of proper accessibility restricted some of the patients in conducting leisure activities. In connection with my recommendations regarding the physical conditions of the premises, I was informed by the Director General of the Hungarian Prison Service and the Chief Medical Director of the FPMI that they would be taken into consideration during the general renovation of the institution planned for 2017 and 2018. In connection with transforming the large, 60 m² plus rooms into smaller ones, they pointed out that it would only be possible while maintaining current capacity if some other premises were transformed into hospital rooms, which was not feasible under the circumstances. In my response, I repeatedly called the attention of the Director General of the Hungarian Prison Service and the Chief Medical Director to the fact that large hospital rooms were not in accordance with the standards of modern psychiatry, and that placing patients in smaller groups was of key importance for preserving or restoring the patients' dignity, as well as for their psychological and social rehabilitation.

²⁰¹ Section 15 of Act XXIX of 2017 on the amendment of certain criminal legal regulations Effective as of April 19, 2017

²⁰² Section 40 of Minister of Justice Decree 22/2017. (XII. 22.) IM on amending certain criminal and penitentiary legal ministerial decrees and the related judicial ministerial decrees Effective as of January 1, 2018

²⁰³ See also in section 8.2.1 above

In my report, I requested the Minister of Justice to take the necessary measures so that the relevant legal regulation allowed the FPMI to provide toiletries and other necessities without discrimination, irrespective of the legal grounds of detention, even to detainees with no money deposit. The Minister amended Decree 13/2014. (XII. 16.) IM on compulsory treatment, temporary compulsory treatment, and the tasks of the Forensic Psychiatric and Mental Institution in accordance with my recommendations.²⁰⁴

At the time of the visit, only 89 of the 178 positions were filled in the FPMI. The shortage of professional staff was felt among the physicians, psychologists, and nurses, as well. The risk of burn-out was high among the overworked staff members who had not received any training on international human rights conventions incorporated into domestic law. I asked the Director General of the Hungarian Prison Service and the Chief Medical Director to organize a training session for the entire staff on the needs of patients living with impairments/disabilities, as well as the relevant provisions of the UN Convention against Torture, the OPCAT, and the CRPD. In response to my recommendation concerning training, the Chief Medical Director requested me to provide learning materials and instructors for the recommended training sessions. In my response, I informed the Director General of the Hungarian Prison Service and the Chief Medical Director that, although my Office does not have the capacities for developing educational materials required for the comprehensive training of the FPMI's personnel, my colleagues are willing to participate in the training, on an ad hoc basis, as guest lecturers. I suggested the Hungarian Prison Service Headquarters should use my reports, available on the website of my Office, as well as the publications of my colleagues during the development of training materials. I also pointed out that the member organizations of the CCB may be of assistance in both developing teaching materials and providing instructors.

The visiting delegation experienced cases when the personnel demonstrated derogatory, disdainful behavior towards the patients. I received contradictory information as regards the cases of abuse and the proceedings initiated against the alleged abusers. In my report, I emphasized that the management of the FPMI should do its best to prevent torture, inhuman and degrading treatment and punishment. I pointed out that comments on the personnel's part, referring to the detainees' perceived or real racial, religious, or ethnic background, as well as the physical abuse of the patients were unacceptable. I requested the Chief Medical Director to warn the staff members that the physical abuse and verbal ill-treatment of the patients were unacceptable and would have, in each and every case, adequate consequences. The Chief Medical Director informed me that he laid emphasis on awareness-raising, regularly monitored communication with the patients and its tone, and dealt severely, using all means, initiating criminal proceedings, if necessary, against the perpetrators of such acts.

The patients did not know the patients' rights representative; there were patients who did not know who the representative was. I requested the Chief Medical Director to add to the house rules that the residents are entitled to turn to the patients' rights representative. He should ensure that the patients' rights representative could ask questions of the patients and the members of the staff, conduct consultations with them, as well as to provide the patients' rights representative with a room required for performing his/her tasks. In his response, the Chief Medical Director informed me that the house

²⁰⁴ As of January 1, 2018, the FPMI Decree was complemented with the following text:

"Section 33/A (1) Regular and sent-in patients shall be provided the conditions necessary for their daily wash and brush-up.

(2) Basic toiletries and other necessities specified in Annex 1 shall be provided to regular and sent-in patients with no money deposit.

(...)

Annex 1 to Decree 13/2014. (XII. 16.) IM

Basic toiletries and other necessities provided by the FPMI to regular and sent-in patients with no money deposit

1. soap

2. toothbrush, toothpaste, tooth mug

3. shampoo

4. comb (if requested)

5. toilet paper

6. shaving equipment

7. cotton wool, tampon, sanitary pad,"

rules had been amended. He would provide an empty office to the patients' rights representative for performing his/her tasks. The staff would brief the patients on the person and tasks of the patients' rights representative and display the schedule of the latter's availability on the FPMI's notice board. I recommended to the Director General of the National Center for Patients' Rights and Documentation to ensure that the patients' rights representative of the FPMI performed his/her tasks in accordance with the relevant legal provisions. The head of the Integrated Legal Protection Service of the Ministry of Human Capacities (legal successor of the National Center for Patients' Rights and Documentation) made the arrangements to ensure that the patients' rights representatives paid special attention to protecting the rights of psychiatric patients treated in the FPMI, and revised the relevant professional rules of procedure. He promised to ensure that the patients' rights representative would regularly visit the FPMI and be present and available during consulting hours.

The catering practices of the FPMI were not in compliance either with the legal provisions regulating food service to be provided in inpatient institutions, or the lifestyles, health conditions of the regular and sent-in patients; I requested the Chief Medical Director of the FPMI and the Chief Medical Officer to take the necessary measures. In the wake of my recommendation as regards catering to the patients, the inspection conducted by the Public Health Department of the Government Office of the Capital City Budapest also established that the FPMI was in violation of the relevant food service regulations and compelled the institution to eliminate the anomalies.

There was a disabled person in administrative detention²⁰⁵ in the FPMI who, under the Act on Administrative Offences, should not have been held there.²⁰⁶ In order to remedy the situation, I initiated proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General. According to the Prosecutor General's response, the inquiries of the competent prosecutor did not uncover any factor hindering execution under Section 433(3)b) of the Prison Code.²⁰⁷ In my response, I called the attention of the prosecution service to the fact that the detainee's being in in-patient care is also a factor excluding the application of administrative detention. Pursuant to Section 1 of the FPMI Decree, penitentiary service physicians may send persons in administrative detention to the FPMI only based on symptoms indicative of mental incompetence or disease of the nervous system, for the purpose of treatment or examination. Pursuant to Section 2(1) of the FPMI Decree, the FPMI shall, as an in-patient healthcare institution, examine, observe, and, if necessary, treat patients sent in for observation of their mental state [*Paragraph e*]), as well as conduct the psychiatric and neurological examination and treatment of patients sent in by penitentiary service physicians [*Paragraph f*]). In the case of persons in administrative detention, there is an obstacle to execution; therefore, they cannot be treated in the FPMI. I am going to lay special emphasis on this issue during a future follow-up inspection in the FPMI.

The visit's experience shows that the conditions necessary for terminating compulsory treatment, i.e., a protective environment, are guaranteed to an ever-decreasing extent. Due to the small number of social care institutions, and in the absence of receiving families, both the issue of adaptive leaves for patients under compulsory treatment and the release of those who did not need such treatment anymore became unsolved. I requested the Minister of Justice to consider, in cooperation with the Ministers of Interior and Human Capacities, the establishment of an inter-professional working group for remedying the systemic problems specified in my report.

²⁰⁵ Section 4a) of Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities: "a person living with disability is a person who lives, either for a prolonged period or permanently, with a sensory, communication, physical, mental, psycho-social impairment or their combination, which, when interacting with environmental, social, other any other factors, hinders or prevent the given person from efficiently and equally participating in society."

²⁰⁶ Section 10a) of Act II of 2012 Act II of 2012 on offences, the procedure in relation to offences and the offence record system: "No administrative detention may be ordered if the person subject to proceedings is a person living with disability as defined in the Act on the rights and equal opportunities of persons with disabilities, or receives in-patient care"

²⁰⁷ „Administrative detention may not be enforced if (...) there is a circumstance excluding the imposition of administrative detention."

9.4.1. Inter-professional working group for remedying the systemic problems of compulsory treatment

Acting upon my recommendation, the Minister of Justice set up an inter-professional working group for reviewing the systemic problems of the conditions necessary for sending patients under compulsory treatment on adaptive leaves and releasing those who do not need such treatment anymore (hereinafter the Working Group). The Working Group held its first meeting on June 12, 2017, in the building of the Ministry of Justice. The meeting was attended, in addition to my colleagues authorized to perform tasks related to the NPM, by the representatives of the Ministry of Human Capacities, the Hungarian Prison Service Headquarters, the FPMI, the National Office for the Judiciary, and the Office of the Prosecutor General.

The representative of the Ministry of Justice set the tasks of examining the actual operation of the institutional framework and gathering data.

The Chief Medical Director of the FPMI noted that the return of all patients to their families was impossible. In such cases, former patients may be transferred to social care institutions. It is problematic that social care institutions receive new residents based on advance booking, and the waiting period is somewhere between two and five years. The participants agreed on the necessity of establishing a new institution for the provisional placement and rehabilitation of patients to be released from the FPMI. My colleagues noted that, if there was a conflict between healthcare and penitentiary service aspects, I would consider the FPMI primarily as a healthcare institution. They pointed out that the biggest problem was to harmonize the patients' rights with the protection of society; this issue has no legal background whatsoever. Segmented forms of care should be provided, and the necessary resources should be allocated. It would be appropriate to set up a two-way system where patients could be sent to the institution both from the FPMI and from "civil" psychiatric institutions as well.

According to the representative of the Ministry of Justice, new legislation would be justified only after setting up the necessary infrastructure and the institutional framework. It has to be made clear whether this new type of institution would operate within the frameworks of the penitentiary service. He asked the participants to send in, prior to the second meeting, in writing, the relevant data at their disposal and their proposals regarding the issues raised during the first meeting, as well as to indicate the involvement of which organs and experts they deemed necessary.

The Working Group held its second meeting on December 4, 2017, with the participation of my colleagues and the representatives of the Ministry of Justice, the Ministry of Interior, the Ministry of Human Capacities, the Hungarian Prison Service Headquarters, the FPMI, the National Office for the Judiciary, the Hungarian Psychiatric Association, and the Psychiatric and Psychotherapeutic Section of the Health Advisory Board. The meeting focused on the forms of establishing and operating an institution facilitating, in a more liberal regime, the reintegration of persons released from the FPMI into society.

My colleagues stressed that it gave cause for serious concern that those unable to start an independent life may have to spend the remaining part of their lives in the FPMI, i.e., in the penitentiary system. It would be important to transfer the person concerned, should his/her condition improve, to a regime more appropriate to his/her needs. Currently, there is no institution suitable for providing adequate pre-care. It falls under the Government competence to decide whether this new institution should operate within the frameworks of the healthcare or the penitentiary systems.

