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**National Human Rights Institution of the United Nations**  
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**Comprehensive Annual Report**  
**of the Commissioner for Fundamental Rights**  
**on the Activities of the**  
**OPCAT National Preventive Mechanism in 2015**



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## Contents

Introduction .....	6
1. The legal background of the NPM's operation.....	7
1.1. The Fundamental Law of Hungary.....	7
1.2. International instruments .....	7
1.2.1. UN documents .....	7
1.2.2. Documents of the Council of Europe.....	9
1.3. Prevention activities of the Commissioner for Fundamental Rights.....	11
1.4. The budget of the National Preventive Mechanism .....	11
2. Designation of the National Preventive Mechanism.....	13
2.1. Establishing an organizational unit responsible for performing the tasks of the NPM .....	13
2.2. The list of places of detention .....	14
2.3. The NPM's schedule of visits for 2015.....	15
2.4. The costs of the establishment of the NPM .....	16
3. Staff members participating in the performance of the tasks of the NPM .....	17
3.1. Public servants in the Office of the Commissioner for Fundamental Rights .....	17
3.2. External experts .....	18
4. Civil Consultative Body.....	19
4.1. Establishment of the Civil Consultative Body.....	19
4.2. The tasks of the Civil Consultative Body .....	20
4.3. The operation of the Civil Consultative Body.....	20
5. Performing the NPM's tasks .....	22
5.1. Access to the places of detention, timing the visits .....	22
5.2. Planning and preparing the visits.....	23
5.2.1. The composition of visiting delegations .....	23
5.3. The conduct of visits.....	24
5.3.1. Proof of authorization to proceed.....	24
5.3.2. Inspection of a place of detention .....	24
5.3.3. Interviews.....	24
5.3.4. Document inspection.....	25
5.3.5. Concluding the visit.....	26
5.4. Processing and evaluating information obtained in the course of the visits .....	26
5.4.1. Preparing the NPM's reports.....	26
5.4.2. The report of the NPM .....	27

5.4.3. <i>The NPM's recommendations</i> .....	28
5.4.4. <i>Making the NPM's reports public</i> .....	29
5.5. Dialog on the NPM's recommendations .....	29
6. Legislation-related powers of the NPM.....	31
6.1. Reviewing draft legislation.....	31
6.2. Ex post review of norms .....	31
7. Focal points of the visits conducted in the capacities of the NPM.....	32
7.1. Reception.....	32
7.2. Material conditions of detention.....	32
7.3. Vulnerable groups .....	32
7.4. Healthcare.....	32
7.5. Activities, leisure .....	33
7.6. Means of restraint, the use of disciplinary and restraining measures.....	33
7.7. Relations between persons deprived of their liberty and their relationship with the staff of the place of detention.....	33
7.8. Complaints mechanism .....	34
8. Places of detention visited in 2015 .....	35
9. Groups of persons deprived of their liberty at various places of detention .....	36
9.1. Children deprived of their liberty .....	36
9.1.1. <i>Children held at dedicated places of detention</i> .....	36
9.1.1.1. <i>Children's Home</i> .....	36
9.1.1.2. <i>Minors serving a sentence involving deprivation of liberty</i> .....	37
9.1.2. <i>Children at places of detention reserved for families and adults</i> .....	39
9.1.2.1. <i>Children in the Guarded Refugee Reception Center</i> .....	39
9.1.2.2. <i>Children in the Central Prison Hospital</i> .....	40
9.1.2.3. <i>Children in the Psychiatric Ward of the Merényi Gusztáv Hospital</i> .....	41
9.2. Disabled persons deprived of their liberty .....	41
9.2.1. <i>Persons with disabilities living in residential institutions</i> .....	42
9.2.2. <i>Persons with disabilities in the Closed Psychiatric Ward of the Merényi Gusztáv Hospital</i> .....	44
9.2.3. <i>Persons with disabilities in the Central Prison Hospital</i> .....	44
9.3. Women deprived of their liberty.....	45
9.4. Elderly persons deprived of their liberty.....	45
9.5. Protecting the ethnic rights of people deprived of their liberty .....	46
10. The authorities responses to my recommendations .....	47
11. International activities, international relations.....	49
12. Dissemination, media.....	51
13. Summary.....	54
14. Annexes .....	57

<i>Annex 1 – Expenditure of the National Preventive Mechanism in 2015</i> .....	57
<i>Annex 2 – Glossary</i> .....	58
<i>Annex 3 – Full text of the OPCAT</i> .....	60
<i>Annex 4 – Full text of the Ombudsman Act</i> .....	71
<i>Annex 5 – The CCB’s Rules of Procedure</i> .....	94

## Introduction

The General Assembly of the United Nations (hereinafter the “UN”) adopted the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the “OPCAT”)<sup>1</sup> on December 18, 2002; it entered into force on June 22, 2006, on the thirtieth day after the date of deposit with the Secretary-General of the UN of the twentieth instrument of ratification.

The OPCAT is open to accession by any State that has ratified or acceded to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>2</sup> Hungary acceded to the Protocol on January 12, 2012, more than two decades after ratifying the UN Convention. The Parliament designated the Commissioner for Fundamental Rights<sup>3</sup> as the national institution conducting regular, unannounced visits to places of detention (hereinafter the “National Preventive Mechanism, NPM”<sup>4</sup>). I have to carry out this task as of January 1, 2015.<sup>5</sup>



Juvenile Penitentiary Institution (Tököl)

I have published my reports on the visits conducted as National Preventive Mechanism on the website of my Office – these reports have all been duly processed by the press.

I have to prepare comprehensive annual reports on my activities as National Preventive Mechanism<sup>6</sup> – I am hereby fulfilling this obligation for the first time. The annual report on the activities of the National Preventive Mechanism in 2015, in addition to summarizing reports on the visits conducted in 2015 and the responses of various authorities given thereto, also informs the readers on the preparatory works carried out in 2014.

Budapest, May 2016

László Székely

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<sup>1</sup>A/RES/57/1999. Optional Protocol to the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

<sup>2</sup> See Article 27 of the OPCAT

<sup>3</sup> See Section 8 of Act CXLIII of 2011

<sup>4</sup> See Article 3 of the OPCAT

<sup>5</sup> See Article 24.1 of the OPCAT and Chapter III/A, effective as of January 01, 2015, of Act CXI of 2011 on the Commissioner for Fundamental Rights

<sup>6</sup> See Section 39/C of the Ombudsman Act

## 1. The legal background of the NPM's operation

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. Furthermore, 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.<sup>7</sup>

### 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 instruments

According to the Fundamental Law, in Hungary, *“rules for fundamental rights and obligations shall be laid down in an Act”*.<sup>8</sup> Legislation falls within the tasks and competences of the Parliament.<sup>9</sup> International instruments stipulating the rules for fundamental rights and obligations shall be promulgated in an Act.<sup>10</sup>

#### 1.2.1. UN documents

According to Article 7 of the International Covenant on Civil and Political Rights, adopted on December 16, 1966, during the 21<sup>st</sup> Session of the UN General Assembly, **promulgated by Law-decree 8 of 1976**<sup>11</sup>, *“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

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

According to Article 15 of the Convention on the Rights of Persons with Disabilities, **promulgated by Act XCII of 2007**, *“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”* “States Parties shall take all effective legislative, administrative, judicial or

<sup>7</sup> See Articles 2 and 16 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)

<sup>8</sup> See Article I, Paragraph (3) of the Fundamental Law.

<sup>9</sup> See Article I, Paragraph (2)b) of the Fundamental Law.

<sup>10</sup> See Section 9, Subsection (1) of Act L of 2005 on procedures related to international agreements.

<sup>11</sup> Prior to January 1988, the Presidium of the People's Republic (hereinafter the “PPR”) had the power of substitution for the Parliament in the field of legislation, with the proviso that it could not amend the Constitution or adopt legislation under the name “Act”. Statutory-level legislation adopted by the PPR was called law-decree. Since the PPR's abolishment, no law-decree may be adopted. Any law-decree still in force may be amended or repealed only through an Act. (See Clause IV/2 of Constitutional Court Decision 20/1994 (XII. 16.) AB)

other measures to prevent persons with disabilities, *on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.*"

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the "UNCAT"), **promulgated by Law-decree 3 of 1988**, entered into force in Hungary on June 26, 1987. The definition of torture was incorporated in Hungarian law on that date. According to Article 1 of the UNCAT, 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 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.
- It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

In accordance with Article 3 of the UNCAT, *"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"*.

States Parties shall submit to the UN Committee against Torture (hereinafter the "Committee") periodical reports on the measures they have taken to give effect to their undertakings under the UNCAT. If the Committee receives reliable information from private persons or states, containing well-founded indications that a State Party does not comply with its obligations deriving from the Convention, the Committee may conduct an investigation. The Committee may initiate ex officio inquiries if there are well-founded indications that torture is being systematically practiced in the territory of a State Party.<sup>12</sup> Documents published by the Committee, in particular its general comments, periodical reports by the States Parties<sup>13</sup>, documents received via the complaints mechanism and the Committee's annual reports serve as important guidelines for National Preventive Mechanisms.<sup>14</sup>

The Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment (hereinafter the "OPCAT"), **promulgated by Act CXLIII of 2011**, is open to accession by any State that has ratified or acceded to the UNCAT.<sup>15</sup>

Pursuant to the OPCAT, the protection of persons, deprived of their liberty, against torture and other cruel, inhuman or degrading treatment or punishment should be strengthened not through the court system, but using tools based on regular, preventive visits to places of detention. The objective of the Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.<sup>16</sup>

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<sup>12</sup> See Articles 19–22 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

<sup>13</sup> Information on the periodical reports submitted by Hungary may be found at:

[http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=HUN&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=HUN&Lang=EN)

<sup>14</sup> Documents of the UN Committee against Torture may be found at:

<http://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>

<sup>15</sup> See Article 27, Paragraph 3 of the OPCAT

<sup>16</sup> See Article 1 of the OPCAT



Pursuant to Article 4, Paragraph 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.*”

Within the Committee, the OPCAT established the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter the “Subcommittee on Prevention”). One of the main tasks of the Subcommittee on Prevention is to visit places where people are deprived of their liberty, and, when necessary, advise and assist States Parties in their establishment and operation of their National Preventive Mechanism (hereinafter the “NPM”), an independent national body conducting regular visits to their places of detention.<sup>17</sup> The NPMs’ operation, in addition to the general guidelines<sup>18</sup> of the Subcommittee on Prevention, shall be governed by the concrete guidelines and recommendations<sup>19</sup> specified in the reports on the visits conducted on the territory of States Parties.

On September 7, 2015, pursuant to Article 11 of the OPCAT, two members of the Subcommittee on Prevention, Mr. Malcolm Evans and Ms. Mari Amos paid an informal visit to my Office, during which they inquired about the launching of the NPM’s operation and the frameworks of my cooperation with domestic civil society organizations.<sup>20</sup> Mr. Malcolm Evans summarized their experiences gained from the visit in a letter.<sup>21</sup> Upon his request, I forwarded a copy of the letter to the members of the Civil Consultative Body as well.

### ***1.2.2. Documents of the Council of Europe***

According to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, dated in Rome on November 4, 1950 (hereinafter the “European Convention on Human Rights”), **promulgated by Act XXXI of 1993**, “*no one shall be subjected to torture or to inhuman or degrading treatment or punishment.*” Unlike the UN documents, the European Convention on Human Rights does not contain the term “cruel”.

Compliance with obligations undertaken in the European Convention on Human Rights and the protocols thereto, including the ban on torture, inhuman, degrading treatment or punishment, stipulated in Article 3, is *essentially* supervised by the European Court of Human Rights (hereinafter the “ECHR”). According 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 by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto within six months after all domestic remedies have been exhausted.<sup>22</sup> In addition to the above, any High Contracting Party may refer to the ECHR any alleged breach of the provisions of the Convention and the Protocols thereto by another High Contracting Party.<sup>23</sup> In the course of its proceedings, the ECHR shall decide

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<sup>17</sup> See Article 11 of the OPCAT

<sup>18</sup> 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. The documents may be found at: <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Brief.aspx>

<sup>19</sup> 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)

<sup>20</sup> The report on the meeting is filed in my Office under AJB-4081/2015.

<sup>21</sup> The English language letter by Mr. Malcolm Evans, dated on October 27, 2015, is filed in my Office also under AJB-4081/2015.

<sup>22</sup> See Articles 34 and 35 of the European Convention on Human Rights

<sup>23</sup> See Article 33 of the European Convention on Human Rights

whether or not the authorities of the High Contracting Party have infringed on any provision of the European Convention on Human Rights.

Based on the ECHR's case-law, *torture* implies serious and willful cruelty that, in the absence of grave physical or psychological damage, cannot be established. *Inhuman treatment or punishment* causes serious physical and psychological suffering, if not necessarily physical damage. *Degrading treatment or punishment* means, in fact, inducing fear, anguish and a sense of inferiority that are suitable to break physical and mental resistance in the person concerned.<sup>24</sup>

Among ECHR decisions based on Article 3, in particular those analyzing issues related to detention conditions and the treatment of persons deprived of their liberty (hygienic conditions, ill-treatment by fellow detainees and the guards, crowdedness, solitary confinement, juveniles in detention, detention under immigration laws, physical and mental health of the detainees etc.) may provide guidance for the National Preventive Mechanism's activities.<sup>25</sup>

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

Article 1 of the European Convention for the Prevention of Torture established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the "CPT"). The CPT's task is, "*by means of visits, to 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 each visit, the CPT prepares a report containing, in addition to the facts experienced during the visit, the body's comments thereon and recommendations to the authorities concerned as well.

The CPT visited Hungary on eight occasions.<sup>27</sup> The body met with the Parliamentary Commissioner for Civil Rights for the first time during its periodical visit in 1999<sup>28</sup>; later on it would visit the institution on each occasion. I received in my Office the participants of the CPT's latest '*ad hoc*' visit to Hungary on October 21, 2015.<sup>29</sup>

Since the Protocol's provisions "*shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention*"<sup>30</sup>, the CPT's reports on its visits to Hungary are of major importance for me. When drafting the first annual schedule of visits by the National Preventive Mechanism, I took into account the conclusions of the CPT's reports on its latest periodical visits to Hungary, their recommendations addressed to the Government, and the latter's responses thereto.<sup>31</sup>

The comprehensive standards<sup>32</sup> worked out by the CPT relative to the treatment of persons deprived of their liberty interpret the prohibition of torture, inhuman or degrading treatment or punishment, as stipulated by 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 lockups,

<sup>24</sup> See: Judgement of the European Court of Human Rights, Ireland v. the United Kingdom (18 January 1978) Clause 167

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

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

<sup>27</sup> Information on the CPT's visits to Hungary so far may be found at: <http://www.cpt.coe.int/en/states/hun.htm>

<sup>28</sup> The ombudsman institution, then called the Parliamentary Commissioner for Civil Rights, started its operation on July 1, 1995.

<sup>29</sup> The CPT has not published yet its report on its '*ad hoc*' visit conducted between October 21–27, 2015.

<sup>30</sup> See Article 31 of the OPCAT

<sup>31</sup> See CPT/Inf (2014) 13 and CPT/Inf (2014) 14.

<sup>32</sup> See: CPT standards CPT/Inf/E (2002) 1 - Rev. 2015.

psychiatric institutions, holding centers for asylum seekers), and various vulnerable groups, e.g., women and minors.

### 1.3. Prevention activities of the Commissioner for Fundamental Rights

According to the Fundamental Law, the “*Commissioner for Fundamental Rights shall perform fundamental rights protection activities*”<sup>33</sup> which cover the ban on torture, inhuman, degrading treatment or punishment as well. In accordance with the Constitutional Court’s consistent case-law, the State’s obligation to respect fundamental rights is not limited to refraining from their infringement, but also implies providing the conditions necessary for the effective implementation of fundamental rights.<sup>34</sup> The decisions of the Constitutional Court are binding on everyone, including the Commissioner for Fundamental Rights.<sup>35</sup> For the aforementioned reason, in my general activities aimed at protecting fundamental rights I am obliged to examine whether the authority concerned has duly provided the conditions necessary for the effective implementation of fundamental rights. If the authority concerned fails to comply or complies only belatedly with its obligation, in my recommendation, referring to the danger of infringing a fundamental right, I may initiate measures necessary for the enforcement of the given fundamental right.<sup>36</sup>

Protection is especially important from the aspect of “*prevention of torture and other cruel, inhuman or degrading treatment or punishment*”. According to the Subcommittee on Prevention, the scope of preventive work is large, encompassing any form of abuse of people deprived of their liberty which, if unchecked, could grow into torture or other cruel, inhuman or degrading treatment or punishment.<sup>37</sup> In the course of his/her general activities aimed at protecting fundamental rights, as well as in his/her capacities of National Preventive Mechanism, the Commissioner for Fundamental Rights is entitled to investigate the practical implementation of international treaties incorporated in national law. Furthermore, he/she may make proposals for the amendment or making of legal rules affecting fundamental rights and/or the expression of consent to be bound by an international treaty.<sup>38</sup>

Since complying with obligations deriving from international instruments is the states’ task, the OPCAT compels the States Parties to provide, in their internal legislation, the statutory conditions necessary for the effective operation of the National Preventive Mechanism. In Hungary, both the “*powers*”<sup>39</sup> necessary for the NPM’s operation and the material and procedural legal rules<sup>40</sup> necessary therefor are stipulated in the Ombudsman Act.

### 1.4. The budget of the National Preventive Mechanism

Administration and preparations related to my tasks are performed by the Office of the Commissioner for Fundamental Rights (hereinafter “the Office”).<sup>41</sup> The costs of the NPM’s

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<sup>33</sup> See Article 30, Paragraph (1) of the Fundamental Law

<sup>34</sup> See Constitutional Court decision 64/1991 (XII. 10.) AB

<sup>35</sup> See Section 39, Subsection (1) of Act CLI of 2011 on the Constitutional Court

<sup>36</sup> See Sections 31–38 of the Ombudsman Act

<sup>37</sup> 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).

