



THE COMMISSIONER FOR FUNDAMENTAL RIGHTS
HUNGARY

20
years

Mr. Joachim R ucker
President
Human Rights Council
The United Nations

Budapest, 21 September 2015

Dear Mr. President,

As the Commissioner for Fundamental Rights of Hungary, I am sending the National Human Rights Institution Report for the Universal Periodic Review on Human Rights in Hungary, scheduled to the sessions in April- May, 2016.

Please accept, Mr President, the assurance of my highest consideration and esteem.

Sincerely yours,


L szl  Sz kely

**UNIVERSAL PERIODIC REVIEW ON HUMAN RIGHTS IN HUNGARY, NHRI REPORT, 2ND Cycle,
April/May 2016**

METHODOLOGY

1. The current report is submitted by the Commissioner for Fundamental Rights (CFR) of Hungary on the occasion of the 2nd Universal Periodic Review on human rights of Hungary at the Human Rights Council. The CFR aims to protect and promote fundamental rights with special attention dedicated to the rights of the child, people with disabilities, vulnerable groups, people belonging to minorities and the interests of the future generations.¹ The report is based on the recommendations given in individual cases and the outcomes of comprehensive investigations initiated ex officio between October 2010 and July 2015.

NATIONAL HUMAN RIGHTS INSTITUTION

2. In December 2014 the Commissioner for Fundamental Rights has been accredited as an “A” status **National Human Rights Institution** by the ICC. In accordance with the Paris Principles the CFR aims to protect and promote fundamental rights in close cooperation with other organizations aiming at the promotion of the protection of fundamental rights including the civil society while the institution is independent from the government and subject only to the provisions of the Fundamental Law of Hungary and the Acts of the Parliament. The Commissioner has two deputies: one of them is responsible for protection of the rights of national minorities living in Hungary, while the other deputy protects the interests of future generations.

3. The CFR is vested with **quasi-judicial competence** to hear and consider complaints against public authorities and other entities providing public services as well as to initiate investigations ex officio into the situation of a non-determinable group of people or the implementation of a particular fundamental right. In case of infringement, the Commissioner addresses a recommendation to the respective authority or its supervisory organ which is obliged to inform him of its position on the merits of the recommendation and on the measures taken within thirty days. Furthermore the CFR scrutinizes laws, bills and policies and makes proposals for amendment or repeal as well as contributes to the **promotion of human rights** by means of education, training and awareness raising activities. Regarding **international obligations** of Hungary, the CFR promotes the ratification of international human rights documents and monitors their implementation. [R.94.17- R.94.27; R.95.15]

¹ Act of CXI of 2011 on the Commissioner for Fundamental Rights

4. The **National Preventive Mechanism (NPM)** under the UN OP-CAT was established as a separate department within the Office of CFR in 2014 and started to operate on 1st January 2015.² In accordance with the Paris Principles, a Civil Consultative Body (CCB) was set up with the participation of 8 NGOs chosen through open calls; the members are inter alia entitled to recommend visits to places of detention and external experts to participate in visiting delegations. So far the NPM has carried out 11 visits of which results will be briefly summarized as well. The major challenge of the NPM's work is the lack of adequate funding. [R.94.1-R.94.5; R.94.80; R.94.88; R.95.1]

5. The **Independent Monitoring Mechanism (IMM)** under the UN CRPD was designated to the National Disability Council (NDC) which fails to comply with the Paris Principles for several reasons.³ The NDC is the advisory body of the government and headed by minister in office responsible for promotion of equal opportunities however it works with the participation of NGOs. The Committee on the Rights of People with Disabilities in its concluding observations called upon Hungary to set up an IMM in accordance with the Paris Principles as well, of which at the moment in Hungary only the CFR complies with.⁴ [R.94.59]