According to the Ministry of Human Capacities, the current system's biggest shortcoming is that the restriction of personal liberty could be applied in social care institutions only when behaviors presenting direct danger are imminent, even if they had the required capacity. A provisional institution would be needed where both social and healthcare are provided within one institution, and those concerned could be compelled to simultaneously avail themselves of both social and healthcare

services. To set up such an institution, the appropriate legal background should be created in addition to the provision of the material conditions.

The representative of the Ministry of Justice could accept a solution when adaptive leave, with the possibility of termination, should be spent in a social care institution, with the proviso that the scope of applicable restrictions was provided for in a legal regulation. In the participants' opinion, it should be specified on an individual basis that, during the adaptive period, when it should be decided on what type of institution should the given patient be transferred to. It would be appropriate if it was decided by the Court upon the recommendation of the institution providing placement and with the involvement of an independent expert; the possibility of appeal against this decision should also be guaranteed.

As regards this issue, the representative of the Ministry of Justice deemed it necessary to draft a detailed pre-legislative concept, the implementation of which could be carried out in the form of a resolution by the Government, not earlier than during the second half of 2018.

10. Follow-up visit

The National Preventive Mechanism should regularly verify the implementation of recommendations, primarily through follow-up visits to problematic institutions, but also based on relevant information from, among others, human rights bodies, governmental institutions, and civil society.²⁰⁸

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 my recommendations. The secondary objective is to encourage the personnel of the places of detention and the authorities to implement my recommendations.²⁰⁹

In the course of the follow-up visits, I try to check the recommendations made in the report on the previous visit, as well as to re-examine the most problematic fields. Within the frameworks of the follow-up visits, I assess the implementation of measures taken in the interest of eliminating fundamental-rights-related improprieties uncovered during the previous visit and factors threatening the enforcement of fundamental rights. Follow-up visits provide an opportunity to discuss the findings of the previous visit and, in their light, the practical implementation of my measures with the personnel of the places of detention.

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

10.1. Selecting the subject of the follow-up visit

While performing the tasks of the NPM, I have conducted two follow-up visits. The locations for the follow-up visits were selected based on the impressions of previous visits, keeping in mind the following criteria.

The first location, the Juvenile Penitentiary Institution was selected because, during the first visit, the visiting delegation had found signs of serious ill-treatment or the threat thereof affecting a large group of detainees.²¹⁰ On the other hand, the follow-up visit was paid to an institution that, due to renovation works, had been operating on temporary premises at the time of the first inspection. In this case, the follow-up visit's objective was to find out to what extent my recommendations made as regards the temporary premises and the treatment of detainees had been implemented after moving back to the permanent premises.²¹¹

In 2017, while performing the tasks of the NPM, I made a follow-up visit to the Platán Integrated Social Institution of Bács-Kiskun County.²¹²

10.2. 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 I analyze and evaluate the responses received from the addressees of the recommendations made in my report. In this consultation, if necessary, I also involve civil organizations or authorities

²⁰⁸ See Clause 33 of the SPT's *Analytical assessment tool for national preventive mechanisms*, (CAT/OP/1/Rev. 1).

²⁰⁹ 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

²¹⁰ See Report № AJB-1423/2015 on the first visit and Report № AJB-685/2017 on the follow-up inspection

²¹¹ See my report № AJB-3772/2017 on the follow-up visit to the Platán Integrated Social Institution of Bács-Kiskun County

²¹² For the major findings of the follow-up visit, see Chapter "Persons deprived of their liberty at the places of detention visited by the NPM"

which I think 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 aims at re-examining circumstances causing or potentially leading to fundamental-rights-related improprieties. The primary objective of the new visit is to check the implementation of the recommendations made in the report on the previous visit.

10.3. Setting up the follow-up visiting delegation

When setting up the visiting delegation, in addition to maintaining gender balance, ensuring multidisciplinary, and involving experts in the field of protecting national and ethnic minority rights, I also tried to include as many colleagues as possible who are familiar with the given place of detention.

10.4. 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 Directive 3/2015. (XI. 30.) AJB.

The follow-up visit provides an opportunity to deepen the constructive dialog with the personnel of the given place of detention, conducted before in writing, 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. It may result in an increased readiness from the part of the staff members to cooperate in the implementation of the recommendations aimed at improving detention conditions and the detainees' treatment.

10.5. Concluding the follow-up visit

Upon completing the follow-up visit, the members of the visiting delegation summarize and share their experiences with the staff of the given place of detention,²¹³ and specify the documents that the personnel of the given place of detention must hand over to me. 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 experiences in connection with the implementation of the recommendations of the previous report, the detainees' treatment, and the detention conditions.

10.6. Processing and evaluating the experiences of the follow-up visit

The members of the visiting delegation process the experiences gained and information obtained at the given place of detention. The head of the visiting delegation drafts a short memo for me 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, upon my approval, is published, both in the Hungarian and English languages, on the NPM's homepage.

²¹³ See Clause 27 of the *Analytical assessment tool for national preventive mechanisms (CAT/OP/1/Rev. 1.)*

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. Powers related to existing legislation

11.1.1. *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, generates domestic legislation.²¹⁴ If an impropriety uncovered during the visit can be attributed to a superfluous, ambiguous or inappropriate provision of a legal rule, or to the lack or deficiency of the legal regulation of the given matter, I may propose to modify, repeal or prepare a legal rule.²¹⁵

In my reports published in 2017, I made 17 legislative proposals in connection with prevailing legal regulations.²¹⁶

11.1.2. *Ex-post review of norms*

If, in the course of my inquiries, I find that a fundamental rights-related impropriety is caused by a conflict between a self-government decree and another legal regulation, I may request the Curia to review the self-government decree’s compatibility with the other legal regulation.²¹⁷ If, in my opinion, a legal regulation is in violation of the Fundamental Law or an international treaty, I may request the Constitutional Court to review it.²¹⁸

In 2017, I did not request an ex-post review of norms either by the Curia or the Constitutional Court.

11.2. 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.

According to the Act on legislation, the party drafting legislation shall ensure that any and all organizations empowered by the law to review draft legislation concerning their legal standing or competence may exercise their rights.²¹⁹ The parties responsible for preparing legal regulations usually submit their drafts to my Office in order to prove that they have complied with my proposals to modify, repeal or prepare legal rules specified in my reports. I review draft legislation in a complex way,

²¹⁴ The NPM made 17 legislative proposals in his reports published in 2017.

²¹⁵ See Section 37 of the Ombudsman Act

²¹⁶ In 2017, while performing my general activities aimed at protecting fundamental rights and the tasks of the NPM, I made altogether 75 legislative proposals.

²¹⁷ See Section 34/A(1) of the Ombudsman Act

²¹⁸ See Section 34 of the Ombudsman Act

²¹⁹ See Section 19 (1) of Act CXXX of 2010 on legislation

i.e., on the basis of both my experiences obtained during the visits conducted in the capacity of the NPM and my investigations conducted in my general competence. I pay special attention to finding out whether the proposed text of the norm is suitable for remedying treatment criticized in my report and for preventing it from recurring in the future.

In the case of legislative concepts and draft legislation where I do not have investigation experience, I usually call the legislator's attention to the threat of ill-treatment and the measures necessary for its prevention.²²⁰ When reviewing draft legislation, I reserve the right to initiate the amendment or the repeal thereof in accordance with the findings of my future visits and investigations.

The organs responsible for drafting and preparing legislation requested me to review **219** draft bills in 2017. More than two-thirds of the draft bills were submitted by the Ministry of Interior (34%), the Ministry of Human Capacities (27%), and the Ministry of Justice (10%).

My remarks on the draft bills are not compelling; however, their fundamental rights protection approach may facilitate efficient codification and the elimination of eventual deficiencies, contradictions.

²²⁰ In his capacity of NPM, the Commissioner for Fundamental Rights reviewed 212 draft in 2016, and 219 in 2017.

12. The NPM's international activities

In 2017, the already wide-ranging professional contacts and experiences of the NPM were widened further. Attending numerous conferences held with the participation of domestic and international organizations, the staff members of the Department would brief the participants on the NPM's activities.

12.1. Visit by the Subcommittee on Prevention

Pursuant to Article 11a) of the OPCAT, the Subcommittee on Prevention shall *“visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment.”*

The Subcommittee on Prevention paid a regular visit to Hungary between March 21 and 30, 2017; on the first working day of their visit, the delegation visited my Office. During the visit, the delegation met with the Commissioner for Fundamental Rights performing the tasks of the NPM, the staff members of the Department, and the representatives of the CCB's member organizations.

On March 28, 2017, the delegation joined, as an observer, my colleagues authorized to perform tasks related to the NPM during the latter's visit to Unit I of the Budapest Remand Prison. Following the visit, in my Office, the delegation conducted consultations on their experience with the Department's staff.

During the meeting held in the Ministry of Interior on March 30, 2017, the delegation informed the representatives of the Hungarian authorities, including the designated staff members of the Department, on their preliminary conclusions.

The report prepared by the Subcommittee on Prevention for the National Preventive Mechanism arrived at my Office on December 8, 2017, with the request to send back my response to its conclusions and recommendations before June 7, 2018.²²¹ The report was published on the NPM's website.²²²

12.2. The NPM's relations with other countries' national preventive mechanisms

12.2.1. South-East Europe NPM Network

I participate in the activities of the South-East Europe NPM Network (hereinafter the SEE Network), whose members perform the task of preventing ill-treatment in cooperation with and assisting each other, as an observer since 2014 and as a full member since April 21, 2016.

The topic of the SEE Network's conference, held in Belgrade on May 24-26, 2017, was the arrest of persons living with disabilities. The participants agreed that National Preventive Mechanisms play a special role in harmonizing the CRPD with the Member States' domestic law. The Austrian and Czech ombudsman institutions also perform the tasks of the monitoring mechanism under Article 33 of the CRPD. According to the participants, the biggest problem is that the Member States' penitentiary service personnel do not have the special competences required for providing care to disabled persons deprived of their liberty.

The topic of the SEE Network's conference held in Podgorica on July 5-6, 2017, was the provision of health care to persons detained in penitentiary and psychiatric institutions.

²²¹ The Subcommittee's report № CAT/OP/HUN/R.2. is filed in my Office under № AJB-791/2018 See Annex 2

²²² Available at: www.aibh.hu/opcat-SPT-jelentes-2017

The topic of the SEE Network's conference held in Belgrade on December 12-13, 2017, was the methodology of the National Preventive Mechanisms' visits.

12.2.2. Conferences

The topic of the conference organized by the Council of Europe in Strasbourg on April 4-5, 2017, was the establishment of the network of the EU's National Preventive Mechanisms.

The consultation organized by the Council of Europe in Strasbourg between May 30 and June 1, 2017, focused on establishing the standards of immigration detention and the methodology of visiting places of detention by independent organizations.

The objective of the professional conference organized by the UN in Geneva on October 6, 2017, was to discuss those efficient legal guarantees which could ensure the prevention of torture and other cruel, inhuman or degrading treatment or punishment in police custody and pretrial detention.