<sup>38</sup> See Section 2, Subsection (2) of the Ombudsman Act

<sup>39</sup> See Article 19 of the OPCAT

<sup>40</sup> See Articles 3-4, 17, 18, 20–22 and 23 of the OPCAT

<sup>41</sup> See Section 41, Subsection (1) of the Ombudsman Act

operation are borne by the Office. The Office has a separate chapter in the central budget, allocated by the Parliament.<sup>42</sup>

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<sup>42</sup> See Section 41, Subsection (4) of the Ombudsman Act

## 2. Designation of the National Preventive Mechanism

By virtue of Article 17 of the OPCAT, *“each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level.”*

Hungary acceded to the OPCAT on January 12, 2012.<sup>43</sup> Upon ratification, availing itself of the possibility provided by Article 24 of the OPCAT, the Republic of Hungary declared the postponement for three years of the implementation of the obligations under Part IV of the Optional Protocol concerning national preventive mechanisms.<sup>44</sup>

By virtue of Article 18, Paragraph 4 of the OPCAT, when establishing national preventive mechanisms, States Parties *“shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights”*.

The OPCAT was incorporated in the domestic legal system through Act CXLIII of 2011 on its promulgation. By adopting the Act on the promulgation of the OPCAT, the Parliament empowered the Parliamentary Commissioner, then a Status “B” national human rights institution<sup>45</sup>, and, as of January 1, 2012, the Commissioner for Fundamental Rights<sup>46</sup>, to act as the national institution conducting regular, unannounced visits to places of detention, a.k.a. the National Preventive Mechanism.

Having been successfully reaccredited on December 29, 2014, as of January 1, 2015, I am obliged to fulfill the duties of NPM as a Status “A” national human rights institution.<sup>47</sup>

### 2.1. Establishing an organizational unit responsible for performing the tasks of the NPM

On January 1, 2014, as part of the preparations for performing the tasks of the NPM, an OPCAT Bureau (hereinafter the “Bureau”) started its operations in my Office as a separate organizational unit, consisting of four public servants with law degrees and personal experience in visiting places of detention.

During the initial stage of setting up the NPM, my Office tried to get acquainted with and make use of the experiences of national preventive mechanisms operating in other countries of the region. In order to achieve this goal, one of the Bureau’s staff members attended an international conference on protecting the rights of elderly people in institutions, organized by the Czech Ombudsman’s Office in Brno on February 20–21, 2014, within the frameworks of the project *“Together Towards Good Governance”*, financed by the European Union. On the day following the

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<sup>43</sup> See Statement 9/2012. (II. 24.) KÜM of the Ministry of Foreign Affairs on the entry into force of Sections 2 and 3 of Act CXLIII of 2011 on the promulgation of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment

<sup>44</sup> See Section 4 of Act CXLIII of 2011 on the promulgation of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment

<sup>45</sup> Parliamentary Commissioner for Civil Rights Máté Szabó sent the application for accreditation as national human rights institution and the related documentation to Geneva, to the International Coordination Committee of National Human Rights Institutions, on October 11, 2010. As a result of the application, in August 2011 the Parliamentary Commissioner for Civil Rights, and, as of January 1, 2012, the Commissioner for Fundamental Rights, acquired accreditation as a Status “B” national human rights institution.

<sup>46</sup> See Section 45, Subsection (2) of Act CXI of 2011 on the Commissioner for Fundamental Rights

<sup>47</sup> See Section 9 of Act CXLIII of 2011 on the promulgation of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment

conference, a workshop was held with the participation of my colleagues and experts from Poland, Slovakia and the Czech Republic, providing an opportunity to exchange experiences and best practices on the establishment and operation of NPMs.

On April 22, 2014, I sent a letter to the Chair of the South-East Europe NPM Network indicating my intention to participate, as part of my preparation for my new responsibilities, in the organization's activities as an observer, in order to get acquainted with and make use of the experiences of NPMs operating in the member states. One of the Bureau's staff members had the opportunity to attend the meeting of the South-East Europe NPM Network held in Ljubljana, on May 26–27, 2014. The success of cooperation between the South-East Europe NPM Network and my Office is clearly demonstrated by the fact that, following the aforementioned date, I was invited to all events – my colleagues attended every meeting, and addressed the participants.

On June 16, 2014, on the public sector's job portal, my Office published a public call for application for the posts of the head and members of the OPCAT Bureau. The first call, due to the lack of qualifying applicants, turned out to be unsuccessful.

The post of the Bureau's head was finally filled as a result of a second call for applications, published on August 1, 2014. The Head of the Bureau started on September 1, 2014. The applications for staff positions were evaluated by a committee consisting of my designated colleagues in cooperation with the new Head of the Bureau.

The lawful treatment of prisoners in Hungary is monitored by the Prosecution Service.<sup>48</sup> Upon the request of the Office of the Prosecutor General, on September 3, 2014, one of the Bureau's staff members delivered a lecture on the NPM's tasks and inspection methodology to the prosecutors participating in such monitoring.

I have to perform the tasks of the NPM autonomously; however, in accordance with Section 2, Subsection (5) of the Ombudsman Act, in my activities aimed at ensuring the enforcement of and protecting fundamental rights I have to cooperate "*with organizations and national institutions aiming at the promotion of the protection of fundamental rights*". In order to involve the experts of civil society organizations, experienced in inspecting places of detention and enforcing the rights of detainees, in the performance of the NPM's tasks, I established a Civil Consultative Body (hereinafter the "CCB") that held its first meeting on November 19, 2014.

## **2.2. The list of places of detention**

Pursuant to Article 20, Paragraph (a) of the OPCAT, I requested the competent ministries to provide 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<sup>49</sup>.

After having processed the data provided by the Ministries, by the middle of November 2014, the Bureau compiled the list of places of detention as defined in Article 4. According to the data at

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<sup>48</sup> See Section 22, Subsection (1) of Act CLXIII of 2011 on the prosecution service of Hungary

<sup>49</sup> For the purposes of 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."

hand, there are some 3,000 places of detention under Hungarian jurisdiction<sup>50</sup> with a total capacity of approximately 125 thousand persons.

Type	Number of locations	Capacity	Number of detainees
social care institutions	1,500	96,201	91,331
penitentiary system	32	13,292	17,796
child protection services without foster parents	482	9,322	8,090
police	771	3,051	varying utilization rate
detention under immigration laws, separately	8	518	varying utilization rate
closed hospital wards	30	1,075	768
juvenile correctional institutions	4	454	varying utilization rate
guarded refugee reception centers	3	381	varying utilization rate
law enforcement (e.g., holding cells in courts)	107	n/a	varying utilization rate
<b>Altogether</b>	<b>2,937</b>	<b>124,294</b>	<b>more than 120 thousand</b>

Consolidated list of places of detention under Hungarian jurisdiction in 2015<sup>51</sup>

On December 2, 2014, I received in my Office the heads and representatives of the most important places of detention. I informed the participants of the meeting about the NPM's tasks, the objectives and methods of inspections, drawing attention to the obligations which the heads and staff members of all places of detention have to comply with in the interest of the successful performance of my tasks. In addition to the competent authorities, representatives of privately operated places of detention, e.g., representatives of various foundations and churches, also attended the meeting, assuring me of their readiness to cooperate. Later on I held separate consultations with the representatives of the police, the penitentiary system and the national security services.

The NPM's homepage is accessible since December 1, 2014; in addition to information on the NPM's operation, I have also published information addressed to the heads and operators of places of detention.<sup>52</sup>

### 2.3. The NPM's schedule of visits for 2015

By virtue of Article 20, Paragraph (e) of the OPCAT, NPMs shall be granted liberty to choose the places they want to visit and the persons they want to interview.

<sup>50</sup> On the subject of jurisdiction, see Section 18 of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services

<sup>51</sup> The register contained data as of December 1, 2014; however, I have added thereto all changes occurred in 2015.

<sup>52</sup> See <http://www.ajbh.hu/opcat;sessionid=980593FC979A5B4C3A509CAE0D58B0C9>

On December 15, 2014, based on the list of places of detention, compiled by the Bureau, and taking into account the CCB's recommendations, I finalized the schedule of visits to be conducted by the NPM during its first year of operation. While preparing the schedule of visits, my colleagues tried to select places of detention of different types and geographical locations, maintained by different operators; furthermore, they also tried to take into account the age of persons deprived of their liberty. This document was handled by the Bureau confidentially; staff members of the Office's other organizational units had no access thereto.

On December 17, 2014, I held a press conference on the launching and tasks of the NPM, which was attended by the representatives of both the written and electronic media.

#### **2.4. The costs of the establishment of the NPM**

Due to the limited nature of the targeted budget support, my Office had to allocate its own resources to the preparation for performing the tasks of the NPM; for this reason, it could not fully ensure the operation of the Bureau, the financing of some events and the staff members' gaining experience abroad.

The establishment of the NPM cost **HUF 30,874,586** in 2014; this amount was provided by my Office through the transformation and reorganization of office operations, simultaneously with the performance of my general duties in protecting fundamental rights.



### 3. Staff members participating in the performance of the tasks of the NPM

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

By virtue of Article 18, Paragraph 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.*”

When performing the tasks of the NPM, I may proceed either personally, or through the authorized staff members of my Office. The investigative powers of the NPM<sup>53</sup> are also granted to my colleagues proceeding under my authorization; furthermore, the authorities concerned and their heads, in accordance with Section 25 of the Ombudsman Act, are obliged to cooperate with them as well.<sup>54</sup>

From among the public servants of my Office, I have to authorize, on permanent basis, at least eleven people to perform the tasks of the NPM. 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.*” Among them, “*there shall be at least one person recommended by the Deputy Commissioner 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.*”<sup>55</sup>

The OPCAT NPM Department (hereinafter the “Department”) started its operation on January 1, 2015, with four lawyers and two psychologists. The Department’s gender composition complies with the stipulations of the Ombudsman Act. By April 2015 two more people had been added to the staff of the Department; however, due to the lack of applicants, the positions of physicians could not be filled. During the most part of 2015, the Department performed its tasks with eight staff members instead of eleven.



Staff members of the Department (from left to right): senior advisers Gábor Izsák, Krisztina Izsó, Sándor Gurbai, Deputy Head of Department Katalin Haraszti, Head of Department Gergely Fliegauf, senior advisers Judit Zeller, István Sárközy and Rita Rostás

<sup>53</sup> See Sections 21, 22, 26 and Section 27, Subsections (1) and (2) of the Ombudsman Act

<sup>54</sup> See Section 39/D, Subsection (1) of the Ombudsman Act

<sup>55</sup> See Section 39/D, Subsection (3) of the Ombudsman Act

The public officials working at the Department are all experts *with an outstanding theoretical knowledge in the field of the treatment of persons deprived of their liberty*, many of them publish regularly, teach at universities and speak as guest speakers at numerous professional and promotional events. The professional activities of my colleagues contribute to the prevention of ill-treatment and to the dissemination of preventive approach among less-affected members of society.

### 3.2. External experts

In addition to the public servant staff members of my Office, I may also authorize, either permanently or on an ad hoc basis, other experts to contribute to performing the tasks of the NPM.<sup>56</sup>

The Ombudsman Act does not specify what types of experts I should involve, in addition to physicians, psychologists and lawyers, in performing the tasks of the NPM. In the absence of a legal provision, I relied on the report published on the SPT's visit to Sweden between March 10 and 14, 2008, pointing out that *prevention as stipulated by the OPCAT necessitates the examination of rights and conditions from the very outset of deprivation of liberty until the moment of release. Such examination should take a multi-disciplinary approach and involve, for example, the medical profession, children and gender specialists and psychologists in addition to a strict legal focus.*<sup>57</sup>

Selection of the experts participating in the performance of the NPM's tasks was carried out on the basis of the roster of experts recommended partly by the CCB, partly by ELTE University under an agreement signed with the President of the University. When selecting translators participating in interviewing foreigners who do not speak languages spoken by my colleagues, I relied on the recommendations of the UNHCR Regional Representation for Central Europe.

Since we could not fill the physician positions in the Department, the physicians—a psychiatrist, a child psychiatrist and a pediatric cardiologist—participating in the NPM's visits in 2015 were all external experts with ad hoc authorization. In certain cases I also involved experts by experience, i.e., persons with practical knowledge of the operation of the selected place of detention, in the preparations of the visits.

The work and remuneration of external experts participating in performing the NPM's tasks is determined on the basis of civil contracts. External experts have to make a written statement on the confidential treatment of the data and information they may learn in connection with performing their task. They may not reveal those data and information, without my written consent, to any third person, and they may not make any statement to any third person and/or the media.

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<sup>56</sup> See Section 39/D, Subsection (3) of the Ombudsman Act

<sup>57</sup> 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)

#### 4. Civil Consultative Body

I have to perform the tasks of the National Preventive Mechanism independently.<sup>58</sup> The fact that the parliamentary commissioner, functioning since July 1, 1995, was an independent national human rights institution that gathered significant practical experience in inspecting domestic places of detention in the course of his general fundamental rights protection activities, played an important role in the Parliament's decision.

The *“inviolable and inalienable fundamental rights of MAN shall be respected. It shall be the primary obligation of the State to protect these rights.”*<sup>59</sup> The Commissioner for Fundamental Rights is a state institution that *“shall perform fundamental rights protection activities, his or her proceedings may be initiated by anyone.”*<sup>60</sup>

The implementation of the State's obligation to respect and protect fundamental rights is monitored by the members of civil society, as well; they draw attention to the shortcomings whenever it is necessary. As a recognition of the civil society's effort in the field of respecting and protecting fundamental rights, in performing his tasks the Commissioner for Fundamental Rights has the statutory obligation to cooperate with *“organizations and national institutions aiming at the promotion of the protection of fundamental rights”*<sup>61</sup>.

##### 4.1. Establishment of the Civil Consultative Body

By virtue of Article 18, Paragraph 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.”*

I established the Civil Consultative Body for the period of three years, in order to make use of the outstanding practical and/or high-level theoretical knowledge accumulated by various organizations registered and operating in Hungary in the field of treating persons deprived of their liberty. The CCB comprises representatives of independent organizations who were either invited, or selected as a result of a call for application.

As a recognition of their outstanding practical experience and knowledge, I invited the Hungarian Medical Chamber, the Hungarian Psychiatric Association, the Hungarian Dietetic Association and the Hungarian Bar Association to the CCB.

The other members of the CCB were selected as a result of a public call for application. In the call, I requested the application of civil society organizations registered and operating in Hungary whose activities during the last five years preceding the publication of the public call had been aimed at protecting the rights and interests of persons deprived of their liberty and monitoring the treatment of persons held in places of detention within Hungary.

By the set deadline, altogether four civil society organizations, the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union, the MENEDÉK - Hungarian Association for Migrants and the Mental Disability Advocacy Center had submitted their application. Since all of them had met the criteria specified in the call for application, they became members of the CCB.

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<sup>58</sup> See Section 39/A of the Ombudsman Act

<sup>59</sup> See Article I, Paragraph (1) of the Fundamental Law.

<sup>60</sup> See Article 30, Paragraph (1) of the Fundamental Law

<sup>61</sup> See Section 2, Subsection (5) of the Ombudsman Act

## 4.2. The tasks of the Civil Consultative Body

The CCB operates as a single entity. During the CCB's operation, its members may submit suggestions as regards the contents of the NPM's annual schedule of visits and its inspection priorities, recommend the involvement of experts with specific knowledge who may also be affiliated with the organizations they represent. The CCB may review the NPM's working methods, reports, information materials for the general public, and other publications; discuss the training plan necessary for developing the skills of staff members authorized to perform the NPM's tasks; participate in conferences, workshops, exhibitions and other events organized by the NPM.<sup>62</sup>

The Department's staff members compiled the NPM's draft schedule of visits for 2015 after studying the CCB's recommendations. I also took into account the CCB's recommendation when approving the schedule of visits.

The NPM has to develop coherent and transparent policies and rules of procedure in order to employ external experts with suitable expertise and practical knowledge.<sup>63</sup> Since, in the absence of applicants, the legal provision stipulating the employment of two public servants with medical degree could not be complied with, certain members of the Hungarian Medical Chamber and the Hungarian Psychiatric Association participated in the NPM's inspections as external experts. When selecting external experts, I also took into account, in addition to the recommendations of the Hungarian Medical Chamber and the Hungarian Psychiatric Association, the relevant provisions of the prevailing legal regulations on the activities of judicial experts.<sup>64</sup>

I duly forward all reports on the NPM's visits to the members of the CCB.

## 4.3. The operation of the Civil Consultative Body

The three-year mandate of the CCB shall be counted from the date of its first meeting, i.e., from November 19, 2014.<sup>65</sup> The participants reviewed the possibilities for cooperation within the frameworks of the NPM's activities to be officially started on January 01, 2015. The members of the CCB were briefed on the professional skills of the public servants at the NPM's disposal and discussed the conditions of the external experts' involvement. My colleagues reviewed the preparations for performing the tasks of the NPM, the methodology of visits to various places of detention, and the legal frameworks of cooperation between the National Preventive Mechanism and civil society organizations.

The CCB held two meetings in 2015. On April 23, the staff members of the Department informed the Body on the conclusions of the visits conducted so far, and discussed some methodological and budgetary issues with the participants.

