

Comprehensive Report

by the Commissioner
for Fundamental Rights
on the activities
of the OPCAT National
Preventive Mechanism
in 2016



COMMISSIONER FOR FUNDAMENTAL RIGHTS
UN NATIONAL HUMAN RIGHTS INSTITUTION

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Introduction

In accordance with the Fundamental Law of Hungary, no one shall be subject to torture, inhuman or degrading treatment or punishment.¹ The State shall take effective legislative, administrative, judicial or other measures to prevent acts of torture or other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction.²

Hungary ratified the Optional Protocol to the Convention against Torture and other Inhuman or Degrading Treatment or Punishment (hereinafter the “OPCAT”) on January 12, 2012.³ The objective of the OPCAT is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.⁴

The Parliament delegated the tasks of the national body carrying out regular visits to places of detention (hereinafter the “National Preventive Mechanism, NPM”) to the Commissioner for Fundamental Rights, acting as a constitutional institution and responsible solely to the Parliament.

2016 was the second year when, in addition to my general activities aimed at protecting fundamental rights, stipulated in Article 30 of the Fundamental Law, I also carried out the tasks of the National Preventive Mechanism. I regularly published my reports on the visits conducted as NPM on the website of my Office – these reports were widely covered by the press.

As I have to prepare annual, comprehensive reports on performing the tasks of the National Preventive Mechanism, I am complying with this obligation hereby.⁵

¹ See Article III, Paragraph (1) of the Fundamental Law.

² See the international convention against torture and other cruel, inhuman or degrading treatment or punishment, promulgated by Law-decree 3 of 1988.

³ See the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011.

⁴ See Article 1 of the OPCAT.

⁵ See Section 39/C of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter the “Ombudsman Act”).

With a view to the State's obligation to efficiently prevent torture and other cruel, inhuman or degrading treatment or punishment, my 2016 comprehensive report on the performance of my tasks as National Preventive Mechanism is going to inform the Reader, in addition to reporting on inspections carried out in various places of detention, also on the challenges I am facing, on the dialog conducted with the ministries and authorities concerned, as well as on my cooperation with non-governmental organizations and various international organizations engaged in protecting fundamental rights.

Budapest, June 2017

László Székely

1.

The legal background of the National Preventive Mechanism's operation

The State shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.⁶

1.1.

The Fundamental Law of Hungary

- No one shall be subject to torture, inhuman or degrading treatment or punishment, or held in servitude. /Article III, Paragraph (1) of the Fundamental Law/
- No one shall be expelled or extradited to a State where he or she would be in danger of being sentenced to death, being tortured or being subjected to other inhuman treatment or punishment. /Article XIV, Paragraph (2) of the Fundamental Law/

1.2.

International instruments

According to the Fundamental Law, in Hungary “*rules for fundamental rights and obligations shall be laid down in an Act.*”⁷ Legislation falls within the tasks and competences of the Parliament.⁸ International instruments stipulating the rules governing fundamental rights and obligations shall be promulgated by an Act.⁹

1.2.1. UN instruments

By virtue of Article 7 of the **International Covenant on Civil and Political Rights** (hereinafter the “Covenant”), adopted by the UNGA on its

⁶ See Article 2 of the international convention against torture and other cruel, inhuman or degrading treatment or punishment, promulgated by Law-decree 3 of 1988.

⁷ See Article I, Paragraph (3) of the Fundamental Law.

⁸ See Article 1, Paragraph (2), Subparagraph b) of the Fundamental Law.

⁹ See Section 9, Subsection (1) of Act L of 2005 on procedures related to international instruments.

Session XXI, on December 16, 1966, promulgated by Law-decree 8 of 1976¹⁰, *“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”*

From the aspect of performing the tasks of the National Preventive Mechanism, Article 10, Paragraph (1) of the Convention, stipulating that *“all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person,”* is of major significance as well.

Under Article 37 of the **Convention on the Rights of the Child, adopted in New York on November 20, 1989**, promulgated by Act LXIV of 1991, States Parties shall ensure that *“no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offenses committed by persons below eighteen years of age”*.

Under Article 15 of the **Convention on the Rights of Persons with Disabilities**, promulgated by Act XCII of 2007, *“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. States Parties shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment.”*

The **international convention against torture and other cruel, inhuman or degrading treatment or punishment** (hereinafter the “UN Convention”), promulgated by Law-decree 3 of 1988, entered into force in Hungary on June 26, 1987. The concept of torture was introduced into Hungarian law with the UN Convention's entry into force. Under Article 1 of the UN Convention, the term **torture** means

- any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as
- obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind,
- when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

¹⁰ Prior to January 1988, in the field of legislation, the Presidium of the People's Republic (hereinafter the “Presidium”) had the power of substitution for the Parliament, with the proviso that it could not amend the Constitution and could not adopt any legal instrument named “Act.” Statutory-level legal instruments adopted by the Presidium were called law-decrees. As of the abolishment of the Presidium, no law-decree may be adopted. Law-decrees still in effect may be amended or repealed only through an Act. /See Clause IV/2 of Decision 20/1994 (IV. 16.) of the Constitutional Court. /

In addition to the above, under Article 16, Paragraph (1) of the UN Convention, each State Party shall undertake to prevent in any territory under its jurisdiction other acts of “*cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.*”

Under Article 3 of the UN Convention, no State Party “*shall expel, return or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.*”

State Parties shall submit periodical reports to the UN Committee against Torture (hereinafter the “Committee”) on their compliance with their obligations deriving from the UN Convention and the measures taken by them. The Committee may investigate complaints lodged by States or private persons alleging that a certain State Party fails to comply with its obligations deriving from the UN Convention. The Committee itself may initiate an inquiry into any reliable information based on which it may believe that torture is regularly applied on the territory of a State Party.¹¹ Documents published by the Committee, in particular, its general comments, periodical reports by the State Parties,¹² documents originating from the complaints mechanism, as well as the Committee’s annual reports, serve as important guidelines for the National Preventive Mechanisms.¹³

The Optional Protocol to the Convention against Torture and other Inhuman or Degrading Treatment or Punishment, **promulgated by Act CXLIII of 2011**, is open to accession by any State that has ratified or acceded to the Convention.¹⁴

According to the OPCAT, the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment may be strengthened not by judicial means but through means based on the regular preventive inspection of places of detention. In the system established by the OPCAT, independent international and national bodies make regular visits to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.¹⁵

¹¹ See Articles 19 through 22 of the international convention against torture and other cruel, inhuman or degrading treatment or punishment.

¹² Information on the periodical reports submitted by Hungary may be obtained at: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=HUN&Lang=EN

¹³ Documents published by the UN Committee against Torture (CAT) may be obtained at: <http://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>

¹⁴ See Article 27, Paragraph (3) of the OPCAT.

¹⁵ See Article 1 of the OPCAT.

Pursuant to Article 4, Paragraph (2) of the Protocol, "*deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.*"

Within the Committee, the OPCAT established the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the Subcommittee on Prevention of Torture). The main tasks of the Subcommittee on Prevention include visiting places where persons are deprived of their liberty, as well as offering advice and assistance to State Parties in establishing and operating independent national bodies that would regularly visit places of detention.¹⁶ From the aspect of the National Preventive Mechanisms' activities, in addition to the Subcommittee's general guidelines,¹⁷ individual guidelines and directives contained in the reports on the visits conducted on the territory of the State Parties¹⁸ are also applicable.

1.2.2. Instruments of the Council of Europe

According to Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome on November 04, 1950, **promulgated by Act XXXI of 1993** (hereinafter the European Convention on Human Rights), "*no one shall be subjected to torture or to inhuman or degrading treatment or punishment.*" Unlike the relevant UN instruments, Article 3 of the European Convention on Human Rights does not contain the term "cruel."

The observation of the obligations undertaken in the European Convention on Human Rights and the Protocols thereto, including compliance with the prohibition of torture, inhuman, degrading treatment or punishment, is *basically* monitored by the European Court of Human Rights (hereinafter the "ECHR"). Under the European Convention on Human Rights, the ECHR may receive applications from any person, non-governmental organization or group of individuals claiming to be the victim of a violation of the rights set forth in the Convention within six months after all domestic remedies have been exhausted.¹⁹ In addition, any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and

¹⁶ See Article 11 of the OPCAT.

¹⁷ *Guidelines on national preventive mechanisms: CAT/OP/12/5; Analytical assessment tool for national preventive mechanisms: CAT/OP/1/Rev.1; Compilation of SPT Advices to NPMs.* The documents may be accessed at: <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Brief.aspx>

¹⁸ See: UN Committee Against Torture (CAT), *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives*, 26 February 2009, CAT/OP/MDV/1, Clause 72 c).

¹⁹ See: Articles 34–35 of the European Convention on Human Rights.

the Protocols thereto by another High Contracting Party.²⁰ As a result of its proceedings, the European Court shall rule on whether the authorities of the High Contracting Party concerned have violated any Article of the European Convention on Human Rights.

Based on the ECHR's case-law, the term **torture** implies a serious and willful act of cruelty that cannot be established in the absence of serious bodily or psychological injuries. **Degrading treatment or punishment** causes, if not actual bodily injury, at least intense physical and mental suffering. **Degrading treatment or punishment** means to arouse in the victims' feelings of fear, anguish, and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance.²¹

Among the ECHR's rulings related to Article 3, those analyzing detention conditions and issues of treating persons deprived of their liberty (conditions of hygiene, abuse by the other inmates or the guards, overcrowdedness, solitary confinement, detention of juveniles, detention under immigration laws, physical and mental health of the detainees, etc.) have special relevance to the activities of National Preventive Mechanism.²²

Hungary ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed in Strasbourg on November 26, 1987, promulgated by Act III of 1995 (hereinafter the "European Convention for the Prevention of Torture"), on November 04, 1993. Its provisions are in effect as of March 01, 1994.²³

Article 1 of the European Convention for the Prevention of Torture established the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the "CPT"). In the course of its regular visits conducted on the territory of the State Parties, the CPT shall "*examine the treatment of persons deprived of their liberty with a view to strengthening, if necessary, the protection of such persons from torture and from inhuman or degrading treatment or punishment.*" The CPT prepares a report on each and every country visit, containing, in addition to the facts established in the course of the visit, the body's conclusions and its recommendations to the competent authorities.

The CPT has visited Hungary on eight occasions so far.²⁴ The Committee met the Parliamentary Commissioner for Civil Rights for the first time dur-

²⁰ See: Article 33 of the European Convention on Human Rights.

²¹ See: Judgement of the European Court of Human Rights, Ireland v. the United Kingdom (January 18, 1978), Clause 167.

²² See Factsheets on ECHR's case-law. Go to: <http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets>

²³ See Section 3 of Act III of 1995.

²⁴ Information on the CPT's visits to Hungary so far may be reached at: <http://www.coe.int/en/web/cpt/hungary>

ing its 1999 periodical visit²⁵ and would visit the institution on each following occasion. I had consultations in my Office with the representatives of the CPT during their ad hoc visit to Hungary on October 21, 2015.²⁶

Since the "*provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention,*"²⁷ the reports of the CPT's visits to Hungary are of major importance for me. The conclusions of the CPT's latest country report, its recommendations for the Government and the responses given thereto were taken into consideration during the preparation of the National Preventive Mechanism's first annual schedule of visits.²⁸

The comprehensive standards²⁹ worked out by the CPT relative to the treatment of persons deprived of their liberty interpret the prohibition of torture, inhuman or degrading treatment or punishment as stipulated in Article 3 of the European Convention on Human Rights from the aspects of the practical operation of various types of places of detention (prisons, police lock-ups, psychiatric institutions, detention centers for refugees), and such vulnerable groups as women or minors.

1.3.

Preventive activities of the Commissioner for Fundamental Rights

According to the Fundamental Law, "*the Commissioner for Fundamental Rights shall perform fundamental rights protection activities,*"³⁰ which also covers the prohibition of torture, inhuman, degrading treatment or punishment. According to the consistent judicial practice of the Constitutional Court, the obligation of the State to respect and protect fundamental rights is not limited to refraining from infringing them, but also includes its obligation to guarantee all conditions required for the enforcement of such rights.³¹ Decisions of the Constitutional Court are binding for everyone, the Commissioner for Fundamental Rights included.³² For the aforementioned reason, even in my general activities aimed at protecting

²⁵ The first ombudsperson, then called the Parliamentary Commissioner for Civil Rights, started her work on July 01, 1995.

²⁶ The Hungarian translation of report CPT/Inf (2016) 27 on the CPT's ad hoc visit to Hungary between October 21 and 27, 2015, may be reached at: <https://rm.coe.int/16806b5d23>

²⁷ See Article 31 of the OPCAT

²⁸ See CPT/Inf (2014) 13 and CPT/Inf (2014) 14.

²⁹ See: CPT standards CPT/Inf/E (2002) 1 - Rev. 2015.

³⁰ See Article 30, Paragraph (1) of the Fundamental Law.

³¹ See Constitutional Court decision 64/1991 (XII. 10.) AB.

³² See Section 39, Subsection (1) of Act CLI of 2011 on the Constitutional Court.

fundamental rights, I have to examine whether the authority concerned has taken proper care of the conditions required for the enforcement of fundamental rights. If the authority concerned fails to comply or incompletely complies with its obligations, I may, referring to the danger of infringement, initiate measures required for the enforcement of the fundamental right in question.³³

Prevention is especially important in terms of “*prevention of torture and other cruel, inhuman or degrading treatment or punishment.*” According to the Subcommittee on Prevention of Torture, prevention extends to any type of treatment of any individual deprived of liberty that, without checks, may lead to torture or any other cruel, inhuman or degrading treatment or punishment.³⁴ The Commissioner for Fundamental Rights, both in his general activities aimed at protecting fundamental rights and performing his tasks as National Preventive Mechanism, is entitled to inquire into the practical implementation of international instruments constituting part of the domestic law. Furthermore, I may make proposals for the amendment or making of legal rules affecting fundamental rights and/or recommend to give consent to be bound by an international treaty.³⁵

Since complying with obligations undertaken in international instruments is the states’ responsibility, the OPCAT compels its States Parties to provide the statutory conditions required for the efficient operation of National Preventive Mechanisms. In Hungary, the *authorizations* required for the National Preventive Mechanism’s operation,³⁶ the material and procedural legal regulations required for its efficient operation³⁷ are provided in the Ombudsman Act.