The meeting organized in Prague on November 14-15, 2017, discussed the National Preventive Mechanisms' role in legislation and the training of staff members participating in performing this task.

The working meeting organized within the frameworks of a joint study by Oxford University and the National Preventive Mechanism of the United Kingdom between December 13 and 15, 2017, focused on monitoring human rights in asylum detention.

12.2.3. Bilateral cooperation

On April 19, 2017, the NPM had a meeting in Vienna with Gertrude Brinek, member of the Austrian Ombudsman Board, and her colleagues. The topic of the meeting was performing the tasks of the National Preventive Mechanism and the Ombudsman's general activities.

The NPM and the Department's staff members met the representatives of the Austrian National Preventive Mechanism in Sopronkőhida, on September 28, 2017. They jointly visited the Sopronkőhida Strict and Medium Regime Prison and discussed the visit's methodology.

12.3. International activities

The NPM received the CPT's delegation on October 20, 2017. The NPM and his colleagues outlined the challenges the Hungarian authorities had to face due to the mass influx of foreign nationals into the country. They explained the current situation, the major changes in the legal environment, and the lessons of their visits to the transit zone. During the exploratory talks, the members of the CPT's delegation asked about the situation of unaccompanied minors and the findings of the NPM's inspections.

The NPM received the delegation of the Office of the UN High Commissioner for Human Rights on October 25, 2017. The delegation inquired about the situation of civil society organizations in Hungary, the handling of unaccompanied minors, and the findings of the visit to the Topház Unified Social Care Institution of Pest County.

The topic of the conference of the European Network of Ombudspersons for Children (ENOC), held in Athens between November 12 and 14, 2017, was the protection of the fundamental rights of minors participating in mass migration. The participants reviewed and discussed the implementation of recommendations made by ENOC regarding the protection and social integration of migrant children.

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.²²³

The NPM has English and Hungarian language homepages on the website of the Office of the Commissioner for Fundamental Rights.²²⁴ The reports on the NPM's visits and their English summaries are published on these pages. In addition to general information on the NPM, visitors may find info materials on turning to the NPM, as well as on various events, including the NPM's visits and the meetings of the CCB.

13.1. Media

In 2017, my colleagues registered 94 appearances in the media in connection with my reports published within my activities performed as NPM.

Media coverage of the NPM's activities in 2017

<i>Place of detention</i>	<i>Independent appearance in the media</i>
Sátoraljaújhely Strict and Medium Regime Prison	65
Forensic Psychiatric and Mental Institution	10
Bóly-Görcsöny Joint Social Institution of Baranya County	3
Szombathely National Prison	0
Platán Integrated Social Care Institution of Bács-Kiskun County	0
14 th District Police Department of the MPHQoB	0
Debrecen Reformatory of the MoHC and its Nagykanizsa Unit	4
Cseppekő (Dripstone) Children's Home	8
Juvenile Penitentiary Institution, Tököl	4
TOTAL	94

My report on the Sátoraljaújhely Strict and Medium Regime Prison received the largest media coverage in 2017. The press reports pointed out that, because of the extremely low wages, it was not worth working for the detainees in the penitentiary institutions. This situation resulted in tension among the detainees and their refusal to work, which, in many cases, prompted the guards to apply safety isolation measures. According to the government, employing detainees has specific extra costs; therefore, their work does not cover these expenditures. The press also reported that staff members had to work significant overtime. One of the media reports called attention to over-crowdedness.

The press coverage of my report on the visit to the FPMI pointed out the practice of stripping the detainees naked during cell inspections, the beatings in the cameras' blind spots, the ban on receiving packages directly from the visitors, the shortage of personnel, and the fact that, at the time of the visit, there were only three toilets for the 50 patients in the institution.

The press covered my report on the Bóly-Görcsöny Integrated Social Institution as well. The reports pointed out that my colleagues found extremely outdated conditions, the statutory minimum living space of six square meters was not ensured in many of the large, as well as the small rooms. There is a shortage of properly qualified professionals. The articles explained that as soon as the residents reached legal age, the institution automatically requested the Guardianship Authority to launch guardianship proceedings and that patients would be rarely released from the institution.

²²³ See Clause 9(b) of *Analytical assessment tool for national preventive mechanisms* CAT/OP/1/Rev. 1

²²⁴ <http://www.ajbh.hu/opcat>

In connection with my 2016 report on the Zita Home for Children with Special Needs, the head of the General Directorate of Social Affairs and Child Protection requested one of the popular broadcasting channels to rectify the information reported by the channel in January 2017. The Director-General complained that one of the staff members of my Office referred to a circumstance not mentioned in my report. In connection with this case, I launched an internal investigation and established that not my colleague's statement but the program's narration was faulty. The broadcasting channel issued a statement: "In our program on January 18, 2017, entitled *"Tortured by their peers in the Home for Children,"* we mistakenly claimed that one of the children had forced his peers to engage in same-sex prostitution in the Zita Children's Home in Kaposvár. According to the supervisory authority, the General Directorate of Social Affairs and Child Protection, the report on the homepage of the Office of the Commissioner for Fundamental Rights does not contain conclusion to that effect."

The press mentioned the report on the Cseppkő Children's Home in connection with other fundamental-rights-related improprieties concerning children, receiving wide publicity. Another source gave a comprehensive analysis of the NPM's investigations focusing on the protection of children, including the issue of isolation. According to another press report, the institution managed to fill all psychologist posts.

The press report on my follow-up visit to the Juvenile Penitentiary Institution in Tököl described the positive changes in the institution. As a result of the NPM's report, "the cells in the cell block have been renovated, toilet bowls, wash basins, light fittings, doors, and windows replaced, and benches installed. The transfer cell has also been renovated, and cameras have been installed in the cells for 'personal and material security considerations.' The gym has also been completed. In order to reduce the cell block's over-crowdedness, some walls have been chiseled off, thus ensuring the statutory minimum living space. The transfer cells have not been made larger; however, they keep only so many detainees in those cells who can comfortably sit. To this end, benches have been installed as well."²²⁵

My colleagues participated in two project-type media events. The longer, a prime time TV-report,²²⁶ dealt with the NPM's everyday operation. The broadcasting crew filmed as my colleagues, upon completing their visit, left the premises of the Psychiatric Ward of the Balassa János Hospital of Tolna County. In the other, an episode of a documentary series²²⁷ with international participants, one of my colleagues gave an expert opinion on the genealogy of torture.

13.2. Dissemination

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, deliver lectures, and publish in professional periodicals.

Courses taught by the Department's staff members in higher education institutions

<i>Subject</i>	<i>Name of the institution</i>
Chapters from the results of criminology	Graduate School of Law Enforcement NUPS
Penology and social sciences research in prison	Graduate School of Law Enforcement NUPS
Prison sociology	Master course in criminology, Faculty of Law and Political Sciences, ELTE
Criminal psychology	Master course in criminology, Faculty of Law and Political Sciences, ELTE
Macro-level, multidisciplinary approach to social issues I The violence	Institute of Mental Health, Faculty of Health and Public Services, Semmelweis University

²²⁵ FARKAS Melinda (2017): Felszámolják az embertelen állapotokat a börtönökben: Használt az ombudsmani felszólítás: nagyobb zárkák, új ablakok és több szakember a fiatalokorúak intézetében, Magyar Nemzet. <https://mno.hu/.../felszamoljak-az-embertelen-allapotokat-a-bortonokban-1388628> [downloaded on March 27, 2018]

²²⁶ HírTV: Riasztás, June 6, 2017, <https://www.youtube.com/watch?v=j2v17yHkMOU> [downloaded on March 27, 2018]

²²⁷ Spectrum TV: Violent Mankind, Season 1, Episode 3

Unaccompanied minors in Hungary	ELTE Institute for Postgraduate Legal Studies, LL.M. program in children's rights
Professional skills development	Faculty of Primary and Pre-School Education, ELTE
Socially efficient attitude – skill development training for foster parents	Maltese Family House Foster Network & General Directorate of Social Affairs and Child Protection
Conflict management techniques Personal development; Psychology of personal development disorders	Faculty of Education, University of Kaposvár

Lectures delivered by the Department's staff members in 2017

<i>Title of the lecture</i>	<i>Venue</i>	<i>Date</i>
The relevance of human rights in police practicing	International Law Enforcement Academy, Budapest	January 13, 2017
The NPM's operation	Internship Program of the OCFR	February 10, 2017
Prohibition of torture	Faculty of Law and Political Sciences, University of Szeged	March 9, 2017
Life in Hungarian prisons; the operation of the NPM	ELTE Radnóti Miklós School	March 12, 2017
Criminal psychology	Faculty of Law and Political Sciences, University of Miskolc	April 18, 2017
Prison-related reports of the Hungarian OPCAT NPM	International conference, CITI-VAL Project, Faculty of Law Enforcement, NUPS	May 2, 2017
The OPCAT NPM's law enforcement-related activities so far	Balassagyarmat Strict and Medium Regime Prison	September 7, 2017
Prisons today: What do these drawings speak about?	Hegyvidéki Cultural Salon, Salon University	October 18, 2017
The relevance of human rights in police practicing	International Law Enforcement Academy, Budapest	October 20, 2017
Sociological features of a prison	Training for alien policing social workers, organized by the OCFR, the NUPS, and the Menedék Association	November 9, 2017
The activities of the OPCAT NPM, with a special focus on the visits to penitentiary institutions	Faculty of Law and Political Sciences, ELTE	November 13, 2017
The inner world of prisons and the prevention of ill-treatment	Leövey Klára High School	November 16, 2017
Durable settlement for unaccompanied minors	Bács-Kiskun County Police Headquarters	November 21, 2017

Publications by the Department's staff members in 2017

<i>Title</i>	<i>Published in</i>
IZSÓ, Krisztina: <i>A nem teljes cselekvőképességgel rendelkező személyek önrendelkezéséről</i> [On the self-determination of persons with no full legal capacity]	Magyar Jog, 2017 № 9
HARASZTI, Margit Katalin: <i>Kísérő nélküli kiskorúak sorsának tartós rendezése – vonzások és választások</i> [Durable settlement for unaccompanied minors – temptations and choices]	Családi Jog, 2017 № 2
ROSTÁS, Rita: <i>Kínzásmegelőzés és gyermekvédelem – OPCAT tevékenység a gyermekvédelmi szakellátás intézményeiben</i> [Prevention of torture and child protection – OPCAT activities in the institutions of the child protection services]	Esély Társadalom- és szociálpolitikai folyóirat, 2017 № 3
GURBAI, Sándor: <i>„Szeretjük, mert muszáj szeretni” – Ombudsmani nagytó alatt az értelmi fogyatékos személyek bentlakásos intézményei</i> [We love them because we have to – residential institutions for mentally disabled persons in the Ombudsman's focus]	Esély Társadalom- és szociálpolitikai folyóirat, 2017 № 2
GILÁNYI, Eszter: <i>A nők elleni erőszak és magyar büntetőjogi szabályozása a nemzetközi elvárások tükrében, PhD értekezés</i> [Violence against women and its legal regulation in Hungarian criminal law, addressing international expectations – Ph.D. thesis]	Deák Ferenc Graduate School of Law and Political Sciences, University of Miskolc, 2017

14. Summary

My task as NPM is to regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4 of the OPCAT, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.²²⁸ The ultimate objective of the NPM's visits is to persuade the authorities and institutions concerned to improve the system of functioning safeguards to prevent all forms of ill-treatment.