The main topic of the third, November 24 meeting of the CCB was the dialog with various state organs, with special attention paid to the results of the operative and legislative proposals, and the

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<sup>62</sup> See Section 6 of Directive 3/2014 (November 11) of the Commissioner for Fundamental Rights on the establishment and rules of procedure of the Civil Consultative Body assisting the National Preventive Mechanism in carrying out its duties

<sup>63</sup> See Section 16, Paragraph (e), Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: Analytical assessment tool for national preventive mechanisms, (CAT/OP/1/Rev.1)

<sup>64</sup> See Act XLVII of 2005 on the activities of judicial experts, and the provisions of Decree No. 9/2006. IM of the Minister of Justice on the specialties of judicial experts and on the qualification and other professional conditions related to them

<sup>65</sup> See Section 1, Subsection (6) of Directive 3/2014 (November 11) of the Commissioner for Fundamental Rights on the establishment and rules of procedure of the Civil Consultative Body assisting the National Preventive Mechanism in carrying out its duties

authorities' responses to the recommendations made in individual reports. My colleagues also presented the press coverage of my activities as NPM so far.

The participants discussed the framework of the NPM's 2016 schedule of visits. My colleagues highlighted the visits' possible focal points and presented their ideas concerning the formulation of checklists for the sites to visit; they also listened to the civil partners' proposals. The CCB's members had a consultation on the themes of the workshops planned for 2016 and some issues of their implementation.

During the meeting I handed over a copy of the letter of Malcolm Evans, dated on October 27, 2015, to the members of the CCB.



The November 24, 2015, meeting of the CCB

## 5. Performing the NPM's tasks

According to Article 19 of the OPCAT, the NPM's task is to regularly examine the treatment of 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.

According to Article 30, Paragraph (1) of the Fundamental Law, the Commissioner for Fundamental Rights shall perform fundamental rights protection activities, his or her proceedings may be initiated by anyone. However, while performing the tasks of the NPM, I have to regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in Article 4 of the OPCAT even in the absence of a petition or suspected impropriety.<sup>66</sup>

The main objective of the NPM's visits is to determine which elements of the treatment of persons deprived of their liberty might lead to torture and other cruel, inhuman or degrading treatment or punishment, and how to prevent them. Another important task is to make recommendations in order to prevent them from happening or recurring.<sup>67</sup>

Since the NPM's task is not the ex post investigation of activities or omissions causing fundamental rights-related improprieties, but the prevention of the ill-treatment of persons deprived of their liberty, the Department does not handle individual complaints. Whenever my colleagues received an individual complaint during the visits, or an individual complaint was filed on the NPM'S homepage, those complaints would be forwarded by the Department to the competent organizational units of my Office. Although investigating complaints received via the NPM's homepage is not the Department's responsibility, studying them provides guidelines for selecting the sites to visit and the inspection criteria.

### 5.1. Access to the places of detention, timing the visits

By virtue of Article 20, Paragraphs (b) and (c) of the OPCAT, the NPM shall be granted access to all places of detention, their installations and facilities, as well as to all information referring to the treatment of those persons as well as their conditions of detention.

In 2015, the NPM visited all places of detention without prior notice. The timing of inspections was usually adjusted to the official work schedule. The timing of visits to certain institutions where especially vulnerable detainees had been placed was adjusted to the peculiarities of the given place of detention. For example, the visit to the police lockups on Aradi and Gyorskocsi streets in Budapest started late in the night, while the inspection of the Psychiatric Ward of the Merényi Hospital started at 5 a.m.

Thanks to the society-wide recognition of the ombudsman institution and the publicity campaign conducted as part of the NPM's establishment, our visiting delegations had unrestricted access to all places of detention.

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<sup>66</sup> See Section 39/B, Subsection (1) of the Ombudsman Act

<sup>67</sup> 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)

## 5.2. Planning and preparing the visits

Pursuant to the Ombudsman Act, *“the Commissioner for Fundamental Rights shall determine the rules and methods of his/her inquiries in normative instructions.”*<sup>68</sup>

All visits by the NPM in 2015 were carried out based on the professional rules and methods stipulated in Directive 2/2012. (January 20) AJB of the Commissioner for Fundamental Rights.<sup>69</sup>

Places of detention were selected in accordance with the annual schedule of visits or in response to an actual event. After having selected the place of detention to visit I appointed the head of the visiting delegation and preparations were started.

The head of the delegation studied the conclusions and recommendations of the ombudsman’s earlier reports on investigating the designated, or similar thereto, places of detention, and the reports prepared by other national preventive mechanisms, international organizations, foreign and domestic civil society organizations on their visits to places of detention. Complying with my general duties in protecting fundamental rights, the visiting delegations also followed up on the implementation of recommendations made in reports on earlier on-the-spot inspections.

In certain cases, upon the initiative of the heads of delegation, I also involved persons with practical knowledge about the operation of a selected place of detention, i.e., experts by experience, in the preparation of the visits. The reports by the experts by experience helped us identify facts and circumstances conducive to ill-treatment. My Office handled the personal data of the experts by experience, as well as the contents of their reports, confidentially.<sup>70</sup>

Visits were carried out on the basis of visiting plans drafted by the head of the visiting delegation and approved by myself. In addition to the name of the selected place of detention, visiting plans also contain the date and time of visit, and the names, qualifications and positions of the members of the visiting delegation. I approved the inspection criteria together with the visiting plan, as an annex thereto.

### 5.2.1. *The composition of visiting delegations*

Pursuant to Article 18, Paragraph 2 of the OPCAT, experts of the national preventive mechanism shall have the required capabilities and professional knowledge.

When determining the visiting delegations’ composition, I tried to secure the gender balance and multidisciplinary of the group, and the involvement of an expert necessary for the protection of national and ethnic minority rights.

In 2015, visits were conducted by groups of 4-8 people, appointed on the recommendation of the heads of delegation. When determining the visiting delegations’ composition, I also took into account, in addition to my colleagues’ professional qualifications, the size and capacity of the places of detention, the gender composition and life expectancy of the persons deprived of their liberty.

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<sup>68</sup> See Section 30 of the Ombudsman Act

<sup>69</sup> See Directive 2/2012. (January 20) AJB on the professional rules and methods of investigations by the Commissioner for Fundamental Rights

<sup>70</sup> See Article 21, Paragraph 2 of the OPCAT

To perform the tasks falling under my general activities aimed at protecting fundamental rights, my Office employs civil servants mainly with law degrees. When it was necessary, lawyers working in other organizational units of my Office, possessing professional knowledge necessary for the successful inspection of a given place of detention, also participated in the inspections. In addition to lawyers, experts with degrees in medicine, psychology and education participated in the inspections carried out by the NPM in 2015; we also used translators for interviewing foreigners who did not speak languages spoken by my colleagues.

### **5.3. The conduct of visits**

#### ***5.3.1. Proof of authorization to proceed***

In my capacity of Commissioner for Fundamental Rights, I may proceed as NPM without any restriction. My colleagues entitled to proceed within the frameworks of my general activities aimed at protecting fundamental rights, including those participating in performing the tasks of the NPM, possess an official inspection document with picture, in the form of a card, with the inscription “Office of the Commissioner for Fundamental Rights”, a serial number, and the bearer’s name and position. Upon arriving at a place of detention, members of the visiting delegation introduce themselves and the purpose of the visit, show their inspection documents and hand over the commission letter signed by me, attesting to their entitlement to proceed in order to perform the tasks of the NPM.

The commission letter also contains the names of external experts, e.g., physicians, interpreters, participating in the inspection of the given place of detention, and their authorization to proceed.

By virtue of Section 39/D, Subsection (1) of the Ombudsman Act, when I act not in person, but by way of my authorized colleagues, the latter are also entitled, when performing the tasks of the NPM, to the rights stipulated in Section 21 of the Ombudsman Act.

#### ***5.3.2. Inspection of a place of detention***

By virtue of Section 39/B, Subsection (3), Paragraph 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 the course of the visits, my colleagues inspected the premises of the places of detention, checked their furnishing and equipment, inspected the documents related to the number, treatment and conditions of the persons deprived of their liberty, made copies of certain documents and, among others, monitored the joint activities of the persons deprived of their liberty.

My colleagues took snapshots during the inspections and took measurements of the sizes and temperatures of the facilities where the persons deprived of their liberty had been placed. In order to prevent the ill-treatment of persons deprived of their liberty, at the places of detention my colleagues also inspected those facilities that were unoccupied during the time of the visit.

#### ***5.3.3. Interviews***

In accordance with Section 39/B, Subsection (3), Paragraph c) of the Ombudsman Act, the NPM may hear “*any person present on the site, including the personnel of the authority under inspection and any person deprived of his/ her liberty*”.



Pursuant to Article 20, Paragraph (e) of the OPCAT, NPMs have the liberty to choose *“the persons they want to interview”*. The heads, staff members and the supervisory organs of the visited places of detention have to cooperate with the visiting delegation and its members.<sup>71</sup> Using previously prepared questionnaires, the members of the visiting delegation conduct interviews with the head of the given place of detention, as well as with staff members and other persons currently at the visited site.

By virtue of Section 39/B, Subsection (4) of the Ombudsman Act, apart from the person who is given a hearing, *“no other person may participate, unless the Commissioner for Fundamental Rights authorized his/her participation”*.

A major objective of the visiting delegation is to ensure that its members could meet all persons deprived of their liberty currently staying at the visited site. The members of the visiting delegation try to conduct hearings privately, in a confidential atmosphere, but they also have group hearings. Among the detainees, there may be traumatized individuals for whom communication is more difficult due to their personality traits or disabilities. The members of the visiting delegation try to dismantle those communication barriers and help the interviewees to open up. To that end, the interviewers have to build trust, which can be reached through empathy and unconditional acceptance; however, they have to refrain from instilling excessive trust, e.g., they must not imply that they can facilitate the transfer of the detainee. In order to properly handle such a complex situation, considerable awareness, self-knowledge, an accepting attitude and congruent communication are required.

Persons deprived of their liberty, unlike the head and the staff members of the given place of detention, do not have to cooperate with the visiting delegation. In the case of those persons deprived of their liberty who, due to their age, state of health or any other circumstance, were unable or unwilling to speak about their experiences with detention, the visiting delegation examined the conditions of their placement.

The members of the visiting delegation prepared notes on the interviews conducted with both the persons deprived of their liberty and the staff members of the given place of detention. All interviewees, should they be detainees, staff members or visitors, were duly informed that *“no one should suffer any disadvantage for providing information to ... the national preventive mechanism”*.<sup>72</sup>

#### **5.3.4. Document inspection**

By virtue of Section 39/B, Subsection (3), Paragraph b), 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”*.

When starting the visit, the head of the visiting delegation hands over the list of documents that he/she or any member of the visiting delegation wishes to inspect or requests a copy thereof. Should the inspection, making extracts or copies of further documents become necessary in the course of the visit, the members of the visiting delegation notify thereof the competent staff member of the given place of detention.

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<sup>71</sup> See Section 25, Subsection (1) and Section 39/D, Subsection (1) of the Ombudsman Act

<sup>72</sup> See Section 39/E of the Ombudsman Act

In the absence of prior notice, staff members of the places of detention cannot prepare for the visits; therefore, on many occasions, they cannot present certain documents or cannot have the requested documents copied by the end of the visit. In that case they have to provide the NPM with the missing documents within the deadline specified by the head of the visiting delegation, which may not be shorter than fifteen days.<sup>73</sup>

In 2015 I received all documents necessary for the performance of the duties of the NPM within the statutory time limit.

### **5.3.5. Concluding the visit**

In 2015, the NPM's visits lasted between six hours and two days. All visits were concluded with a feedback to the personnel of the given place of detention, laying the emphasis on partnership.

In their feedback, the members of the visiting delegation summarize their experiences gained in the course of the visit, the inspected and/or copied documents, pointing out what other documents the staff members of the given place of detention should provide to the NPM.

In their feedback, the members of the visiting delegation also share with the management of the given place of detention their positive and negative impressions as regards the treatment of detainees and the conditions of detention, thus promoting best practices and encouraging the earliest solution of certain pressing problems.

## **5.4. Processing and evaluating information obtained in the course of the visits**

The members of the visiting delegation process their experiences and impressions, gained at the visited place of detention, together. During these consultations they may identify situations causing difficulties and the reactions given thereto. Visiting various types of places of detention, meeting children and adults deprived, to a lesser or greater extent, of their liberty, is rather stressful even in the absence of circumstances indicating ill-treatment. Joint analyses, in addition to helping to preserve the mental health of the visiting delegation's members, also increase the efficiency of the next visit through pointing out the causes and effects of decisions made on-the-spot.

The head of the delegation prepares a brief informing me on the most important experiences gained at the visited place of detention. Then he/she prepares the draft of the short summary of the visit that, upon approval, will be published by my Office, in the Hungarian and English languages, on the NPM's website.

### **5.4.1. Preparing the NPM's reports**

According to Article 21, Paragraph 2 of the OPCAT, "*confidential information collected by the national preventive mechanism shall be privileged*".

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*

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<sup>73</sup> Pursuant to Section 21, Subsection (1), Paragraph a), 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*". According to Section 21, Subsection (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.*"

*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 proceeding*<sup>74</sup>.

My colleagues participating in the visits forward their progress reports, summarizing results of their observations and the measurements and interviews conducted by them, together with the snapshots and documents obtained in the course of the visit to the head of the visiting delegation; the contributing experts also submit their opinion to the head of delegation. Progress reports and expert opinions do not contain any data suitable for personal identification.

Since “*documents and material evidence obtained in the course of the proceedings of the Commissioner for Fundamental Rights shall not be public*”<sup>75</sup>, notes taken and documents obtained at any stage of the visit, including the period following its conclusion, are not accessible to outsiders.

#### **5.4.2. The report of the NPM**

A report is compiled on the visit conducted by the NPM, which “*shall contain the uncovered facts, and the findings and conclusions based on the facts*”<sup>76</sup>. On the cover of the report, in addition to the name of the visited site, it is also indicated that I have published the report not within the frameworks of my general fundamental rights protection activities, but in my capacity of NPM.

The report briefly presents the scope of the NPM’s tasks, the reasons and circumstances of the site selection, and the criteria based on which the selected site qualifies as a place of detention under Article 4, Paragraph 2 of the OPCAT.

The report also contains the date of the visit, the names and qualifications of the members of the visiting delegation, the official positions of the Department’s staff members, the list of domestic and international sources of law applied, as well as the list of fundamental rights touched upon in the report.

The facts of the case include the description of the observations made, interviews conducted and data obtained by the members of the visiting delegation in the course of their visit to the given place of detention, serving as a basis for the NPM’s conclusions and recommendations.<sup>77</sup> The draft report is prepared by the head of the visiting delegation on the basis of the progress reports and expert opinions. Applying the method of triangulation—cross-checking information obtained from different persons (allegations) with the documents acquired—is conducive to a higher level of objectivity.

The report’s conclusions must cover those aspects of treatment and placement which may result in a fundamental right-related anomaly or the danger thereof. The concluding part of the report must also indicate whether the fundamental right-related anomaly is the result of the incorrect interpretation of the law or derives from a superfluous, ambiguous or inadequate legal provision, or from the absence or shortcomings of the relevant legal regulation.

In addition to treatment-related critical remarks, comments on the best practices experienced in the course of the visit should also be contained in this part of the report.

<sup>74</sup> See Section 27, Subsection (1) of the Ombudsman Act

<sup>75</sup> See Section 27, Subsection (3) of the Ombudsman Act

<sup>76</sup> See Section 28, Subsection (1) of the Ombudsman Act

<sup>77</sup> See Section 32, Subsection (1) of Directive 2/2012. (January 20) AJB on the professional rules and methods of investigations by the Commissioner for Fundamental Rights

Although the objective of the NPM's visit is "*protection against torture and other cruel, inhuman or degrading treatment or punishment*", it often happens that persons deprived of their liberty complain about treatment-related grievances that refer to an anomaly relating to another fundamental right or the danger thereof. Such circumstances may present physical and mental challenges to persons deprived of their liberty. Since "*full respect*" for the human rights of people deprived of their liberty is a common responsibility shared by all<sup>78</sup>, in my reports I consider uncovering fundamental rights-related anomalies outside "*torture and other cruel, inhuman or degrading treatment or punishment*" and the danger thereof as an important task.

#### **5.4.3. The NPM's recommendations**

According to Article 19, Paragraph (b) of the OPCAT, the National Preventive Mechanism has to 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*".

The ultimate goal of the NPM's visits is to encourage the respective authorities and institutions to improve the effectiveness of their measures aimed at the prevention of ill-treatment.<sup>79</sup> My recommendations made in my reports on the NPM's visits serve the purpose of eliminating and preventing the ill-treatment of persons deprived of their liberty.

I may use the powers I am entitled to in my general activities aimed at protecting fundamental rights in the course of performing the tasks of the NPM as well:

- In order to redress the ill-treatment of persons deprived of their liberty, I may address recommendations to the head of either the authority subject to inquiry<sup>80</sup> or its supervisory organ<sup>81</sup>. In 2015, in the course of performing the tasks of the NPM, I made **89** recommendations to the heads of the visited places of detention and **45** to the heads of their supervisory organs.
- In order to redress the uncovered impropriety related to a fundamental right or if I become aware of a circumstance pointing to an infringement of a legal rule, I may initiate proceedings by the competent prosecutor through the Prosecutor General.<sup>82</sup> In 2015 I availed myself of this possibility on **one** occasion.<sup>83</sup>
- If ill-treatment or the danger thereof uncovered in the course of a 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 the amendment, repeal of the legislation concerned or the preparation of a new legal rule.<sup>84</sup> As a result of the NPM's visits in 2015, I made **17** legislative recommendations.<sup>85</sup>
- 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

<sup>78</sup> See the Preamble of the OPCAT

<sup>79</sup> 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).

