



OFFICE OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS
HUNGARY

COMMUNIQUÉ

**Hungary: New Organisation-New Methods of Investigation
On the Methods of Inquiry of the Commissioner for Fundamental Rights**

The normative instructions on the professional rules and methods of the inquiries of the Commissioner for Fundamental Rights have been drawn up. The restructuring of the organisation of the Office of the Commissioner for Fundamental Rights has started in accordance with the provisions of the new Act. Independently of this internal reorganisation, the Office's system of receiving complaints functions without interruption.

According to the normative instructions on the professional rules and methods of the inquiries, one has to pay special attention to the fundamental right relating to human dignity, to the rights of children, to the interests of future generations, to the rights of nationalities, to the rights of persons with disabilities, and to the protection of the rights of the most vulnerable groups of society. Apart from the proceedings started upon complaints from citizens, the Commissioner may, when justified, start proceedings *ex officio*, or on the proposal of the Deputy Commissioner responsible for the interests of futures generations or on that of the Deputy Commissioner responsible for the protection of the rights of nationalities living in Hungary. The method of inquiry will be chosen by the Commissioner from among a wide variety of possibilities ranging from simple requests for data to on-site inspections without previous notification. Several methods may be applied within the same proceedings, and in justified cases the same inquiry may be repeated several times. The Commissioner for Fundamental Rights may make use of any legal means which are necessary to uncover the factual and legal background of a case. The authority under inquiry is bound to cooperate, and if it fails to do so, the Commissioner will put it on record in his report, and inform Parliament and the public thereof in his annual report.

According to the provisions of the new Act, the Ombudsman may initiate with the Constitutional Court the *ex-post* review of the conformity a rule of law, or of a provision thereof, with the Fundamental Law, i.e. proceedings for the *ex-post* review of norms; he may also request a review of the Constitutional Court to ascertain whether a rule of law is contrary to an international treaty. He may do so on the basis of an inquiry conducted in an individual case or without it, on the basis of a complainant's request, or *ex officio*, or on the basis of previous consultation at the proposal of one of his deputies. An important guarantee is that where the Commissioner does not agree with the proposal of a Deputy of his, he will also inform Parliament of the reasons therefor in his annual report. The submission of a motion for an *ex-post* review of norms is especially justified in cases where the fundamental rights of those belonging to groups needing special protection are infringed, where the right to a healthy environment is violated, where the infringement of fundamental rights is of flagrant gravity, or if the number of citizens affected by the infringement makes it necessary.

The Commissioner for Fundamental Right may conduct exceptional inquires if the conditions specified in the Act are met. This is justified in particular if the activity or omission of the organ not qualifying as authority gravely infringes the fundamental rights of a larger group of natural persons whose members are unable to request legal protection. Another justification for such proceedings is



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where one may reasonably assume that the infringement will be repeated or where there is no legal remedy for it. In the course of these proceedings the Ombudsman may request a written explanation, declaration, information or opinion from the organ not qualifying as authority.

In case of an activity which is harmful for the environment, the Commissioner may carry out an on-site inspection. In such proceedings he may have access to any information relating to the activity that is harmful to the environment, including personal data, business secrets, tax secrets, or data on the habitat of plants or animals under special protection, on national resources nearing depletion, or on the location of geological natural treasures under special protection.

The instructions expressly mention that the Commissioner may, upon the request of the submitter or of his own decision, give an opinion on draft rules of law under public consultation; in his opinion he will assess whether the text of the proposed norm reflects the legislative recommendations made in the course of previous inquiries, whether it redresses the improprieties uncovered previously by him or her, and whether it is suitable to eliminate in the future the observed legal deficiencies. He will have to always take into account such comprehensive criteria as the realisation of equal treatment and of equal opportunity, the principle of sustainable development, the realisation of tension-free social relations, and the impact of the given rule of law on the situation of the protected groups. The detailed rules can be found in the instructions on the professional rules and methods of the inquiries of the Commissioner for Fundamental Rights, the entire text of which will be published in the annex of the Hungarian Official Gazette.

As a result of a series of consultations, the secretariats of the former Ombudsman responsible for the rights of national and ethnic minorities and of the former Ombudsman for future generations were modelled on those of the Constitutional Court's members of ministerial rank, and are now functioning with four full-time employees and one part-time employee - as of 1 January these two Deputies of state secretarial rank are the specialised Deputies of the Commissioner for Fundamental Rights. Dr. Ernő Kállai already appointed the members of his staff in December, while Dr. Sándor Fülöp appointed some of his staff after receiving on 2 January the new organisational and operational rules of the Office, and the others will be appointed in the near future. The effective operation of the new Office will be further ensured by the fact that the Ombudsman has requested five former staff members of the Commissioner for Minority Rights, and two former staff members of the Commissioner for Future Generations to head certain separate organisational units within the Office. Speaking of the organisation restructuring and organisation building started this year, the Commissioner for Fundamental Rights, Dr Máté Szabó, has made it clear that further, now unforeseeable major changes might also be made in the course of the year. The new organisation even makes it possible for all the staff members of the Office of the Commissioner for Fundamental Rights to deal, on a temporary basis, with a priority issue, such as environmental or minority rights.