The specific rules of performing this task are stipulated in Chapter III/A of the Ombudsman Act. The legal environment is suitable for the performance of my tasks.

In performing the tasks of the NPM, I may proceed personally or through authorized public servant members of my Office. In 2017, my Office had to face two major challenges while performing the tasks of the NPM. On the one hand, due to the lack of applicants, I could not fill the two physician positions stipulated in Section 39/D(4) of the Ombudsman Act. I employed the physicians participating in the visits on the basis of civil law contracts. On the other hand, staff turnover was rather high among the lawyers participating in the performance of tasks related to the NPM. Two of the six lawyers working in the Department on January 1, 2017, left during the year. These vacancies were filled via a public call for applications, in accordance with the Ombudsman Act's provisions on gender composition.²²⁹ The Department's staff comprised eight public servants on the average.

Visits were carried out by visiting delegations consisting of four to eight members. When setting up the visiting delegations, in addition to the gender balance, I tried to ensure the groups' multidisciplinary and include experts in the field of protecting the rights of national, ethnic minorities.

Although I have to perform the tasks of the NPM independently, I received valuable support from the members of the CCB, 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. I have re-established this body set up in 2014 for three years.

Using the data received from the competent governmental organs, my colleagues updated, as of December 31, 2016, the list of places of detention as defined in Article 4 of the OPCAT, originally compiled in the middle of November 2014. Based on the data at my disposal, on December 31, 2016, there were some **4,000 places of detention** under Hungarian jurisdiction with a **total capacity of about 123 thousand detainees**.

During the third year of the NPM, I inspected a total of **1,772 detention units at eight places of detention**. The average utilization rate of these places of detention stood at 94.3%. Our visiting delegations found the highest utilization rates (over 163%) at Unit I of the Budapest Remand Prison and the Szabolcs-Szatmár-Bereg County Remand Prison.

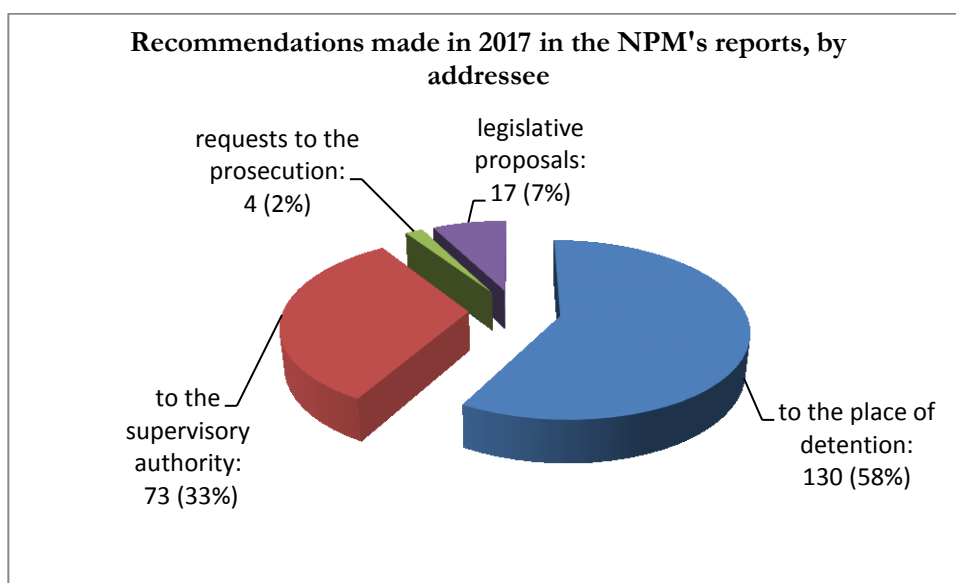
Although there had been no prior notifications, the visiting delegations were given access to almost all the places of detention without delay. The visiting delegation's objective was to meet, if possible, all persons deprived of their liberty present at the given place of detention at the time of the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

²²⁸ See Section 39/B(1) of the Ombudsman Act

²²⁹ See Clause 16 of the „Guidelines on national preventive mechanisms”, CAT/OP/12/5

Reports were prepared on every visit containing the visiting delegations' *"findings and the conclusions based thereon."*²³⁰ In 2017, I prepared altogether **8 reports** within the frameworks of performing the tasks of the National Preventive Mechanism. The visiting delegations did not detect any circumstances indicative of intentional abuse by the staff of the places of detention potentially resulting in severe physical or psychological trauma.

With a view to the tasks of the NPM, in my reports on the inspections, I recommended taking measures aimed at terminating and preventing the recurrence of the ill-treatment of persons deprived of their liberty. In 2017, I took measures altogether on **224 occasions**. Most frequently, in **130 cases**, I made recommendations to the heads of the places of detention²³¹, in another **73 cases** to the heads of the supervisory organ of the institution subject to inquiry²³², and on **four occasions**, I initiated proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General.²³³ I, 2017, I made **17 legislative proposals**.²³⁴



In the third year of the NPM's operation, the addressees of these measures studied my recommendations and responded on their merits within the statutory deadline. If formulating their position or implementing my recommendation seemed not possible within the deadline stipulated in the relevant provision of the Ombudsman Act, the addressees notified me thereof before the deadline and requested its extension.

Maintaining continuing and constructive dialog 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 dialog between the NPM and the addressees of the recommendations is conducted on the basis of the reports. The Ombudsman Act regulates in detail the method of monitoring, including the deadlines for responding.²³⁵

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 I do not agree with the position or the measure taken, I may submit the case to Parliament within the framework of my annual report, and ask Parliament to inquire into the matter. If the impropriety is of flagrant gravity or affects a larger group of natural persons, I

²³⁰ See Section 28(1) of the Ombudsman Act

²³¹ Section 32(1) of the Ombudsman Act

²³² Section 31(1) of the Ombudsman Act

²³³ Section 33(1) of the Ombudsman Act

²³⁴ Section 37 of the Ombudsman Act

²³⁵ Sections 31 through 38 of the Ombudsman Act

propose that the Parliament debate the matter before the annual report is put on its agenda. Parliament shall decide on whether to put the matter on the agenda.

The inspected authorities and/or their supervisory organs responded on the substance of the recommendation made in my reports prepared in 2017, and the NPM's visits did not find any violation of the law that would have prompted me to turn to Parliament.

I maintain a dialog with the addressees of my measures mainly in writing, involving, as necessary, the supervisory organs, as well. There is no legal obstacle to hold oral consultations within the framework of the dialog. During the constructive talks held on January 17, 2017, with the participation of the representatives of my Office, the Ministry of Interior, the Ministry of Human Capacities, the Hungarian Prison Service Headquarters, and the Office of the Prosecutor General, my colleagues explained in detail the reasons for amending the legal regulations on conducting body search in penitentiary institutions.²³⁶ Acting on my recommendation made in the report on the visit to the Forensic Psychiatric and Mental Institution, the Minister of Justice set up an inter-professional working group, with the participation of my colleagues authorized to perform tasks related to the NPM, for reviewing and redressing the systemic problems of compulsory treatment. The working group had two meetings in 2017.²³⁷

Another form of dialog is the follow-up visits, in the course of which I try to check the recommendations made in the report on the previous visit, as well as to re-examine the most problematic fields. Follow-up visits provide an opportunity to discuss the findings of the previous visit and, in their light, the practical implementation of my measures with the personnel of the places of detention. In 2017, while performing the tasks of the NPM, I made a follow-up visit to the Platán Integrated Social Institution of Bács-Kiskun County.²³⁸

The civil suit brought in connection with certain conclusions of my report on the visit to the Cseppekő Children's Home, for damaging the reputation of the Children's Home, is another form of the dialog between the NPM and the place of detention.²³⁹ Court proceedings were still underway on December 31, 2017.

The NPM's operational costs in 2017 amounted to **76,217,024** Forints; this amount was allocated by my Office from its budget provided by the Parliament.

The Subcommittee on Prevention paid a regular visit to Hungary between March 21 and 30, 2017; on the first working day of their visit, the delegation visited my Office. During the visit, the delegation met with the Commissioner for Fundamental Rights performing the tasks of the NPM, the staff members of the Department, and the representatives of the CCB's member organizations. The report prepared by the Subcommittee on Prevention for the National Preventive Mechanism arrived at my Office on December 8, 2017, with the request to send back my response to its conclusions and recommendation before June 7, 2018.²⁴⁰ The report was published on the NPM's website.²⁴¹

²³⁶ See the part on the law amendment recommended in my report on the visit to the Somogy County Remand Prison in chapter "Dialog about the measures taken by the NPM"

²³⁷ See the part on the establishment of an inter-professional working group for handling the systemic problems of compulsory treatment in chapter "Dialog about the measures taken by the NPM"

²³⁸ For the major findings of the follow-up visit, see Chapter "Persons deprived of their liberty at the places of detention visited by the NPM"

²³⁹ See the part on the Cseppekő Children's Home in chapter "Dialog about the measures taken by the NPM"

²⁴⁰ The Subcommittee's report № CAT/OP/HUN/R.2. is filed in my Office under № AJB-791/2018. See Annex 2

²⁴¹ Available at: www.ajbh.hu/opcat-SPT-jelentes-2017

Annex 1 – Recommendations by the member organizations of the Civil Consultative Body

Recommendations made by the representatives of the CCB's member organizations on March 22, 2017, during the meeting held with the participation of the NPM and the delegation of the Subcommittee on Prevention:

1. The NPM should ensure the direct involvement of the civil organizations and their experts in the inspections, including their active participation in the visits. To this end, they are ready to sign a confidentiality declaration. Establishment of a joint database containing the data of all available experts on detention.
2. The NPM should also involve experts by experience in the visits.
3. The NPM should increase the annual number of its visits and reports to 25.
4. The NPM should consult the members of the CCB at least two weeks before publishing its reports; the CCB's suggestions should be incorporated into the final text.
5. The NPM should consult the members of the CCB when selecting the types of institutions to be visited, including the methodology of the visits.
6. The NPM should consult the members of the CCB also on the findings of its follow-up visits.
7. The NPM should agree with the members of the CCB on the chair, venue, and agenda of the CCB's meetings. It would be worth considering to hold the CCB's meetings in venues outside the Office of the Commissioner for Fundamental Rights, e. g., in a psychiatric institution.
8. The NPM should consult with the members of the CCB prior to the selection of locations to be visited. Locations suggested by the CCB should account for at least one-third of the places of detention to be visited.