RIGHTS OF THE CHILD

6. The **operation of the child protection system** was matter of individual complaints as well as investigations on systemic issues initiated ex officio with special focus on the signaling system⁵ and the situation of children entitled to special welfare services.⁶ Upon the request of the Commissioner, a manual on recognizing the warning signs of **child abuse** was developed targeting professionals who are members of the child protection signaling system (e.g. teachers, psychologist, and medical staff).⁷ Although the CFR is still concerned that relevant **professional experience** is not a requirement of employment in child care institutions offering special welfare services and there is no mandatory training for new employees.⁸

7. Despite the main rule of placing children under the age of 12 is primarily family-based care, the Child Protection Act enables **institutional care of children** with severe disability or illness and of multiple siblings. One of the visits of the NPM at a children's home confirmed that children under the

² Website of the Office of the Commissioner for Fundamental Rights, National Preventive Mechanism available at <http://www.ajbh.hu/en/web/ajbh-en/opcat>

³ Report of AJB-2979/2014.

⁴ Concluding observations on the initial periodic report of Hungary adopted by the Committee at its eighth session (17-28 September 2012), CRPD/C/HUN/1

⁵ Report of OBH-4326/2000., OBH-4226/2006., OBH-5158/2007., OBH-1024/2008., OBH-1905/2009., AJB-2227/2010., AJB-7903/2013, AJB-2456/2015.

⁶ Report of AJB-4883/2009., AJB-1604/2010., AJB-545/2013., AJB-2648/2013.

⁷ Report of AJB-7903/2013.

⁸ Report of AJB-545/2013.

age of 3 are still frequently placed in institutions because of these “specific needs”.⁹ Another concern is that there is no strategy against the **sexual exploitation of children and child prostitution**, children’s homes often lack of adequate solutions when facing prostitution or sexual exploitation cases.

8. In relation to realization of the right to education the Commissioner found that the quality and quantity of **school meal** was not satisfying and often special dietary needs were not taken into account,¹⁰ furthermore, he drew attention to **the weight of school bags** (result of the high number of mandatory books) and related health risks and problems.¹¹ **The shortage of child and adolescent psychiatrist** is another issue which jeopardizes the provision of services.¹² Furthermore, **the human rights education** of children is part of the formal curriculum but in practice children rights are not discussed in details.¹³

9. The Commissioner raised concerns in the field of **child friendly justice**, too. He found that the relevant provisions of the **Misdemeanor Act**¹⁴ which enable the use of detention as a sanction in juvenile’s cases are not in accordance with the UN CRC.¹⁵ During an NPM visit it was observed that in a **juvenile penitentiary institution** the inter-prisoner sexual and physical violence is occurring frequently.¹⁶ [R.94.77; R.94.87]

PEOPLE WITH DISABILITIES

10. The report about **access to public services** of people using assistance dogs revealed the shortcomings of the relevant legislation and its implementation such as the restrictive definition of assistance dogs to guide dogs and the barriers hindering full access to public services despite all the efforts taken by the relevant authorities.¹⁷ Outcomes of the investigation on **access to public transport** was quite similar: the Commissioner welcomed the measures already implemented by

⁹ Report of AJB-373/2015. on NPM Visit to the Reménysugár (“Ray of Hope”) Children’s Home of Debrecen. See Summary at http://www.ajbh.hu/documents/14315/2445792/Remenyisugar_Gyermekotthon_jelentes_osszefoglalo_EN_VEGLEGES.pdf/0bdc091e-1d3f-45b5-b720-093c4908a8aa

¹⁰ Report of AJB-560/2011.

¹¹ Report of AJB-691/2013.

¹² Report of AJB-1298/2011.

¹³ Report of AJB-1199/2013.

¹⁴ Act of II of 2012 on Misdemeanor Act

¹⁵ Report of AJB-3298/2012.

