



OFFICE OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS
THE NATIONAL HUMAN RIGHTS INSTITUTION OF THE UNITED NATIONS
HUNGARY

To whom it may concern.

Subject: Human Rights Council resolution 19/36 on human rights, democracy and the rule of law

Budapest, 15th September, 2012.

Dear Sir/Madam,

With reference to your letter dated 11th July, 2012 on providing information regarding challenges, best practices and lessons learned, referred to in paragraph 24 of Human Rights Council resolution 19/36 on human rights, democracy and the rule of law please find enclosed the following information:

In January 2012, in the framework of constitutional changes, a new Ombudsman-system was introduced in Hungary, establishing a new, **unified organisation and creating new methods of inquiry** of the Commissioner for Fundamental Rights. In general, this new system may guarantee the protection of fundamental rights in a more effective and focused way. It had also made possible for the institution to become more effective and intelligible, and the tasks and areas of competencies received a clear regulation. The new legislation on the Commissioner for fundamental Rights **made possible to launch special proceedings related to organizations which are not public bodies** (e.g. companies, banks, social organizations).

The two previous special ombudsmen (**parliamentary commissioners for the protection of national and ethnic minorities and for the interests of future generations**) **were integrated** into the office of the general ombudsman, now serving as deputies of the Commissioner for Fundamental Rights.

The Ombudsman's Office has to perform not only rights protection tasks, but **in connection with future generations** exceptionally it has to perform **advocacy tasks** as well. In this field there is **continued cooperation with the parliamentary committees, the National Council on Sustainable Development, the National Environment Council, the academic world of science, church and civil society organisations and the representatives of economic interests.**

In the new system the **Deputy Ombudsman responsible for the Protection of the Rights of Nationalities** living in Hungary **analyses the contradictions of legal regulations,**



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the special circumstances relating to nationalities and the state of affairs regarding the cultural autonomy of the nationalities. As a new element in his concept, each month he intends to focus his attention on the conditions and circumstances of a chosen nationality. He also conducts talks with the leaders and experts of the community concerned, reviews the work of the educational institutions and meets people in person. Besides *ex officio* inquiries, certain questions relating to the autonomy of nationalities and to the integration of Roma are also dealt with by the Deputy Ombudsman at experts' meetings, and in permanent and *ad hoc* circles of professionals.

The present Commissioner for Fundamental Rights launched a new working method in 2008. He examines every year different topics of special importance for society and with particular significance from the point of view of rights and freedoms. Within these defined fields, he initiates special projects which have particular focus within the Ombudsman's office (initiating particular inquiries, etc), in the media and the public presentation of the Commissioner. In 2012 these projects – among others – included: Project on children's rights - a project on child-friendly justice or the project on the losers of the crisis. It is important to note that due to the fact that there is no independent ombudsman institution for the protection of the rights of the child, the Commissioner operates during his mandate also as an Ombudsperson for children's rights.

Another important achievement was – even at international level – the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in January, 2012. The Hungarian Government appointed the Commissioner for Fundamental Rights to perform the tasks of the national preventive mechanism. However, the lack of financial commitment by the government will make it difficult to comply properly with all the obligations deriving from the provisions of the OPCAT until 2015.

Despite these achievements, the Hungarian constitutional system has faced several challenges having an important impact on the duties and activities of the Commissioner for Fundamental Rights.

It was a significant change, that as of 1 January 2012 only certain persons and organs may turn to the Constitutional Court. Besides the Government or one fourth of all Members of Parliament, the Commissioner for Fundamental Rights may also initiate a review of the conformity of rules of law with the Fundamental Law if he or she considers that the rule of law is contrary to it. This means that the new regulation on the Constitutional Court does not ensure *actio popularis any more*, i.e. it does not allow that citizens without a special legal interest to initiate the review of the constitutionality of a rule of law. On the basis of an inquiry conducted upon a concrete complaint and following the establishment of a situation infringing a fundamental right, the Ombudsman still has the possibility to file an application with the Constitutional Court in order to request the *ex post* (after adoption) review of the contested regulation.

As a result of the narrowing of the right to file petitions there is a steady increase in the number of those complaints arriving to the Commissioner where the proceedings of the Ombudsman are not initiated in connection with particular cases. According to the Act on



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the Commissioner for Fundamental Rights the **Commissioner also has the possibility to file petitions with the Constitutional Court directly on the basis of submitted complaints without conducting proceedings or inquiries.** For filing *direct petitions* one should consider especially the gravity of the existing fundamental rights violation, the number of injured persons and the group(s) these persons belong to.

Sincerely Yours,

Prof. Dr. Máté Szabó

The Commissioner for Fundamental Rights of Hungary