<sup>80</sup> See Section 32, Subsection (1) of the Ombudsman Act

<sup>81</sup> See Section 31, Subsection (1) of the Ombudsman Act

<sup>82</sup> See Section 33, Subsections (1) and (2) of the Ombudsman Act

<sup>83</sup> In my report on the visit to the Therapeutic House of Debrecen.

<sup>84</sup> See Section 37 of the Ombudsman Act

<sup>85</sup> Regarding legislation also see Chapter 6

of public interest, I may report it to the National Authority for Data Protection and Freedom of Information.<sup>86</sup> I did not avail myself of this possibility in 2015.

#### ***5.4.4. Making the NPM's reports public***

*“The reports of the Commissioner for Fundamental Rights shall be public.” Published reports may not contain personal data, classified data, secrets protected by an Act or secrets restricted to the exercise of a profession.*<sup>87</sup>

I always send my reports on the visits of the NPM to the head of the place of detention concerned, the addressees of the recommendations, the members of the Civil Consultative Body and the Hungarian member of the CPT.

I have to make my reports available to anyone without restrictions, electronically, free of charge on the homepage of my Office. The NPM's reports are made publicly available to anyone by my colleagues, in Hungarian, within a couple of days after having sent them to the above listed addressees. The reports of the NPM have to be deposited, within thirty days upon their publication, in the Office's digital archives as well.<sup>88</sup>

Due to the lack of appropriate financial resources, there is only one report that I could publish in English in its entirety. The costs of translating the report on the NPM's visit to the Debrecen Guarded Refugee Reception Center to English were borne by the UNHCR Regional Representation for Central Europe. The English language summaries of the reports on the other visits were published on the homepage of my Office within thirty days upon their publication.

#### **5.5. Dialog on the NPM's recommendations**

Pursuant to 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”*.

Although the recommendations of the Commissioner for Fundamental Rights are not binding, the Ombudsman Act compels the authority concerned to give a meaningful response to the conclusions and critical remarks of the Commissioner for Fundamental Rights and his initiatives aimed at the elimination of the anomalies discovered. The Ombudsman Act even specifies the deadline for such responses. The aforementioned provisions have to be complied with not only in my general activities aimed at the protection of fundamental rights, but also in the course of performing the tasks of the NPM.

If the authority subject to inquiry is able to terminate the impropriety related to fundamental rights within its competence, I 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 have to be recorded in the case file. Within thirty days of receipt of the initiative the authority subject to inquiry has to inform me of its position on the merits of the initiative and on the measures taken.<sup>89</sup> If the authority subject to inquiry does not agree with the initiative, it has to, within thirty days of receipt of the initiative,

<sup>86</sup> See Section 36 of the Ombudsman Act

<sup>87</sup> See Section 28, Subsection (2) of the Ombudsman Act

<sup>88</sup> See Section 39, Subsection (1) of Directive 2/2012. (January 20) AJB on the professional rules and methods of investigations by the Commissioner for Fundamental Rights

<sup>89</sup> See Section 32, Subsections (1) and (2) of the Ombudsman Act

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.<sup>90</sup>

If, on the basis of an inquiry conducted, I come to the conclusion that the authority subject to inquiry is unable to eliminate the fundamental rights-related impropriety within its competence, I 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 initiative the supervisory organ concerned has to inform me of its position on the merits of the initiative and on the measures taken.<sup>91</sup> If the authority subject to inquiry has no supervisory organ, I shall address the recommendation to the authority subject to inquiry.<sup>92</sup>

If I initiate proceedings by the competent prosecutor through the Prosecutor General, the competent prosecutor has to inform me of his/her position and his/her measure, if any, within sixty days.<sup>93</sup>

If, in order to eliminate ill-treatment or the danger thereof, I propose to modify, repeal or issue a legal rule, the requested organ has to inform me of its position and of any measure taken within sixty days.<sup>94</sup>

The provisions of Section 38, Subsection (1) of the Ombudsman Act constitute the key legal guarantees of dialog on my recommendations. In accordance with the aforementioned legal regulation, 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 the Parliament within the framework of my annual report and ask the Parliament to inquire into the matter. If the impropriety is of flagrant gravity or affects a larger group of natural persons, I may propose that the Parliament debate the matter before the annual report is put on its agenda. The Parliament shall decide on whether to put the matter on the agenda. The visits of the NPM did not uncover infringements of such gravity that would have prompted me to turn to the Parliament.

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<sup>90</sup> See Section 32, Subsection (3) of the Ombudsman Act

<sup>91</sup> See Section 31, Subsection (1) of the Ombudsman Act

<sup>92</sup> See Section 31, Subsection (4) of the Ombudsman Act

<sup>93</sup> See Section 33, Subsection (1) of the Ombudsman Act

<sup>94</sup> See Section 37 of the Ombudsman Act

## 6. Legislation-related powers of the NPM<sup>95</sup>

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

### 6.1. Reviewing draft legislation

According to Section 2, Subsection (2) of the Ombudsman Act, the Commissioner for Fundamental Rights shall give an opinion on the draft legal rules affecting his/her 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.

According to the Act on legislation, the entity preparing draft legislation shall ensure that any organization may exercise its right to review the draft concerned if it affects the organization’s legal status or duties, with the proviso that such right is expressly provided to it by the Act.<sup>96</sup> The organs responsible for codification sent me drafts primarily in order to prove that they had implemented my proposals relative to amending, repealing or drafting the legal regulations indicated in my reports.

With a view to the NPM’s powers to make proposals, the State has to send, *ex officio*, already in the preparatory phase, all draft bills affecting detention conditions to the National Preventive Mechanism. I reviewed the drafts in a complex manner, *i.e.*, based on my experiences gained in the course of both the visits conducted by the National Preventive Mechanism and the investigations conducted within my general powers.

In 2015, the organs responsible for codification sent me **255** draft bills for reviewing and I expressed my position *ex officio* on **two** drafts.

### 6.2. 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 (the Hungarian Supreme Court) to review the self-government decree’s compatibility with the other legal regulation.<sup>97</sup>

If I find a legal regulation anti-constitutional or in violation of an international treaty, I may turn to the Constitutional Court requesting its review.<sup>98</sup>

In 2015, when performing the tasks of the NPM, I did not requested *ex post* review of norms either by the Curia or the Constitutional Court.

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<sup>95</sup> As regards legislation-related recommendations see Chapter 5.4.3.

<sup>96</sup> See Section 19, Subsection (1) of Act CXXX of 2010 on legislation

<sup>97</sup> See Section 34/A, Subsection (1) of the Ombudsman Act

<sup>98</sup> See Section 34 of the Ombudsman Act

## 7. Focal points of the visits conducted in the capacities of the NPM

When visiting places of detention, the NPM examines the treatment of persons deprived of their liberty and the conditions of their placement. The visiting delegations examined those areas of treatment and placement where the risk of unsatisfactory enforcement of the fundamental rights of persons deprived of their liberty is the biggest.

A distinctive feature of the visits carried out in the course of performing the NPM's tasks is that the detection and identification of symptoms indicative of torture and other cruel, inhuman or degrading treatment or punishment and in particular physical and mental abuse are conducted with the methods of medical science and psychology.

Focal points were determined on the basis of the CPT's reports on visits to Hungarian places of detention, the reports of the UN Committee against Torture and the Subcommittee on Prevention of Torture, the conclusions of my on-the-spot inspections carried out as part of my general activities aimed at protecting fundamental rights, and the recommendations of the CCB.

### 7.1. Reception

Since persons deprived of their liberty are in an especially vulnerable position in the initial stage of their detention, the NPM thoroughly examines the reception process in each place of detention. In addition to the procedural actions of reception, e.g., medical checks, assigning bunks, providing with clothing, bedding and toiletries, the examination also covers the contents of briefings on the rules of the given place of detention and its rules of conduct, as well as the ways and conditions of maintaining contact with guards and relatives.

### 7.2. Material conditions of detention

The visiting delegations survey the premises of the places of detention, inspect their furnishing and equipment. They examine the size of rooms used by the detainees and the living space at their disposal, the natural lighting and ventilation of the premises, the furniture, the detainees' access to drinking water and the restrooms, the conditions of their staying outdoor, the washing facilities, the state of sanitary units and community rooms, and catering.

### 7.3. Vulnerable groups

In my activities I must pay special attention to protecting the rights of the child and the nationalities living in Hungary, facilitating and monitoring the implementation of the Convention on the Rights of Persons with Disabilities, to protecting the rights of the most vulnerable groups of society.<sup>99</sup> Since the aforementioned obligation is also applicable in the course of performing the tasks of the NPM, the visiting delegations pay extra attention to the prevention of ill-treatment of women, foreigners, young adults, homosexual, bisexual or transsexual persons, and persons in need of healthcare or deprived of their liberty.

### 7.4. Healthcare

In Hungary everyone *“shall have the right to physical and mental health”*.<sup>100</sup> Each *“patient shall have a right, within the frameworks provided for by law, to appropriate and continuously accessible health care justified by his health condition, without any discrimination.”*<sup>101</sup>

<sup>99</sup> See Section 1, Subsections (1) to (3) of the Ombudsman Act

<sup>100</sup> See Article XX, Paragraph (1) of the Fundamental Law

<sup>101</sup> See Section 7, Subsection (1) of Act CLIV of 1997 on Healthcare



Healthcare services available to persons deprived of their liberty, i.e., medical treatment, necessary diets, therapeutic appliances and equipment, rehabilitation or any other special treatment, should be provided on conditions generally available to the members of society. The barrier-free accessibility, furnishing and equipment of healthcare institutions treating persons deprived of their liberty, as well as their medical, nursing and technical personnel should be provided with a view to the aforementioned requirements.

### **7.5. Activities, leisure**

Measures aimed at counterbalancing isolation and inactivity caused by deprivation of freedom are of key importance in each and every sector of detention. The NPM's visits pay special attention to what community, cultural, educational and outdoor programs are provided to persons deprived of their liberty.

### **7.6. Means of restraint, the use of disciplinary and restraining measures**

Restricting liberty and using disciplinary and restraining measures, in themselves, affect the enforcement of fundamental rights. The risks deriving therefrom may be lessened through the adoption and proper application of the adequate legal regulations.

My colleagues also investigate incidents having occurred in the given place of detention, as well as the conflict management methods used by the personnel. They examine how the personnel administers the use of means of restraint and disciplinary actions against persons deprived of their liberty who violate the rules of the place of detention, and the use of restraining measures in social and healthcare institutions. The inspection of the existing documentation of the use of means of restraint, disciplinary actions and restraining measures, in addition to the notes taken by the personnel, also involves checking who monitors, and how, those actions' appropriateness and lawfulness and whether their extent is in accordance with the prevailing legal regulations.

### **7.7. Relations between persons deprived of their liberty and their relationship with the staff of the place of detention**

As a balanced human relationship of persons deprived of their liberty with one another and with the staff of the given place of detention is one of the most effective means of preventing ill-treatment, my colleagues thoroughly examine such relationships every time they visit a place of detention.

The visiting delegations inquire into the relationships between persons deprived of their liberty using the same facilities, paying special attention to gathering information on cases of violence among the detainees.

Mixed gender staffing is another safeguard against ill-treatment in places of detention.<sup>102</sup> Since 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<sup>103</sup>, my colleagues also examine the gender composition of the persons deprived of their liberty, the custodial staff, the nurses etc. in the course of their visits.

The experience of the on-the-spot inspections, conducted by the ombudsman institution during the last twenty years, shows that when the staff of a place of detention is frustrated in the

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<sup>102</sup> See Clause 26 of CPT/Inf (99) 12

<sup>103</sup> See Clause 23 of CPT/Inf (2000) 13

hierarchical structure, continuously dissatisfied with the working conditions, they may vent it on their subordinates, persons deprived of their liberty or anyone else depending on them. In order to identify or prevent the aforementioned situations, my colleagues check whether the staff members of the place of detention have the qualifications necessary for performing their tasks, and if training and supervision, necessary for quality work, are accessible and efficient enough. In the course of inspecting the facilities, furnishing and equipment of a place of detention, visiting delegations also inspect the premises used by the personnel, in particular the locker rooms, bathrooms, dining and recreational facilities and rest rooms.

### **7.8. Complaints mechanism**

In Hungary *“everyone shall have the right to submit, either individually or jointly with others, written applications, complaints or proposals to any organ exercising public power”*<sup>104</sup>.

With a view to Article 4, Paragraph (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 authority.

One of the most efficient ways of preventing and eliminating ill-treatment is if the personnel of a place of detention learns as soon as possible about the grievances of the persons deprived of their liberty in connection with their placement and treatment, investigates those grievances within a reasonable period and promptly takes the measures necessary for their redressing.

Considering the vulnerability of persons deprived of their liberty and their fear of possible retaliation, I expect the places of detention to ensure the possibility of submitting anonymous complaints. My colleagues examine at each place of detention how persons deprived of their liberty may submit their complaints, how those complaints get registered, investigated and redressed by the staff, and how the complainants are notified thereof.

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<sup>104</sup> See Article XXV of the Fundamental Law

## 8. Places of detention visited in 2015

During the first year of the NPM's existence, I examined **2,339** units of detention\*\*\*\* on **15** locations. The schedule below lists the dates of the visits, the names of the places of detention and the number of examined units of detention.

Number	Date of the visit 2015	Place of detention		At the time of the visit		
		name	authorized capacity (persons)	examined units of detention	utilization rate (%)	number of detainees (persons)
1	January 26-27	GRRC of Debrecen	182	182	35.7	65
2	January 28	Therapeutic House of Debrecen	250	251	100.4	251
3	January 29	Reménysugár ("Ray of Hope") Children's Home of Debrecen* without the network of foster parents	40+122 =162	164	105.0 64.6	120
4	February 26	Psychiatric Ward of the Merényi Gusztáv Hospital	51	51	72.5	37
5	March 24-25	Juvenile Penitentiary Institution	217 (juv.)** 590 (ad.)	820	72.8 (juv.)** 102.2 (ad.)	158 (juv.)** 603 (ad.)
6	April 2	Central Penitentiary Hospital, Tököl	297	297	65.9	196 (incl. two newborns)
7	June 23	Platán Residential Home of Kecskemét	100	100	91.0	91
8	June 24-25	Somogy County Penitentiary	129	132	102.3	132
9	June 25-26	Zita Special Children's Home	32	32	93.7	30
10	July 21	KICC Home for Children with Special Needs	32	32	81.2	26
11	August 13	KICC Home for Children with Special Needs	24	24	100.0	24
12	September 23	KICC Home for Unaccompanied Minors	34	53	155.9	53
13	October 13-14	Central Holding Facility of the MPHQoB and the Holding Facility of the NBI, NPHQ***	67+36=103	103	23.9 25.0	16+9=25
14	November 10	Assisted Living Center for the Elderly of Pécel	45	48	106.6	48
15	November 11	Assisted Living Center for the Elderly of Écs	50	50	100	50
<b>Altogether</b>			<b>2,298</b>	<b>2,339****</b>	<b>83.26****</b>	<b>2,164</b>

\*The first number refers to the special children's home unit, the second refers to the foster homes.

\*\* In accordance with Section 82, Paragraph 1 of Act CCXL of 2013 on the Execution of Punishments, Criminal Measures, Certain Coercive Measures and Confinement for Administrative Offences (hereinafter the "Penal Execution Code"), "*convicts in juvenile penitentiary who are over eighteen but have not reached yet twenty-one years of age shall also be treated as juveniles*" juv.=juvenile; ad.=adult

\*\*\* In the course of an on-site inspection the NPM visited two institutions. The first number refers to the Central Holding Facility of the MPHQoB, the second to the Holding Facility of the National Bureau of Investigation, NPHQ.

\*\*\*\* The number of inspected units of detention contains both the unfilled capacities and the number of persons, if any, over the authorized capacity.

\*\*\*\*\* The average of the utilization rates of the visited places of detention on the day of the visits.

## 9. Groups of persons deprived of their liberty at various places of detention

### 9.1. Children deprived of their liberty

Regardless of the reasons for which they may have been deprived of their liberty, juveniles are inherently more vulnerable than adults. Due to this vulnerability, particular vigilance is required on the part of the staff members of the places of detention to ensure that the children's physical and mental well-being is adequately protected.<sup>105</sup>

There is no children's ombudsman in Hungary; however, in performing the tasks of 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*".<sup>106</sup>

Although, in the system of Hungarian penal law, children having reached fourteen (in exceptional cases twelve) years of age are actionable and, in the field of health law, they may make independent decisions after having reached the age of sixteen years, special treatment, extra attention and specific conditions of detention have to be provided to persons deprived of their liberty who have not reached yet the age of eighteen or, in the case of the enforcement of the sentence, twenty-one years of age.<sup>107</sup>

Visits by the NPM to places of detention where children deprived of their liberty are kept focus, on the one hand, on gathering information indicative of abuse and/or ill-treatment and, on the other hand, on finding out whether the detention environment is suitable for ensuring and protecting their physical and mental well-being. During these visits the NPM paid special attention to the extent the given place of detention meets the special requirement deriving from the joint placement of persons deprived of their liberty belonging to various gender and age groups.

#### 9.1.1. Children held at dedicated places of detention

##### 9.1.1.1. Children's Home

States Parties "*shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.*"<sup>108</sup>

At the time of the NPM's visit, there were 42 children, between the ages of one month and 16 years, taken care of in the Reménysugár ("Ray of Hope") Children's Home of Debrecen (hereinafter the "Children's Home") that has a total capacity of 40. Several children were suspected to have been placed in the institution predominantly due to their parents' dire financial situation. Part of the children had special needs only because they had not reached the age of three yet. In the case of one third of them, placement with foster parents would not be made

<sup>105</sup> See Clause 20 of CPT/Inf (99) 12

<sup>106</sup> See Article 1 of the Convention on the Rights of the Child (hereinafter the "UN Convention on the Rights of the Child"), signed in New York on November 20, 1989, promulgated by Act LXIV of 1991

<sup>107</sup> In accordance with Section 82, Paragraph 1 of the Penal Execution Code, "*convicts in juvenile penitentiary who are over eighteen but have not reached yet twenty-one years of age shall also be treated as juveniles*".

