

**ACT CXI OF 2011
ON THE COMMISSIONER FOR FUNDAMENTAL
RIGHTS**

(Draft Paper)

The Act has entered into force on 1st January, 2012.



2012.

In the interest to ensure the effective, coherent and most comprehensive protection of fundamental rights and in order to implement the Fundamental Law of Hungary, the Hungarian Parliament adopted the Act on the Commissioner for Fundamental Rights pursuant to the Article 30 of the Fundamental Law.

The Commissioner for Fundamental Rights performs his tasks independently, as a national preventive and/or supervisory body for the protection of rights. The Commissioner for Fundamental Rights is subordinated only to law, and may not be given instructions regarding his/her activities.

THE COMMISSIONER FOR FUNDAMENTAL RIGHTS

The Commissioner for Fundamental Rights pays special attention to the protection of

- the rights of children,
- the rights of nationalities living in Hungary,
- the rights of the most vulnerable social groups,
- the values determined as ‘the interests of future generations’.

The Commissioner for Fundamental Rights gives an opinion on the draft rules of law affecting his/her tasks and competences; on long-term development and land management plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations; and he/she may make proposals for the amendment or making of rules of law affecting fundamental rights and/or the recognition of the binding nature of an international treaty.

The Commissioner surveys and analyses the situation of fundamental rights in Hungary, and prepares statistics on those infringements of rights in Hungary which are related to fundamental rights. Therefore, the Commissioner submits his/her *annual report to Parliament*, in which he/she gives information on his/her fundamental rights activities and gives recommendations and proposals for regulations or any amendments. The Parliament shall debate the report during the year of its submission.

In the course of his/her activities, the Commissioner cooperates with organisations aiming at the promotion of the protection fundamental rights.

As a new mandate, the Commissioner for Fundamental Rights may initiate the review of rules of law at the Constitutional Court as to their conformity with the Fundamental Law.

Furthermore, the Commissioner participates in the preparation of national reports based on international treaties relating to his/her tasks and competences, and monitors and evaluates the enforcement of these treaties under Hungarian jurisdiction.

THE DEPUTY-COMMISSIONERS FOR FUNDAMENTAL RIGHTS

The provisions of the Act strongly affect the organizational structure of the ombudsman system. Since the Parliament elects only one ombudsman, this person is assigned to choose his/her own deputies whom are also elected by the Hungarian Parliament. There is one Deputy-Commissioner who is responsible for the protection of the interests of future generations and there is one other Deputy-Commissioner who is responsible for the protection of the interests of nationalities living in Hungary.

The Deputy-Commissioners

- monitor the enforcement of the interests of future generations,
- regularly inform the Commissioner for Fundamental Rights on his/her experience regarding the enforcement of the interests of future generations or minorities living in Hungary,
- draw the attention of the Commissioner to the danger of infringement of the rights of a larger group of natural persons,
- participate in the inquiries of the Commissioner for Fundamental Rights,
- may propose the Commissioner to institute proceedings ex officio,
- may propose the Commissioner for Fundamental Rights to turn to the Constitutional Court.

THE MANDATE OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS AND THE DEPUTIES:

The Parliament elects the Commissioner for Fundamental Rights (by the proposal of the President of the Republic) and his/her Deputies for 6 years term. Any Hungarian citizen can be elected as Commissioner for Fundamental Rights or the Deputy-Commissioner, if he/she holds a law degree, has the right to stand as a candidate in elections of Members of Parliament and who also has outstanding theoretical knowledge or at least ten years of professional experience; furthermore he/she has reached the age of thirty-five years and has considerable experience in conducting or supervising proceedings concerning fundamental rights.

The mandate of the Commissioner and his/her Deputies is incompatible with any other state, local government, social or political office or mandate or any other gainful occupation, with the exception of scientific, educational, artistic activities.

The Commissioner and his/her Deputies have the right to immunity identical to that of Members of Parliament.

The Commissioner for Fundamental Rights may be re-elected once.

The mandate of the Commissioner for Fundamental Rights and his/her Deputies' terminates

- upon expiry of his or her mandate,
- upon his/her death,
- upon his/her resignation,
- if the conditions necessary for his/her election no longer exist,
- upon the declaration of a conflict of interests,
- upon his/her dismissal, or
- upon removal from office.

PROCEEDINGS OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS:

Anyone may turn to the Commissioner for Fundamental Rights, if in his/her judgement, the activity or omission of the public and/or other organs performing public duties (see: the exhaustive list below)

infringes a fundamental right of the person submitting the petition or presents an imminent danger. When the person reporting has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or if no legal remedy is available to him or her.

The list of organs:

- a public administration organ,
- a local government,
- a nationality self-government,
- a public body with mandatory membership,
- the Hungarian Defence Forces,
- a law-enforcement organ,
- any other organ acting in its public administration competence, in this competence,
- an investigation authority or an investigation organ of the Prosecution Service,
- a notary public,
- a bailiff at a county court,
- an independent bailiff, or
- an organ performing public services.

Inquiries into an organ performing public services may be carried out only in connection with its public service activities. Independently of its form of organisation, organs performing public services shall be the following:

- organs performing state or local government tasks and/or participating in the performance thereof,
- public utilities providers,
- universal providers,
- organisations participating in the granting or intermediation of state or European Union subsidies,
- organisations performing activities described in a rule of law as public service, and
- organisations performing a public service which is prescribed in a rule of law and the use of which is mandatory.

The Commissioner for Fundamental Rights *cannot inquire the activities* of the Parliament, the President of the Republic, the Constitutional Court, the State Audit Office, the courts, or the Prosecution Service (with the exception of the investigation organs of the Prosecution Service).

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

Cases where the Ombudsman cannot help:

- If the procedure has begun before 23rd October 1989.
- If the non-appealable decision was made more than 1 year ago.
- If the legal proceeding is pending or is already *res judicata*.

In the course of his/her inquiries, the Commissioner for Fundamental Rights

- may request data and information from the authority subject to inquiry on the proceedings it has conducted or failed to conduct, and may request copies of the relevant documents,
- 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,
- may participate in a public hearing, and
- may conduct on-site inspections.

The Commissioner may request a *written explanation, declaration, information or opinion* from the organisation, person or employee of the organisation having the *obligation to cooperate*.

The Commissioner for Fundamental Rights may turn to the **Constitutional Court** in accordance with those laid down in the Act on the Constitutional Court.

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

The Commissioner for Fundamental Rights submits his/her **annual report to Parliament**, in which he/she gives information on his/her fundamental rights activities and gives recommendations and proposals for regulations or any amendments. The Parliament shall debate the report during the year of its submission.

THE OFFICE OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS

The administration and preparation related to the tasks of the Commissioner for Fundamental Rights is performed by the **Office**, which is directed by the Commissioner for Fundamental Rights and managed by the **Secretary General**.

Office of the Commissioner for Fundamental Rights

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