1.4.

Costs of performing the NPM’s tasks in 2016

The administration and preparation related to my tasks are performed by the Office of the Commissioner for Fundamental Rights (hereinafter the “Office”).³⁸ Costs related to the performance of the NPM’s tasks are covered by my Office. In the central budget, laid down in the act of the Parliament, the budget of the Office is a separate chapter.³⁹

³³ See Sections 31 through 38 of the Ombudsman Act.

³⁴ See: Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives (26 February 2009), Clause 4.

³⁵ See Section 2, Subsection (2) of the Ombudsman Act.

³⁶ See Article 19 of the OPCAT.

³⁷ See Articles 3–4, 17–18, 20–23 of the OPCAT.

³⁸ See Section 41, Subsection (1) of the Ombudsman Act.

³⁹ See Section 41, Subsection (4) of the Ombudsman Act.

Schedule 1 – Costs of performing the NPM's tasks in 2016

Expenditure	Amount
Personal allowances (7 persons [*])	41,317,118
Contributions	11,445,212
Professional, operational materials	686,858
IT and communication expenses	1,043,698
Professional assistance services	768,808
Mission expenses	478,023
International membership fees	167,194
Maintenance and repair expenses	355,435
Public utilities	917,396
Operational services	4,607,406
VAT	1,973,342
Altogether in HUF	63,760,490

* The number of the Department's staff on December 31, 2016, was seven persons. Therefore, with the exception of personal allowances, contributions and mission expenses, the data in Schedule 1 are calculated on the basis of the Office's per capita expenses. Personal allowances, contributions and mission expenses are items allocated separately to the Department.

2. Staff members participating in performing the tasks of the NPM

2.1. Public servants of the Office of the Commissioner for Fundamental Rights

Pursuant to Article 18, Paragraph (2) of the OPCAT, the States Parties “*shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.*”

In performing the tasks of the NPM, I may proceed personally or through authorized members of my Office’s staff members. Authorized staff members of my Office are also entitled to the NPM’s investigative powers⁴⁰, and, by virtue of Section 25 of the Ombudsman Act, the authorities concerned and their management and staff are obliged to cooperate with them, as well.⁴¹

In order to perform the NPM’s tasks, from among the staff of the Office, I have to authorize—on a permanent basis—at least eleven persons. The “*authorized public servant staff members shall be experts with a graduate degree and have an outstanding knowledge in the field of the treatment of persons deprived of their liberty or have at least five years of professional experience.*” Among them, “*there shall be at least one person who has been proposed by the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary, and at least two persons each with a degree in law, medicine and psychology respectively. Among the authorized public servant staff members, the number of the representatives of either sex may exceed that of the other by one at the most.*”⁴²

Staff members of my Office authorized to perform the tasks of the NPM on a permanent basis⁴³ conduct their activities within a separate organizational unit, the OPCAT NPM Department (hereinafter the “Department”).⁴⁴

⁴⁰ See Sections 21, 22, 26 and Section 27, Subsections (1) and (2) of the Ombudsman Act.

⁴¹ See Section 39/D, Subsection (1) of the Ombudsman Act.

⁴² See Section 39/D, Subsection (3) of the Ombudsman Act.

⁴³ See Section 39/D, Subsection (3) of the Ombudsman Act.

⁴⁴ “*Guidelines on national preventive mechanism,*” CAT/OP/12/5, Clause 32.

On January 01, 2016, there were two psychologists and six lawyers in the Department's staff. The Department's gender composition is in compliance with the provisions of the Ombudsman Act.

In 2016, my Office had to face two major challenges while performing the tasks of the NPM. First, due to the lack of applicants, we could not fill the two public servant posts reserved for physicians, as stipulated in Section 39/D, Subsection (4) of the Ombudsman Act, in 2016 either. My Office employed the physicians participating in NPM visits on an ad hoc basis, within the frameworks of civil law contracts. Second, the frequent changes in the ranks of public servants/lawyers in the Department made the performance of the NPM's tasks more difficult. Of the six lawyers working at the Department on January 01, 2016, three left during the year. These job vacancies were filled via a public call for applications, in accordance with the Ombudsman Act's provisions on gender composition.⁴⁵

As a result of these vacancies, permanent on the posts of physicians and temporary on the posts of lawyers, the Department carried out its activities with seven public servants in average.

The public servants working at the Department are *experts with an outstanding knowledge in the field of the treatment of persons deprived of their liberty*, many of them regularly publish, teach at universities, and deliver presentations at numerous professional and promotional events.

2.2.

External experts

In addition to my Office's public servants, I may also authorize, either permanently or on an ad hoc basis, other experts to contribute to performing the tasks of the NPM.⁴⁶

In this regard, I took into account the report published by the SPT on its visit to Sweden between March 10 and 14, 2008, in which the SPT, in connection with the operation of the ombudsman institution performing the tasks of the NPM, had pointed out as follows: prevention as defined by the OPCAT *"necessitates the examination of rights and conditions from the very outset of deprivation of liberty until the moment of release. Such examination should take a multi-disciplinary approach and involve, for example, the medical profession, children and gender specialists and psychologists in addition to a strict legal focus."*⁴⁷

⁴⁵ "Guidelines on national preventive mechanism," CAT/OP/12/5, Clause 16.

⁴⁶ See Section 39/D, Subsection (3) of the Ombudsman Act.

⁴⁷ See: Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to The Maldives (2008 February 10), Clause 36 Available at: <http://www.refworld.org/docid/48edc3b92.html>

Experts contributing to the performance of the NPM's tasks were chosen from the roster of experts compiled by the members of the Civil Consultative Body.

Since the physician positions within the Department were still vacant, the physicians participating in the inspections were external experts authorized on an ad hoc basis.

In individual cases, in the preparation of inspections, I also involved experts by experience, i.e., persons with actual, practical knowledge of the place of detention to be inspected.

When performing the tasks of the NPM, the work⁴⁸ and the remuneration⁴⁹ of external experts are carried out on the basis of civil law contracts, in compliance with the relevant regulations concerning forensic experts. All external experts signed written statements on the confidential handling of all data and information they might learn while performing their tasks. Without my written consent, they would not transfer those data and information to third parties, and they would not make any statement to the press and/or third persons.

⁴⁸ See Act XXIX of 2016 on forensic experts.

⁴⁹ See Minister of Justice Decree 3/1986. (II. 21.) IM on the remuneration of forensic experts.

3.

Cooperation between the NPM and civil society organizations

By virtue of Article 3 of the OPCAT, the Commissioner for Fundamental Rights shall perform the tasks of the NPM independently.⁵⁰ In doing so, I have to engage in social awareness-raising and information activities and cooperate with *“organizations and national institutions aiming at the promotion of the protection of fundamental rights.”*⁵¹

3.1.

The tasks of the Civil Consultative Body

I established the Civil Consultative Body (hereinafter the “CCB”) in order to utilize the outstanding practical and/or high-level theoretical knowledge of various organizations registered and operating in Hungary relative to the treatment of persons deprived of their liberty. The CCB assists the activities of the National Preventive Mechanism with its suggestions and comments.

CCB members selected as a result of a public call for application are the Hungarian Helsinki Committee, Menedék – Hungarian Association for Migrants, the Hungarian Civil Liberties Union and the Mental Disability Advocacy Center (MDAC).

The organizations invited by the Commissioner for Fundamental Rights are the Hungarian Medical Chamber, the Hungarian Psychiatric Association, the Hungarian Dietetic Association and the Hungarian Bar Association.

The CCB acts as a body. Members may make suggestions as regards the contents of the NPM’s annual schedule of visits and the inspection priorities; initiate the inspection of certain places of detention; recommend the involvement of experts with special knowledge, who may be the staff members of the organization represented by them. The CCB may comment on the NPM’s working methods, reports, information materials and other publications; review the training plan drafted for improving the skills of staff members authorized to perform the tasks of the NPM;

⁵⁰ See Section 2, Subsection (6) of the Ombudsman Act.

⁵¹ See Section 2, Subsection (5) of the Ombudsman Act.

and participate in conferences, workshops, exhibitions and other events organized by the NPM.⁵²

The 2016 Schedule of Visits was drafted by the Department's staff members upon reviewing the suggestions of the CCB. I also took into consideration the CCB's suggestions when I approved the schedule.

In order to employ external experts with proper expertise and practical knowledge, the NPM shall develop coherent and transparent rules of procedure.⁵³ Since, due to the lack of applicants, the statutory provision stipulating the employment of two public servants with a degree in medicine could not be complied with, certain members of the Hungarian Medical Chamber and the Hungarian Psychiatric Association participated as external experts in the NPM's inspections. When selecting external experts, I took into consideration, in addition to the recommendations of the Hungarian Medical Chamber and the Hungarian Psychiatric Association, the relevant provisions of the legal regulations on the activities of forensic experts as well.⁵⁴ I sent my reports on the NPM's inspections to the members of the CCB, too.

In 2016, the CCB had two meetings, on April 19 and November 16.⁵⁵

3.2.

Meetings of the CCB

The main topic of the *April 19, 2016 Meeting of the CCB* was the feedback paper (hereinafter the "Document") prepared by the designated members of Hungarian Psychiatric Association, the Hungarian Civil Liberties Union, Menedék – Hungarian Association for Migrants, the Hungarian Helsinki Committee (hereinafter the "Working Group") on the following inspections conducted by the NPM:⁵⁶

- Debrecen Guarded Refugee Reception Center,
- Juvenile Penitentiary Institution

⁵² See Section 6 of Directive 3/2014 (XI. 11.) of the Commissioner for Fundamental Rights on the establishment and rules of procedure of the Civil Consultative Body assisting the National Preventive Mechanism in carrying out its duties.

⁵³ See Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the "SPT"): *Analytical assessment tool for national preventive mechanisms*, (CAT/OP/1/Rev.1) Clause 16, Paragraph (e).

⁵⁴ See Act XLVII of 2005 on the activities of forensic experts and the provisions of Decree 9/2006 IM of the Minister of Justice on the specialization of forensic experts and the related qualification and other professional requirements.

⁵⁵ The documents related to the fourth meeting of the CCB can be found in my Office under file number AJB-2674/2016. The report on the meeting is accessible to the public on the NPM's website.

⁵⁶ The document "*Comments by the Reviewing Working Group of the Civil Consultative Body on the reports prepared by the National Preventive Mechanism*" may be found in my Office under file number AJB-2674/2016/23. The document is also accessible to the public on the NPM's website as an attachment to the report on the April 19, 2016 Meeting of the CCB.

- Disability Unit of the Platán Home for the Elderly of the Directorate of Health and Social Care Institutions
- Closed Psychiatric Ward of the Merényi Gusztáv Hospital premises of the Psychiatric and Addiction Treatment Center of the Unified Szent István and Szent László Hospital and Outpatient Care Clinic
- Home for Children with Special Needs of the Károlyi István Children's Center.

According to the Document, the diverse thematic structure of the reports reviewed derives from the diverse functions of the institutions concerned and the diverse nature of the issues uncovered. The Working Group made no critical remarks regarding the thematic structure of the reports, the elaborateness of the individual chapters, the identification and accurate recording of the deficiencies found in the institutions and the anomalies related to fundamental rights.

According to the Working Group, in order to remedy problems falling under the NPM's competence and increase the efficiency of efforts aimed at enforcing the OPCAT's provisions, it is of prime importance to make clear for the readers the co-relation between the conditions found and problems uncovered in the institutions and torture, inhuman or degrading treatment. Thus, it can be ensured that the main objective of preventing inhuman treatment would not get lost between the lines. However, the reports reviewed presented certain facts, conditions, and problems uncovered at the inspected place of detention in a way that had not made clear their connection to the primary objective, the prohibition of inhuman, degrading treatment.

According to the Working Group's suggestion, if the NPM, in addition to the primary objective of preventing degrading treatment, intends to pursue secondary, tertiary objectives as well, those objectives should be pointed out at the report's beginning, and—later on—problems should be identified, and recommendations should be made based on these objectives. It could facilitate the long-term, effective exercise of the NPM's powers of inspection, if the focus of inspection was clear for both the inspected places of detention and the authorities concerned, and if it could be known beforehand that the elimination of which problems and the implementation of which recommendations would be in the focus of possible follow-up visits.

Accurate and reliable recording of the circumstances experienced during the visits is of key importance from the aspects of the NPM's efficient operation. According to the Document, most of the reports reviewed met this requirement. The Working Group suggested that, in the future, too, the NPM should record the conditions and events in the inspected institutions as thoroughly as before. However, the Working Group concluded that, in some reports, the actual gravity of the described problem was not in propor-

tion to its description. According to the Document, the quality of the NPM's reports could be improved via the proportionate description of the uncovered conditions and problems.

Certain reports contained a wide range of references to the relevant international legal sources, which enriched the legal assessment of the problems uncovered in the inspected institutions. For instance, the report on the Juvenile Penitentiary Institution mentioned not only the relevant EU legal norms and CPT reports but also the relevant case-law of the European Court of Human Rights. According to the Working Group, the case-law of the aforementioned judicial body may provide significant, applicable standards and legal benchmarks for the assessment of circumstances prevailing in various detention facilities; therefore, they are worth being taken into account in the course of the reports' drafting.

According to the Document, the reports that, in general, can be considered as thorough and accurate in identifying problems, should be improved in the field of the recommendations set forth therein. In the Working Group's opinion, "take-the-necessary-measures-type" recommendations are rather difficult to follow up efficiently. According to the Working Group, sharing the draft reports with the relevant, competent members of the CCB prior to their publication would lend a useful expert perspective to formulating specific recommendations. Preliminary consultations with the members of the CCB would offer a professional advantage enabling the NPM to consider and, if justified, use the incoming comments when finalizing the text of the report.

I took into consideration the Document's conclusions and recommendations and tried to use them, where possible, during the preparation of my reports published after the meeting.

The main topic of the *November 16, 2016 meeting of the CCB* was the dialog conducted with the authorities targeted by the NPM's recommendations and the implementation of the measures initiated by the NPM.⁵⁷ In connection with the verbal discrimination used by the staff of the places of detention, participants discussed the possibilities of holding off-site training programs and conducting follow-up inspections in order to assess the efficiency of the measures taken.