<sup>108</sup> See Article 9, Paragraph 1 of the United Nations Convention on the Rights of the Child

difficult by either serious disability or the need of the joint placement of siblings. The ten staff members of the children's home take care of the children under three in turns, which makes the formation of personal attachment impossible. The majority of children attended kindergarten or school outside the institution; their systematic development and engagement were ensured in the children's home as well.



Reménysugár Children's Home

One hundred and twenty-two children lived in foster homes. Recreational activities offered for children living in foster homes were occasional. In some cases older children behaved aggressively vis-à-vis the younger ones; such cases were not always handled properly by the foster homes' staff. At the time of the visit, 13 children were away without permission; there were grounds for suspecting that one of them was engaged in prostitution.

The Children's Home provides *joint placement for mothers of minor age and their children* as well. Minor mothers may continue their education with the assistance of educators and, as a result, they may even get vocational qualifications and, later on, successfully enter the labor market. A supportive environment strengthens the attachment between young mothers and their children, which may lay the ground for living together as a family after they leave the system.

I made a recommendation to the Minister of Human Capacities requesting him to act more efficiently in order to prevent children from being taken from their families due to financial considerations, and proposed to fully eliminate the practice of placing children under twelve years of age in institutions. In the interest of placing chronically ill or seriously disabled children with foster parents, I proposed the amendment of Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship.

#### ***9.1.1.2. Minors serving a sentence involving deprivation of liberty***<sup>109</sup>

States "*shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law*".<sup>110</sup>

<sup>109</sup> In accordance with Section 82, Paragraph 1 of the Penal Execution Code, "*convicts in juvenile penitentiary who are over eighteen but have not reached yet twenty-one years of age shall also be treated as juveniles*".

<sup>110</sup> See Article 40, Paragraph 3 of the United Nations Convention on the Rights of the Child

In the view of the CPT, *“all juveniles deprived of their liberty because they are accused or convicted of criminal offences ought to be held in detention centers specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with the young”*.<sup>111</sup>

In Hungary, one of the places of detention designated to accommodate *persons of minor age* sentenced to imprisonment for having committed an ordinary offence is the Juvenile Penitentiary Institution (hereinafter the “Institution”), located in Tököl. Although the Institution’s main task is to accommodate juvenile offenders, their number at the time of the visit was only one fifth of that of the adult detainees: **158** out of **761**.

Juveniles deprived of their liberty were held separated from the adult detainees in the Institution. The occupation rate of cells designated for their placement was 72.8 %; however, in certain parts of the Institution, the size of prison cells did not reach the statutory minimum. In these rooms neither the ventilation, nor the lighting was appropriate. In some cells, in the absence of a signaling system, inmates had to shout in order to get the guards’ attention. Sanitary units were dilapidated on the entire premises of the Institution.

The transfer cell, i.e., the room where detainees have to wait before being transported to another penitentiary institution, is located in the building of the Central Prison Hospital. At the time of the visit, the transfer cell was so crowded that some inmates could not sit; however, there were no juvenile prisoners among those waiting to be transferred. Since juvenile prisoners had to wait in the same room, I drew the Institution’s attention to the fact that they have to be separated from the adults even in the transfer cell.

Several persons deprived of their liberty claimed to have been subjected to physical and/or sexual abuse by their fellow inmates. In their experience, it was not advisable to report such incidents to the personnel, since that could lead to repercussions, including threats of or actual violence. The disciplinary resolutions on record in the Institution also confirmed that persons deprived of their liberty abuse each other on a regular basis.

Several inmates complained of having been abused not only by the other inmates, but also by the staff. According to them a member of the healthcare personnel choked many of them and talked to them in a racist manner. Certain guards occasionally slapped the inmates across the face *“for any purpose it may serve”*, in order *“to give guidance”*. It happened in rooms, e.g., in the shower room, where there was no surveillance camera.

Although, according to Hungarian law, special attention shall be paid to the personal development of juvenile convicts while they are deprived of their liberty, there were only four psychologists employed by the Institution who were simultaneously responsible for the adult inmates as well.

In my report on the visit I suggested that the Institution should provide appropriate lighting and ventilation in every cell and renovate the sanitary units. In order to prevent ill-treatment, I suggested that the head of the Institution should, without any delay, take the necessary measures to put an end to the violence among the persons deprived of their liberty, as well as to their “educational” abuse by the staff. I asked the Director General of the Hungarian Prison Service to seriously consider restoring the proper proportions between juvenile and adult inmates and examining the possibility of hiring more psychologists.

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<sup>111</sup> See Clause 28 of CPT/Inf (99) 12

### 9.1.2. *Children at places of detention reserved for families and adults*

According to the United Nations Convention on the Rights of the Child, “every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so”.<sup>112</sup> However, there may be “exceptional situations (e.g., children and parents being held as immigration detainees) in which it is plainly in the best interests of juveniles not to be separated from particular adults”.<sup>113</sup>

#### 9.1.2.1. *Children in the Guarded Refugee Reception Center*

At the time of the visit, 26 of the 65 detainees held at the institution designated for asylum seeking families in Debrecen (hereinafter the “GRRC”) were children.

Despite the fact that even the longest period spent in the GRRC by one of its current residents was less than two weeks, this period had also left some psychological marks. Many of the detainees complained that, in the absence of organized programs, as a result of day-long inactivity, detention was rather wearing not only physically, but also mentally.



At the time of the visit, there were some children detained in the GRRC.

There also were infants among the persons deprived of their liberty at the place of detention; however, the GRRC did not possess the facilities necessary for meeting their age-appropriate needs, i.e., cribs, high chairs, height-appropriate conveniences or potties.

While almost half of the 65 detained foreigners, and almost half of the children among them, were women, there were only 8 women, i.e., less than 5%, among the guards.

It is unacceptable that the clothes of all persons deprived of their liberty entering the GRRC, including women and girls, were inspected by male members of the security personnel. It is also unacceptable that detained families had to undergo the medical examination constituting a part of the reception process together, and parents and their children had to strip naked in the presence of each other and a male security guard.

<sup>112</sup> See Article 37, Paragraph (c) of the United Nations Convention on the Rights of the Child

<sup>113</sup> See Clause 25 of CPT/Inf (99) 12

I also objected to the detention practice under which families with small children were escorted to the medical examination by four-five armed guards even inside the building;; furthermore, around ten male guards used to gather at the exit to the courtyard, which had an intimidating effect especially on the children.

Despite the presence of uniformed guards equipped with handcuffs, baton and tear gas spray even at the activities organized for the children in the playroom, nobody complained about abuse or impolite remarks.

In my report on the visit I requested the Chief of the National Police Headquarters and the Director-General of the Office of Immigration and Nationality to take the necessary measures to ensure that the proportion of women in the security personnel of places of detention designated for accommodating couples and families with small children should reach 30% as a minimum, and that detained foreigners should be escorted to the medical examination and their clothes should be checked by security personnel of the same sex, and children's activities should be supervised by female members of the security staff. I also asked the Director General of the Office of Immigration and Nationality to procure the facilities necessary for satisfying the needs of children deprived of their liberty.

#### ***9.1.2.2. Children in the Central Prison Hospital***

Fully-equipped hospital service should be provided to persons deprived of their liberty, *"in either a civil or prison hospital"*.<sup>114</sup>

In Hungary, medical and prophylactic services corresponding to the convicted persons' state of health are provided primarily by either the penitentiary institution where they are detained or by the Central Prison Hospital (hereinafter the "Hospital"). Medical treatment is conducted in four specialized (Internal Medical, Surgical, Obstetrical-Gynecological and Pulmonological), closed wards of the Inpatient Department. In addition to the aforementioned wards, the institution also has a Diagnostics Ward (hereinafter the "DW") treating detainees sent to the Hospital as outpatients in order to be examined by specialists.

The Hospital's capacity is 297 patients; at the time of the visit there were 194 adults, including a Romanian, a Portuguese and a Nigerian national, treated in the institution. Among them, 30 persons were treated in the Gynecological Ward, 34 in the Surgical, 44 in the Pulmonological and 57 in the Internal Medical Wards. There were 26 patients in the DW, three persons were treated in another hospital, and there was one person confined to the disciplinary unit. At the time of the visit, there were no juvenile convicts<sup>115</sup> in the Hospital; however, there were two infants in the Obstetrical-Gynecological Ward.

I expressed my objection to the wards' doors being closed around the clock, which is disadvantageous to patients sentenced to minimum security prison, since, while in the Hospital, they have to suffer more stringent restrictions on their mobility than those ordered by the court sentencing them to a minimum security prison.

The condition and equipment of the wards, the hygiene conditions and, in particular, the washing facilities provided to the patients were far below the standards prescribed for institutions

<sup>114</sup> See Clause 36 of CPT/Inf (93) 12

<sup>115</sup> In accordance with Section 82, Paragraph 1 of the Penal Execution Code, *"convicts in juvenile penitentiary who are over eighteen but have not reached yet twenty-one years of age shall also be treated as juveniles"*.



providing healthcare services to members of society outside the prisons. The buildings, wards, and their equipment were highly worn out, the vast majority of them needed urgent renovation or replacement. Low water pressure made the use of the restrooms more difficult. On the main building's fourth floor, and often on the lower floors, as well, patients had to flush the toilets with water collected in cans.

In the Obstetrical-Gynecological Ward there were two mothers kept together with their newborn children. There was a boiler and a continuous flow water heater installed in the Obstetrical Ward; however, their operation was also hindered by the low water pressure. The terrace used by pregnant women and mothers with small children should also be renovated. The furniture was in very bad shape as well.

There were twenty-five children born in the Hospital in 2014, and three in 2015 before the date of the visit. The visiting delegations did not uncover any circumstances indicative of any ill-treatment in connection with maternal and infant care, and the joint placement and detention of mothers and their children. Births are reported on the next working day to the territorially competent mayor's office. The registrar mails the birth certificates either to the Hospital or to the mother's place of residence.

According to the patients, the poor material conditions notwithstanding, placement conditions in the Hospital are much better than those in the penitentiary institutions from where they had been transferred. It is quite frequent that someone deliberately inflicts some damage on himself/herself just to get transferred to the Hospital. My colleagues met patients who had swallowed various metallic objects (bed spring, teaspoon, tablespoon, plaque remover) in order to prevent themselves from being transferred to another penitentiary institution.

I requested the Government to ensure the financial resources for the expansion and modernization of the Hospital. I also suggested that the Minister of Justice should initiate an amendment to Act CCXL of 2013 on the Execution of Punishments, Criminal Measures, Certain Coercive Measures and Confinement for Administrative Offences which would stipulate the rules of opening and closing the doors of hospital wards or sickrooms where convicts with different levels of imprisonment are kept together.

### ***9.1.2.3. Children in the Psychiatric Ward of the Merényi Gusztáv Hospital***

During their visit to the Closed Psychiatric Ward of the Merényi Gusztáv Hospital, my colleagues found a patient younger than 18 years of age in an eight-bed men's sickroom.

Although they did not come across any circumstance indicative of intentional abuse or ill-treatment, I have drawn the attention of the Head of the Merényi Gusztáv Hospital to the fact that, according to the prevailing legal regulations on the minimum professional requirements necessary for health service provision, *“healthcare providers taking care of children within the frameworks of adult care shall provide a separate sickroom for those children, an opportunity to the parents to be present and access to the services of a qualified pediatrician”*. *Children under the age of 18 may be treated in the adult wards of the following specializations: oto-rhino-laryngology, traumatology, surgery, obstetrics-gynecology, ophthalmology and orthopedics.*<sup>116</sup>

## **9.2. Disabled persons deprived of their liberty**

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<sup>116</sup> See Paragraph 1.1 of Annex 1 of Minister of Health and Social Affairs Decree 60/2003. (X. 20.) ESzCsM on the minimum professional requirements necessary for health service provision

For the purpose of performing the tasks of the NPM, persons living with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>117</sup>

Disabled persons deprived of their liberty are often placed in segregated institutions, which perpetuates their social marginalization and stigmatization. Institutionalization perpetuates their deprivation of liberty that can last as long as they live. In the case of persons with disabilities living in such institutions, the lack of reasonable accommodation in detention facilities may increase the risk of exposure to neglect, violence, abuse, torture and ill-treatment.<sup>118</sup>

### ***9.2.1. Persons with disabilities living in residential institutions***

Performing the tasks of the NPM in the field of the placement of disabled persons deprived of their liberty in residential institutions, in 2015 I published reports on two institutions, the Therapeutic House of Debrecen (hereinafter the “Therapeutic House”) and the Platán Residential Home of Kecskemét (hereinafter the “Platán Residential Home”).

The authorized capacity of the Therapeutic House was 280; it had been temporarily reduced to 250. On the day of the visit, there were 200 persons with psycho-social and 51 with intellectual disabilities residing in the institution.

The authorized capacity of the Platán Residential Home was 100. Due to the renovation works in progress, 91 residents of the Platán Residential Home had been transferred to a temporary facility, and four elderly patients were taken care of in the building under renovation.

The visits to the Therapeutic House and the Unit for the Disabled of the Platán Residential Home established the inadequacy of material conditions. Despite the relevant legal provisions, barrier-free access was not provided everywhere in the institutions’ buildings. There were rooms that did not meet the requirements of six square meters of living space per patient and maximum four persons per room. Furthermore, there were not enough rooms for married couples and partners.

The Therapeutic House could not provide one bathtub or shower per ten patients; furthermore, it did not meet the statutory requirement of providing separate restrooms for men and women. The shower rooms in the Platán Residential Home needed urgent renovation and, according to the staff, they had to wait for hot water for a long time. The institution could not provide separate restrooms and shower rooms for men and women, either. The restrooms and shower rooms accessible to the persons deprived of their liberty could not be locked.

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<sup>117</sup> See Article 1 of the CRPD

<sup>118</sup> See Paragraphs 38 and 39 of the *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 28 July 2008, A/63/175 by Manfred Nowak



Lavatory in the Therapeutic House

In the Platán Residential Home, disabled persons deprived of their liberty had no access to intimacy room, and in the Therapeutic House there were cases when residents wanting to use the intimacy room had to stand in a queue. They had to ask for the key from a member of the staff, and they could use the intimacy room only after a certain, predetermined period of waiting, with the approval of the staff.

I found one of the practices of the Therapeutic House unacceptable, since it caused an impropriety related to degrading treatment: the disabled persons deprived of their liberty, irrespective of the state of health, were bathed naked, with their private parts exposed, by the female members of the staff.

I also drew attention to the shortcomings of the protocol on restrictive measures vis-à-vis disabled persons living with disabilities in my reports on both the Therapeutic House and the Platán Residential Home. In the case of the Therapeutic House, I also suggested the termination of the use of cage beds for adults. In connection with the Platán Residential Home, I pointed out that organizing various leisure and community activities for disabled persons deprived of their liberty could render unnecessary or, at least, significantly reduce the use of tranquilizing shots.



Adult cage bed

Although the number of nursing personnel was in compliance with the relevant legal regulations in both institutions, there were cases in the Therapeutic House when only one nurse was present in a nursing unit with the capacity of over 50 patients. According to the head of the institution, the staff is “completely drained”, and supervision aimed at preserving their mental health is not provided.

In the case of both the Therapeutic House and the Platán Residential Home, I pointed out that the right of the disabled persons deprived of their liberty to choose their place of residence

should be respected in residential institutions as well.<sup>119</sup> Presumed or actual disability, including psycho-social disability, may not provide lawful ground for treating or placing the person concerned against his/her will in a psychiatric institution.<sup>120</sup> It violates the prohibition of ill-treatment, thus it may cause a fundamental rights-related impropriety, if a person with partially limited capacity to act is placed in a residential institution against his/her will, based exclusively on the statement of his/her guardian.

### ***9.2.2. Persons with disabilities in the Closed Psychiatric Ward of the Merényi Gusztáv Hospital***

At the time of the visit, 37 patients were treated in the Closed Psychiatric Ward of the Merényi Gusztáv Hospital that has the capacity of 51.

As far as the placements material conditions were concerned, the visiting delegation found leaking roofs, rotting walls and furniture, peeling plaster and broken tiles. When it was raining outside, rainwater was seeping through the dining hall's ceiling upon the head of the patients who had to negotiate buckets collecting rainwater. The windows in the small sickroom did not work properly.

The toilet booths with a common anteroom, the mixed-gender bathroom, the doors that cannot be closed, the lack of bathtub and shower curtains allowed the male and female patients to see one another while using the toilet, taking a shower or taking/receiving a bath. The staff tried to ensure that female patients under the age of 35, who could not bathe independently, were not bathed by male nurses. In my report on the visit I pointed out that the sexual modesty of persons deprived of their liberty is independent of their age and gender. Therefore, participation of nurses of the opposite gender in bathing persons deprived of their liberty may be justified exclusively by the patient's physical state.

I also raised objection to the shortcomings of the rules on ordering and implementing restrictive measures applicable in the closed ward. The visiting delegation registered the low number of the nursing staff and the heavy workload resulting therefrom. Although the OPCAT plays a key role in successfully preventing ill-treatment, the staff was not aware or had only superficial knowledge thereof.

In order to prevent the ill-treatment of persons deprived of their liberty, treated in the closed ward, I proposed to supplement and amend the rules regulating restrictive measures, and to brief the staff on the OPCAT. I recommended the compulsory education of all members of the closed ward's staff on the rules regulating restrictive measures. The documents should be put on display so that they were clearly visible to the persons deprived of their liberty, as well as to their authorized legal representatives and the institution's staff.