¹⁶ Report of AJB-1423/2015. on NPM Visit to the Juvenile Penitentiary Institution of Tököl (March 24-25, 2015), http://www.ajbh.hu/documents/14315/2445792/1423-T_%C3%B6sszegz%C3%A9s+EN.pdf/032be1a8-5a14-4a83-a10b-cc0de4b96a03

¹⁷ Report of AJB-2663/2013.

Center for Budapest Transport however found that further steps are needed in order to broaden accessibility and effective use of public transport.¹⁸

11. The issue of **access to banking services** offered by private financial institutions was raised quite a few times before and after the relevant decision of the Committee on the Rights of Persons with Disabilities.¹⁹ The Commissioner has recently stated that a non-binding recommendation made by the public monitoring body of financial institutions and a comprehensive plan of the Ministry of Human Resources is rather considered preparation than implementation. The training activities organized for employees is definitely a step ahead, however appropriate legislation is still needed.²⁰

12. The visit of the NPM confirmed that the **placement of persons with intellectual disabilities or mental health problems in institutions** is still an accepted practice, no efforts are being made to reduce the number of inmates, facilitate their return to the community and develop community-based services instead. Children of the inmates are not accepted, the use of contraception is almost a “must” in the institution.²¹

13. However the legal definition of people with disabilities was modified on the recommendation of the CFR in order to comply with UN CRPD – among others to include people with psychosocial disabilities-,²² there is still some shortcomings in this field. Neither the legislative tools nor the everyday practice meet the requirements of the Convention concerning the definition of **persons with psychosocial disabilities** and the **involuntary placement in psychiatric institutions due to psychosocial disability**. The visit of the NPM at a closed psychiatric ward has shown that the number of personnel is low and the **patients’ right to complain** is compromised by the fact that the patients’ rights representative does not visit the closed ward and patients are not allowed to visit the consulting hours.²³ [R.94.30]

VULNERABLE GROUPS

14. **Rights of elderly people** is given a priority within the mandate of the Commissioner, accordingly several investigations are focused on the situation of **residential homes of older persons** (both public and private ones). These institutions are usually the last residence of elders but still face quite a lot of

¹⁸ Report of AJB-1971/2014.

¹⁹ Nyusti & Takacs v. Hungary (Communication No. 1/2010, CRPD/C/9/D/1/2010)

²⁰ Report of AJB-2979/2014. and see the press release of the CFR on 24/04/2015 at http://www.ajbh.hu/kozlemenyek/-/content/10180/2/az-ajanlas-meg-nem-megvalositas-az-ombudsman-a-latasserult-emberek-bankautomata-hasznalatarol?p_p_auth=Elho3wBo

²¹ Report of AJB-371/2015. on OPCAT Visit to the Therapeutic House of Debrecen, Summary available at http://www.ajbh.hu/documents/14315/2445792/Debreceni+Terapiás+Ház+jelentés+összefoglaló-GS_eng_GS_clear.pdf/b0fc7282-832f-4ea6-a521-3da11768cc79

²² Report of AJB-1152/2012.

²³ Report of AJB-371/2015.

difficulties on daily basis. It is challenging to run a multilevel residential home – many times with more than 100 habitants - in a contradictory legal environment which often causes misunderstanding of the institutional functions while the lack of adequate funding is an everyday issue. In 2013, the CFR recommended the minister in charge to review the legal requirements for special nursing work conducted in these residential institutions (such as the need of special institutional permission) and to provide continuous and adequate financial resources.²⁴

15. Since 2011, the Commissioner has monitored the implementation of **the rights of homeless people** every year. In 2014, issues were raised concerning the management of the homeless registry as well as the uncertainties found in the legal and financial background of social services.²⁵ However the social service system had been refined based on the Commissioner's recommendations, the elaboration of a comprehensive reform is still under progress.