The representative of the Hungarian Helsinki Committee indicated that in 2017 they would start visiting places of detention already inspected by the NPM. The CCB's members commented on the inspection of rooms, installations, and vehicles used during apprehension and detention, the enforce-

⁵⁷ The documents related to the fifth meeting of the CCB can be found in my Office under file number AJB-7478/2016. The report on the meeting is accessible to the public on the NPM's website.

ment of the right to defense, and the monitoring of the penal system's suicide prevention activities.

The representative of the Hungarian Helsinki Committee informed the participants that two years before they had started a research project covering seven countries, whose main objective was to find an explanation as to why there were differences in the quality of official inquiries into cases of abuse committed by persons in their official capacity (to what extent those inquiries are suitable for preventing abuse and finding the perpetrator). The Hungarian Helsinki Committee is looking for specific legal or practical solutions that could be of significance from this aspect. In the experimental phase of the research, launched in 2015, the analysis of the legal systems of Hungary and the United Kingdom, and the necessary research background materials were completed. The other participants of the project are Belgium, Bulgaria, the Czech Republic, Northern Ireland and France. With the help of a preliminary questionnaire and a hypothetical case, the experts of the participating countries had prepared their case studies, based on which the Hungarian Helsinki Committee compiled a 140-page comparative study presenting the project's methodology and results. The presentation of the comparative study and the discussion thereof by colleagues participating in the project and invited external experts, including the representative of the SPT, was scheduled to be held in Budapest, on February 24, 2017.

The representative of the Hungarian Helsinki Committee suggested that the NPM should visit the transit zones near Rösztke and Tompa.

The representative of the MDAC made a short presentation of a project financed by the European Union, conducted with the participation of the Czech Republic, Hungary, the United Kingdom and Bulgaria. The project's participants conducted monitoring visits to the homes of mentally handicapped children, organized and held interdisciplinary training programs for legal, social and healthcare professionals, and developed methodologies in connection with the visits and training programs. The training programs and the methodologies are aimed at preparing professionals participating in the visits. Within the framework of the project, in Hungary, they visited five, mainly church-administered institutions. Unfortunately, the staffers of the MDAC faced some serious difficulties when trying to have access to certain state-run institutions. Although the head of the institution in Bóly showed readiness to cooperate, the General Directorate of Social Affairs and Child Protection did not give its consent to the visit by the MDAC. On the day just before the meeting of the CCB, the visit to the TOPHÁZ Special Home in Felsőgöd (where the number of inhabitants is above two hundred) fell through because, previous arrangements notwithstanding, a high-ranking representative of the operator refused to let the visiting delegation in the institution. According to the information at the MDAC's disposal, an internal inspection

conducted by the supervisory authority before the MDAC's intended visit had found some deficiencies in the institution in Felsőgöd and, as a result, the director was dismissed effective immediately. Referring to what had happened, the representative of the MDAC requested the NPM to conduct an inspection in the TOPHÁZ Special Home as soon as possible.

The MDAC suggested that its staff members should conduct joint inspections with the experts of the NPM. According to their suggestion, in addition to organizing joint training programs within the framework of the cooperation between the MDAC and the NPM, they could work together in disseminating methodologies developed in the course of the project (interviewing, exchange of experiences, involvement of expert by experience).

The representative of the Hungarian Psychiatric Association suggested that the NPM should inquire into the practices of the judicial review of emergency and mandatory treatment on the one hand, and the restrictive measures on the other hand. He pointed out: in the case of the former, the entire procedure is extremely formal (the expert makes only a written statement, is not present at the trial, may not be asked questions, the guardian ad litem is not present); examples could be found in the case of the Merényi Hospital. As far as the latter case is concerned, the proceeding judges notified neither the patients' rights representative nor the relatives, and there are several problems with the documentation. The patient does not have any opportunity to stand up for his/her interests, and the observation periods/mechanisms, making a more nuanced assessment of individual cases possible, are missing.



Meeting of the CCB, November 16, 2016

In his response, the Commissioner for Fundamental Rights informed the participants that, in the course of the last two years, he had already notified the Curia's competent analytic workgroup of the problems mentioned by the participants, requesting the judicial body to put them on its agenda.

3.3.

Additional cooperation with civil society organizations

On March 08, 2016, the Head of the Department had a meeting with the representative of the Association for the Human Rights and the Protection of Detainees in Hungary, during which they concluded a working agreement.

On October 04, 2016, the Head of the Department consulted with the representatives of the MDAC. During the meeting, they reviewed the possibilities of joint inspection of places of detention and other forms of cooperation.

On November 02, 2016, in order to prepare visits to places of detention suggested by the MDAC, the members of the NPM's visiting delegation held consultations with the MDAC's representatives.

On November 24, 2016, two psychologist members of the Department participated in a training organized by the civil organization **Cordelia Foundation for the Rehabilitation of Torture Victims**, entitled "*Torture and Trauma in Asylum Policies: Issues of Identification, Documentation and Proceedings*," the objective of which was to facilitate the early detection and identification of refugees who have gone through torture or any other trauma.

On December 05, 2016, representatives of the Hungarian Helsinki Committee had an exchange of experiences with the competent members of the Department regarding the visit to the Central Holding Facility of the Budapest Metropolitan Police Headquarters.

4.

List of domestic places of detention

Pursuant to Article 20, Paragraph a) of the OPCAT, in order to enable the National Preventive Mechanism to fulfil its mandate, the States Parties to the present Protocol shall undertake to grant it access to “*all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location.*”

Based on the data provided by the Government, by the middle of November 2014, my colleagues had compiled the list of places of detention as defined in Article 4 of the OPCAT.

On December 13, 2016, referring to Article 20, Paragraph a) of the OPCAT, I sent letters to the heads of the governmental organs concerned requesting them to provide me, as at December 31, 2016, with all data on places of detention as defined in Article 4 of the OPCAT.⁵⁸

Schedule 2 – Consolidated list of all places of detention under Hungarian jurisdiction as of December 31, 2016⁵⁹

Type	Number of locations	Capacity	Number of detainees
Social care institutions	1,962	81,404	72,174
Child protection services (locations provided by foster parents, without after-care beneficiaries)	826	19,721	20,635
Juvenile correctional institution	5	562	395
Penitentiary system	32	14,530	17,972
Police	1,007	3,241	1,827
Airport Police Directorate separately	3	29	14
Healthcare: “closed or partially closed” psychiatric or addictology wards	55	2,359	26
Guarded refugee reception centers	3	790	257
Law enforcement (number of detainee waiting rooms as on the last workday of December 2016)	152	291	88
Altogether	4,045	122,927	113,388

⁵⁸ These data requests may be found in my Office under file number AJB-8858/2016.

⁵⁹ Except when indicated otherwise in the Schedule.

All the organs addressed by my letters complied with my data request. According to the data provided to me, **on December 31, 2016**, there were **113,388** persons held at about **4,000** places of detention under Hungarian jurisdiction⁶⁰ with a total capacity of **122,927**.⁶¹

4.1.

The NPM's schedule of visits for 2016

Under Article 20, Paragraph e) of the OPCAT, the NPM shall be granted the liberty to choose the places it wants to visit.

On December 15, 2015, based on the list of the places of detention and taking into account the CCB's suggestions, I determined the NPM's Schedule of Visits for the year 2016.⁶² When preparing the schedule, in addition to selecting places of detention of different nature, geographical locations, and operators, my colleagues also took into account the age structure of persons deprived of their liberty and the locations covered by the 2015 Schedule of Visits.

The locations of follow-up inspections were designated on the basis of recommendations set forth in the reports on the NPM's earlier visits, taking into account time frames rationally needed for their implementation.

This document was handled confidentially, even my colleagues working at other organizational units did not have access thereto.

4.2.

Locations visited by the NPM in 2016

In accordance with Article 19 of the OPCAT, the NPM's task is to regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.

Performing the tasks of the NPM, in 2016 I visited **10** places of detention holding **3,061** detainees. The schedule below contains the dates of the visits, the name of the places of detention and the number of detainees.

⁶⁰ On the subject of jurisdiction, see Section 18 of Act CXL of 2004 on the General Rules of Administrative Proceedings and Services.

⁶¹ These data may be found in my Office under file number AJB-700/2017.

⁶² "Guidelines on national preventive mechanism," CAT/OP/12/5, Clause 33.

Schedule 3 – visits conducted by the NPM in 2016

Number	Date of the visit in 2016	Place of detention		At the time of the visit			Number of persons interviewed
		Name	Authorized capacity (persons)	Actual capacity (persons) [*]	Utilization rate	Number of detainees (persons)	
1.	February 08	House arrest in a private apartment	1	1	–	1	1
2.	February 16–18	Forensic Psychiatric and Mental Institution	311	311	69.1	215	98
3.	March 01–02 April 26	Cseppkő (Dripstone) Children’s Home without the foster parent network	137	137	81.0	111	97
4.	June 28–29	Juvenile Penitentiary Institution**	217	217	60.4	120 11 ad.***	49
5.	July 19–21	Sátoraljaújhely Strict and Medium Regime Prison	421	426	101.2	426	84
6.	July 26–28	Szombathely National Prison	1,476	1,476	97.0	1,433	116
7.	September 13–14	Nagykanizsa Unit of the Debrecen Correctional Institution operated by the Ministry of Human Capacities	108	108	44.4	48	65
8.	September 26–27	Debrecen Correctional Institution operated by the Ministry of Human Capacities	140	140	81.4	114	68
9.	November 08–09	Bóly-Görcsöny Joint Social Institution of Baranya County	235	235	99.6	234	29
10.	December 06	14 th District Police Department, Metropolitan Police Headquarters of Budapest	10	10	10.0	1	4
Altogether			3,056	3,061	71.6****	2,714	611

* Actual capacity includes both vacancies and detainees held above the authorized capacity

** On May 01, 2016, Tököl National Prison got separated from the Juvenile Penitentiary Institution.

*** Pursuant to Section 82, Paragraph 1 of Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offences (hereinafter the “Prison Act”), “juvenile also means a young adult older than 18 but younger than 21 serving his/her juvenile prison sentence.” At the time of the visit, there were 11 adult detainees (ad.) held temporarily in the institution.

**** Average utilization rate of the places of detention at the time of the visits.

5.

Visits conducted by the NPM

Pursuant to Article 30, Paragraph (1) of the Fundamental Law, the Commissioner for Fundamental Rights shall perform fundamental rights protection activities, his or her proceedings may be initiated by anyone. However, when performing the tasks of the NPM, I have to regularly examine the treatment of persons deprived of their liberty, held at a place of detention specified in Article 4 of the Protocol, also in the absence of any petition or alleged impropriety.⁶³

The primary objective of the NPM's visit is to establish which elements of the treatment of persons deprived of their liberty may lead to torture or other cruel, inhuman or degrading treatment or punishment, and how they may be eliminated. Another important task of the NPM is to make recommendations in order to prevent them from happening or recurring.⁶⁴

Since the NPM's task is not the ex-post investigation of activities or omissions causing fundamental rights-related improprieties, but to prevent the ill-treatment of persons deprived of their liberty, the Department does not inquire into individual complaints. If in the course of the visits individual complaints were submitted either to my colleagues or on the NPM's website, the Department forwarded those complaints to the competent organizational unit of my Office. Although inquiring into complaints submitted on the NPM's homepage is not the Department's responsibility, analyzing them may provide guidelines for selecting places to visit and working out the major aspects of the visits.

5.1.

Planning and preparing the visits

Under the Ombudsman Act, *"the Commissioner for Fundamental Rights shall determine the rules and methods of his/her inquiries in normative instructions."*⁶⁵

Places of detention to visit were selected on the basis of the annual schedule of visits or in response to some actual event. After selecting the

⁶³ See Section 39/B, Subsection (1) of the Ombudsman Act.

⁶⁴ *Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives* (February 26, 2009), Clause 5.

⁶⁵ See Section 30 of the Ombudsman Act.

location, I designated the head of the visiting delegation and preparations were started.

The head of the visiting delegation studied the conclusions and recommendations of the Ombudsman's earlier reports on visiting that particular location or other, similar places, and the reports prepared by other National Preventive Mechanisms or international organizations, domestic and foreign civil organizations engaged in inspecting places of detention. Visiting delegations also verified the implementation of recommendations set forth in my earlier reports on visits conducted while performing my general fundamental rights protection tasks.

In certain cases, upon the initiative of the heads of the visiting delegations, I also involved in the visits' preparation persons with practical knowledge of the operation of the designated place of detention, i.e., experts by experience. The reports of these experts by experience facilitated the detection of facts and circumstances leading to ill-treatment. My Office handled both the personal data and the contents of the reports of the experts by experience confidentially.⁶⁶

Visits were conducted in accordance with an inspection plan prepared by the head of the visiting delegation and approved by me. In addition to the name of the place of detention, the inspection plans contained the date of the visit, names, qualifications and official positions of the members of the visiting delegation. I approved the main aspects of the visits together with the inspection plans, as their attachments.

5.1.1. The composition of the visiting delegations

Pursuant to Article 18, Paragraph (2) of the OPCAT, the experts of the National Preventive Mechanism shall have the required capabilities and professional knowledge.

When setting up the visiting delegations, in addition to the gender balance I tried to ensure the group's multidisciplinary and include experts in the field of protecting the rights of national and ethnic minorities.

In 2016, visits were carried out by delegations consisting of four to eight persons, whom I designated upon the recommendation of the heads of delegation. When setting up visiting delegations, in addition to my colleagues' qualifications I also took into consideration the size and holding capacity of the designated place of detention, the gender composition and the average age of the persons deprived of their liberty.

To perform tasks arising in the course of my general activities aimed at protecting fundamental rights, my Office employs mainly public ser-

⁶⁶ See Article 21, Paragraph (2) of the OPCAT.

vants with a law degree. When it was necessary, lawyers possessing the required professional knowledge, working in other organizational units of my Office also participated in the visits in order to ensure the effective conduct of the inspection. In 2016, in addition to lawyers, experts with degrees in medicine, psychology, education and nutritional science also participated in the NPM's inspections.

5.2.

The conduct of the inspections

5.2.1. Access to places of detention, certification of procedural right

Pursuant to Article 20, Paragraphs b) and c) of the OPCAT, in order to enable the NPMs to fulfil their mandate, the States Parties have to grant them access to all places of detention and their installations and facilities, and to all information referring to the treatment of persons deprived of their liberty, as well as their conditions of detention.