### ***9.2.3. Persons with disabilities in the Central Prison Hospital***

At the time of the visit, there were several—for a longer or shorter time period—disabled persons in the Hospital; however, the tires of the wheelchairs found there were flat. The patients had a hard time moving around with those wheelchairs even within the building. In addition to being unable to negotiate the treatment rooms' thresholds without help, they could not even get near the courtyard.

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<sup>119</sup> See Articles 12 and 19 of the CRPD

<sup>120</sup> See Articles 14 and 25 of the CRPD

Reduced mobility caused by the wheelchairs' flat tires is not a consequence of being detained, and it is not the result of the patients' state of health; it is the result of the Hospital's failure to carry out the necessary renovation works; therefore, it causes an impropriety related to degrading treatment.

### 9.3. Women deprived of their liberty

The NPM met women deprived of their liberty in the course of almost all visits. One of the women deprived of their liberty staying at the GRRRC complained that, although she had had two abortions in her home country, instead of the requested gynecological examination while in asylum detention she had received only a fever reducer. Another woman was four and a half months pregnant according to the medical examination conducted upon reception. She felt aggrieved at not having been examined by a specialist irrespective of her explicit request. On the second day of her stay at the GRRRC, having fainted, she was taken, under police escort, to an ambulatory ob/gyn clinic.

Women placed in the Therapeutic House and the disability unit of the Platán Residential Home had to submit themselves to mandatory contraception in the form of injections or pills. A contraceptive device was implanted, without her knowledge, in a disabled woman deprived of her liberty wanting to get pregnant, with the approval of her guardian.

Responding to my recommendations made in the report on the visit to the Therapeutic House, the Minister of Human Capacities promised to have the relevant legal regulation amended in a way that would regulate cases when there is a disagreement between a woman under guardianship and her guardian as far as intrauterine contraceptive devices, sterilization and abortion are concerned. The Minister of Human Capacities is going to consider the preparation of a regulation that would make it possible for disabled persons deprived of their liberty, living in residential institutions, to keep and, with appropriate help, take care of their children while residing in the institution.

### 9.4. Elderly persons deprived of their liberty

The visiting delegations paid special regard to the situation of the elderly. For the purpose of performing the tasks of the NPM, the elderly are persons of or over 60 years of age.<sup>121</sup>

The elderly persons living in the Therapeutic House complained that *they were staying in the institution not of their own accord* but upon the request or insistence of their relatives. Some of them emphasized how much they missed their freedom. I was concerned that the institution had placed some unsteady elderly persons in cage beds, some of which could not be opened from the inside. The environment within the institution was expressly unstimulating; the elderly patients spent their days in their beds or wandering aimlessly around the corridors, occasionally talking to their roommates.

Elderly patients become more easily victims of aggression in a place of detention. During the visit to the Merényi Hospital, the visiting delegation was informed that a young male patient had physically abused an elderly lady who, having confused the sickroom, had lied down in the young man's bed.

Almost 30% of the patients in the Closed Psychiatric Ward of the Merényi Hospital were elderly people. The provision of inadequate care to elderly, demented patients seemed to be a systemic problem. Elderly people with psychiatric illness may not be placed in an assisted living center; however, the waiting list for getting living-in social care is rather long. In one of its earlier reports

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<sup>121</sup> See p. 200, Népszámlálás, 4., Demográfiai adatok, Központi Statisztikai Hivatal 2013 (Demographical Data, The Census of 2011, published by the Central Statistical Office)

on Hungary the World Health Organization (WHO) pointed out that elderly people should be taken care of in wards set up especially for them.

I recommended to the Minister of Human Capacities to prepare the legal framework for providing elderly patients with various forms of care that could contribute to eliminating the practice of providing care to the elderly in the hospitals' psychiatric wards, within the framework of acute care.

### **9.5. Protecting the ethnic rights of people deprived of their liberty**

In my activities I pay special attention to protecting the rights of nationalities living in Hungary. To this end, my Deputy responsible for the protection of the rights of the nationalities living in Hungary has to delegate on of her colleagues to the staff of the NPM.<sup>122</sup>

In Hungary, declaring ethnic affiliation is an exclusive and unalienable right; however, as a general rule, no one may be forced to declare such affiliation. The NPM has no records whatsoever based on which the ethnic affiliation of persons deprived of their liberty could be established.

In the course of the NPM's visits, the examination of the enforcement of national minority rights focused primarily on discrimination. On the one hand, persons deprived of their liberty made statements on their ethnic affiliation and as to whether they had suffered any discrimination because of such affiliation freely, of their own volition. On the other hand, in the course of interviews conducted with the members of the personnel, the staff's perceptions vis-à-vis any person deprived of his/her liberty or group of persons deprived of their liberty were sufficient to establish discrimination. Treating a given person or a group of persons on the basis of a presumed trait constitutes discrimination in itself.

From the aspects of prohibiting and preventing ill-treatment, persons deprived of their liberty are entitled to the same rights irrespective of their ethnic background. In the course of the visits conducted in 2015, my colleagues learned of several incidents of *prejudice against Roma detainees*, manifested primarily through *discriminative language*.

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<sup>122</sup> See Section 39/D, Subsection (4) of the Ombudsman Act

## 10. The authorities responses to my recommendations

Upon receiving my report on the visit to the GRRC of Debrecen, the Chief of the National Police Headquarters and the Director General of the Office of Immigration and Nationality designated the GRRC of Békéscsaba for implementing the asylum detention of married couples and families with small children. Acting on my recommendation, the Chief of the National Police Headquarters issued an order stipulating that the proportion of female guards in institutions designated for implementing alien policing or asylum detention of women and families with small children should reach 30%. The Director General of the Office of Immigration and Nationality took the necessary measure to ensure that the playing room was open throughout the day, not only during joint activity classes, and that the social workers provided leisure activities appropriate to the detainees.

The Therapeutic House accepted my recommendations and worked out detailed initiatives specifying deadlines and the persons responsible. Acting on my recommendation, the institution's supervisory authority, the General Directorate of Social Affairs and Child Protection conducted extraordinary inspections in all 69 psychiatric institutions under its supervision and shared the summary of its conclusions with me. The Ministry of Human Capacities and the Ministry of Justice made a promise to initiate, taking into account the rights specified in the CRPD, the amendment of the legislation concerning persons placed under guardianship, regulating the use of intrauterine contraceptive devices and sterilization.

As a result of the visit to the children's home, I initiated several legislative amendments. In my report, I emphasized the necessity of the ratification of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse – in the meantime, with the adoption of Act XCII of 2015, the Convention was incorporated into the Hungarian legal system. In the interest of placing chronically ill or seriously disabled children with foster parents, I proposed the amendment of Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship.

As a result of my report on the Merényi Gusztáv Hospital, in September 2015, the Office of the State Minister for Parliament at the Ministry of Human Capacities indicated that from the Force Majeure Fund of the Ministry HUF 40 million had been allocated to infrastructural investments, and the disbursement of the amount had begun. In my reply, I voiced my concern to the MoHC and the National Healthcare Service Center as supervisory authorities in connection with the renovation. I drew the attention of the parties concerned to the fact that, in the course of the renovation of the Closed Psychiatric Ward, special care must be taken over ensuring adequate per capita living space and the number of staff members provided for by the legislation.

The MoHC promised to take the necessary measures in order to separate juvenile psychiatric patient from the adult patients.

The head of the Merényi Gusztáv Hospital accepted the majority of my recommendations; however, I find it unacceptable that he set a "continuous" deadline instead of a fixed one for implementing my recommendation regarding the increase in the number of staff members.

Acting on my recommendation, the Director General of the Hungarian Prison Service ordered the on-site inspection of the Juvenile Penitentiary Institution. He also ordered the revision of the Institution's personnel chart in order to provide more psychologist and physician positions. The Institution was granted and additional psychologist position. Furthermore, he ordered to draft a plan for the possible fitting up and expansion of the lockup unit. He instructed the Warden of

the Institution to have the lockup renovated and ordered the settlement of the issues of ventilation, natural lighting and water supply. The Warden also took measures to prevent the transfer cell from getting overcrowded even for a short while, to ensure that all detainees could sit and smokers were separated from non-smokers. The Director General of the HPS called the Warden's attention to the fact that juveniles may be put in solitary confinement only if there is sufficient cause to do so and asked him to consider using the cells in the lockup unit when imposing separation.

In the case of the Central Prison Hospital, I requested the Government to ensure funding for the extension and modernization of the institution. The Chief Medical Director of the Hospital provided for the painting of the wards, replacing the windows and doors, replacing and repairing the wards' furniture, and maintaining the wheelchairs. He also set the tasks of renovating the terrace used by pregnant women and their children, and installing television sets in the wards. Four physicians were added to the Hospital's staff. The Minister of Justice adopted the recommendation and, at the same time, promised HUF 2 billion for the full replacement of the Hospital's water and sewer network – the works will probably start in 2016.



## 11. International activities, international relations

Within the frameworks of its international activities, the Department participated in numerous conferences and workshops, and received the representatives of several international organizations and the members of other National Preventive Mechanisms.

Between March 1–3, 2015, Strasbourg hosted a conference organized on the occasion of the 25<sup>th</sup> anniversary of the CPT that provided an opportunity to report on the NPM's activities so far to the head of the Subcommittee, Mr. Malcolm Evans.

Cooperation with the Office of the Czech Ombudsman had started back in 2014; in this context, between March 10–12, 2015, two colleagues of the NPM attended the bilateral meeting of the Hungarian and Czech National Preventive Mechanisms in Brno. During the meeting, the members of the delegations exchanged views on technical issues related to the NPMs' activities. Professional consultations continued in Budapest in October.

A conference entitled “Strengthening the follow-up on NPM recommendations in the EU: Strategic development, current practices and the way forward” was held in Vienna on April 28–29, 2015. The conference concluded that, in addition to conducting dialog between the NPMs and the investigated organs, it is of key importance to maintain regular contact with the media and the parliamentary groups, as well as to hold horizontal and vertical consultations with the Government.

My Deputy responsible for the protection of the rights of nationalities living in Hungary visited Warsaw on June 4, 2015, participating in a workshop organized by the Switzerland-based Association for the Prevention of Torture (APT) and the Organization for Security and Cooperation in Europe (OSCE) “Implementation of preventive mandate: Ombudsmen designated as National Preventive Mechanisms in OSCE region”.

In June 2015, staff members of the Department attended a round-table conference on the alternatives to detention and asylum detention, jointly organized by the Office of the UN High Commissioner for Refugees (UNHCR) and the Council of Europe. The panel discussion held on June 15 covered the legal regulation and the practice of asylum detention. On June 16, participants focused on European and international norms related to the best interest of the child, and on the case-law of the European Court of Human Rights.

On June 18, 2015, two colleagues of the NPM held talks at the Embassy of Romania on the NPM's report on the Debrecen Guarded Refugee Reception Center.

The workshop “Implementing a preventive mandate”, co-organized by the International Ombudsman Institute (IOI) and the APT was held between June 17–19, 2015, in the Office the Ombudsman of Latvia in Riga. The workshop focused on the basic principles and working methods of preventive monitoring. Based on these criteria, it could be established that the NPM had performed its tasks well even already in the initial stage of its operation.

Between June 28–30, 2015, two staff members of the Department participated in a Workshop on “Health Care Access of People Deprived from Freedom in the SEE Region”, organized by the Southeast Europe NPM Network in Tirana.



Malcolm Evans and Mari Amos in the Office

On September 7, 2015, two members of the Subcommittee on Prevention, Mr. Malcolm Evans and Ms. Mari Amos paid an informal visit to Hungary, during which they also visited my Office. During the meeting, also attended by my Deputy responsible for the protection of the rights of nationalities living in Hungary, the Secretary General of the Office and the staff of the Department, we discussed our experience gained since the NPM's establishment and talked about possibilities for enforcing preventive approach, and the conditions of operation. During the second half of the meeting, the members of the CCB joined in: the participants discussed the possibilities of cooperation. In his letter of November 2015, Mr. Malcolm Evans gave a high praise to my OPCAT activities.

Between September 28–30, 2015, the Head of the Department attended an international conference on pre-trial detention and the follow-up to OPCAT NPM reports, organized by the University of Bristol in London.

The Department's expert on migration was invited to a consultation, organized by the European Ombudsman in Madrid between October 13–15, 2015, focusing on mass migration and forced returns executed within the frameworks of Frontex.

I received in my Office the representative of the CPT on October 21, and Mr. Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, on October 26, 2015. Both discussions, attended by two staff members of the Department, focused on asylum and migration.

The representatives of the Southeast Europe NPM Network held their meeting in Tirana between October 28–30, 2015. The conference focused on handling the extraordinary situation caused by the mass migration in 2015, with special attention to protecting the fundamental rights of detained migrants / asylum seekers.

In early December, Austrian Ombudsman Günther Kräuter asked the Hungarian NPM to join the Southeast Europe NPM Network. I submitted my application to join the Network within the year.

## 12. Dissemination, media

Establishing the Department and hiring more staff members caused some changes in the organizational structure of my Office, too. Having laid the legal foundation, staff members of the Department with degrees in law and psychology held internal trainings for the staff of the other organizational units on the working methods and attitudes of the Department.

The internal trainings concentrated on the following topics:

- The concepts of torture and detention;
- The psychology of OPCAT NPM-type hearings and feedback (frameworks, consistencies, difficulties);
- The distinction between post-traumatic stress syndrome (PTSD) and cumulative trauma disorder (CTD), their relevance and checklist;
- Personal perception – distortion mechanisms, promoting objectivity;
- Violence among detainees (case study);
- Foucault’s concept of torture;
- The Lucifer effect: understanding how good people turn evil;
- Roles in children communities: bullies, victims, bystanders.

According to the UN Guidelines on National Preventive Mechanisms,<sup>123</sup> sharing the spirit, working methods of the OPCAT, as well as the experiences gained during its operation, is a fundamental duty, since it can contribute to the prevention of torture and ill-treatment.

The activities of the NPM imply the existence of a direct relationship between the NPM and wider sections of society. This relationship is very complex since our activities are of interest to a wide variety of the actors of public administration, representatives of civil society organizations, researchers and clients.

In 2014, in order to promote communication and meet international expectations, the Office set up the NPM’s homepage that can be reached in Hungarian and in English on the Office’s website (<http://www.ajbh.hu/opcat>). Visitors can find on the homepage basic information on the NPM, instructions on how to turn to the NPM, important information for the institutions concerned and materials for various target groups, including children. On the homepage one can also follow NPM-related events, e.g., visits, meetings of the CCB. Visitors can also find on the homepage the original Hungarian version and the shortened English version of the NPM’s reports. The GRRRC report’s full English text is also available. The NPM’s homepage can also be reached from the Subcommittee’s website<sup>124</sup>. Anyone can directly contact the NPM using the information found on the homepage.

It is extremely important that all NPM-related information could be directly reached also from the places of detention; that is why we had prepared an information leaflet for the “dialog with the authorities” meeting held in late 2014. The leaflet was distributed to all those concerned. These shortened information materials were distributed during the visits, too.

On December 17, 2014, I held a press conference on the launching of the NPM on January 01, 2015. The NPM’s activities received wide press coverage in 2015. Various press materials covering the individual visits are listed in the schedule below:

<sup>123</sup> See Clause 31 of the Guidelines on national preventive mechanisms, United Nations CAT/OP/12/5

<sup>124</sup> <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx>

Name of the visited institution	Number of independent press coverages
Psychiatric Ward of the Merényi Gusztáv Hospital	282
Juvenile Penitentiary Institution	130
Therapeutic House of Debrecen	124
Central Penitentiary Hospital, Tököl	72
Debrecen Guarded Refugee Reception Center (GRRC)	15
Reménysugár ( <i>"Ray of Hope"</i> ) Children's Home of Debrecen	9
Home for Children with Special Needs, Károlyi István Children's Center (KICC)	7
KICC Home for Children with Special Needs	7
KICC Home for Unaccompanied Minors	6
Somogy County Penitentiary Institution	4
Disability Unit of the Platán Residential Home	2
Zita Special Children's Home	2
<b>Altogether</b>	<b>660 appearances</b>

Press releases on the NPM's visits

Among the reports on the first three visits to sites in Debrecen, it was the one on the Therapeutic House that received the most attention. In parallel with or thanks to this, there was a nation-wide change in closed institutions of social type; the General Directorate of Social Affairs and Child Protection in its circular letter, relying on the report's conclusion, called the attention of the heads of all institutions under its supervision to the existing shortcomings and problems.

As a result of the report on the Therapeutic House, there was a personal change in the institution, although the NPM's objective is always to prevent ill-treatment, not to force personal changes in the institutions concerned.

Much attention was paid to the report on the penal institution for juvenile offenders in Tököl as well. It may be explained by the fact that the report uncovered phenomena that had been present in the penitentiary system for a long time and which can be regarded as of general nature. I have to point out two of them: the violence among detainees and the conditions of their placement.

The report on the Merényi Hospital received the widest media coverage. The media's interest was kindled by the conditions of placement. Several organs of the press published pictures taken by the NPM, some of those pictures got shared on various social media sites as well. Thanks to the report, wide segments of society learned about the general conditions and labor shortage prevailing in psychiatric institutions. From this aspect, it can be safely said that my report on the Merényi Hospital has given an impetus to the social discussion on the state of healthcare.

Major domestic and/or international events (e.g., the crisis situation in Syria or mass migration) had great influence on the media's interest, or the absence thereof, towards the reports published by the NPM.