**Optional Protocol to the
Convention against
Torture and Other Cruel,
Inhuman or Degrading Treatment
or Punishment**

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**Subcommittee on Prevention of Torture and Other
Cruel, Inhuman or Degrading Treatment or Punishment**

**Visit to Hungary undertaken 21 to 30 March 2017:
observations and recommendations addressed to
the national preventive mechanism**

Report of the Subcommittee*, **, ***

* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the national preventive mechanism on 08.12.2017.

** The present document is being issued without formal editing.

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I. Introduction

1. In accordance with its mandate under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the Subcommittee on Prevention of Torture (SPT), carried out its first regular visit to the Hungary from 21 to 30 March 2017.
2. The Subcommittee members conducting the visit were: Mari Amos (head of delegation), Arman Danielyan, Nora Sveaass, Aneta Stanchevska. The Subcommittee was assisted by three Human Rights Officers from the Office of the United Nations High Commissioner for Human Rights (OHCHR), United Nations security officers and interpreters.
3. During the visit, the Subcommittee conducted visits to places of deprivation of liberty, including police stations, remand prisons, immigration detention centres, guarded asylum centres, correctional educational establishments for juveniles, psychiatric and forensic institutions, and penitentiary hospital (Annex 1). The Subcommittee held meetings with relevant authorities of Hungary, the Commissioner for Fundamental Rights, the national preventive mechanism (NPM). The delegation met with the members of civil society and the Regional Representative of the United Nations High Commissioner for Refugees for Central Europe (Annex II).
4. Meetings held with members of the national preventive mechanism and with the members of Civic Consultative Body (CCB) permitted the Subcommittee to discuss the mechanism's mandate and working methods and to explore ways to strengthen and increase its effectiveness. In order to better understand how the mechanism works in practice, the Subcommittee also visited, together with the mechanism, a place of deprivation of liberty that had been chosen by the mechanism. The visit was led by the NPM, with the members of the Subcommittee as observers.
5. At the conclusion of the visit, the delegation presented its confidential preliminary observations orally to the authorities of Hungary. The Subcommittee will send a separate confidential report to the authorities in which it will make recommendations to the State party.
6. The present report sets out the observations and recommendations of the Subcommittee addressed to the national preventive mechanism of Hungary. These recommendations are made in accordance with the Subcommittee's mandate to offer training and technical assistance and to advise and assist the mechanism, in accordance with article 11 (b) (ii) and (iii) of the Optional Protocol. The present report remains confidential unless the mechanism decides to make it public, in accordance with article 16 (2) of the Optional Protocol.
7. The Subcommittee draws the attention of the national preventive mechanism to the Special Fund established in accordance with article 26 of the Optional Protocol. Recommendations contained in visit reports that have been made public can form the basis of an application for funding of specific projects through the Fund, in accordance with its rules.
9. The Subcommittee wishes to express its gratitude to the national preventive mechanism of Hungary for its assistance and cooperation during the visit.

II. National preventive mechanism

10. Hungary acceded to the OPCAT in 2012 with a declaration under the article 24, postponing the establishment of its national preventive mechanism for three years. In October 2012, the SPT was notified that that as of January 2015 the Commissioner for Fundamental Rights will perform the function of Hungarian national preventive mechanism.¹ The

¹ <http://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/Hungary30102012.pdf>

Commissioner's role as the official NPM of Hungary was established under Chapter III/A of Act CXI of 2011 and came into effect in January 2015.²

11. Since its establishment in 2015 the NPM has carried out 15 visits to places of deprivation of liberty.³ Due to the limited nature of the targeted budget support, the Commissioner had to allocate its own resources to the preparation for performing the tasks of the NPM. This amount was provided by Commissioner's Office through the transformation and reorganization of the operations of the Office.⁴

12. The Subcommittee was informed that compared to 2015 the budget of the Commissioner's Office has increased; however, there are no explicit provisions in the regulating acts regarding the earmarked funding of the NPM. In this connection the SPT underlines that the lack of budgetary independence negatively impacts the independent functioning of the NPM.

13. The Civic Consultative Body was established in 2014 for a period of three years to provide advice to the NPM. It is composed of representatives of independent organizations which are either invited, such as Hungarian Medical Chamber, the Hungarian Psychiatric Association, the Hungarian Dietetic Association and the Hungarian Bar Association, or selected as a result of a public call, such as Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Menedék - Hungarian Association for Migrants, and Mental Disability Advocacy Center. According to the NPM Annual Report, the CCB provides comments and suggestions on the content of the NPM's annual schedule of visits and inspection priorities, working methods, reports and other publications, and the training plan for NPM's members.⁵

14. The SPT welcomes the fact that NPM has been operational for more than a year, has conducted several visits to places of deprivation of liberty in Hungary and published its first annual report.

III. Recommendations to the national preventive mechanism

A. Recommendations relating to legal, institutional and structural issues

Structure and independence

15. As a general observation, the Subcommittee notes that the national preventive mechanism does not have an identity distinct from Office of the Commissioner for Fundamental Rights, not only with respect to its legal framework but also in relation to its institutional framework and guarantees of independence. The Subcommittee is particularly concerned about the lack of functional independence of the mechanism within the Office of the Commissioner for Fundamental Rights. While the Optional Protocol does not provide for a unique model for an Optional Protocol-compliant mechanism structure, it is imperative for the mechanism that it is able to carry out its mandate in accordance with the principles of the Optional Protocol, as reflected in the Subcommittee's NPM guidelines⁶

16. Even though the decision about the institutional format of the NPM is left to State parties' discretion, it is imperative that the legal acts regulating the work of the NPM must be in full compliance with the OPCAT, the NPM Guidelines⁷, and Paris Principles⁸ as well as with the compilation of advice provided by the Subcommittee in response to requests from NPMs annexed to its ninth annual report.⁹

² Act CXI of 2011 (n 48) Chapter III/A.

³ 'Comprehensive Annual Report of the Commissioner for Fundamental Rights on the Activities of the OPCAT National Preventive Mechanism in 2015' (May 2016), 38.

⁴ *ibid*, section 2.4.

⁵ 'Comprehensive Annual Report of the Commissioner for Fundamental Rights on the Activities of the OPCAT National Preventive Mechanism in 2015' (May 2016) 20.

⁶ Guidelines on national preventive mechanisms (CAT/OP/12/5).

⁷ *Idem*.

⁸ Principles relating to the Status of National Institutions.

⁹ CAT/OP/C/57/4, annex.

17. In this connection the Subcommittee urges the NPM in close cooperation with the State party to review the legal framework in which the mechanism operates and bring it into full conformity with all relevant international norms and guidelines with a view to solve existing or potential issues that may hinder the NPM to carry out its mandate effectively. The practical needs and the operability of the mechanism have also to be also taken into account. Therefore, **the Subcommittee recommends the NPM be enabled by means of legislation to exercise effectively its core functions as stipulated by the Optional Protocol.**

18. **In this connection the SPT recommends the NPM to carry out a mapping exercise to assess the range of activities it ought to undertake in accordance with the OPCAT, Paris Principles, NPM Guidelines, SPT Assessment Tool¹⁰ and compare it against current structure and activities of the NPM.**

19. **The Subcommittee further recommends the NPM to carry out internal review of the existing legal acts stipulating the functioning of the mechanism in order to have full overview of all aspects that need to be revised to enable it to carry out its mandate effectively. The NPM has to be involved in the drafting of the amendments in close cooperation with the Ministry of Justice. Furthermore, the NPM, together with the authorities, has to work proactively on the possible solutions to increase the efficiency and independence of the Mechanism.**

Human and financial resources

20. According to the provisions of the Act CXLIII of 2011, the tasks related to the NPM shall be performed by at least eleven staff members of the Office of the Commissioner for Fundamental Rights.¹¹ During the SPT visit the NPM was composed of 9 staff members: two medical positions were vacant.

21. The Subcommittee is concerned that only 9 staff members perform tasks related to the mechanism's mandate that affects the ability of the mechanism to fully execute its mandate under the Optional Protocol. An effective system of regular visits to all the places of deprivation of liberty in the State party cannot function properly with limited number of staff and vacant medical positions. Moreover, the mechanism should have full operational autonomy with regard to hiring its staff, including medical, which is not currently the case. As explained by the NPM, there were legal caveats hindering the recruitment of medical personnel since reportedly all the NPM members had to be civil servants, whereas in Hungary doctors could not be civil servants.

22. The Subcommittee is further concerned that a lack of financial resources presents a major obstacle to the effective and efficient functioning of the national preventive mechanism. The designation of the Office of the Commissioner for Fundamental Rights as the national preventive mechanism of Hungary has not been followed by the allocation of sufficient resources necessary to allow the Office to undertake this additional role. The Subcommittee is further concerned that the failure to allocate necessary resources seems to be due to the fact that the government authorities do not consider that the mechanism needs additional support to carry out its mandate effectively. This is a misconception that the mechanism needs to address urgently.

23. The Subcommittee reminds the mechanism that the evaluation of its financial needs must take into account all its mandated activities under the Optional Protocol, including the provision of interpretation, when necessary, in order to communicate with detained migrants.

24. **Recalling that OPCAT article 18 (3) obliges States parties to provide NPMs with the necessary resources to undertake their work, the SPT reiterates that the NPM shall be provided with a budget sufficient for accomplishing all mandated tasks, in addition to granting the NPM the institutional autonomy to use its resources. This funding should be provided through a separate line in the national annual budget referring specifically to the NPM¹² and not through the general budget of the Office of the**

¹⁰ Analytical assessment tool for national preventive mechanisms (CAT/OP/1/Rev.1).

¹¹ Chapter III/A, enacted by Section 9 of Act CXLIII of 2011, effective as of 1 January 2015.

¹² See Compilation of advice provided to NPMs, (CAT/OP/C/57/4), Part III.

Commissioner. This funding shall be at such a level as to allow the NPM to carry out its visiting programme, to engage outside experts as and when appropriate, to increase its human resources and to regularly access training, in accordance with its own work plan.

25. **In order to ensure the functional and operational independence of the NPM and with a view to clearly identify the nature and extent of these additional needs, the NPM has to enter into constructive dialogue with the relevant State authorities in order to ascertain what is needed by the NPM to permit it to properly fulfil its NPM mandate in accordance with the provisions of the OPCAT.**

26. **The Subcommittee recommends that the national preventive mechanism evaluate its financial needs in order to more effectively fulfil its mandate under the Optional Protocol, and that it submit proposals to the governmental authorities, as a matter of priority, concerning its financial needs.**

27. The above-mentioned exercise will make it possible to design concrete plans for development and future activities of the mechanism. Based on this exercise, the NPM can enter into constructive dialogue with the State authorities for concrete proposals, and that it may be provided with sufficient resources through a separate budget line.

Cooperation with the Civic Consultative Body (CCB)

28. The Subcommittee welcomes the cooperation established between the NPM and civil society organizations. Taking into consideration that NPM has only limited resources and given the number of places of detention in Hungary it is not feasible with such capacity to cover all the places of deprivation of liberty as well as to undertake other activities NPM is mandated to. Better communication and an improved coordination between the NPM and the Civic Consultative Body (CCB) is a key element for them to work efficiently as a collegial body.