As Commissioner for Fundamental Rights, I may proceed within the NPM's competence without any restrictions. Pursuant to Section 39/D, Subsection (1) of the Ombudsman Act, when I perform the tasks of NPM not in person, but by way of my authorized colleagues, they are also entitled to the rights specified in Section 21 of the Ombudsman Act.

My public servant staff members entitled to proceed within the frameworks of my general activities aimed at the protection of fundamental rights, including those participating in performing the tasks of the NPM, possess an Office Identity Card, showing the inscription "Office of the Commissioner for Fundamental Rights," their serial number, photo, name and official position. Upon arriving at the place of detention, members of the delegation introduce themselves, present the purpose of their visit, their Office ID Cards, and hand over a letter of authorization, signed by me, certifying that they are entitled to perform the tasks of the NPM.

The letter of authorization also contains the names of external experts participating in the inspection of the given place of detention and their authorization to proceed.

In 2016, all visits were carried out without prior notification. The dates and times of the visits were usually in compliance with the Office's working order. Visits to certain places of detention, holding extremely vulnerable detainees, were adjusted to the peculiarities of the given institution.

The visiting delegations were able to enter most places of detention without delay. The only exception was the Holding Facility of the National Bureau of Investigation of the Emergency Response Team of the National

Police Headquarters: my colleagues could start the inspection only 30 minutes after presenting their letter of authorization and their Office ID Cards. The delay was caused by the failure of the Holding Facility's personnel to identify, being unaware of the relevant provisions of the OPCAT, the powers, and competences of the visiting delegation arriving at the Facility in the late-night hours. My colleagues had to wait in the foreground of the premises until the issue got resolved.⁶⁷

5.2.2. Inspecting a place of detention

According to Section 39/B, Subsection (3) of the Ombudsman Act, the NPM *"may enter without any restriction the places of detention and other premises of the authority under inquiry."*

In 2016, visits by the NPM were conducted in accordance with the professional rules and methods specified in Order 3/2015. (XI. 30.) AJB.⁶⁸

In the course of the visits, my colleagues inspected the premises of the places of detention, their furnishing and equipment, documents related to the number, treatment and conditions of placement of the detainees, made photocopies of some of the documents, and also reviewed the engagement of the persons deprived of their liberty. In order to prevent the ill-treatment of persons deprived of their liberty, members of the visiting delegation also inspected those facilities that were vacant at the time of the visit.⁶⁹

My colleagues made snapshots of the inspected facilities, and in the course of the inspection also checked the size and temperature of the rooms designated for the placement of persons deprived of their liberty.

5.2.3. Interviews

By virtue of Section 39/B, Subsection (3), Paragraph c) of the Ombudsman Act, the NPM *"may hear any person present on the site, including the personnel of the authority under inspection and any person deprived of his or her liberty."*

In accordance with Article 20, Paragraph e) of the OPCAT, NPMs have the liberty to choose *"the persons they want to interview."* The management, the personnel of the place of detention and their supervisors have to cooperate with the visiting delegation and its members.⁷⁰ Based on the questionnaires compiled in advance, members of the visiting delegation

⁶⁷ See Report AJB-151/2016.

⁶⁸ The special professional rules and methods related to performing the tasks of the NPM are stipulated in Chapter X of Order 3/2015. (XI. 30.) AJB.

⁶⁹ See SPT: *Analytical assessment tool for national preventive mechanisms*, (CAT/OP/1/Rev.1) Clause 25.

⁷⁰ See Section 25, Subsection (1) and Section 39/D, Subsection (1) of the Ombudsman Act.

may interview, in addition to the head of the institution, any member of the institution's personnel, as well as any other person present there at the time of the visit.

Under Section 39/B, Subsection (4) of the Ombudsman Act, in the hearing of a person deprived of his/her liberty, *"apart from the person who is given a hearing, no other person may participate, unless the Commissioner for Fundamental Rights authorized his/her participation."*

Unlike the head and the staff members of the given place of detention, persons deprived of their liberty are not compelled to cooperate with the visiting delegation. The visiting delegation's objective is to meet, if possible, all persons deprived of their liberty present at the given place of detention at the time of the visit.

Members of the visiting delegations tried to hold confidential, tête-à-tête interviews, but they had group hearings as well. In the case of those persons deprived of their liberty, who, due to their age, state of health or any other circumstance, were not able or willing to speak about their experiences as regards their detention, the visiting delegation inspected the conditions of their placement.

My colleagues authorized to perform the tasks of the NPM visited the Cseppkő (Dripstone) Children's Home in Budapest on March 1–2, 2016. On the first day of the visit, planned for two days, the director complained that the Ombudsman's earlier reports on the Home had contained conclusions as a result of which public perception of the institution had worsened.⁷¹ On the second day of the visit, the educator on duty took the children to an off-site playing ground irrespective of being notified earlier that one of the visiting delegation's members would soon like to see the children in order to interview them. During the day, the educators took most of the children returning from school on off-site programs. Those few children who had returned to the Home from school had to go to the space exhibition in the Millenáris Cultural Center. The staff of the Children's Home, referring to the space exhibition, prevented the children from being interviewed. According to one of the children, a staff member told them that the Ombudsman was visiting the Home because he wanted to have the children transferred to another institution. Several children claimed, each independently but unanimously, that they had no prior knowledge that the visit to the space exhibition would be mandatory.⁷²

In response to the lack of cooperation on the personnel's side, on April 26, 2016, the members of the visiting delegation interviewed the residents

⁷¹ See reports AJB-316/2011, AJB-457/2011. and AJB-3540/2011.

⁷² See Report AJB-1603/2016.

of the Children's Home in the frameworks of another, unscheduled and unannounced visit. One of the children claimed that, as far as he could remember, during the previous visit they had had to leave the premises because of a bomb threat. According to the interviewed children, many of them had not even seen the space exhibition, they had spent the time on a playground.⁷³

The members of the visiting delegation made written records of the interviews conducted with both the personnel of the place of detention and the persons deprived of their liberty. All the interviewees, should they be detainees, staff members or visitors, were informed that *"no one shall suffer any disadvantage for providing information"* to the NPM.⁷⁴

5.2.4. Document inspection

Pursuant to Section 39/B, Subsection (3), Paragraph b) of the Ombudsman Act, the NPM *"may inspect without any restriction all documents concerning the number and geographical location of places of detention, the number of persons deprived of their liberty who are held there, on the treatment of these persons and on the conditions of their detention, and make extracts from or copies of these documents."*

At the beginning of the visit, the head of the visiting delegation hands over the list of those documents that either he/she or any member of the delegation would like to inspect or request a copy thereof. Should the need arise during the visit to inspect further documents and make copies or extract thereof, the members of the visiting delegation shall notify the competent staff member of the place of detention of their request.

In the absence of prior notice, the staff of the places of detention cannot prepare for the visit; it is not unusual that they cannot immediately present some of the requested documents, or they cannot have the requested documentation copied by the end of the inspection. Should it be the case, they have to present the missing documents to the NPM within the deadline, not shorter than fifteen days, set by the head of the visiting delegation.⁷⁵

⁷³ See Report AJB-1603/2016.

⁷⁴ See Section 39/E of the Ombudsman Act.

⁷⁵ Pursuant to Section 21, Subsection (1), Paragraph a) of the Ombudsman Act, *"in the course of his or 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."*

In accordance with Section 21, Subsection (2) of the Ombudsman Act, *"the request of the Commissioner for Fundamental Rights pursuant to points a) and b) of subsection (1) shall be complied with within the time-limit set by the Commissioner. The time-limit may not be shorter than 15 days."*

In 2016, I received all documents required for the performance of the tasks of the NPM within the statutory time-limit.

5.2.5. Concluding the visit

In 2016, the timespan of the NPM's visits ranged between four hours and three days. Each visit was concluded with an immediate debriefing, stressing partnership, with the representatives of the place of detention.⁷⁶

During the debriefing, the members of the visiting delegation summarize their experiences of the visit, the documents they inspected or made copies of, and present a list of further documents that the staff of the place of detention has to provide to the NPM.

In the course of the debriefing, the members of the visiting delegation share their positive and negative impressions regarding treatment and detention conditions with the head of the institution, which promotes best practices and facilitates the earliest solution of individual problems.

5.2.6. Processing and evaluating the experiences and information received in the course of the visits

The members of the visiting delegation process together their experiences and impression obtained at the visited place of detention. This exchange may make them identify situations that might result in difficulties and the reactions thereto. Visiting various types of places of detention meeting children and adults who are deprived, albeit to various extent, of their liberty, may be taxing even in the absence of circumstances indicative of ill-treatment. Joint analytic sessions, in addition to helping the members of the visiting delegation to preserve their psychological health, increase the efficiency of future visits through pointing out the causes and effects of decisions made on the spot.

The head of the delegation prepares for me a short memo on the most important lessons learned at the visited place of detention. My colleagues visiting the Children's Home were taken by surprise by the fact that the staff members of the institution, in clear violation of their obligation to cooperate stipulated in Section 25, Subsection (1) of the Ombudsman Act, had created a situation preventing them from interviewing the children living in the Home. Summing up the visit's lessons raised the question whether it was enough to record the staff's failure to cooperate in the report on the inspection and to highlight it

⁷⁶ See *Analytical assessment tool for national preventive mechanism*, Clause 27.

in my annual report,⁷⁷ or my colleagues should try and hold the interviews that had fallen through during the visit. In my view, the residents of the Children's Home are persons who may provide relevant information on the ways they are treated there.⁷⁸ Therefore, I ordered my colleagues to conduct another unannounced visit to the institution in order to hear the children.

After having summarized the most important lessons of the visit to a place of detention, the head of the visiting delegation prepares a short report on the inspection which, after being approved by me, gets published, both in Hungarian and in English, on the NPM's website.

⁷⁷ See Section 25, Subsection (2) of the Ombudsman Act.

⁷⁸ See Article 20, Paragraph d) of the OPCAT.

6. The focal points of the visits conducted within the NPM's competence

The State *"shall keep under systematic review interrogation rules, instructions, methods, and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture."*⁷⁹

In the course of the inspections, the NPM examines the conditions of the placement of persons deprived of their liberty and the way they are treated. Visiting delegations investigate those areas of placement and treatment, where there is the greatest risk that the fundamental rights of persons deprived of their liberty will not be properly enforced.

A special characteristic of the visits conducted in performing the NPM's tasks is that the symptoms of torture and other cruel, inhuman or degrading treatment or punishment, and, in particular, physical and psychological abuse, were detected and identified using medical and psychological methods.

Focal points were set on the basis of the CPT's reports on visiting places of detention in Hungary, the reports of the UN Committee against Torture, the SPT's reports on its visits, the conclusions of my on-the-spot inspections conducted within my general activities aimed at protecting fundamental rights, and the CCB's recommendations.

6.1. Reception

Since persons deprived of their liberty are particularly vulnerable in the early stages of their detention, the NPM thoroughly investigates the reception procedure at every place of detention. In addition to the procedural acts of reception, e.g., medical examination, assigning a bed to the detainees, providing them with clothing, bedding articles and toiletry utensils, the investigation also covers the daily regimen of the place of detention,

⁷⁹ See Article 11 of the UN Convention.

the contents of information on behavioral guidelines, and the ways and means of maintaining contact with the guards and the relatives.

6.2.

The material conditions of detention

The visiting delegations inspect the premises of the places of detention, their furnishing, and equipment. They examine the size of the facilities used by the detainees, the size of their living space, the natural lighting conditions and ventilation of the facilities, their furnishing, access to potable water and the restrooms, the conditions of staying in the open air, the condition of sanitary units and community spaces, and the provision of meals.

6.3.

Vulnerable groups

In performing my activities, I have to pay special attention to protecting the rights of the child and the nationalities living in Hungary, to facilitating and monitoring the implementation of the United Nations Convention on the Rights of Persons with Disabilities, and to the protection of the rights of society' most vulnerable groups.⁸⁰ Since the performance of the NPM's tasks is also governed by this obligation, visiting delegations pay extra attention to the prevention of the ill-treatment of women, foreigners, young adults, LGBT, and persons deprived of their liberty who are in need of medical care.

6.4.

Healthcare

In Hungary, *"everyone shall have the right to physical and mental health."*⁸¹ Each patient *"shall have a right, within the frameworks provided for by law, to appropriate and continuously accessible health care justified by his health condition, without any discrimination."*⁸²

Medical services available to persons deprived of their liberty, i.e., medical care, nursing, necessary diet, therapeutic appliances and equipment, rehabilitation or any other special form of treatment, shall be provided under the same conditions as they are provided in general to the members of society. The barrier-free accessibility, furnishing, and equipment, medi-

⁸⁰ See Section 1, Subsections (1) through (3) of the Ombudsman Act.

⁸¹ See Article XX, Paragraph (1) of the Fundamental Law.

⁸² See Section 7, Subsection (1) of Act CLIV of 1997 on Healthcare.

cal, nursing and technical staff of healthcare institutions servicing persons deprived of their liberty shall also be provided in accordance with the aforementioned requirements.

6.5.

Employment, recreational activities

Measures to counterbalance isolation and inactivity caused by the deprivation of liberty are of major importance in every detention sector. During the NPM's visits, special attention is paid to the community, cultural, educational and open-air programs provided by the places of detention to persons deprived of their liberty.

6.6.

Application of means of restraint, disciplinary and restrictive measures

Deprivation of liberty and the application of various means of restraint and restrictive measures in themselves affect the enforcement of fundamental rights. The inherent risks may be mitigated through the adoption and proper application of appropriate legislation.

At the places of detention they visit, my colleagues also inquire about incidents and the conflict management methods used by the personnel. They examine how the staff administers the application of means of restraint, disciplinary measures and, in healthcare and social institutions, the application of restrictive measures against persons deprived of their liberty violating the regimen of the place of detention. The inspection of documents related to the application of means of restraint, disciplinary and restrictive measures also includes, in addition to the healthcare personnel's records, finding out who and how checks the appropriateness and lawfulness of these measures and whether their extent is consistent with the applicable law.

6.7.

The relationships of persons deprived of their liberty with each other and with the personnel of the place of detention

Maintaining balanced human relationships of persons deprived of their liberty and with each other and the staff of their place of detention is the most efficient means of preventing ill-treatment; therefore, it is always the subject of my colleagues' detailed inquiry.