In addition to appearance in the media and on the homepage, the NPM's duties include the conduct of deliberate dissemination activities. Training future experts is an efficient way to disseminate knowledge. Six staff members of the Department deliver lectures on a regular or occasional basis in various domestic higher education institutions. Law students of several

universities (ELTE, University of Pécs, University of Debrecen, Pázmány Péter Catholic University), students of the ELTE Bárczi Gusztáv Faculty of Special Education and the psychology majors of the University of Debrecen were acquainted, inter alia, with the concepts of torture and its prevention and the interpretation of the concept of places of detention. The most complex transfer of knowledge was realized at the Faculty of Law and Political Sciences of the University of Pécs where a study group was launched on the topic “The Lucifer effect and beyond. How to prevent torture, cruel, inhuman or degrading treatment in closed institutions?”. In addition to graduate education, some members of the Department participate in the training of PhD students as well.

The Department’s staff participated in several domestic and international conferences in the course of the year; they were also invited to various round table discussions in connection with the reports published by the NPM. Publishing in professional journals also facilitates the wide dissemination of knowledge on the OPCAT.

### 13. Summary

While acting in the capacity of the NPM, my task is to regularly examine the treatment of persons deprived of their liberty in places of detention as defined in Article 4 of the OPCAT, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.<sup>125</sup> The ultimate 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.

I have been performing the tasks of the NPM since January 1, 2015. The special rules of performing these tasks are stipulated in the provisions of Chapter III/A of the Ombudsman Act, effective from the same date. The legal environment is suitable for performing my new tasks.

When performing the tasks of the NPM, I may proceed either personally or through the authorized staff members of my Office. The selection of my civil servant colleagues, two physicians and two psychologists in addition to the lawyers participating in the performance of these tasks, started in 2014 by way of a public call for application. The head of the organizational unit established for the performance of these tasks assumed his position on September 1, 2014. In the absence of applicants, the two positions of physicians could not be filled. I may authorize, either permanently or on an ad hoc basis, other experts as well to contribute to performing the tasks of the NPM.

Preparations for performing these tasks started in 2014: on May 26, 2014, I joined in the activities of the South-East Europe NPM Network as an observer, and my colleagues met and consulted with the staff of NPMs operating in the member states of the Visegrád Cooperation on several occasions. Within the frameworks of the project "*Together Towards Good Governance*", staff members of the Department held consultations on two occasions, in 2014 and 2015, once in Brno and once in Budapest, with their counterparts performing the same tasks in the Office of the Czech Ombudsman.

Although I have to perform the tasks of the NPM independently, I established, for the period of three years, a Civil Consultative Body, comprising the representatives of independent organizations, either invited or selected via a public call for application, in order to make use of the outstanding practical and/or high-level theoretical knowledge accumulated by various organizations registered and operating in Hungary in the field of treating persons deprived of their liberty.

By the middle of November 2014, based on data received from the competent government organs, my colleagues had completed the list of places of detention falling under the effect of Article 4 of the OPCAT.

In 2014 my Office spent HUF 30,874,586 on the preparation for the performance of the tasks of the NPM.

In my capacity as NPM, in 2015 I investigated altogether **2,339 units of detention** on **15 locations**. Visits are carried out by groups of 4–8 persons. When determining the visiting delegations' composition, I tried to secure the gender balance and multidisciplinary of the group, and the involvement of an expert necessary for the protection of national and ethnic minority rights.

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<sup>125</sup> See Section 39/B, Subsection (1) of the Ombudsman Act

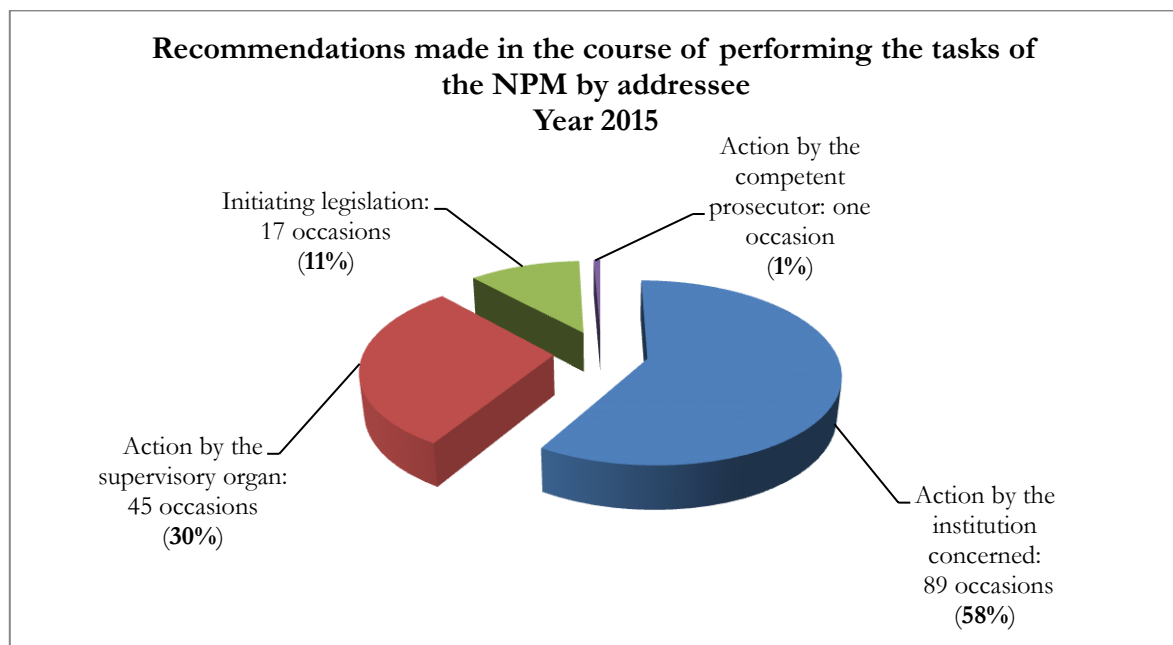
Despite the fact that all visits were carried out without prior notice, the visiting delegations were provided unrestricted access to all places of detention, and staff members of the places of detention concerned fully complied with their obligation to cooperate. The visiting delegations inspected the premises of the places of detention, checked their furnishing and equipment, inspected the documents and made copies of certain documents, monitored the joint activities of the persons deprived of the liberty and conducted interviews with them and the staff as well.

Reports were prepared on these visits, “*specifying their findings and the conclusions based thereon*”.<sup>126</sup> The visiting delegations did not find any circumstances indicative of intentional abuse by the staff resulting in grave physical or mental injuries with the exception of juvenile detainees serving a sentence of imprisonment.

The average occupancy of the places of detention inspected was 83.26%. The visiting delegations found the highest utilization rate, 156%, in Fót, in the Károlyi István Children’s Center’s Home for Unaccompanied Minors, where extra space would be added in order to prevent crowdedness.

The visits by the NPM uncovered serious anomalies related to inhuman or degrading treatment in the GRRC of Debrecen (gender composition of the security staff), the Therapeutic House (mandatory contraception), the Closed Psychiatric Ward of the Merényi Gusztáv Hospital and the Central Prison Hospital (general conditions).

In my reports, I made recommendations that serve the purpose of eliminating and preventing ill-treatment of persons deprived of their liberty. I made altogether **152** recommendations in 2015. I suggested that measures should be taken by the head of the place of detention<sup>127</sup> on **89** occasions and by the supervisory organ<sup>128</sup> on **45** occasions; I initiated proceedings by the competent prosecutor<sup>129</sup> through the Prosecutor General on **one** occasion. I recommended to draft or amend a legal regulation on **17** occasions.<sup>130</sup>



<sup>126</sup> See Section 28, Subsection (1) of the Ombudsman Act

<sup>127</sup> See Section 32, Subsection (1) of the Ombudsman Act

<sup>128</sup> See Section 31, Subsection (1) of the Ombudsman Act

<sup>129</sup> See Section 33, Subsection (2) of the Ombudsman Act

<sup>130</sup> See Section 37 of the Ombudsman Act

The addressees of my recommendations reviewed my proposals and gave meaningful responses within the statutory deadline; in some cases they requested an extension thereto. I am going to check the implementation of my recommendations within the frameworks of follow-up inquiries.

The authorities' responses to my recommendations have proved that the heads of both the visited institutions and their supervisory organs took those recommendations seriously: additional professional consultations have been started on their implementation.

In addition to the recommendations, I reviewed **255** draft bills upon the request of the legislator and **two** more ex officio.

The NPM's operation cost HUF 69,647,353 in 2015; this amount, in the absence of budgetary support for the performance of the new tasks, was allocated by my Office from the budget provided for the performance of my general activities aimed at protecting fundamental rights.



## 14. Annexes

*Annex 1 – Expenditure of the National Preventive Mechanism in 2015*

Type of expense	Amount
Salaries with contributions	58,646,939
Other costs	
IT and communication	858,987
Domestic missions	228,162
Missions abroad	884,054
Professional and operational materials (books, periodicals, scientific literature)	775,148
Building management, utility charges	4,053,718
Maintenance and repair services	481,359
Additional professional services (translations, media monitoring)	757,105
Other services (insurance, financial services, use of cars, postal charges)	843,732
Advertising, promotional and representation expenses	284,481
VAT and other material expenses	1,833,667
<b>Altogether in HUF</b>	<b>69,647,352</b>

## Notes:

By the end of 2015, the number of the Department's staff members stood at eight; it had reached this number by the middle of April 2015. Consequently, in the schedule above we have determined expenses inseparable from those of the Office via multiplying the per capita expenditure of the Office by the Department's annual average number of staff members.

*Annex 2 – Glossary*

<b>APT</b>	Association for the Prevention of Torture
<b>Bureau</b>	OPCAT Bureau
<b>CCB</b>	Civil Consultative Body
<b>Children’s Home</b>	Reménysugár (“ <i>Ray of Hope</i> ”) Children’s Home of Debrecen
<b>Committee (CAT)</b>	UN Committee against Torture
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities
<b>Department</b>	OPCAT National Preventive Mechanism Department
<b>DW</b>	Diagnostics Ward
<b>ECHR</b>	European Court of Human Rights
<b>ELTE</b>	Eötvös Loránd University
<b>European Convention for the Prevention of Torture</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>European Convention on Human Rights</b>	European Convention for the Protection of Human Rights and Fundamental Freedoms
<b>GRRC</b>	Debrecen Guarded Refugee Reception Center
<b>Hospital</b>	Central Penitentiary Hospital, Tököl
<b>Institution</b>	Juvenile Penitentiary Institution, Tököl
<b>IOI</b>	International Ombudsman Institute
<b>KICC</b>	Károlyi István Children’s Center
<b>Merényi Gusztáv Hospital</b>	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 Clinic
<b>MoHC</b>	Ministry of Human Capacities
<b>MoJ</b>	Ministry of Justice
<b>MPHQoB</b>	Metropolitan Police Headquarters of Budapest
<b>NBI</b>	National Bureau of Investigation

<b>NPHQ</b>	National Police Headquarters
<b>NPM</b>	National Preventive Mechanism
<b>Ombudsman Act</b>	Act CXI of 2011 on the Commissioner for Fundamental Rights
<b>OPCAT</b>	Optional Protocol to the Convention Against Torture and Cruel, Inhuman or Degrading Treatment or Punishment
<b>OSCE</b>	Organization for Cooperation and Security in Europe
<b>Platán Residential Home</b>	Disability Unit of the Platán Residential Home, Directorate of Health and Social Care Institutions
<b>Subcommittee on Prevention (SPT)</b>	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
<b>Therapeutic House</b>	Therapeutic House of Debrecen
<b>UN</b>	United Nations Organization
<b>UNCAT</b>	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>UNHCR</b>	United Nations High Commissioner for Refugees
<b>WHO</b>	World Health Organization
<b>Zita Special Children's Home</b>	Zita Special Children's Home of the Somogy County Child Protection Directorate

**Act CXLIII of 2011****on the promulgation of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment<sup>131</sup>**

**Section 1** – The Parliament hereby gives its consent to be bound by this Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on December 18, 2002, by the General Assembly of the United Nations (hereinafter the “Protocol”).

**Section 2** – The Parliament hereby promulgates the Protocol.

**Section 3** – The authentic English language text [...] of the Protocol is as follows:

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

## Preamble

The States Parties to the present Protocol,

Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

Have agreed as follows:

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<sup>131</sup> Promulgated on November 03, 2011

## Part I

## General principles

*Article 1*

The objective of the present Protocol is to establish a system of regular visits 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.

*Article 2*

1 A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.

2 The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.

3 Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

4 The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

*Article 3*

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

*Article 4*

1 Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its 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 (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.

2 For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

## Part II

## Subcommittee on prevention

*Article 5*

1 The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.

2 The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.

3 In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

4 In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.

5 No two members of the Subcommittee on Prevention may be nationals of the same State.

6 The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

#### *Article 6*

1 Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.

2 (a) The nominees shall have the nationality of a State Party to the present Protocol;

(b) At least one of the two candidates shall have the nationality of the nominating State Party;

(c) No more than two nationals of a State Party shall be nominated;

(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.

3 At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

#### *Article 7*

1 The members of the Subcommittee on Prevention shall be elected in the following manner:

(a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;

(b) The initial election shall be held no later than six months after the entry into force of the present Protocol;

(c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;

(d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

2 If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:

(a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;

(b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;

(c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

#### *Article 8*

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

#### *Article 9*

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

#### *Article 10*

1 The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

2 The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:

(a) Half the members plus one shall constitute a quorum;

(b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;

(c) The Subcommittee on Prevention shall meet in camera.

3 The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

### Part III

#### Mandate of the subcommittee on prevention

#### *Article 11*

1 The Subcommittee on Prevention shall:

(a) 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;

(b) In regard to the national preventive mechanisms:

(i) Advise and assist States Parties, when necessary, in their establishment;

(ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;

(iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;

(c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

#### *Article 12*

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

(a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;

(b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;

(c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;

(d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

#### *Article 13*

1 The Subcommittee on Prevention shall establish, at first by lot, a program of regular visits to the States Parties in order to fulfil its mandate as established in article 11.

2 After consultations, the Subcommittee on Prevention shall notify the States Parties of its program in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.

3 The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.

4 If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.



*Article 14*

1 In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:

(a) Unrestricted 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;

(b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;

(e) The liberty to choose the places it wants to visit and the persons it wants to interview.

2 Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defense, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

*Article 15*

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

*Article 16*

1 The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.

2 The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.

3 The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

4 If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

## Part IV

## National Preventive Mechanisms

*Article 17*

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

*Article 18*

1 The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.

2 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.

3 The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

4 When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

*Article 19*

The national preventive mechanisms shall be granted at a minimum the power:

(a) 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;

(b) 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;

(c) To submit proposals and observations concerning existing or draft legislation.

*Article 20*

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

(a) 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;

(b) Access to all information referring to the treatment of those persons as well as their conditions of detention;

(c) Access to all places of detention and their installations and facilities;

(d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;

(e) The liberty to choose the places they want to visit and the persons they want to interview;

(f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

*Article 21*

1 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.

2 Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

#### *Article 22*

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.

#### *Article 23*

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

### Part V

#### Declaration

#### *Article 24*

1 Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.

2 This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

### Part VI

#### Financial provisions

#### *Article 25*

1 The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.

2 The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

#### *Article 26*

1 A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programs of the national preventive mechanisms.

2 The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

### Part VII

## Final provisions

*Article 27*

1 The present Protocol is open for signature by any State that has signed the Convention.

2 The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3 The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.

4 Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5 The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

*Article 28*

1 The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2 For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

*Article 29*

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

*Article 30*

No reservations shall be made to the present Protocol.

*Article 31*

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

*Article 32*

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

*Article 33*

1 Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2 Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.

3 Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

#### *Article 34*

1 Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favor a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favor such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.

2 An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

3 When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

#### *Article 35*

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

#### *Article 36*

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

#### *Article 37*

1 The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2 The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.”

**Section 4** Pursuant to Article 24 of the Protocol, upon ratifying the Protocol, the Republic of Hungary shall make a declaration as regards the present Protocol. The authentic English language text and its official Hungarian translation are as follows:

“In accordance with Article 24 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Hungary declares the postponement for three years of the implementation of the obligations under Part IV of the Optional Protocol, concerning national preventive mechanisms.”

„A Magyar Köztársaság a kínzás és más kegyetlen, embertelen vagy megalázó bánásmód vagy büntetés elleni egyezmény fakultatív jegyzőkönyvének 24. cikkével összhangban kijelenti, hogy a fakultatív jegyzőkönyv IV. részéből származó, a nemzeti megelőző mechanizmussal kapcsolatos kötelezettségeinek teljesítését három évvel elhalasztja.”

**Section 5** – (1) The present Act shall take effect, with the exceptions stipulated in Subsections (2) to (4), on the day following its promulgation.

(2) Sections 2 and 3 of the present Act shall take effect on the date stipulated in Article 28, Paragraph 2 of the Protocol.<sup>132</sup>

(3) Sections 8 to 10 of the present Act shall take effect on January 01, 2015.

(4) Section 11 of the present Act shall take effect on January 02, 2012.

(5) The calendar date of the entry into force of the Protocol and the present Act shall be communicated in a specific resolution by the minister responsible for foreign policy, to be published in the Hungarian Official Gazette immediately after its becoming known.<sup>133</sup>

(6)<sup>134</sup> The measures necessary for the implementation of the present Act shall be determined by the minister responsible for the penitentiary system, the minister responsible for healthcare, the minister responsible for youth protection, the minister responsible for national defense, the minister responsible for immigration and refugee policies, the minister responsible for justice, the minister responsible for education and the minister responsible for law enforcement.

**Sections 6-7**<sup>135</sup>

**Sections 8-10**<sup>136</sup>

**Section 11** Sections 6 and 7 of the present Act shall become ineffective.

<sup>132</sup> Took effect on February 11, 2012, by virtue of Statement 9/2012. (II. 24.) KüM of the MoFA.