16. The CFR challenged **the legislation criminalizing homelessness** on several occasion. In 2012, the new Misdemeanor Act qualified the habitual use of public space committed repeatedly as a misdemeanor punishable by fine or detention, while the Act on Local Governments²⁶ gave authorization for local governments to define any kind of "unsocial behavior" in a local decree punishable by fine. The Commissioner initiated a review at the Constitutional Court with success,²⁷ both of the provisions had been annulled but ultimately the new legislation (both of the laws) reintroduced the matter in a slightly different manner.

17. The CFR filed two petitions to the Constitutional Court concerning **equal rights of LGBTQI people**. First, he initiated the review of a provision of the **Family Protection Act**²⁸ defining the **concept of family**,²⁹ which recognized only marriage as a basis of the family, therefore excluded the 'marriage-like' partnership relations of same sex-couples (which cannot be considered marriage according to the Fundamental Law). Eventually the Constitutional Court annulled the challenged provisions.³⁰ In the second petition – which is still pending - the Commissioner stressed that it infringes the equal dignity of sexual minorities that the **new Civil Code**³¹ has left out registered partnerships from the definition of both "**close relatives**" and "**relatives**".³²

²⁴ Report of AJB-537/2013.

²⁵ Report of AJB-518/2014.

²⁶ Act of CLXXXIX of 2011 on Local Governments

²⁷ Decision of the Constitutional Court No. 38/2012. (XI. 14.)

²⁸ Act of CCXI of 2011 on the Protection of Families

²⁹ Report of AJB-1041/2012. and AJB-4159/2012.

³⁰ Decision of the Constitutional Court No. 43/2012. (XII.20.)

³¹ Act of V of 2013 on Civil Code

³² Report of AJB-1812/2013.

18. The protection of **rights of refugees and asylum seekers** fall within the mandate of the CFR as well. The **asylum detention** was introduced in July 2013³³ and could be ordered only on grounds defined by law in order to secure the course of the procedure as well as the execution of the Dublin III Regulation. **Families with minors** can only be placed in asylum detention as a measure of last resort. The maximum period of detention is 6 months, in case of families is 30 days.³⁴ [R.95.25]

19. Having considered that half of Hungary's **asylum detention** capacities³⁵ can be found in the Closed Asylum Centre of Debrecen and that the **detention of single women and families with small children** has also to be implemented in this facility, the NPM paid their first visit in this institution. Based on the results of the investigation, the Commissioner initiated the amendment of the relevant law in order to improve the treatment of detainees with consideration to the special needs of families and children and requested the competent authorities to take all the appropriate measures³⁶. Since publishing the report there are no families in asylum detention. [R.94.112-R.94.113]

20. Asylum detention does not apply in the case of **unaccompanied minors (UAM)**.³⁷ When a UAM is apprehended by the police, the preliminary age assessment is conducted through a physical examination by police doctors, only in cases of doubt an additional X-ray examination is performed. If he or she is identified as a minor, the police procedure is suspended and a guardian is appointed, especially because UAMs under the age of 14 are not able to file an application for international protection on their own. Since the maximum limit is 8 hours to keep the UAM at the police station, priority is given to their transport special facilities for reception, which a designated child care facility thanks to one of the previous recommendations of the Commissioner.³⁸

MINORITY PROTECTION

21. Out of the thirteen national minorities enjoying special minority rights under Hungarian law the members of the Roma community are the most likely to fall victims of human rights violations. Disadvantageous social situation of **Roma** is aggravated by **discrimination** especially in the field of education, health, employment, housing and access to services, while Roma women are facing

³³ Act of LXXX of 2007 on Asylum

³⁴ Ibid.

³⁵ At the time of the visit, three such facilities were in the country (in Békéscsaba, Debrecen and Nyírbátor) with a total capacity of 381.