Visiting delegations inquire about the relationship between persons deprived of their liberty sharing the same facilities, paying special attention to gathering information indicative of violence among detainees.

*“Mixed gender staffing is another safeguard against ill-treatment in places of detention.”*⁸³ Since persons deprived of their liberty should only be searched by staff of the same gender and any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender,⁸⁴ my colleagues examine the gender composition of the persons deprived of their liberty, guards, nurses etc. in the course of each and every visit.

The experience of the on-the-spot inspections, conducted during the ombudsman institution’s 20 years of operation, shows that if staff members of a place of detention are frustrated in the hierarchical structure, continuously dissatisfied with their working environment or the conditions of their work, they may vent the tension deriving therefrom on their subordinates, or the persons deprived of their liberty. In order to identify or prevent such situations, my colleagues examine whether the staff members of a given place of detention have the qualifications required to perform their tasks, and how accessible and efficient are the training programs and supervision, necessary for high-quality work. When inspecting the facilities, furnishing, and equipment of places of detention, the visiting delegations also inspect the facilities used exclusively by the personnel, i.e., the locker and shower rooms, diners, recreational areas, and restroom.

6.8.

Complaints mechanism

In Hungary, everyone *“shall have the right to submit, either individually or jointly with others, written applications, complaints or proposals to any organ exercising public power.”*⁸⁵

With a view to Article 4, Paragraph (2) of the OPCAT, stipulating that deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is *“not permitted to leave at will by order of any judicial, administrative or other authority,”* I consider places of detention as organs exercising public power.

⁸³ See CPT/Inf (99) 12, Clause 26.

⁸⁴ See CPT/Inf (2000) 13, Clause 23.

⁸⁵ See Article XXV of the Fundamental Law.

One of the most effective means of eliminating or preventing ill-treatment is if the staff members learn as soon as possible about the grievances of the persons deprived of their liberty relative to their placement or treatment, probe into the matter within a reasonable time and take the measures to remedy those grievances with no delay.

Considering the vulnerable position of persons deprived of their liberty and their fear of eventual retaliation, I expect the places of detention to provide them with the means to submit anonymous complaints. My colleagues examine at every place of detention how the persons deprived of their liberty may submit their complaints, how the staff registers those complaints, how the complaints are inquired into and remedied, and how the complainants are informed of the inquiries' results.

7.

The primary aspect of investigation: segregation of persons deprived of their liberty at the place of detention

Solitary confinement is present, in one form or another, in every penitentiary system.⁸⁶ In the penitentiary system, the term “solitary confinement” means whenever a prisoner is ordered to be held separately from other prisoners, for example, as a result of a court decision, as a disciplinary sanction imposed by the prison system, as a preventative administrative measure for the protection of the prisoner concerned.⁸⁷

During the visits in 2015, I found that the persons deprived of their liberty are segregated for a shorter or longer period, during which they may not communicate either with the outside world or their fellow inmates, not only in the penitentiary system but also in places of detention of other types. Segregation of persons already deprived of their liberty results in a further restriction of their already restricted rights, a kind of “detention within detention.” Since these further restrictions originate not from the fact of detention itself, the fundamental rules of their application have to be regulated in an Act.⁸⁸

The visits’ experiences raise the suspicion that the practices of segregating persons deprived of their liberty are not always in compliance with the requirements of lawfulness, necessity, proportionality, and accountability, the conditions of placement are not on par with the minimum requirements set for the given type of place of detention.⁸⁹

⁸⁶ See CPT/Inf (2011) 28, Clause 53.

⁸⁷ See CPT/Inf (2011) 28, Clause 54.

⁸⁸ According to Article I, Paragraph (3) of the Fundamental Law, “*rules for fundamental rights and obligations shall be laid down in an Act. A fundamental right may only be restricted to allow the effective use of another fundamental right or to protect a constitutional value, to the extent absolutely necessary, proportionate to the objective pursued and with full respect for the essential content of such fundamental right.*”

⁸⁹ See CPT/Inf (2011) 28, Clause 58.

7.1.

Experiences of the visits conducted in 2015

The detainees staying in the **Debrecen Guarded Refugee Reception Center** could be segregated⁹⁰ for the reasons of health issues⁹¹ or disorderly conduct.⁹² The legal regulations prevailing at the time of the visit did not provide for the duration of the circumstances of segregation for the purpose of medical examination, an integral part of the reception process.

While trouble-makers could be segregated as long as necessary, but not longer than 24 hours, the legislator did not specify who was entitled to order the segregation, decide on its length or the ways of its documentation. Although almost exclusively families with small children were detained in the institution, the law did not specify whether segregation for disorderly conduct should be applied to all detainees or only above a certain age, and what conditions of placement should be provided to the segregated person. At the time of the visit, no information could be obtained as to how to proceed if the segregated person is hungry, thirsty, cold, not feeling well or has to go to the restroom.

The management of the **Therapeutic House of Debrecen**, a residential social care institution for psychiatric patients and persons with intellectual disabilities, claimed at the time of the visit that they did not apply segregation; however, upon inspecting their records it was learned that one of the residents had had to spend more than three weeks in the “observation room.”⁹³ There were several adult cage beds in use in the institution, some of them with doors that could be opened only from the outside.

In residential social care institutions⁹⁴ for psychiatric patients,⁹⁵ restrictive measures may only be taken if a resident demonstrates dangerous or immediately dangerous behavior.⁹⁶ Restrictions may be maintained for a period, to an extent and in a form that is strictly necessary to ward off the danger.⁹⁷

⁹⁰ See Report AJB-366/2015.

⁹¹ See Section 3, Subsection (1) of Minister of Interior Decree 29/2013 (VI. 28.) BM on the Rules of Implementing Asylum Detention and Asylum Bail. This provision was repealed, as of April 23, 2015, by Minister of Interior Decree 8/2015 (III. 24.) BM.

⁹² See Section 7, Subsection (3) of Minister of Interior Decree 29/2013 (VI. 28.) BM.

⁹³ See Report AJB-372/2015.

⁹⁴ See Section 94/G of Act on Social Governance and Social Benefits (hereinafter the “Social Act”).

⁹⁵ By virtue of Section 188, Paragraph d) of Act CLIV of 1997 on Healthcare (hereinafter the “Healthcare Act”), a psychiatric patient is a patient who is diagnosed by the treating physician with mental and behavioral disorders (F00-F99) or intentional self-harm (X60-X84) under the International Classification of Diseases Rev. 10.

⁹⁶ According to Section 192, Subsection (1) of the Healthcare Act, restricting personal freedom in any manner whatsoever (by physical, chemical, biological or psychical means or procedure).

⁹⁷ Section 192, Subsection (1) of the Healthcare Act.

The experience gained from the visit has shown that the institution's protocol failed to comply with the relevant legal regulations on several issues (ordering, way of duration, duty to notify, documentation and revision regulations),⁹⁸ and staff members had filled the forms on the application of restrictive measure inadequately and failed to forward them to the patients' rights representative in time on several occasions.

In Building 'B' of the **Juvenile Penitentiary Institution**⁹⁹ the gross floor space of the cells used for the safety or disciplinary isolation¹⁰⁰ of inmates did not reach six square meters,¹⁰¹ and several cells had no adequate lighting and ventilation.

Several isolation cells lacked washbasins. In those cells, water flowed from the taps directly into the lavatory bowls. Not only were the walls of the isolation cells dilapidated, but my colleagues also saw cockroaches and bedbugs. In the absence of an emergency notification system, the inmates in the cells could signal to the guards only shouting or knocking. In my report on the visit, I have pointed out that the domestic regulations on the solitary confinement of juveniles¹⁰² are in violation of Clause 67 of the Havana Rules.

The inspection of the **Zita Home for Children with Special Needs, operated by the Child Protection Directorate of Somogy County**,¹⁰³ established that the isolation room used for segregating children demonstrating immediately dangerous behavior was unsafe.

Although the staff claimed that the children's personal liberty was not restricted in any way in the institution, most of the children mentioned a so-called "isolation period" after reception, during which—for a period spanning from one week to one month—they could not leave the premises of the institution. In the case of two children, during this isolation period, the

⁹⁸ See Section 101/A, Subsection (2) of Minister of Health, Social and Family Affairs Decree No. 1/2000 (I. 7.) SzCsM on Professional Tasks and Conditions for Operation of Institutions Providing Personal Care.

⁹⁹ See Report AJB-1423/2015.

¹⁰⁰ Provisions on security isolation: Section 146 of Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offences; Section 52 of Minister of Justice Decree 16/2014 (XII. 19.) on the Detailed Rules of Confinement Replacing Prison Sentencing, Confinement, Pretrial Detention and Disciplinary Fines; Section 13, Subsection (1) of Minister of Justice Decree 14/2014 (XII. 17.) IM on the Disciplinary Responsibility of Inmates and other Detainees held in Penitentiary Institutions.

¹⁰¹ Pursuant to Section 121, Subsection (3) of the Prison Rules prevailing at the time of the visit, in the case of individual placement the floor-space of the cell or room shall reach six square meters and, according to Subsection (2), when calculating living space, the space occupied by furnishing and equipment should be deducted from the floor-space of the cell or room.

¹⁰² See Section 193, Subsection (4) of the Prison Act.

¹⁰³ See Report AJB-704/2016.

Children's Home restricted their contacts with their relatives to phone calls and writing letters.

After arriving at the **Home for Children with Special Needs of the Károlyi István Children's Center**¹⁰⁴ children had been placed in a so-called "receiving room" on the building's ground floor for one week, sometimes for two weeks, before letting them join the community.

Children staying in the receiving room could not leave the room, receive visitors or make phone calls. Children isolated this way had contacts only with the educators of the group they were to join and the staff members of the Methodological Division. Some of the children reported that they had not been let out on the open air while staying in the receiving room. The Director of the Home for Children with Special Needs described the reception protocol as "*very good*," characterizing the placement of newly arrived children in the receiving room not as isolation, but as a method allowing the staff to provide the children with more supervision and protection.

The documents dealing with the so-called safety isolation of children were superficial; it was established that, in some cases, the medical examination mandatory for children in isolation¹⁰⁵ had not been conducted.

7.2.

Method of inquiry into the isolation of persons deprived of their liberty within the place of detention

In order to establish an efficient method of inquiry, I contacted the institution performing the tasks of the National Preventive Mechanism in the United Kingdom. Having reviewed the questionnaire used in the United Kingdom in 2014–2015, the staff members of the Department compiled a questionnaire for the domestic mapping of isolation in places of detention.

The questions provided by the British NPM were based on two basic concepts. The first one was *isolation*, i.e., the "*physical isolation of persons for disciplinary, safety, preventive, monitoring or administrative reasons. Such persons are isolated from the other detainees either in their physical environment or at the level of regimes. The institution reduces the possibility of social interaction and other activities.*" The other was *solitary confinement*, i.e., *isolation exceeding 22 hours. Substantial social interaction is reduced to a minimum, the environment is unstimulating. Accessible social interactions are chosen not by the person in isolation.*"¹⁰⁶

¹⁰⁴ See Report AJB-705/2016.

¹⁰⁵ See Section 81/A, Subsection (6) of Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship.

¹⁰⁶ See the Sixth Annual Report of the United Kingdom's National Preventive Mechanism, 1 April 2014 – 31 March 2015, p. 22.

During the visits, an inquiry into isolation was conducted on the basis of the following groups of questions:

- recording the identified isolation practice;
- the process of the isolation procedure;
- the circumstances of isolation;
- the rules and practices of monitoring;
- questions for the general interviews to be conducted with persons in isolation;
- questions for assessing the psychological state of the person in isolation.

7.3.

Forms of isolation applied at the places of detention visited in 2016

As a result of the departure of almost half of public servants with a degree in law, participating in the performance of the tasks of the NPM, out of the 10 visits conducted in 2016, reports on only three visits had been completed by December 31, 2016: on *house arrest* in a private apartment, on the inspection of the *Cseppkő Children's Home*, and on the visit to the *Juvenile Penitentiary Institution*.

Since in the case of the person under house arrest isolation within the place of detention had no sense, I am going to summarize the experiences gained as regards the isolation of children within the institution.

7.4.

Isolation of children deprived of their liberty in the place of detention

Irrespective of the reason for their detention, juveniles deprived of their liberty are inherently more vulnerable than adults. Due to their vulnerability deriving from their age, particular vigilance is required on the part of the staff members of places of detention holding juveniles to ensure that their physical and mental well-being is adequately protected.¹⁰⁷

The placement of juveniles in conditions resembling solitary confinement can compromise their physical and/or mental integrity. If *juveniles are held separately from others, this should be for the shortest possible period of time and, in all cases, they should be guaranteed appropriate human contact, granted access to reading material and offered at least one hour of outdoor exercise every day.*¹⁰⁸

¹⁰⁷ See CPT/Inf (99) 12, Clause 20.

¹⁰⁸ See CPT/Inf (99) 12, Clause 35.

7.4.1. Isolation of children living in a children's home

In 2016, I inquired into the practices of isolating children living in an institution during the visit to **Cseppkő (Dripstone) Children's Home**.¹⁰⁹ I could not detect any signs, either when interviewing the children and the personnel, or when inspecting the documentation, indicating that the institution would have kept children, either as a punishment or for preventive purposes, in isolation from the others, restricting their social interaction.

7.4.2. Isolation of juveniles serving their prison sentence

The rules of law-enforcement provide the possibility for the isolation of detainees for having committed a disciplinary offense. One of its forms is "*disciplinary isolation*", applicable during the disciplinary proceedings, aimed at ensuring the *effectiveness of the disciplinary investigation*.¹¹⁰ During the disciplinary isolation, the convict may not contact certain persons, and the scope of personal objects kept with him/her may also be restricted. Disciplinary isolation may last till the completion of the first instance proceedings, but not longer than 20 days.

Another form of isolation is "*solitary confinement*," the maximum *sanction* in disciplinary proceedings.¹¹¹ The maximum duration of solitary confinement depends on the type of imprisonment and the work of the detainee. During the solitary confinement, the detainee may not go on authorized absence or leave, may not buy items of personal need, may not engage in cultural and sports activities, may not read the press, his/her contacts with the outside world (receiving correspondence, packages, visitors) are suspended with the exception of his/her attorney and priest.¹¹²

In the case of juveniles, solitary confinement may only be applied if its execution does not prevent them from participating in education and reintegration programs,¹¹³ and its duration shall be shorter than in the case of adults.¹¹⁴

The third option is "*safety isolation*," which may be applied against a detainee gravely violating or threatening the order and safety of the penitentiary institution, participating in rebellion, refusing to comply with an order

¹⁰⁹ See Report AJB-1603/2016.

