

INTRODUCTION

***OFFICE OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS
IN HUNGARY***



2012

www.ajbh.hu

I. INTRODUCTION TO THE INSTITUTION OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS IN HUNGARY

The first written Constitution of the Republic of Hungary was adopted in 1949, and later comprehensively amended in 1989. Hungary was the only former communist country in Eastern Europe that did not adopt an entirely new basic law after the fall of Communism. As a result of the parliamentary elections held in April 2010, a new centre-right government came to power with a stunning two-thirds majority in Parliament with the promise of introducing constitutional changes. After the formation of the new Parliament, an ad-hoc committee was established for the preparation of the new Constitution in June 2010. The new Fundamental Law was adopted on 18th April 2011 and entered into force on 1st January 2012.

In accordance with the Fundamental Law of Hungary, Act CXI of 2011 on the Commissioner for Fundamental Rights was adopted as well, which created a unified ombudsman system. According to Article 30 of the Fundamental Law, the Commissioner for Fundamental Rights is an organ comprising a single person who shall be nominated by the President of the Republic and elected by Parliament to carry out activities guaranteeing the protection of fundamental rights.

According to the provisions of the Fundamental Law, the name of the institution also changed from Parliamentary Commissioner for Civil Rights to Commissioner for Fundamental Rights. The provisions strongly affect the organizational structure of the ombudsman system, since Parliament elects only one ombudsman and this person will be empowered to propose his/her own deputies (also elected by the Parliament). The offices of the special ombudsmen (parliamentary commissioners for the rights of national/ethnic minorities and for the interests of future generations) were integrated into the office of the general ombudsman.

The new Act preserved the achievements in the field of the Ombudsman's protection of rights, but at the same time it sought to provide solutions to the problems which have arisen in the course of judicial practice in recent decades. According to the Act, the Commissioner has the right to launch special proceedings related to organizations which are not public organs (e.g., companies, banks, social organizations). Moreover, the new regulation leads to an increased protection of rights, due to a more effective commissioner system and a broadening of the General Ombudsman's mandate.

The main task of the Commissioner for Fundamental Rights is to inquire into any improprieties relating to constitutional rights he has become aware of and to initiate general or particular measures for their redress. The Parliamentary Commissioner for Fundamental Rights is solely accountable to Parliament. As for the legal status of the Ombudsman, in the course of proceedings he has to be independent and may take measures exclusively on the basis of the Fundamental Law and Acts of Parliament.

The Ombudsman is elected for a six-year term by a majority of two-thirds of the votes of the Members of Parliament at the proposal of the President of the Republic. The Ombudsman may be re-elected for a second term.

Act CXI of 2011 on the Commissioner for Fundamental Rights states that **anyone may turn to the Commissioner**, if he or she has suffered injury as a result of an action of any authority or organ performing a public service, or a decision taken in the course of action, or omission by an authority that has resulted in the infringement of his/her fundamental rights, or if a risk thereof exists.

The Act on the Commissioner gives an exhaustive list of authorities. These are:

- ❖ a public administration organ;
- ❖ a local government;
- ❖ a nationality self-government;
- ❖ a public body with mandatory membership;
- ❖ the Hungarian Defense 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 service;

Fundamental rights may be infringed in particular by the following:

- ❖ unreasonably long proceedings
- ❖ discrimination
- ❖ provision of inaccurate or wrong information
- ❖ unfair treatment
- ❖ refusal to disseminate information on unreasonable grounds
- ❖ unlawful decision

A very important aspect of the Commissioner's role is that a complaint may be filed even if the complainant has already exhausted the available administrative remedies – except for judicial review of administrative decisions –, or where no legal remedies are ensured.

Cases where the Ombudsman cannot help:

- If the proceedings have begun before 23rd October 1989
- If the final administrative decision was made more than 1 year ago
- If legal proceedings are pending or a final court decision has been rendered
- The Ombudsman cannot inquire into the activities of Parliament, the President of the Republic, the Constitutional Court, the State Audit Office or the public prosecutor's office (except for the investigation office of the public prosecutor),
- If the plaintiff seeks legal counsel

The Ombudsman selects him/herself the course of action that is deemed to be most appropriate. Key measures are:

1. To initiate redress of the impropriety by the head of the authority subject to inquiry and inform the supervisory organ.
2. To initiate proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General.
3. To turn to the Constitutional Court in accordance with the provisions of the Act on the Constitutional Court.
4. To participate in the proceedings as an intervener in the course of the judicial review of an administrative decision relating to the state of the environment.
5. To initiate regulatory or disciplinary proceedings with the organ authorized to conduct such proceedings.
6. To propose that the organ authorised to make law modify, repeal or issue the rule of law, or to propose that the organ in charge of preparing rules of law prepare a rule of law.
7. To submit the case to Parliament and request a parliamentary inquiry.

II. INTRODUCTION TO THE PROJECTS OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS IN HUNGARY

The Commissioner **Dr. Máté Szabó** launched a new working method and a way of thinking after his election in September 2007. **He examines every year topics which are especially important for the society and the enforcement of the rule of law and have a particular significance from the point of view of rights and freedoms.** Within these defined fields, he initiates special projects which have particular focus and consideration within the Ombudsman office (initiating particular inquiries, etc), in the media and the public presentation of the Commissioner. Since there is no independent parliamentary institution for the protection of the rights of children, the Commissioner operates during his mandate also as an ombudsperson for children's rights.