29. **While recalling that the Optional Protocol envisages the NPM as a collegial body of experts, the Subcommittee urges the NPM to improve information sharing through regular meetings and other channels of communication in a collaborative manner as well as to adopt clearly defined working methods. It is recommended that the NPM in cooperation with the CCB establish clear and productive framework for cooperation and mutual enforcement.**

30. **The Subcommittee further recommends that the NPM engage more directly and independently with civil society organizations, including, at a minimum, through their increased participation in NPM visits, internal trainings, outreach activities, in report writing and in dialogue with the authorities.**

31. In this connection the SPT encourages to follow-up to the concrete proposals put forward during the joint CBB – NPM meeting held on 22 March 2017. This includes involving civil society experts in detention activities; creating a database of experts and including also the experts by experience in the monitoring teams; increasing the number of visits up to 25; consulting the CCB on the selection of the places to be visited by the NPM (one third to be selected by the CCB); discussing with the CCB the NPM report at least 2 weeks prior to its publication as well as following-up to the NPM recommendations with the latter; consulting with the CCB about the types of places to be visited and the methodology to be used; adopting Terms of Reference of the cooperation with the CCB, including on chairmanship and the venue of the NPM-CCB meetings.

32. **In addition, the Subcommittee recommends that the NPM ensure that the standard operating procedures are uniformly applied by all its staff and members of the CCB, with a view to ensuring consistency of working methods and sharing of knowledge among all. Adequate training for all persons participating in visits, including external experts, is essential and should be sought, including through the development of handbooks and assistance of international partners.**

33. **While noting the professionalism of some of the NPM members when conducting interviews with the detainees, the Subcommittee recommends that all NPM participants undergo regular trainings, including on interview techniques, visiting procedures and skills to detect signs and risks of torture and ill treatment, to develop working methods and a comprehensive visiting methodology that will highlight institutional and systematic challenges, including those affecting vulnerable populations in places where persons are deprived of liberty. Experienced NPM members could train the new members and the external experts on interviewing techniques.**

B. Recommendations on methodological issues relating to visits

Work plan, reporting and follow-up

34. The NPM plans its visiting activities on a yearly basis, taking into account the different type and geographical location of places of deprivation of liberty and the categories of persons deprived of liberty as well as thematic target(s) of the year. However, the SPT observed that the NPM is mainly focusing on detention monitoring activities.

35. **The Subcommittee recommends that the NPM should focus not only on visiting places of deprivation of liberty but also on other preventive activities. The Subcommittee further recommends the NPM to develop an annual plan of work which should include all preventive activities, such as commenting on draft legislation, awareness raising and training activities, in accordance with article 19 of the Optional Protocol and article 9 of the NPM assessment tool.**

36. **To properly fulfil its mandate under the Optional Protocol in various areas and keeping in mind its preventive role the NPM is advised to critically analyse its activities against relevant international guiding acts. Such an exercise can be done by using Subcommittee's NPM assessment tool¹³ and its matrix. Having clear overview of areas that are insufficiently covered, the NPM can (together with its partners) make well-grounded working plan for immediate implementation and future development.**

37. Following the visits, the members of the visiting delegation prepare partial reports that are summarised by the head of visiting delegation. Visit reports are subsequently submitted to the respective authorities, as well as to the head of the place of detention concerned, the addressees of the recommendations, and the members of the CCB as well as to the Hungarian member of the European Committee for the Prevention of Torture. Then the visits reports are made publicly available in Hungarian. Some of them are also translated into English, depending on the availability of funds.

38. The Office of the Commissioner for Fundamental Rights publishes its annual reports and the reports on the inspections conducted by the NPM on Commissioner's website. However, the Subcommittee was informed that the drafting and publication of the NPM reports could take very long time due to the wish to aim for high quality and the comprehensiveness of the reports. In this regard the Subcommittee underlines that extended delays in drafting and publication of the reports can have a negative impact on the timely follow-up to the visit report recommendations and eventually overall conditions of people in detention.

39. While the Subcommittee notes that reports of visits are prepared and submitted to the authorities, it also notes that there is no clear policy concerning the systematic follow-up and dialogue procedure.

40. **Further to making the annual report public, pursuant to article 23 of the Optional Protocol, the Subcommittee recommends that it should be discussed publicly in parliament and widely publicized. The annual report of the NPM should be distinct from the annual report of the Office of the Commissioner for Fundamental.**

41. **The Subcommittee further recommends that the NPM enters into a continuous dialogue with the relevant State and other authorities as well as with other addressees**

¹³ http://www.ohchr.org/Documents/HRBodies/OPCAT/CAT-OP-1-Rev-1_en.pdf

of the recommendations, with a view to implementing the NPM's recommendations. Following the transmittal of the report, the mechanism should develop a strategy for following up on the recommendations and using the report as a platform for dialogue with the authorities of the place of detention visited as well as with the respective state or other authorities.

42. The Subcommittee also recommends that the mechanism meet with the relevant public authorities directly to discuss the implementation of its recommendations, in accordance with article 22 of the Optional Protocol. Finally, the mechanism should disseminate its annual reports, including by transmitting them to the Subcommittee, for the purposes set out in the Optional Protocol.

Recommendations on visit methodology

43. During the joint visit to Budapest Remand Prison (Unit I), the Subcommittee was pleased to note that the NPM enjoyed full access to all facilities within the prison and had access to all information concerning numbers of detainees and conditions of detention.

44. *Preparations for visits:* taking into consideration that the year 2017 is dedicated to food/nutrition in the places of deprivation of liberty, the NPM shall collect overall information regarding the topic for appropriate state supervisory bodies in general and specific format before conducting the visit. This would enable the experts to understand better the situation in the place to be visited and to ensure the appropriate preparations for the visit. In case the NPM needs additional data from the administration of the place of detention they can provide the managements with the list of required information at the beginning of the visit so that all such information is ready to collect by the end of the visit or it can be sent via email. This will enable to save time on the spot for carrying out actual monitoring activities.

45. *Interviews:* The Subcommittee observed that during the joint visit the members of the NPM often introduced themselves as representatives of the Office of the Commissioner for Fundamental Rights, because the latter is more widely recognized and better known institution. This may lead to confusion about the separate mandates of each institution, by both detaining authorities and detainees. The Subcommittee also noted that the members of the mechanism were not clearly identified as such and some of them did not systematically introduce themselves to detainees as representatives from the national preventive mechanism and at times did not explicitly explain their mandate (including making a clear distinction between activities of the NPM and the Office of the Commissioner). In addition, some "exchanges of information" with detainees were conducted in the presence or in hearing distance of detention officers.

46. The Subcommittee recommends that members of the NPM, particularly the external experts, introduce themselves to the interviewees with their name and the position they occupy within the mechanism. The Subcommittee is of the view that an appropriate and complete presentation builds trust with the interviewees and facilitates communication and information sharing. In addition, the visiting team should be clearly identified as the national preventive mechanism, for example, by wearing badges or vests, and provide an information leaflet to the authorities as well as to the detainees.

47. *Confidentiality and risk of reprisals:* The Subcommittee reiterates that the location where the individual interviews take place should be carefully chosen to ensure that the content of the interview remains confidential and that the "do no harm" principle is applied, without exception. The interviewers should also indicate that the interviewees can report any reprisal they may face subsequent to the visit and encourage them to do so. If necessary, follow-up visits should be conducted. The Subcommittee underlines the need always to seek ways to protect those interviewed from possible reprisals, even when there appears to be little risk. The Subcommittee noted that the mechanism did not mention to the authorities of the place of detention at the final debriefing that any form of intimidation or reprisal against persons deprived of their liberty constitutes a violation of the State party's obligation.¹⁴

48. The Subcommittee recommends that the national preventive mechanism always consider that there is a risk of intimidation, sanctions or reprisals, and therefore take steps to

¹⁴ Article 13 of the Convention and article 20 of the Optional Protocol.

address that risk. In addition to the precautions mentioned above, the mechanism should clearly inform the authorities that reprisal of any kind is impermissible, will be reported and will be followed up by the mechanism. This is done with the clear intention of ensuring that those responsible for such reprisals are promptly investigated, and if found guilty, receive appropriate penalties. The mechanism should also, inter alia, undertake preventive follow-up visits.

Visibility and awareness

49. The Subcommittee observed a lack of visibility of the NPM among the authorities, and among persons deprived of their liberty, something which may have a detrimental effect on NPM's efficiency and effectiveness. In many places of deprivation of liberty neither the administration nor persons held in detention were aware of the NPM, its role and/or function. Moreover, the Subcommittee is further under the impression that some officials in places of detention are not familiar with recommendations of the NPM after their institutions were visited by the NPM.

50. **The Subcommittee recommends increasing the visibility of the NPM, including through activities that raise awareness of the OPCAT and of the NPM mandate. The NPM should undertake activities to increase the awareness of the general public, and especially persons deprived of their liberty, about its mission and its mandate. The NPM should engage in legislative processes, advocacy, which NPMs are encouraged to undertake under OPCAT article 19, and which increases their overall visibility. The Subcommittee further recommends the NPM to engage in outreach activities and other events as appropriate.**

51. **The Subcommittee also recommends elaborating and distributing further materials on the NPM's mandate and activities to personnel and detainees in the places of deprivation of liberty, and to the civil society at large to increase the visibility of the NPM as well as enhance understanding about its mandate.**

IV. Final recommendations

52. **In conclusion, the Subcommittee is aware that the national preventive mechanism of Hungary is facing complex challenges regarding its legal, institutional and structural framework. It recommends that the mechanism take a proactive attitude and submit to the authorities a proposal to revise its legal, institutional and structural framework, including within the Office of the Commissioner for Fundamental Rights, and to submit proposals on how to secure the necessary financial resources, further to a thorough internal evaluation of the level of financial resources needed to adequately fulfil its mandate under the Optional Protocol.**

53. **In the light of scarcity of human and financial resources available to the national preventive mechanism, the Subcommittee recommends that the mechanism also increase its international cooperation with other national preventive mechanisms to reinforce its capacities, share information and practices and develop its working methods so as to improve its ability to carry out its mandate under the Optional Protocol adequately.**

54. **The Subcommittee also recommends that the NPM continue to develop its capacity through increasing cooperation with the Subcommittee, as well as through engagement with other NPMs and appropriate NPM networks.**

55. The Subcommittee regards its visit and the present report as the beginning of a constructive dialogue with the national preventive mechanism of Hungary. The Office of the High Commissioner for Human Rights stands ready to provide technical assistance and advice to the mechanism to reinforce its capacity to prevent torture and ill-treatment in all places of deprivation of liberty in the State party and to make the common goal of prevention a reality.