¹¹⁰ See Section 13, Subsection (1) of Minister of Justice Decree 14/2014 (XII. 17.) IM on the Disciplinary Responsibility of Inmates and other Detainees held in Penitentiary Institutions.

¹¹¹ See Sections 169 and 170 of the Prison Act.

¹¹² However, pursuant to Section 169, Subsection (5) of the Prison Act, the packages and visitors not received during the solitary confinement may be received upon its completion.

¹¹³ See Section 193 of the Prison Act.

¹¹⁴ Pursuant to Section 193, Subsection (4) of the Prison Act, it may not exceed ten days in a juvenile jail and five days in a juvenile correctional institution.

or to work. The duration of the safety isolation may not exceed 10 days but may be extended on one occasion. Detainees presenting a danger to themselves or to the others may be placed in a room specially designed for this purpose for no more than six hours, and the necessity of this measure shall be reviewed in every two hours. The medical examination of such detainees is mandatory. Safety isolation results in the serious limitation of the rights of the detainee: he/she may communicate with his/her visitor only in a secure booth or using a safety communication device, may not participate in collective leisure activities, is under permanent supervision, and the scope of his/her personal items may be restricted.¹¹⁵

The fourth option is “*placement in a secure cell or unit*,” which may be applied after a thorough deliberation of circumstances specified by the law (e.g., previous record, contacts, personal circumstances, behavior) as a consequence of or in order to prevent any action or criminal offence violating the institution’s order and security, or any behavior presenting danger to the life, personal integrity or property of the detainee himself/herself or the others.¹¹⁶ Such detainees may work only in the secure cell or unit, or a place designated by the governor. Placement in a secure cell does not necessarily mean complete isolation, since only two detainees may be placed in such cells.¹¹⁷ Placement in a secure cell or unit may not last longer than three months, but it may be extended.¹¹⁸

The last option is the “*long-term special unit*,” which may be applied in the case of detainees spending long-term, life sentence, meaning at least 15 years of imprisonment, based on the deliberation of their individual circumstances, when their special treatment and placement is justified for reintegration purposes.¹¹⁹ The limitations of the detainees’ rights, with the exception of receiving visitors, is the same as the general rules of placement in a secure cell.¹²⁰ In 2016, there was no juvenile convict held in a long-term special unit.¹²¹

¹¹⁵ For the detailed rules see Section 146 of the Prison Act and Section 52 of the Prison Rules.

¹¹⁶ See Section 145, Subsection (1), Paragraphs a) and b) of the Prison Act and Section 2, Subsection (2) of the Prison Rules.

¹¹⁷ See Section 2, Subsection (2) of the Prison Rules.

¹¹⁸ See Section 147 of the Prison Act and Section 53 of the Prison Rules.

¹¹⁹ Pursuant to Section 68, Subsection (1) of the Prison Rules, the long-term special unit is a separate part of the penitentiary institution, designed for this purpose, consisting of secure cells and auxiliary facilities.

¹²⁰ See Section 105 of the Prison Act and Section 68 of the Prison Rules.

¹²¹ According to Section 105, Subsection (1) of Act C of 2012 on the Criminal Code (hereinafter the “Criminal Code”), a juvenile offender shall mean any person between the age of twelve and eighteen years at the time of committing a criminal offense. Juveniles may be sentenced to more than 15 years in prison only in exceptional cases. For instance, if a juvenile offender is over the age of sixteen years at the time the crime is committed, he receives a cumulative and merged sentence (Section 123, Subsection (1), Paragraph a) or the Criminal Code), or is held responsible for a violent crime as a repeat offender (Section 123, Subsection (2) of the Criminal Code).

The rules of law-enforcement provide in due details for ordering, executing and reviewing measures involving isolation, and duly ensure the right to complain and appeal. In connection with the applications of these measures, I did not find any circumstances indicative of any fundamental-rights-related impropriety.

In the course of a follow-up visit to the **Juvenile Penitentiary Institution** in Tököl,¹²² I reviewed the implementation of measures initiated earlier, in particular in 2015, in the interest of improving the conditions of isolation.

Following the earlier NPM visit, rustproof lavatory bowls were installed in the 13 cells in the right wing of the cell block housing the isolation unit, and the per capita six square meters of personal space had been ensured through chiseling off the walls of the cells. The cells in the cell block's left wing had been painted, porcelain toilet bowls and wash basins had been installed, and larger doors and windows were to be installed. Heating pipes in the cell block had been painted and covered, light fittings and strip lights had been replaced in the cells and corridors, the doors and walls had been repainted.

I was sorry to learn that, due to financial reasons, no emergency notification system had been installed. It gives cause for concern that, judging by the interviews made with detainees in isolation, getting there means an opportunity to escape an environment of abuse.

¹²² See Report AJB-685/2017.

8.

Reports of the NPM

The National Preventive Mechanism prepares *reports on his inspections, specifying their findings and the conclusions based thereon*.¹²³ On the cover of the report, in addition to the name of the institution visited, it is also indicated that the report is published not in the frameworks of my general activities aimed at protecting fundamental rights, but in performing the tasks of the NPM.

I have taken into consideration the conclusions and recommendations of the Document discussed during the CCB's meeting on April 19, 2016, and tried to use them, where possible, during the preparation of my reports published after that date.¹²⁴

8.1.

Preparation of the report

Under Article 21, Paragraph (2) of the OPCAT, *"confidential information collected by the National Preventive Mechanism shall be privileged."*

In the course of his/her proceedings *"the Commissioner for Fundamental Rights may process – to the extent necessary for those proceedings – all those personal data and data qualifying as secrets protected by an Act or as secrets restricted to the exercise of a profession which are related to the inquiry or the processing of which is necessary for the successful conduct of the proceedings."*¹²⁵

My colleagues who participated in the visit submit their subreports summarizing the results of their observations, measurements and interviews, pictures that were taken and documents that were obtained in the course of the visit to the head of the visiting delegation, just as the contributing

¹²³ See Section 28, Subsection (1) of the Ombudsman Act.

¹²⁴ The document *"Comments by the Reviewing Working Group of the Civil Consultative Body on the reports prepared by the National Preventive Mechanism"* may be found in my Office under file number AJB-2674/2016/23. The document is also accessible on the NPM's website as an attachment to the report on the April 19, 2016, Meeting of the CCB. 0419_emlékeztető.pdf/ba13e0bd-dc82-4b36-ae8d-52629361d60a"

¹²⁵ See Section 27, Subsection (1) of the Ombudsman Act.

experts forward their expert opinions to him/her. Neither the subreports nor the expert opinions contain identifiable personal data.

Since *“the documents and material evidence obtained in the course of the proceedings of the Commissioner for Fundamental Rights shall not be public,”*¹²⁶ outsiders may not have access to notes taken and documents obtained in the course of the visit or its preparation either during or after the completion of the proceedings.

8.2.

Introduction

The introduction gives a short presentation of the NPM’s tasks, the reasons, and circumstances of selecting the location, and the criteria based on which deprivation of liberty is justified under Article 4, Paragraph (2) of the OPCAT.

It contains the date and time of the visit, the names, and qualifications of the visiting delegation’s members and the official positions of my fellow public servants, the method of the inspection, the list of the international and domestic legal sources applied, and the listing of fundamental rights touched upon in the report.

8.3.

The facts of the case and the findings

Detailed description and presentation of the treatment of the detainees and the circumstances observed during the visit are of major importance from the aspect of performing the tasks of the NPM.

The facts of the case include the basic data of the place of detention, and the detailed description of the observations made, interviews held and data obtained in the course of the visit, on which the conclusions and actions of the NPM are based.¹²⁷ The draft of the report is prepared by the head of the delegation on the basis of the subreports of the members of the visiting delegation and the opinions of the outside experts. Objectivity is ensured using the method of triangulation, i.e., crosschecking allegations by different persons and comparing documents.¹²⁸

The report’s findings should list those aspects of placement and treatment which could result in a fundamental-rights-related impropriety or the

¹²⁶ See Section 27, Subsection (3) of the Ombudsman Act.

¹²⁷ See Section 32, Subsection (1) of Normative Instruction 3/2015. (XI. 30.) A/B of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries.

¹²⁸ See S/P/E *Analytical assessment tool for national preventive mechanisms*, (CAT/OP/1/Rev.1) Clause 26.

danger thereof.¹²⁹ Among the findings, I also pointed out those facts and circumstances that, at certain places of detention, resulted in the staff's delayed compliance or failure to comply with their obligation to cooperate, stipulated in Section 25, Subsection (1) of the Ombudsman Act.

In my report on the inspection of the Central Holding Facility of the Budapest Metropolitan Police Headquarters, in addition to mentioning that the delegation could begin the visit only after a 30-minute delay, I also reminded the Chief of the National Police Headquarters of the fact that in 2014, when preparing for the performance of the tasks of the National Preventive Mechanism, I had warned him that the police organs concerned would be notified of the inspection only on the spot, upon starting.¹³⁰ I pointed out that my colleagues authorized to perform the tasks of the NPM attest to their entitlement to proceed when starting the inspection, on the one hand through presenting their Office ID Cards and, on the other hand, handing over a letter of authorization signed by me. Upon receiving my letter, the Chief of the National Police Headquarters issued Order 42/2014. (XII. 18.) ORFK regulating the police chiefs' obligations in connection with the inspections conducted in the frameworks of performing the tasks of the National Preventive Mechanism.¹³¹

In my report on the visit to the Cseppkő Children's Home, in addition to describing how the staff members of the institution prevented the members of the visiting delegation from interviewing the children, I also explained in details why holding those interviews was necessary.¹³²

Among the report's findings, it has to be explained if the uncovered, fundamental-right-related impropriety is the result of the incorrect interpretation of the law, or it derives from an unnecessary, unclear or inadequate legal regulation or the absence or deficiency of the given issue's legal regulation.¹³³

By virtue of Article 16 of the UN Convention, the State has to "*undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined*

¹²⁹ See Section 33, Subsection (1) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries.

¹³⁰ See Report AJB-151/2016.

¹³¹ See Clauses 10/A–10/D, effective as of January 01, 2015, of Order 29/2013. (VII. 5.) ORFK on the proceedings related to inspections conducted by the Commissioner for Fundamental Rights and his Deputies and the National Authority for Data Protection and Freedom of Information.

¹³² See Report AJB-1603/2016.

¹³³ See also Article 11 of the international convention against torture and other cruel, inhuman or degrading treatment or punishment, promulgated by Law-decree 3 of 1988.

in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." The UN Convention does not define "other acts" that do not amount to torture as defined in Article 1 but constitute ill-treatment. In the absence of a definition, in performing the tasks of the National Preventive Mechanism, the term "other acts" compels me to act against any form of treatment which, albeit does not amount to torture, causes suffering to persons deprived of their liberty.

The objective of the NPM's visits is to persuade the authorities and institutions concerned to improve the system of functioning safeguards to prevent all forms of ill-treatment.¹³⁴ I do share the Subcommittee's view that "*the scope of preventive work is large, encompassing any form of abuse of people deprived of their liberty which, if unchecked, could grow into torture or other cruel, inhuman or degrading treatment or punishment.*"¹³⁵

In my experience, not only withstanding treatment or conditions falling under the prohibition of torture and other cruel, inhuman or degrading treatment or punishment but also enduring other improprieties related to their fundamental rights may cause serious physical and psychological ordeal. Since the protection of people deprived of their liberty and the "*full respect*" for their human rights is a common responsibility shared by all,¹³⁶ in my reports published within the frameworks of performing the tasks of the NPM, in addition to preventing torture and other cruel, inhuman or degrading treatment or punishment, I also aim at identifying and preventing other fundamental-rights-related improprieties and the danger thereof.¹³⁷

Upon identifying a fundamental-rights-related impropriety or the danger thereof, in my argumentation, I referred, in particular, to the interpretation of the law by the Constitutional Court, the ECHR, the CPT, the Committee on the Rights of Persons with Disabilities,¹³⁸ and other organs of the UN and the Council of Europe.

In addition to the critical remarks concerning treatment or placement, the visit's findings as regards best practices identified during the visit are recorded and assessed in this part of the report.¹³⁹

¹³⁴ See point 5 of the Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to the Maldives (February 26, 2009).

¹³⁵ See the SPT's first annual report, Clause 12.

¹³⁶ See the Preamble of the OPCAT.

¹³⁷ See Section 30, Subsection (1) of the Ombudsman Act.

¹³⁸ See Article 34 of the United Nations Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007.

¹³⁹ See SPT: *Analytical assessment tool for national preventive mechanisms*, (CAT/OP/1/Rev.1) Clause 30.

I deem it extremely important that reports should be concise and to the point. To pay “full respect” for the rights of persons deprived of their liberty, I strive to pay detailed attention to those aspects of their treatment and placement which could lead to improprieties related to the fundamental rights of persons deprived of their liberty or the danger thereof.

8.4.

Measures taken by the NPM

Pursuant to Article 19, Paragraph (b) of the OPCAT, the National Preventive Mechanism shall be granted the power to make recommendations “to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations.”

This part of the report has to list the measures necessary for remedying fundamental-rights-related anomalies in treatment and placement, uncovered in the course of the visits, or eliminating circumstances threatening the enforcement of fundamental rights.¹⁴⁰ In the case of each measure, it has to be indicated which provision of the Ombudsman Act stipulates the given measure.¹⁴¹

The NPM can fulfill his/her task to regularly examine the treatment of the persons deprived of their liberty, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment¹⁴² only if he/she has immediate access to places of detention and has the possibility to interview persons possessing information regarding treatment and placement. In my reports on visits where the visiting delegation could enter the place of detention only with a delay,¹⁴³ or where the staff tried to prevent it from interviewing the persons deprived of their liberty,¹⁴⁴ I made recommendations to the heads of the institutions concerned aimed at preventing such incidents from recurring.¹⁴⁵

¹⁴⁰ See Section 34, Subsection (1) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries.

¹⁴¹ See Section 34, Subsection (3) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries.