³⁶ Report in of AJB-366/2015. on Debrecen Guarded Refugee Reception Centre available at http://www.aibh.hu/documents/14315/1887891/Report+on+monitoring+the+Debrecen+Guarded+Refugee+Reception+Centre++366_2015.pdf/4a45943e-f0f6-42d6-acc5-21d050e81f2f

³⁷ Act on Asylum

³⁸ Report of AJB-733/2012. available at

http://www.wp.kigyk.hu/wp-content/uploads/2012/11/alapveto_jogok_biztosanak_jelentes_e_eng.pdf

multiple discrimination. As it was stressed before, the collection of disaggregated data – among others - by ethnicity would be essential to tackle discrimination³⁹. [R.94.8; R.94.40-R.95.51; R.94.101-R.94.103]

22. However **segregation in education** is prohibited by law, in practice the segregation of Roma students is widespread. As it was discovered by the Commissioner, segregation in most of the cases is the consequence of different direct⁴⁰ and indirect discriminatory⁴¹ practices against Roma students, but at the same time Roma minority education may also lead into segregation⁴² or malpractice⁴³. The latest human rights concern is the amendment of National Public Education Act in such a way that it gives authorization for the government to set up criteria for exemption from the prohibition of segregation in case of minority and religious education in form of a government decree.⁴⁴ [R.94.93; R.94.94-R.94.97]

23. In the field of **employment** the Commissioner found that Roma is increasingly engaged in public work programs which actually fail to improve the employment prospects of participants⁴⁵ and often does not meet fully with the requirements of labor law (e.g. minimum wage is not provided to the public workers) therefore create discriminatory settings again⁴⁶. [R.94.99]

24. The Commissioner in recently published report on **control activities of the authorities** of Miskolc and **the right to housing** of Roma people has found that the authorities' often raid-like, joint and mass official control activities conducted in the segregated living areas are incompatible with the principle of the rule of law and the requirement of legal certainty.⁴⁷ It was further mentioned that the number of flats in social housing schemes with appropriate living conditions is decreasing, while the rate of evictions of disadvantaged families is increasing. The disadvantaged social and housing situations also affect the general health conditions of the poor, furthermore geographical disadvantages may constitute barriers to access to health care and other services.⁴⁸ The right to care

³⁹ Hungary has received several recommendations from international organizations for ethnic data collection. In November 2009, Data Protection and Minorities Ombudsmen published a joint report in order to clarify the regulations regarding the collection and processing of data on ethnicity. At the same time in our reports many time have been suggested to elaborate data system on segregation (segregation map) in sphere of public education.

⁴⁰ Report of No. 5572/2007., 1541/2008., 1542/2008., 1543/2008., 1544/2008., 1545/2008., a 1552/2008., and 1553/2008, No. NEK-356/2011., NEK-425/2011., NEK-476/2011., NEK-356/2011., NEK-1022/2010.

⁴¹ Report of NEK-356/2011., NEK-425/2011., NEK-476/2011 in cases of placement of Roma student diagnosed with mental disability.

⁴² Report of AJB-6010/2014., AJB-3894/2012.

⁴³ Report of NEK-368/2010., NEK-411/2011.

⁴⁴ Report of AJB-6010/2014.

⁴⁵ Report of AJB-5317/2012.

⁴⁶ Report of AJB-3025/2012.

⁴⁷ Report of AJB-1474/2014.

⁴⁸ Report of AJB-2050/2013.

and protection as well as the right to health of children living in segregated neighborhood is at risk, too.⁴⁹ [R.94.106-R.94.110]

INTERESTS OF THE FUTURE GENERATIONS - ENVIRONMENTAL RIGHTS

25. In Hungary **the environmental rights** are protected in respect of **the interests of the future generations** and declared as a fundamental right in the Fundamental Law. The legislation as well as the policies and strategies in this field are in full compliance with the international human rights obligations of the state, although the public consultation is not fully ensured in the law-making process and the institutional background has been reformed and downsized.⁵⁰

⁴⁹ Report of AJB-2050/2013. and AJB-1474/2014.

⁵⁰ Annual Report of the Commissioner for Fundamental Rights, 2014, pp.259.