<sup>133</sup> See Statement 9/2012. (II. 24.) KüM

<sup>134</sup> Amended by Section 420 of Act CCI of 2011

<sup>135</sup> Repealed by Section 11 of the same Act Ineffective as of January 02, 2012

<sup>136</sup> Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2015

**Act CXI of 2011**  
**on the Commissioner for Fundamental Rights<sup>137</sup>**

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

*Chapter I*

*General provisions*

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

**Section 1<sup>138</sup>** – The Commissioner for Fundamental Rights shall—in addition to his/her tasks and competences specified in the Fundamental Law—perform the tasks and exercise the competences laid down in this Act.

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

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

(3)<sup>139</sup> In the course of his/her activities the Commissioner for Fundamental Rights shall—especially by conducting proceedings ex officio—pay special attention to assisting, protecting and supervising the implementation of the Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007.

**Section 2** – (1)<sup>140</sup> 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.

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<sup>137</sup> Promulgated on July 26, 2011

<sup>138</sup> Shall enter into force with the text specified in Section 6, Subsection (1) of Act CXLIII of 2011

<sup>139</sup> Shall enter into force with the text specified in Section 6, Subsection (2) of Act CXLIII of 2011

<sup>140</sup> Amended by Section 1 of Act CLXXXVI of 2012 and Section 22, Subsection (6) of Act CLXXXIII of 2013

(3)<sup>141</sup> 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)<sup>142</sup> The Commissioner for Fundamental Rights shall promote the enforcement and protection of fundamental rights. In doing so, he/she shall engage in social awareness raising and information activities and cooperate with organizations and national institutions aiming at the promotion of the protection of fundamental rights.

(6)<sup>143</sup> The Commissioner for Fundamental Rights shall perform the tasks related to the national preventive mechanism pursuant to Article 3 of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011.

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

*a)*<sup>144</sup> shall regularly inform the Commissioner for Fundamental Rights, the institutions concerned and the public of his/her experience regarding the enforcement of the interests of future generations,

*b)*<sup>145</sup> shall draw the attention of the Commissioner for Fundamental Rights, the institutions concerned and the public to the danger of infringement of rights affecting a larger group of natural persons, the future generations in particular,

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

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

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

*f)*<sup>146</sup> shall monitor the implementation of the sustainable development strategy adopted by the Parliament,

*g)*<sup>147</sup> may propose the adoption, amendment of legislation on the rights of future generations, and

*h)*<sup>148</sup> shall promote, through his/her international activities, the presentation of the merits of domestic institutions related to the interests of future generations.

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

*a)*<sup>149</sup> shall regularly inform the Commissioner for Fundamental Rights, the institutions concerned and the public of his/her experience regarding the enforcement of the interests of future generations,

*b)*<sup>150</sup> shall draw the attention of the Commissioner for Fundamental Rights, the institutions concerned and the public to the danger of infringement of rights affecting nationalities living in Hungary,

<sup>141</sup> Stipulated by Section 1 of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>142</sup> Stipulated by Section 2 of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>143</sup> Enacted by Section 8 of Act CXLIII of 2011 Effective as of January 01, 2015

<sup>144</sup> Stipulated by Section 3, Subsection (1) of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>145</sup> Stipulated by Section 3, Subsection (1) of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>146</sup> Enacted by Section 3, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>147</sup> Enacted by Section 3, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>148</sup> Enacted by Section 3, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>149</sup> 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)<sup>151</sup> shall review the Government's social inclusion strategy and monitor the implementation of its objectives concerning nationalities living in Hungary,  
 g)<sup>152</sup> may propose the adoption, amendment of legislation on the rights of future generations, and  
 h)<sup>153</sup> 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)<sup>154</sup> In the course of their activities, the Deputy Commissioner for Fundamental Rights responsible for the protection of the interests of future generations may use the title of "Ombudsman for Future Generations", and the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary may use the title of "Ombudsman for the Rights of National Minorities".

## *Chapter II*

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

#### 2. 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

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<sup>150</sup> Stipulated by Section 4, Subsection (1) of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>151</sup> Enacted by Section 4, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>152</sup> Enacted by Section 4, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>153</sup> Enacted by Section 4, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>154</sup> 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)<sup>155</sup> No one may become Commissioner for Fundamental Rights or his/her Deputy who—in the four years preceding the proposal for his/her election—has been a Member of Parliament, 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)<sup>156</sup> If the mandates of the Commissioner for Fundamental Rights and his/her Deputy terminate at the same time, the newly elected Commissioner for Fundamental Rights shall make a proposal for the person of the Deputy Commissioner for Fundamental Rights within thirty days 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.

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<sup>155</sup> 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

<sup>156</sup> 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)<sup>157</sup> The Commissioner for Fundamental Rights and his/her Deputies may not pursue any other gainful occupation, nor accept pay for their other activities, with the exception of scientific, educational, artistic activities, activities falling under copyright protection, 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

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<sup>157</sup> 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)*<sup>158</sup> a bailiff at a court of law,
- k)* an independent bailiff, or

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<sup>158</sup> 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)*<sup>159</sup> –with the exceptions provided in Section 2, Subsection (3)–the Parliament,
- b)* the President of the Republic,
- c)* the Constitutional Court,
- d)* the State Audit Office,
- e)* the courts, and
- f)* the Prosecution Service, with the exception of its investigative service.

(4) The Commissioner for Fundamental Rights may conduct ex officio proceedings in order to have such improprieties terminated as are related to fundamental rights and which have arisen in the course of the activities of the authorities. Ex officio proceedings may be aimed at conducting an inquiry into improprieties affecting not precisely identifiable larger groups of natural persons or at conducting a comprehensive inquiry into the enforcement of a fundamental right.

(5) 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

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<sup>159</sup> 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)*<sup>160</sup> may inspect all documents which may have any relevance to the case under inquiry, and may make copies or extracts thereof, and

*c)* may conduct a hearing of any employee of the authority subject to inquiry.

(2)<sup>161</sup> 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

<sup>160</sup> Shall enter into force with the text amended in accordance with Section 7, Paragraph a) of Act CXLIII of 2011

<sup>161</sup> 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)<sup>162</sup> In order to redress the uncovered impropriety related to a fundamental right, the Commissioner for Fundamental Rights may initiate proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General. Within sixty days the competent prosecutor shall inform the Commissioner for Fundamental Rights of his/her position on the initiation of proceedings for the supervision of legality and his/her measure, if any.

(2) 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/A**<sup>163</sup> – (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

<sup>162</sup> Shall enter into force with the text specified in Section 408 of Act CCI of 2011

<sup>163</sup> 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.<sup>164</sup> Inquiries into public interest disclosures

**Section 38/A<sup>165</sup>** – The Commissioner for Fundamental Rights shall inquire into the practices of authorities specified under Section 18, Subsection (1), Paragraphs *a)-k)* in handling public

<sup>164</sup> Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

<sup>165</sup> 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/B<sup>166</sup>** – (1) The Commissioner for Fundamental Rights shall provide for the operation of an electronic system for filing and registering public interest disclosures in accordance with the Act on complaints and public interest disclosures (hereinafter referred to as the “electronic system”).

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

**Section 38/C<sup>167</sup>** – 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/D<sup>168</sup>** Staff members of the Office performing tasks directly related to public interest disclosures shall carry out their duties in positions falling within the scope of national security checks and requiring a personal security certificate.

#### Section 11/B<sup>169</sup> Inquiry into the review process of national security checks

**Section 38/E<sup>170</sup>** – (1) In accordance with the stipulations of the Act on national security services, the Commissioner for Fundamental Rights may inquire into ordering and conducting a review of national security checks from the aspects of fundamental rights related improprieties.

(2) The restrictions stipulated in Section 23, Subsection (2) shall not affect the proceedings of the Commissioner for Fundamental Rights if consulting a document is essential for the successful conduct of the given proceedings.

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

<sup>166</sup> Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

<sup>167</sup> Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

<sup>168</sup> Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

<sup>169</sup> Enacted by Section 46 of Act CIX of 2014 Effective as of February 01, 2015

<sup>170</sup> 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*<sup>171</sup>*The proceedings and measures of the commissioner for fundamental rights within the framework of the national preventive mechanism*<sup>172</sup>

**Section 39/A**<sup>173</sup> – If the Commissioner for Fundamental Rights conducts proceedings in the performance of his/her tasks related to the national preventive mechanism pursuant to Article 3 (hereinafter referred to as ‘national preventive mechanism’) of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment (hereinafter referred to as ‘the Protocol’) promulgated by Act CXLIII of 2011, the provisions of chapter III shall apply to his/her proceedings with the derogations laid down in this chapter.

**Section 39/B**<sup>174</sup> – (1) In order to perform his/her tasks related to the national preventive mechanism, the Commissioner for Fundamental Rights shall regularly examine the treatment of persons deprived of their liberty and held at a place of detention specified in Article 4 of the Protocol—regardless of subsections (1) to (7) of Section 18—also in the absence of any petition or alleged impropriety.

(2) In the course of his/her examination the Commissioner for Fundamental Rights may, in addition to those contained in subsection (1) of Section 21, request data, information and copies of documents from the authority under inquiry on the number and geographical location of places of detention and on the number of persons deprived of their liberty who are held there, on the treatment of these persons and on the conditions of their detention.

(3) In the course of on-site inspections the Commissioner of Fundamental Rights may

*a)* enter without any restriction the places of detention and other premises of the authority under inquiry,

*b)* inspect without any restriction all documents concerning the number and geographical location of places of detention, the number of persons deprived of their liberty who are held there, on the treatment of these persons and on the conditions of their detention, and make extracts from or copies of these documents,

*c)*<sup>175</sup> hear any person present on the site, including the personnel of the authority under inspection and any person deprived of his/her liberty.

*d)*<sup>176</sup>

(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/C**<sup>177</sup> – The Commissioner for Fundamental Rights shall each year prepare a comprehensive report on the performance of his/her tasks related to the national preventive mechanism which report shall be published on the website of the Office.

**Section 39/D**<sup>178</sup> – (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.

<sup>171</sup> Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

<sup>172</sup> Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

<sup>173</sup> Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

<sup>174</sup> Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

<sup>175</sup> Shall enter into force with the text amended by Section 9, Subsection (2) of Act CCXXIII of 2013

<sup>176</sup> Shall not enter into force by virtue of Section 9, Subsection (1) of Act CCXXIII of 2013

<sup>177</sup> Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

<sup>178</sup> 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)<sup>179</sup> 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)<sup>180</sup> 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/E**<sup>181</sup> 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)*<sup>182</sup> 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.

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<sup>179</sup> Shall enter into force with the text amended by Section 9, Subsection (3) of Act CCXXIII of 2013

<sup>180</sup> Shall enter into force with the text amended by Section 9, Subsection (4) of Act CCXXIII of 2013

<sup>181</sup> Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

<sup>182</sup> 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)<sup>183</sup> Public servants employed by the Office shall be appointed and dismissed by the Commissioner for Fundamental Rights or, in the case of public servants 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)<sup>184</sup> 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.<sup>185</sup>

(3)<sup>186</sup> 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.

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<sup>183</sup> Stipulated by Section 7 of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>184</sup> Amended by Section 5, Subsection (2) of Act CLXXI of 2011

<sup>185</sup> See Decree 62/2012. (XII. 11.) BM of the Minister of Interior

<sup>186</sup> 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/A**<sup>187</sup> – Section 34/A of the present Act, established by Act CCXI of 2012 on the amendment of certain justice-related acts, shall also be applicable in handling cases still running on January 1, 2013.

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

**Section 46**<sup>188</sup> – 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 47**<sup>189</sup>

**Section 48** – (1)-(3)<sup>190</sup>

(4)<sup>191</sup>

<sup>187</sup> Enacted by Section 72, Subsection (2) of Act CCXI of 2012 Effective as of January 01, 2013

<sup>188</sup> Stipulated by Section 8 of Act CCXXIII of 2013 Effective as of December 19, 2013

<sup>189</sup> Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012

<sup>190</sup> Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012

<sup>191</sup> Shall not enter into force by virtue of Section 410, Subsection (2) of Act CCI of 2011

(5)–(16)<sup>192</sup>

18. Repealing provisions

**Sections 49-50**<sup>193</sup>

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<sup>192</sup> Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012

<sup>193</sup> Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012

*Annex 5 – The CCB’s Rules of Procedure*

**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**

The Commissioner for Fundamental Rights, acting as National Preventive Mechanism designated in accordance with Article 3 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLI of 2011, hereby establishes a Civil Consultative Body (hereinafter referred to as “CCB”) in order 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. The CCB shall assist the activities of the National Preventive Mechanism with its suggestions and comments.

**Section 1** – (1) The CCB shall comprise member organizations either invited, or selected as a result of a public call for application. Member organizations of the CCB shall be selected by the Commissioner for Fundamental Rights as a token of recognition of their outstanding professional knowledge relative to the treatment of persons deprived of their liberty.

(2) The invited member organizations of the CCB are the following:

Hungarian Medical Chamber,  
Hungarian Psychiatric Association,  
Hungarian Dietetic Association,  
Hungarian Bar Association.

(3) CCB members selected as a result of a public call for application (hereinafter referred to as “public call”) shall include at least four civil society organizations registered and operating in Hungary whose activities during the last five years preceding the publication of the public call have been aimed at protecting the rights and interests of persons deprived of their liberty and monitoring the treatment of persons held in places of detention within Hungary.

(4) The Commissioner for Fundamental Rights shall issue the public call for application and publish it on the website of the Office of the Commissioner for Fundamental Rights 60 days prior to the establishment of the CCB.

(5) The applications received shall be evaluated by a committee comprising at least three members; the members of the committee shall be designated by the Commissioner. The committee shall adopt its decision and make its recommendation with consensus or, if consensus cannot be reached, with the consent of the majority of members. The final decision on the winners of the public call shall be made by the Commissioner based on the committee’s recommendation.

(6) The CCB’s mandate shall be three years from the date of its first session.

**Section 2** – (1) Membership in the CCB shall be established upon accepting the written invitation of the Commissioner for Fundamental Rights.

(2) Member organizations shall inform the Commissioner for Fundamental Rights of the persons representing them simultaneously with confirming the acceptance of the invitation.

**Section 3** – Membership in the CCB shall be terminated

- upon completion of a member’s mandate (three years),
- as a result of a member’s resignation or
- if membership is suspended for more than one year.

**Section 4** – (1) The CCB is not a legal entity.

(2) The Commissioner shall publish the roster of the CCB on the homepage of the Office of the Commissioner for Fundamental Rights and in the annual report of the National Preventive Mechanism.

(3) The member organizations shall bear no responsibility for any statements made by the Commissioner for Fundamental Rights or the contents of the annual report of the National Preventive Mechanism.

**Section 5** The seat of the CCB: Office of the Commissioner for Fundamental Rights (1051 Budapest, Nádor utca 22.)

**Section 6** The CCB shall operate as a body whose members may

- a) make suggestions relative to the contents of the annual schedule of visits of the National Preventive Mechanism and concerning inspection priorities;
- b) initiate visits to certain places of detention;
- c) recommend, on account of the particularities of the places of detention, the involvement of an expert with special knowledge who may be affiliated with the organization they represent;
- d) comment on the working methods, reports, information materials and other publications of the National Preventive Mechanism;
- e) discuss the training plan designed to develop the skills of staff members authorized to carry out the duties of the National Preventive Mechanism;
- f) participate, when possible, in conferences, workshops, exhibitions and other events organized by the National Preventive Mechanism.

**Section 7** – (1) The Commissioner for Fundamental Rights shall provide for the appropriate conditions for the CCB's operation. Members of the CCB shall not be entitled to any remuneration.

(2) Should an expert recommended by the members of the CCB engage in carrying out the duties of the National Preventive Mechanism, and provided that the given expert is not a staff member of the Office of the Commissioner for Fundamental Rights, the Commissioner for Fundamental Rights shall conclude an engagement contract with the given expert.

**Section 8** – (1) The sessions of the CCB shall be convened by the Commissioner for Fundamental Rights as necessary, but at least twice annually, indicating the venue, the time and the agenda of the meeting. Invitations shall be sent out to members not later than eight days before the date of the meeting. The sessions may be convened via email. The Commissioner for Fundamental Rights and the members of the CCB may request the inclusion of an additional item in the agenda in writing not later than the third day before the meeting, and orally during the meeting itself.

(2) Any member may request the Commissioner for Fundamental Rights to convene a session of the CCB in writing, indicating the reason and purpose thereof.

(3) A session of the CCB shall have quorum if it was duly convened and its agenda was duly communicated, and if it is attended by at least one invited member and one member selected as a result of a public call.

**Section 9** – (1) The meetings of the CCB shall not be open to the public; they may be attended only by the members and those invited by the Commissioner for Fundamental Rights.

(2) The meetings of the CCB shall be chaired by the Commissioner for Fundamental Rights.

(3) The CCB shall take its decisions by a majority of the votes cast. Each member shall have one vote; in the event of a tie, the vote of the chair shall decide.

(4) The minutes of a session shall be kept by a person requested by the Commissioner for Fundamental Rights. The minutes shall indicate the time and venue of the meeting, the names of the participants, the summary of oral contributions, the decisions taken and, if necessary, the reasons prompting their adoption and their serial numbers adjusted to the corresponding item on the agenda. The minutes shall be signed by the keeper and approved by the Commissioner for Fundamental Rights.

(5) The minutes of the sessions of the CCB shall be open to the public; the Commissioner for Fundamental Rights shall publish them on the homepage of the National Preventive Mechanism and may also publish them in any other publication.

**Section 10** – (1) The present directive shall be published by the Secretary General of the Office of the Commission for Fundamental Rights on the institution's homepage within eight days after its execution.

(2) The present directive shall take effect on the first day of the month following its execution.

Budapest, September 11, 2014

László Székely