¹⁴² See Article 19, Paragraph a) of the OPCAT.

¹⁴³ See Report AJB-151/2016.

¹⁴⁴ See Report AJB-1603/2016.

¹⁴⁵ See Section 31, Subsection (1) of the Ombudsman Act.

In addition to preventing torture and other cruel, inhuman or degrading treatment or punishment, the NPM's recommendations are also aimed at improving the treatment and the conditions of placement of persons deprived of their liberty. Through the measures described in my reports on NPM visits, in addition to preventing torture and other cruel, inhuman or degrading treatment or punishment, I also tried to facilitate the elimination of improprieties related to other fundamental rights of persons deprived of their liberty and the conditions and ways of treatment leading to them.

The reports have to be clear as to what fundamental-rights-related impropriety or what circumstance threatening the enforcement of the fundamental rights affected the given measure is aimed at.¹⁴⁶ These measures have to be formulated in a way making it possible to distinguish a measure with several addressees from several measures with the same addressee.¹⁴⁷

In connection with my relevant reports, the Director-General of the General Directorate of Social Affairs and Child Protection, operator of the inspected children's homes, voiced his concern that I had drawn conclusions and made recommendations merely based on the statement or allegation of one staff member or one resident of the inspected institution. According to the Director General, it is inappropriate to draw conclusions on the general practices of an institution based on the mere suspicion of infringement, it is necessary to examine the correlation between the circumstances, proceedings, and actions. He complained that, instead of inquiring into the truthfulness of the interviewed children's allegations or into the phenomena giving cause for concern, my colleagues took them as facts and used them as the basis for recommendations.¹⁴⁸

Addressing his concerns, I informed the Director General that the NPM's primary task is not fact-finding, but preventing ill-treatment. My reports treated the allegations made by a single person not as facts, but as information giving cause for concern – I recommended the conduct of an internal investigation in order to clarify the situation. I initiated remedying the situation causing a fundamental-rights-related anomaly on the basis of pieces of information coming from at least two persons and confirming and strengthening each other.¹⁴⁹

¹⁴⁶ See Section 34, Subsection (2) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries.

¹⁴⁷ See Section 34, Subsection (4) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries.

¹⁴⁸ The letter of the Director General of the GDSACP, sent on July 14, 2016, under reference number SZGYF-IKT-6751-3/2016, may be found in the archives of my Office under file number AJB-3341-44/2016.

¹⁴⁹ My reply of August 25, 2016, may be found under file number AJB-3341-48/2016 in the archives of my Office.

I may use the wide range of powers, provided by the Ombudsman Act for conducting my general activities aimed at protecting a fundamental right, also while performing the tasks of the NPM.

- In order to remedy the ill-treatment of persons deprived of their liberty, I may make recommendations to the Head of the inspected authority,¹⁵⁰ or even to the Head of its supervisory organ.¹⁵¹ When performing the tasks of the NPM in 2016, I requested the heads of the inspected places of detention to take the necessary measures on **114** occasions. I made another **70** recommendations to the heads of the supervisory organs of the aforementioned places of detention.
- In order to redress an uncovered impropriety related to a fundamental right or a circumstance pointing to an infringement of a legal rule, I may initiate proceedings by the competent prosecutor through the Prosecutor General.¹⁵² I did not avail myself of this possibility in 2016.
- If the ill-treatment uncovered in the course of the visit or the danger thereof can be attributed to a superfluous, ambiguous or inappropriate provision of a legal rule, or to the lack or deficiency of the legal regulation of the given matter, I may propose that the legislator should modify, repeal or issue a legal rule.¹⁵³ As a result of the NPM visits, I made **24** legislative proposals in 2016.¹⁵⁴
- If, in the course of my inquiry, I notice an impropriety related to the protection of personal data, to the right of access to data of public interest or to data public on grounds of public interest, I may report it to the National Authority for Data Protection and Freedom of Information.¹⁵⁵ I availed myself of this possibility on **one** occasion in 2016.¹⁵⁶

8.5.

Publication of the NPM's reports

*"The reports of Commissioner for Fundamental Rights shall be public. Published reports may not contain personal data, classified data, secrets protected by an Act or secrets restricted to the exercise of a profession."*¹⁵⁷

¹⁵⁰ See Section 32, Subsection (1) of the Ombudsman Act.

¹⁵¹ See Section 31, Subsection (1) of the Ombudsman Act.

¹⁵² See Section 33, Subsections (1) and (2) of the Ombudsman Act.

¹⁵³ See Section 37 of the Ombudsman Act.

¹⁵⁴ In connection with legislation, see Chapter 6.

¹⁵⁵ See Section 36 of the Ombudsman Act.

¹⁵⁶ In my report AJB-151/2016, I suggested that the National Authority for Data Protection and Freedom of Information should inquire into the lawfulness of how data on the state of health of detainees held in the Central Holding Facility of the Metropolitan Police Headquarters of Budapest are handled.

¹⁵⁷ See Section 28, Subsection (2) of the Ombudsman Act.

I forward all my reports on NPM visits to the head of the place of detention concerned, to the addressees of my recommendations, to the members of the Civil Consultative Body and the Hungarian member of the CPT.

The NPM's reports are available to everyone on my Office's homepage in digital format, without any restriction and free of charge.¹⁵⁸ Within a couple of days after sending out the NPM's reports to its addressees, my colleagues make them available in Hungarian to the general public.¹⁵⁹ Within thirty days after its publication, the NPM's reports shall be published in the electronic archives, as well.¹⁶⁰

Due to the lack of financial resources, I have had but one chance so far to publish a report on an NPM visit in its entirety in English. My Office uploaded the English summaries of the NPM reports on the visits conducted in 2016 to the NPM's official web page within thirty days after their publication.¹⁶¹

¹⁵⁸ See Section 39, Subsection (1) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries.

¹⁵⁹ See Section 39, Subsection (2) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries.

¹⁶⁰ See Section 39, Subsection (3) of Normative Instruction 3/2015. (XI. 30.) AJB of the Commissioner for Fundamental Rights on the professional rules and methods of his/her inquiries.

¹⁶¹ <http://www.ajbh.hu/en/web/ajbh-en/opcat-reports-2016>

9.

Legislation-related powers of the NPM

Pursuant to Article 19 of the OPCAT, the NPM has to be granted the power to submit “*proposals and observations*” concerning “*existing or draft legislation.*”

9.1.

Powers related to the prevailing legal regulations

9.1.1. Recommendations made in the NPM’s reports

I exercise the NPM’s power to submit “*proposals and observation*” concerning the prevailing legal regulations mainly in the form of recommendations put forward in my reports on the inspections.

If the ill-treatment or the danger thereof uncovered in the course of the NPM’s visits can be attributed to a superfluous, ambiguous or inappropriate provision of a legal rule, or to the lack or deficiency of the legal regulation of the given matter, I may propose that the legislator modify, repeal or issue the legal rule.¹⁶² In my reports on the NPM’s visits published in 2016, I made **24** legislative proposals.¹⁶³

As National Preventive Mechanism, I exercised for the first time my power under which I may submit a case to Parliament within the framework of my annual report¹⁶⁴ if I do not agree with the position of or the measure taken by the authority subject to inquiry or its supervisory organ¹⁶⁵ in the Annual Report for 2016.¹⁶⁶

The reason behind my decision was that during the inspection of the Central Prison Hospital I had found convicts under different regimes treated in the same ward whose door was closed around the clock.¹⁶⁷ In my report, I pointed out that cells and other accommodation units “*may be periodically open, in accor-*

¹⁶² See Section 37 of the Ombudsman Act.

¹⁶³ In 2016, in the course of my general activities aimed at protecting fundamental rights and while performing my tasks as NPM I made altogether 73 legislative proposal.

¹⁶⁴ See Section 38, Subsection (1) of the Ombudsman Act.

¹⁶⁵ See Section 38, Subsection (3) of the Ombudsman Act.

¹⁶⁶ See the Annual Report on the Activities of the Commissioner for Fundamental Rights and his Deputies in 2016, p. 217 <http://www.ajbh.hu/documents/10180/2613063/AJBH+Besz%C3%A1mol%C3%B3+2016/7233e88b-d26c-a439-6b06-6905a291526e?version=1.0>

¹⁶⁷ See Report AJB-1424/2015.

dance with the regime regulations”, in strict regime prisons,¹⁶⁸ and “around the clock or periodically” in medium regime prisons.¹⁶⁹ In light regime prisons, the doors of the cells and other accommodation units have to be “open during the day.”¹⁷⁰

Keeping the hospital wards’ doors closed around the clock is prejudicial mainly to patients sentenced to light regime prison, since, during their treatment, they are subjected to restrictions stricter than their original sentencing, which results in an impropriety related to the rights to freedom and personal safety.

In order to remedy and prevent the recurrence of this fundamental-rights-related impropriety, I requested the Minister of Justice to initiate the amendment of Section 99 of Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offences, in order to define the rules of keeping open or closed the doors of hospital wards accommodating convicts with sentences of different regimes in the course of their medical treatment.

Since, irrespective of several exchanges of correspondence, no substantial measure had been taken to remedy this fundamental-rights-related impropriety, I turned to the Parliament.

9.1.2. Ex-post review of norms

If, in the course of my inquiries, I find that a fundamental rights-related impropriety is caused by a conflict between a self-government decree and another legal regulation, I may request the Curia to review the self-government decree’s compatibility with the other legal regulation.¹⁷¹

If I find a legal regulation in breach of the Fundamental Law or an international treaty, I may petition the Constitutional Court in order to have it reviewed.¹⁷²

Performing the tasks of the NPM in 2016, I did not petition either the Curia or the Constitutional Court for ex-post review of norms.

9.2.

Draft-bill-related powers

By virtue of Section 2, Subsection (2) of the Ombudsman Act, the Commissioner for Fundamental Rights shall give an opinion on the draft legal rules

¹⁶⁸ See Section 100, Subsection (2), Paragraph d) of Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offences.

¹⁶⁹ See Section 101, Subsection d) of Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offences.

¹⁷⁰ See Section 102, Subsection (2), Paragraph d) of Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offences.

¹⁷¹ See Section 34/A, Subsection (1) of the Ombudsman Act.

¹⁷² See Section 34 of the Ombudsman Act.

affecting his or her tasks and competences, and may make proposals for the amendment or making of legal rules affecting fundamental rights and/or the expression of consent to be bound by an international treaty.

With a view to the National Preventive Mechanism's power to make legislative proposals, the State has to submit to the National Preventive Mechanism, *ex officio*, all draft bills related to detention conditions already in the preparatory stage of legislation. I gave complex reviews on all draft bills, i.e., I formulated my opinion on the basis of the experiences gained during the NPM's visit, as well as the conclusions of my inquiries conducted within the frameworks of my general activities.

Under Act CXXX of 2010 on legislation, the entity preparing the draft has to ensure that all organizations entitled by the law to review draft bills concerning their legal status or competence could exercise this right.¹⁷³ The organs responsible for codification submitted the drafts to me primarily to demonstrate that they had incorporated my proposals to amend, repeal or prepare certain legal regulations as indicated in my reports.

With a view to my competence to review draft bills, I participate in codification only on an exceptional basis. As a positive example, it may be mentioned that in the course of preparing the new act on criminal proceedings I had the chance not only to submit my written opinion but also to participate, upon request, in the professional consultations.

In 2016, I was requested by the organs responsible for codification to review **212** draft bills. Almost 60 per cent of these draft bills originated in the Ministry of Interior and the Ministry of Human Capacities. I was pleased to have the opportunity to review an amendment to Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offenses, drafted in connection with the ruling of the European Court of Human Rights in the case *Varga & Co. versus Hungary*.¹⁷⁴

I was usually given by the competent ministries five working days to formulate my position; however, I had only one working day to review the planned amendment of the Police Act, drafted in connection with the fight against terrorism.

My opinion expressed in connection with the draft bills has no binding force; however, their fundamental rights protection aspects may contribute to increasing the effectiveness of codification and eliminating potential deficiencies and contradictions.

I barely received any feedback on the reviewed drafts even if they had been revised, which made it rather difficult to check whether my remarks had been taken into account.

¹⁷³ See Section 19, Subsection of Act CXXX of 2010 on legislation.

¹⁷⁴ See Case A/B-4246/2016.

10.

Dialog on the NPM's measures

Under Article 22 of the Protocol, the *“authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.”*

The implementation of measures proposed by the Commissioner for Fundamental Rights is not mandatory. However, the Ombudsman Act compels the addressee of the proposal to give a substantive response to my initiative aimed at eliminating the impropriety or the danger thereof uncovered in the course of an investigation. The Ombudsman Act also specifies the deadline for such responses. These provisions have to be applied even in performing the tasks of the NPM.

I conduct a dialog with the addressees of my measure mainly in writing, involving, if needed, their supervisory organs as well. No legal obstacle would prevent me from conducting oral consultations within the dialog's frameworks. The stipulations of Section 38, Subsection (1) constitute the most important legal guarantees as regards the dialog conducted in connection with my measures. According to the aforementioned provision, if the authority subject to inquiry or its supervisory organ fails to form a position on the merits and to take the appropriate measure, or I do not agree with the position or the measure taken, I may submit the case to the Parliament within the framework of my annual report, and may ask the Parliament to inquire into the matter.

If the impropriety is of flagrant gravity or affects a larger group of natural persons, I propose that the Parliament debate the matter before the annual report is put on its agenda. The Parliament shall decide on whether to put the matter on the agenda.

As far as the measures set forward in the NPM's reports published in 2016 are concerned, the inspected authorities or their supervisory organs responded on the merits, and the visits did not uncover any infringement of such gravity that would have required my turning to the Parliament in the interest of remedy.

10.1.

Initiatives

If a fundamental rights-related impropriety may be remedied within the inspected authority's competence, I may recommend it to the head of

the inspected authority. Such initiative may be made directly by phone, orally or by e-mail. In such cases, the date, manner, and substance of the initiative shall be recorded in the case file. Within thirty days of receipt of the initiative, the authority subject to inquiry shall inform me of its position on the merits of the initiative and on the measures taken.¹⁷⁵ If the authority subject to inquiry does not agree with the initiative, it shall, within thirty days of receipt of the initiative, submit the initiative to its supervisory organ together with its opinion thereon. Within thirty days of receipt of the submission, the supervisory organ shall inform me of its position and on the measures taken.¹⁷⁶ As far as the initiatives set forward in my reports on the NPM's visits, published in 2016, are concerned, the addressees, practically with no exception, responded on the merits, within the statutory deadline.