Projects in 2008 are:

- **HOMELESSNESS**
- **CHILDREN'S RIGHTS (AWARENESS RAISING)**
- **FREEDOM OF PEACEFUL ASSEMBLY**

Projects in 2009 were:

- **RIGHTS OF PEOPLE LIVING WITH DISABILITIES**
- **CHILDREN'S RIGHTS (VIOLENCE)**
- **RIGHT TO FREE MOVEMENT AND TRANSPORT**
- **RIGHT TO STRIKE**

Projects in 2010 were:

- **RIGHTS OF ELDERLY PEOPLE**
- **CHILDREN'S RIGHTS (CHILDREN IN CARE)**
- **CONSEQUENCES OF THE FINANCIAL CRISIS**

Projects in 2011 were:

- **RIGHT TO HEALTH**
- **CHILD HEALTHCARE**
- **DISASTER MANAGEMENT**

Projects Foreseen for 2012:

- **CHILD FRIENDLY JUSTICE**
- **LOSERS OF THE ECONOMIC CRISIS**
- **DIGNITY OF LABOR**
- **INQUIRY BY THE OMBUDSMAN ON THE PENITENTIARY SYSTEM AND ALIEN POLICY IN THE FRAMEWORK OF THE PROJECT EXAMINING THE FUNDAMENTAL RIGHTS CONNECTIONS OF DETAINEES' RIGHTS**

MAIN PROJECTS IN 2011:

a) RIGHT TO HEALTH

The right to health project concentrated on the patients' rights, including the confidential relationship between doctors and patients, the right to the rejection of life-saving interventions, transplantations, the care system for HIV patients, the special problems of the psychiatric care-system and the guarantees of the mother-child friendly birth-giving.

b) PROJECT ON CHILD HEALTHCARE

The Parliamentary Commissioner for Fundamental Rights had a special responsibility based on *Act XXI of 1997 on Child Protection*; hence, he acted as an ombudsperson for children as well. A new website on children's rights – www.gyermekjogok.ajbh.hu – was created for the public and professionals. In the first year of the project, priority was given to awareness-raising of children about their rights. In the second year the ombudsman focused on violence against and among children and in the third year he focused on children in care (child welfare basic provision and services, children's rights in the media and in the education system, employment of children, conditions of young persons in detention centres). In 2011, the children's project aimed to deal with different kinds of abuses committed against and by the children, particularly sexual abuse, drug and alcohol consumption, healthy food and catering in the schools, missing children, access to sport activities in and outside the school, health care of disabled children, child psychiatric care. The Ombudsman actively took part in the European Network of Ombudspersons for Children and in Eurochild.

c) DISASTER MANAGEMENT PROJECT

Hungary faced numerous natural and industrial disasters during the year of 2010. Therefore, the ombudsman launched several inquiries relating to this subject, but the tragic experience of the last year highlighted the necessity of a new approach to the emergency system of the state organs, with great emphasis on the necessary cooperation of the organizations concerned. The following inquiries were completed in the field of proceedings in emergency-related cases:

- follow-up inquiry into the case of the annual Budapest fireworks in August 2006. (The storm had reached the spectators of the annual fireworks of 20th August in the open air resulting in several fatalities and injuries of different degrees and affecting some 500 further persons. The ex-officio inquiry of the ombudsman by reason of the violation of the constitutional right to life has revealed the improprieties of the relevant regulations and the functional inconsistency of the concerned authorities.)
- psychological care for the policemen;- the collaboration and cooperation of the armed forces and other state organs during and after emergencies;
- the question of professional guidance during emergencies;
- the functioning of fire-brigade organizations and other emergency units;
- the special needs of emergency during the planning and execution of large-scale projects, such as highway construction;
- reparation and compensation of the citizens for the damages after the tragic events.

INTERNATIONAL ACTIVITY

It was a milestone in our international relations when, in May 2011, the Commissioner received a positive response from the Accreditation Sub-committee, and an NHRI B-status was offered for our institution in response to the application to Geneva for obtaining the status of the *National Human Rights Institution* (NHRI). The main mission as a corollary of the status is the independent and expert inspection of human rights in the given country on the basis of the Paris Principles of 1991.

The most important tasks are:

- human rights counselling or consultation either ex officio, or on one's own initiative, or commissioned by the government, parliament or a state organ;
- preparation of position papers, recommendations and reports and their presentation to the public on human rights issues;
- recommendation and promotion of the ratification of agreements of international law;
- promoting the adjustment of the domestic legal order to international human rights agreements and the effective implementation of the latter;
- active participation in the compilation of the human rights reports for the UN;
- cooperation with the UN and international or domestic human rights organisations;
- teaching and research into human rights;
- calling the attention of the society to issues of human rights (particularly those related to discrimination) and to the violations of rights.

In 2011, the Hungarian Ombudsman was a rather active participant of the various international networks of Ombudsmen (IOI, EOI) on international organisations (EU, FRA, Council of Europe, OSCE etc.) as the exchange of information and experiences had a highly positive effect on our work.

In 2012, the Commissioner also intends to continue the international cooperation and work of the former special ombudsmen as their task is within the competence of the Commissioner of Fundamental Rights according to Act CXI of 2011.

Office of the Commissioner for Fundamental Rights

H-1051 Budapest, Nádor u. 22.

☒ 1387 Budapest, Pf.: 40

☎ (06-1) 475 7100

☎ (06-1) 269 1615

www.ajbh.hu