56. The Subcommittee recalls that prevention of torture constitutes an ongoing and wide-ranging obligation of the State party, the likelihood of whose achievement is greatly enhanced

by an efficient mechanism. The Subcommittee encourages the mechanism to review and strengthen its working methods and to avail itself of training courses to improve its ability to discharge its responsibilities under the Optional Protocol, including through the assistance of the Office of the United Nations High Commissioner for Human Rights with following up on the present recommendations.

57. The Subcommittee also encourages the mechanism to transmit its annual reports to the Subcommittee, and reaffirms its readiness to help in achieving the shared aims of preventing torture and ill-treatment and ensuring that commitments are translated into action.

58. **The Subcommittee recommends that the mechanism make the present report public, and requests that it be notified of the mechanism's decision in this regard.**

Annexes

Annex I

List of places of deprivation of liberty visited by the Subcommittee on Prevention of Torture

Correctional educational institution for juveniles, Aszod
 Correctional educational institution for juveniles, Budapest
 Correctional educational institution for juveniles, Debrecen
 Correctional educational institution and child care home of Rákospalota for girls and young mothers (EMMI)

Békéscaba asylum detention centre
 Kiskunhalas Immigration Detention Centre
 Niyarbator Guarded Asylum Centre
 Niyarbator Immigration Detention Centre (Alien Policing)
 Rözske transit zone
 Tompa transit zone

Budapest Strict and Medium Regime Prison
 Budapest Remand Prison (Units II and III)
 Hajdú-Bihar County Remand Prison (Debrecen)
 Szeged Strict and Medium Regime Prison (Units I and II)
 Tököl National Prison

Budapest Police Station Központi Fogda
 Budapest district police station (BRFK III)
 Budapest district police station (BRFK VII)
 Budapest district police station (BRFK VIII)
 Budapest district police station (BRFK IX)

Debrecen police station Debreceni Rendőrkapitányság
 Debrecen police station Debreceni Rendőrkapitányság Fogda- és Kísérőőri Alosztály
 Gyöngyös police station (Gyöngyösi Rendőrkapitányság)
 Szeged police station (Szegedi Rendőrkapitányság)

Forensic Psychiatric and Mental Health Institution (IMEI),
 Budapest Central Penitentiary Hospital, Tököl

Joint visit with the NPM

Budapest Remand Prison (Unit I)

Annex II

List of officials and other persons with whom the Subcommittee on Prevention of Torture met

Ministry of Interior

Mátyás Hegyaljai, Deputy State Secretary for European Union Affairs and International Relations

Tímea Erzsébet Lehoczki, Deputy Head of Department of European

Cooperation Gábor Tóthi, Head of Unit (Department of European Cooperation)

János Iványi, Legal Expert (Department of European Cooperation)

National Police Headquarters

Tibor Lakatos, Police Colonel

László Balázs, Police Colonel

Csaba Borsa, Police Lieutenant-Colonel

Emese Kertész, Police Lieutenant-Colonel

Hungarian Prison Service Headquarters

Róbert Bogotyán, Prison Guard, Lieutenant Colonel

Gergely Vattay, Head of Department of Legal Issues

Hungarian Immigration and Asylum Office

Gyula Mikolicz

Katalin Miklós

Independent Police Compliant Body

Nóra Fráterné Ferenczy

Dóra Deák-Kondákor

Ministry of Justice

Anikó Raisz, Political Adviser.

Zoltán Tallódi, Deputy Head of Department of Human Rights

Gergely Kunyák, Prosecutor, Department of Criminal Procedure.

Veronika Pázsit, Legal Expert, Department of Criminal Law and Penal Law

Balázs Belovics, Legislator, Department of Criminal Law and Penal Law

Office of the Prosecutor General of Hungary

András Szűcs, Prosecutor, Head of Unit

Central Investigative Prosecutor's Office

Rolland Waltner, Deputy Prosecutor General

Zoltán Margl, Deputy Prosecutor General

Ministry of Foreign Affairs and Trade

Tamás Kuntár, Head of Department of International Organisations

Ágnes Hegyesi, Deputy Head of Department of International Organisations

Marianna Klaudia Lévai, Human Rights Expert, Department of International

Ministry of Human Capacities

Csilla Lantai, Deputy Head of Department

Éva Bódy, Deputy Head of Department

Éva Dr Gellénné dr Lukács, Advisor

Edina Molnár, Social Expert

Judit Mária Tóth, Health Care Expert

Representatives of Hungarian Parliament

Márk Ádám Janó

Csaba Gergely Tamás
Szilvia Madarasi
Mónika Pozsgai

National Preventive Mechanism

Laszlo Szekely, Commissioner for Fundamental Rights
Gergely Fliegau, Head of the OPCAT Department
Katalin Haraszti, Deputy Head of the OPCAT Department
Members of the OPCAT Department and Civic Consultative Body

United Nations

Montserrat Feixas Vihe, UNHCR Regional Representative for Central Europe

Annex 3 – Text of the Ombudsman Act

Act CXI of 2011

on the Commissioner for Fundamental Rights²⁴²

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 1²⁴³ – 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)²⁴⁴ 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)²⁴⁵ The Commissioner for Fundamental Rights shall survey and analyze 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, the Independent Police Complaints Body 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 legal rules affecting his/her tasks and competences, on long term development and spatial planning plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations, and may make proposals for the amendment or making of legal rules affecting fundamental rights and/or the expression of consent to be bound by an international treaty.

²⁴² Promulgated on July 26, 2011

²⁴³ Shall enter into force with the text specified in Section 6, Subsection (1) of Act CXLIII of 2011

²⁴⁴ Shall enter into force with the text specified in Section 6, Subsection (2) of Act CXLIII of 2011

²⁴⁵ Amended by Section 1 of Act CLXXXVI of 2012 and Section 22, Subsection (6) of Act CLXXXIII of 2013

(3)²⁴⁶ The Commissioner for Fundamental Rights may initiate at the Constitutional Court the review of legal rules 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)²⁴⁷ 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 organizations and national institutions aiming at the promotion of the protection of fundamental rights.

(6)²⁴⁸ 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.

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)*²⁴⁹ 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)*²⁵⁰ 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)*²⁵¹ shall monitor the implementation of the sustainable development strategy adopted by the Parliament,

*g)*²⁵² may propose the adoption, amendment of legislation on the rights of future generations, and

*h)*²⁵³ 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 interests of future generations, and

*a)*²⁵⁴ 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)*²⁵⁵ shall draw the attention of the Commissioner for Fundamental Rights, the institutions concerned and the public to the danger of infringement of rights affecting nationalities living in Hungary,

²⁴⁶ Stipulated by Section 1 of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁴⁷ Stipulated by Section 2 of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁴⁸ Enacted by Section 8 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁴⁹ Stipulated by Section 3, Subsection (1) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵⁰ Stipulated by Section 3, Subsection (1) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵¹ Enacted by Section 3, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵² Enacted by Section 3, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵³ Enacted by Section 3, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵⁴ Stipulated by Section 4, Subsection (1) of Act CCXXIII of 2013 Effective as of December 19, 2013

- 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)²⁵⁶ shall review the Government's social inclusion strategy and monitor the implementation of its objectives concerning nationalities living in Hungary,
 g)²⁵⁷ may propose the adoption, amendment of legislation on the rights of future generations, and
 h)²⁵⁸ shall promote, through his/her international activities, the presentation of the merits of domestic institutions related to the interests of future generations.

(3) If a Deputy Commissioner for Fundamental Rights makes a proposal within his/her competence pursuant to point a) of subsection (1) or point a) of subsection (2) for the Commissioner for Fundamental Rights to institute proceedings ex officio or to 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)²⁵⁹ 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. 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) The employer's rights regarding the Deputies of the Commissioner for Fundamental Rights—with the exception of those pertaining to the coming into existence and the 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 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 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

²⁵⁵ Stipulated by Section 4, Subsection (1) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵⁶ Enacted by Section 4, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵⁷ Enacted by Section 4, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵⁸ Enacted by Section 4, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵⁹ Enacted by Section 5 of Act CCXXIII of 2013 Effective as of December 19, 2013

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)²⁶⁰ 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, Member of the European Parliament, President of the Republic, Member of the Government, state secretary, permanent state secretary, deputy state secretary, member of a local government body, mayor, deputy mayor, member of a nationality self-government, notary, professional member of the Hungarian Defense 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 according to 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 16, 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)²⁶¹ 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 after 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.

²⁶⁰ Shall enter into force with the text amended by Section 410, Subsection (1) of Act CCI of 2011 Amended by Section 158, Subsection (28) of Act XXXVI of 2012

²⁶¹ Enacted by Section 6 of Act CCXXIII of 2013 Effective as of December 19, 2013

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

(6) Deputy Commissioners 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)²⁶² 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, or proof-reading or editing activities.

(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 till January 31 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 declaration of assets the declaration of assets of their spouse or partner 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—until submission of the declaration of assets—the Commissioner for Fundamental Rights and his/her Deputies may not perform the tasks deriving from their mandate, and may not receive remuneration.

(4) With the exception of the declaration of assets of family members, the declaration 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 mandates 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 declaration 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

²⁶² Stipulated by Section 78 of Act CI of 2014 Effective as of January 01, 2015

without conducting proceedings. The veracity of those contained in the declaration of assets shall be checked by the Conflict of Interests Committee.

(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 notify without delay and in writing the supporting data on property, income and interest relations indicated in their own declaration of assets and in that 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) The Commissioner for Fundamental Rights shall be entitled to a salary and allowances identical to those of a Minister; the salary supplement for management duties, however, shall be one and a half times that of a Minister.

(2) The Deputy Commissioners for Fundamental Rights shall be entitled to a salary and 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 organ of public administration.

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.

7. Deputizing 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 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 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 a 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 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)* a public administration organ,
- b)* a local government,
- c)* a nationality self-government,
- d)* a public body with mandatory membership,
- e)* the Hungarian Defense 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)*²⁶³ a bailiff at a court of law,
- k)* an independent bailiff, or

²⁶³ Shall enter into force with the text amended by Section 409, Subsection (1) of Act CCI of 2011

l) an organ performing public services (hereinafter referred to together as “authority”) infringes a fundamental right of the person submitting the petition or presents an imminent danger thereto (hereinafter referred to together as “impropriety”), provided that this person has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or that no legal remedy is available to him/her.

(2) Regardless of their form of organization, 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)* organizations participating in the granting or intermediation of state or European Union subsidies,
- e)* organizations performing activities described in a legal rule as public service, and
- f)* organizations performing a public service which is prescribed in a legal rule and to be compulsorily consumed.

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)*²⁶⁴—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) 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 from the notification of the decision.

(6) The Commissioner for Fundamental Rights may only inquire into proceedings that started after October 23, 1989.

(7) The Commissioner for Fundamental Rights may not proceed in cases where court proceedings have been started 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. If the person filing the petition requests it, the Commissioner for Fundamental Rights may 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.

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

²⁶⁴ Stipulated by Section 10, Subsection (2) of Act CXXXI of 2013 Effective as of August 01, 2013

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 authorized 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 authorized to conduct the inquiry

a) may enter the premises of the authority subject to inquiry, unless provided otherwise by a legal regulation,

*b)*²⁶⁵ 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)²⁶⁶ In the course of an on-site inspection of the Commissioner for Fundamental Rights or of members of his/her staff authorized to conduct the inquiry, the rules of entry into, stay in and exit from the zones serving the operation of the Hungarian Defense Forces, the Military National Security Service, 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 defense, the Minister responsible for directing the law-enforcement organ or the Minister supervising the National Tax and Customs Administration.

(3) No legal rule regulating entry into the premises of the authority subject to inquiry may obstruct on-site inspection in substance.

(4) Any employee of the authority subject to inquiry may refuse to answer the questions during the hearing if

²⁶⁵ Shall enter into force with the text amended in accordance with Section 7, Paragraph *a)* of Act CXLIII of 2011

²⁶⁶ Amended by Section 5. Subsection (2) of Act CLXXI of 2011 and Section 53, Paragraphs *a)* and *b)* of Act CLXXXIII of 2015

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 Defense Forces, the Commissioner for Fundamental Rights may not inspect

a) documents related to inventions, products or defense investments of outstanding importance for the national defense of Hungary, or documents on the development of national defense capabilities, that contain essential information thereon,

b) documents containing a battle order extract of the Hungarian Defense 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 Defense 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 Defense Forces, compiled documents on mobilization readiness and the level of combat readiness of the Hungarian Defense Forces, aggregate military preparedness plans of the military districts and of military organizations of the same or of a higher level or related documents on the whole organization,

f) aggregate plans of the organization of communications of the Ministry directed by the Minister responsible for national defense and of the Hungarian Defense 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 Defense 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 Defense 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 organizations, 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 organized 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) 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) personal data of witnesses, if the closed processing thereof has been ordered on the basis of the Act on Criminal Procedure, or

i) cooperation agreements concluded with the Hungarian Defense 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 organizations, 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 organized 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) 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,

h) 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) 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) personal data of witnesses, if the closed processing thereof has been ordered on the basis of the Act on Criminal Procedure,

b) documents of the investigative organ of the Prosecution Service originating from intelligence information gathering,

c) any document specified in subsection (2) to (4), in relation to organs gathering intelligence information, relating to, originating from or pertaining to the cooperation of the investigative organ of the Prosecution Service with organs gathering intelligence information, or

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,

(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, authorization 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 authorization 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) 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 authorized by a legal rule to conduct inquiries and the employees of the authority subject 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 organizations 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 organization, person or employee of the organization having the obligation to cooperate.

(3) If the organization 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) Contacts between the Commissioner for Fundamental Rights and the authority, the organization or person with an obligation to cooperate, as well as the organization affected by an exceptional inquiry may also be maintained by electronic documents signed electronically

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) The report of the Commissioner for Fundamental Rights relating to the activities of organs authorized to use covert operative means and methods may not contain any data from which one could draw conclusions on intelligence information gathering activities 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 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 paragraph (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)²⁶⁷ 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) 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 rule, he/she may forward the petition to the competent prosecutor through the Prosecutor General.

(3) 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 those laid down in the Act on the Constitutional Court.

Section 34/A²⁶⁸ – (1) If, in the course of his/her inquiries, the Commissioner for Fundamental Rights finds that a fundamental rights-related impropriety is caused by a conflict between a 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) The petition submitted in accordance with Subsection (1) shall contain:

- a) the self-government decree to be reviewed by the Curia,
- b) the indication of the provision found in breach with the law,
- c) the indication of the legal regulation that the self-government decree is in breach with,
- d) the reason why the Commissioner for Fundamental Rights deems the given provision in breach with the law.

Section 35 – (1) 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 authorized to start such proceedings. If, in the course

²⁶⁷ Shall enter into force with the text specified in Section 408 of Act CCI of 2011

²⁶⁸ Enacted by Section 72, Subsection (1) of Act CCXI of 2012 Effective as of January 01, 2013

of his/her inquiry, the Commissioner for Fundamental Rights considers that there is a 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 authorized 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 rule or public law instrument for the regulation of organizations, 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 authorized to make law or to issue a public law instrument for the regulation of organizations modify, repeal or issue the legal rule or the public law instrument for the regulation of organizations, or propose that the organ in charge of preparing legal rules prepare a legal rule. 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 requested Parliament, the Commissioner for Fundamental Rights shall report on his/her measure and on the measure of the requested 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 would 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*.

11/A.²⁶⁹ Inquiries into public interest disclosures

Section 38/A²⁷⁰ – The Commissioner for Fundamental Rights shall inquire into the practices of authorities specified under Section 18, Subsection (1), Paragraphs *a)-k)* in handling public

²⁶⁹ Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

²⁷⁰ Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

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/B²⁷¹ – (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/C²⁷² – A whistle-blower 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 authorized to proceed under the Act on complaints and public interest disclosures (hereinafter referred to as the “organ authorized to proceed),

b) the whistle-blower does not agree with the conclusions of the investigation,

c) according to the whistle-blower, the organ authorized to proceed has failed to conduct a comprehensive inquiry into a public interest disclosure.

Section 38/D²⁷³ 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.

Section 11/B²⁷⁴ Inquiry into the review process of national security checks

Section 38/E²⁷⁵ – (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.

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 organization 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’).

(2) To exceptional inquiries subsections (5) to (8) of Section 18, Section 19, Section 20, subsections (1), (3) and (4) of Section 27, Sections 28 to 30 and Sections 34 to 37 shall be applied.

(3) For the conduct of exceptional inquiries the organizations 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 organization not

²⁷¹ Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

²⁷² Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

²⁷³ Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

²⁷⁴ Enacted by Section 46 of Act CIX of 2014 Effective as of February 01, 2015

²⁷⁵ Enacted by Section 46 of Act CIX of 2014 Effective as of February 01, 2015

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*²⁷⁶*The proceedings and measures of the commissioner for fundamental rights within the framework of the national preventive mechanism*²⁷⁷

Section 39/A²⁷⁸ – 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/B²⁷⁹ – (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 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)²⁸⁰ hear any person present on the site, including the personnel of the authority under inspection and any person deprived of his/her liberty.

d)²⁸¹

(4) In the hearing pursuant to points c) and d) of subsection (3), apart from the Commissioner for Fundamental Rights and the person who is given a hearing, no other person may participate, unless the Commissioner for Fundamental Rights authorized his/her participation.

Section 39/C²⁸² – 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/D²⁸³ – (1) In the performance of his/her tasks related to the national mechanism, the Commissioner for Fundamental Rights may act in person or by way of the members of his/her staff authorized by him/her to perform the tasks related to the national preventive mechanism. Staff members of the Commissioner for Fundamental Rights authorized 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.

²⁷⁶ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁷⁷ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁷⁸ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁷⁹ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁸⁰ Shall enter into force with the text amended by Section 9, Subsection (2) of Act CCXXIII of 2013

²⁸¹ Shall not enter into force by virtue of Section 9, Subsection (1) of Act CCXXIII of 2013

²⁸² Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁸³ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

(2) Staff members of the Commissioner for Fundamental Rights authorized 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)²⁸⁴ The Commissioner for Fundamental Rights shall authorize, from among the public servants of the Office of the Commissioner for Fundamental Rights, on permanent basis, at least eleven staff members to perform the tasks related to the national preventive mechanism. The authorized 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 authorize, either permanently or on an ad hoc basis, other experts to contribute to performing the tasks related to the national preventive mechanism.

(4)²⁸⁵ Among the public servant staff members authorized 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 authorized 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/E²⁸⁶ No one shall suffer any disadvantage for providing information to the Commissioner for Fundamental Rights or to his/her staff members authorized to perform the tasks related to the national preventive mechanism.

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 the 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)*²⁸⁷ give information on his/her fundamental rights protection activities, presenting in separate chapters his/her activities pursuant to the stipulations of Section 1, Subsections (2) and (3) and Section 2, Subsection (6), respectively, and his/her activities conducted in connection with inquiring into public interest disclosures.

b) give information on the reception and outcomes of his 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) The 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 the 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.

²⁸⁴ Shall enter into force with the text amended by Section 9, Subsection (3) of Act CCXXIII of 2013

²⁸⁵ Shall enter into force with the text amended by Section 9, Subsection (4) of Act CCXXIII of 2013

²⁸⁶ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁸⁷ Stipulated by Section 10 of Act CXLIII of 2011 Effective as of January 01, 2015

(2) The Office shall be directed by the Commissioner for Fundamental Rights and managed by the Secretary General.

(3) The organizational and operational rules of the Office shall be established by way of a normative instruction by the Commissioner for Fundamental Rights.

(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 organizational 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) The Secretary General shall be entitled to a salary and allowances identical to those of a state secretary and to forty working days of leave per calendar year.

(3)²⁸⁸ Public servants employed by the Office shall be appointed and dismissed by the Commissioner for Fundamental Rights or, in the case of public servants referred to in 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. The Office of the Commissioner for Fundamental Rights shall endeavor to give due representation to women, ethnic, minority and disadvantaged groups in the personnel of the Office.

(4) The authorized number of posts of public servants placed under the direction of the Deputy Commissioners for Fundamental Rights shall be determined in the organizational and operational rules.

Chapter VI

Final provisions

13. Authorizing provisions

Section 43 – (1)²⁸⁹ The Minister responsible for national defense shall be authorized 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 Defense Forces and of the military national security services.

(2) The Minister responsible for directing the law-enforcement organ shall be authorized 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.²⁹⁰

(3)²⁹¹ The Minister supervising the National Tax and Customs Administration shall be authorized 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.

²⁸⁸ Stipulated by Section 7 of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁸⁹ Amended by Section 5, Subsection (2) of Act CLXXI of 2011

²⁹⁰ See Decree 62/2012. (XII. 11.) BM of the Minister of Interior

²⁹¹ Amended by Section 53, Paragraph b) of Act CXCI of 2015

14. Provision on entry into force

Section 44 – The present Act shall enter into force on January 1, 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 Section 17, Subsection (1), Paragraphs *b) to g)* 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) From the point of view of the application of Section 14, Subsection (1), Paragraph *c)* of Act XXIII of 1992 on the Legal Status of Public Servants, the Office shall be considered the legal successor of the Office of the Parliamentary Commissioner.

Section 45/A²⁹² – 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 January 1, 2013.

16. Compliance with the requirement of the Fundamental Law on cardinality

Section 46²⁹³ – Sections 2, Subsection (3) of this Act shall qualify as cardinal pursuant to Article 24, Paragraph (2) *g)* of the Fundamental Law.

17. Amending provisions

Section 47²⁹⁴

Section 48 – (1)-(3)²⁹⁵

(4)²⁹⁶

²⁹² Enacted by Section 72, Subsection (2) of Act CCXI of 2012 Effective as of January 01, 2013

²⁹³ Stipulated by Section 8 of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁹⁴ Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012

²⁹⁵ Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012

²⁹⁶ Shall not enter into force by virtue of Section 410, Subsection (2) of Act CCI of 2011

(5)–(16)²⁹⁷

18. Repealing provisions

Sections 49-50²⁹⁸

²⁹⁷ Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012

²⁹⁸ Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012