There was only one case when the head of the authority concerned, instead of submitting his objection to the supervisory organ,¹⁷⁷ returned my report to my Office for further action.¹⁷⁸ My Office received the report together with the letter of the head of the authority concerned.¹⁷⁹

In the absence of statutory authorization, I may not deprive the supervisory organ of its powers to formulate its position and take measures as regards my initiative. That is why I requested the head of the supervisory organ of the inspected authority to comply with its obligation stipulated in Section 32, Subsection (3) of the Ombudsman Act.¹⁸⁰ I also informed of this request the original addressee of the initiative.

I received the letter of the initiative's addressee shortly after posting my request to the supervisory organ. In addition to her position regarding my measure, the director also informed me that my report containing the measure in question had not been enclosed with any of my letters sent to her, so she was not able to present her comments thereon.¹⁸¹

¹⁷⁵ See Section 32, Subsections (1) and (2) of the Ombudsman Act.

¹⁷⁶ See Section 32, Subsection (3) of the Ombudsman Act.

¹⁷⁷ See Section 32, Subsection (3) of the Ombudsman Act.

¹⁷⁸ The letter of the director of the Pest County Child Protection Center and Regional Child Protection Directorate, dated February 08, 2016, sent under file number Ig/81/2016, has been filed under case number AJB-705/2016/32.

¹⁷⁹ The two documents were filed under file number 705/2016/32 on February 10, 2016.

¹⁸⁰ See my request to the Director General of the Directorate of Social Affairs and Child Protection, dated February 23, 2016, filed under AJB-705/2016/34.

¹⁸¹ The letter of the director of the Pest County Child Protection Center and Regional Child Protection Directorate, dated February 08, 2016, sent under file number Ig/161/2016, has been filed under case number AJB-705/2016/36.

10.2.

Recommendations

If the investigation concludes that an impropriety in relation to a fundamental right cannot be redressed by the inspected authority within its powers, I may, simultaneously informing the investigated authority subject to inquiry, address a recommendation to the supervisory organ of the authority concerned. Within thirty days of receipt of the initiative, the supervisory organ shall inform me of its position on the merits of the recommendation and on the measures taken.¹⁸² If the authority subject to inquiry has no supervisory organ, I address the recommendation to the investigated authority.¹⁸³ As far as the recommendation set forward in my reports on the NPM's visits, published in 2016, is concerned, the addressees responded on the merits within the statutory deadline.

10.3.

Initiating proceedings by the Prosecution Service

In order to redress an uncovered impropriety related to a fundamental right, I may initiate proceedings by the competent prosecutor through the Prosecutor General. Within sixty days the competent prosecutor has to inform me of his or her position thereon and his or her measure, if any.¹⁸⁴ I did not exercise this power of the Commissioner for Fundamental Rights in any of my reports published on the NPM's visits in 2016.

10.4.

Reporting to the National Authority for Data Protection and Freedom of Information

If my inquiry uncovers an impropriety related to the protection of personal data, to the right of access to data of public interest or to data public on grounds of public interest, I may report it to the National Authority for Data Protection and Freedom of Information.

In 2016, I exercised this power only on one occasion, in my report on the inspection of the Central Holding Facility of the Metropolitan Police Headquarters of Budapest and the Holding Facility of the National

¹⁸² See Section 31, Subsection (1) of the Ombudsman Act.

¹⁸³ See Section 31, Subsection (4) of the Ombudsman Act.

¹⁸⁴ See Section 33, Subsection (1) of the Ombudsman Act.

Bureau of Investigation of the National Police Headquarters.¹⁸⁵ In his letter, the President of the National Authority for Data Protection and Freedom of Information informed me that he had ordered an inquiry into the matter. The inquiry established that, upon receiving my letter, as a matter of urgency, the Chief of the National Police Headquarters had taken the necessary measures to ensure that the conclusions of the medical examinations conducted at the time of receiving detainees could be accessed only by those with appropriate authorization. As a normative guarantee of the lawful handling of the detainees' medical data, the Holding Facilities' Rules of Operation were also duly amended. The National Authority for Data Protection and Freedom of Information deemed the actions of the Chief of the National Police Headquarters, taken in order to remedy the situation, as appropriate and satisfactory, and closed the inquiry with no further action taken.¹⁸⁶

10.5.

Proposing legislation

If, in order to eliminate ill-treatment or the danger thereof, I propose to modify, repeal or issue a legal rule, the organ concerned shall inform me of its position and of any measure taken within sixty days.¹⁸⁷

The addresses responded to my recommendation set forward in my reports on the NPM's visits, published in 2016, on the merits and within the statutory deadline.

10.6.

Follow-up inquiry

*The national preventive mechanism should regularly verify the implementation of recommendations, primarily through follow-up visits to problematic institutions, but also based on relevant information from, among others, human rights bodies, governmental institutions, and civil society.*¹⁸⁸

Follow-up inquiries are part of the National Preventive Mechanism's activities aimed at preventing ill-treatment of persons deprived of their

¹⁸⁵ See Report AJB-151/2016.

¹⁸⁶ The letter of the President of the National Authority for Data Protection and Freedom of Information, dated October 28, 2016, sent under case number NAIH/2016/4548/4N, may be found in my Office's archives under file number AJB-151-48/2016.

¹⁸⁷ See Section 37 of the Ombudsman Act.

¹⁸⁸ See SPE: *Analytical assessment tool for national preventive mechanisms*, (CAT/OP/1/Rev.1) Clause 33.

liberty. One of the main objectives of the follow-up inquiry is to get information on the measures aimed at implementing my recommendations. Another objective is to motivate the personnel of the places of detention and authorities concerned to implement my recommendations.¹⁸⁹

In the course of the follow-up inquiry, I try to check the implementation of my recommendations set forward in my report on the previous visit and re-check the most problematic areas. Within the frameworks of the follow-up inquiry, I assess the implementation of measures aimed at eliminating fundamental-rights-related anomalies uncovered during the

Schedule 4 – Measures suggested in my reports prepared in 2016 within the frameworks of performing the tasks of the NPM¹⁹⁰

Number	Name of the place of detention	Addressee of the measure				
		Total number	Inspected institution ¹⁹¹	Supervisory organ ¹⁹²	Legislation ¹⁹³	Data protection ¹⁹⁴
1.	Central Holding Facility of the MPHQoB and Holding Facility of the NBI of the NPHQ	36	17	14	4	1
2.	Zita Home for Children with Special Needs	19	9	8	2	–
3.	KICC Home for Children with Special Needs	31	19	6	6	–
4.	Somogy County Remand Prison	36	28	7	1	–
5.	Assisted Living Center, Pécel	19	13	6	–	–
6.	KICC Home for Children with Disabilities	37	24	9	4	–
7.	Assisted Living Center, Écs	23	10	10	3	–
8.	House arrest in a private apartment	0				
9.	Cseppkő (Dripstone) Children's Home	26	17	7	2	–
10.	Juvenile Penitentiary Institution, Tököl	12	7	3	2	–
	Altogether	239	144	70	24	1

¹⁸⁹ See: Moriz BIRK, Gerrit ZACH, Debra LONG, Rachel MURRAY, Walter SUNTINGER: Enhancing impact of National Preventive Mechanisms, Strengthening the follow-up on NPM Recommendations in the EU: Strategic Development, Current Practices and the way forward. Ludwig Boltzmann Institute & University of Bristol, May 2015, page 10. Available at: http://www.bristol.ac.uk/media-library/sites/law/hric/2015-documents/NPM%20Study_final.pdf

¹⁹⁰ See Part 11 of the Ombudsman Act.

¹⁹¹ See Section 32, Subsection (1) of the Ombudsman Act.

¹⁹² See Section 31, Subsection (1) of the Ombudsman Act.

¹⁹³ See Section 37 of the Ombudsman Act.

¹⁹⁴ See Section 36 of the Ombudsman Act.

earlier visit and circumstances jeopardizing the enforcement of fundamental rights. The follow-up inquiry provides a chance to discuss the experiences of the earlier visit and, in the light thereof, the practical implementation of my recommendations with the personnel of the place of detention concerned.

Since neither the OPCAT nor the Ombudsman Act contains provisions as regards follow-up inquiries, the general rules have to be applied in their respect.

When selecting the target of a follow-up inquiry, I took into account that, through my activities, especially by conducting proceedings *ex officio*, I have to pay special attention to the rights of the child.¹⁹⁵ On the other hand, I also considered which of the recommendations set forward in my reports published in 2015 could have been implemented in the meantime.

In performing the tasks of the NPM in 2016, I conducted a follow-up inquiry in the Juvenile Penitentiary Institution in Tököl.

¹⁹⁵ See Section 1, Subsection (2), Paragraph a) of the Ombudsman Act.

11.

Groups of persons deprived of their liberty at the places of detention

In 2016, I prepared 10 reports within the frameworks of performing the tasks of the NPM. Seven reports dealt with visits in 2015, and three with visits in 2016.

Schedule 5 – Reports published in 2016 within the frameworks of performing the tasks of the NPM

Number	Date of the visit	Place of detention		At the time of the visit			Number of persons interviewed
		Name	Authorized capacity (persons)	Actual capacity (persons)*	Utilization rate	Number of detainees (persons)	
1.	June 24–25, 2015	Somogy County Remand Prison	129	132	102.3	132	35
2.	June 25–26, 2015	Zita Home for Children with Special Needs	32	32	93.7	30	24
3.	July 21, 2015	KICC Home for Children with Special Needs	32	32	81.2	26	31
4.	August 13, 2015	KICC Home for Children with Disabilities	24	24	100.0	24	14
5.	October 13–14, 2015	Central Holding Facility of the MPHQoB and Holding Facility of the NBI of the NPHQ**	67+36 =103	103	23.9 25.0	16+9 =25	12
6.	November 10, 2015	Assisted Living Center, Pécel	45	48	106.6	48	32
7.	November 11, 2015	Assisted Living Center, Écs	50	50	100	50	27
8.	February 08, 2016	House arrest in a private apartment	1	1	–	1	1

* Actual capacity includes both vacancies and detainees held above the authorized capacity

** Within the framework of a single visit, the NPM inspected two institutions. The first number stands for the Central Holding Facility of the MPHQoB; the second stands for the Holding Facility of the NBI of the Emergency Response Team of the NPHQ.

Number	Date of the visit	Place of detention		At the time of the visit			Number of persons interviewed
		Name	Authorized capacity (persons)	Actual capacity (persons)*	Utilization rate	Number of detainees (persons)	
9.	March 01–02 and April 26, 2016	Cseppkő (Dripstone) Children's Home without the foster parent network	137	137	81.0	111	97
10.	June 28–29, 2016	Juvenile Penitentiary Institution, Tököl***	217	217	60.4	120, 11 ad.****	49
	Altogether		770	776	77.41*****	578	322

*** On May 01, 2016, Tököl National Prison got separated from the Juvenile Penitentiary Institution. Pursuant to Section 82, Paragraph 1 of Act CCXL of 2013 on the execution of punishments, criminal measures, "juvenile also means a young adult older than 18 but younger than 21 serving his/her juvenile prison sentence."

**** ad. = adult – At the time of the visits, 11 adults stayed temporarily, under guarding in the institution.

***** Average utilization rate of the places of detention at the time of the visits.

11.1.

Children deprived of their liberty

Irrespective of the reason for their detention, juveniles deprived of their liberty are inherently more vulnerable than adults. Due to their vulnerability deriving from their age, particular vigilance is required on the part of the staff members of places of detention holding juveniles to ensure that their physical and mental well-being is adequately protected.¹⁹⁶

Hungary has no special ombudsman for children; however, when performing the tasks of the NPM, I have to pay particular attention to the protection of the rights of the child. A child is "a person who has not yet reached 18 years of age, except if such a person becomes an adult earlier pursuant to the laws applicable to him or her."¹⁹⁷

Although in the system of the Hungarian penal law children over fourteen (in exceptional cases twelve) years of age may be held criminally responsible, or, in the field of health law, may make certain decisions independently, children deprived of their liberty under eighteen or, in the penitentiary system, twenty-one years of age shall be provided special treatment, extra attention and special detention conditions.¹⁹⁸

¹⁹⁶ See CPT/Inf (99) 12, Clause 20.

¹⁹⁷ See Article 1 of the Convention on the Rights of the Child, signed in New York on November 20, 1989 (hereinafter the UN Convention on the Rights of the Child), promulgated by Act LXIV of 1991.

¹⁹⁸ Pursuant to Section 82, Paragraph 1 of the Prison Act, "juvenile also means a young adult older than 18 but younger than 21 serving his/her juvenile prison sentence."

The NPM's visits to places of detention holding children deprived of their liberty are focused, on the one hand, on gathering information on intentional abuse and ill-treatment, and, on the other hand, on assessing whether the detention environment is suitable for ensuring and protecting physical and psychological well-being.

11.1.1. Children living in children's homes

Zita Home for Children with Special Needs

In the Zita Home for Children with Special Needs operated by the Somogy County Child Protection Directorate (hereinafter the Zita Children's Home), of the authorized capacity of 32, there were 30 children with special needs in three groups of boys and one group of girls at the time of the visit.



The courtyard of the Zita Children's Home

Relations between the children and the child carers and educators were basically good; however, I pointed out that preventing verbal and physical abuse among the children would be the responsibility of the Home's personnel. The Zita Children's Home did not keep the children busy, regular supervision of the staff was not ensured, and they were one psychologist short. Drug abuse and prostitution presented an increased risk for the residents.

The reception of children into the institution was followed by a so-called isolation period during which—for a period spanning from one week to one month—they could not leave the premises of the institution. In my report, I pointed out that the isolation period, in addition to resulting in deprivation of freedom, also hindered children from maintaining contact with family members.

Children to be transferred were often informed of their transfer on the day of departure, which violates the principles of child-friendly justice: and jeopardizes the enforcement of the right of proper administration and the right to remedy. In my report, I asked the head of the Zita Children's Home to take the necessary steps in order to make the staff or the legal representative inform the children in due time on the Guardianship Office's transfer decision.

The isolation room designated for segregating children demonstrating "immediately dangerous behavior" was unsafe at the time of the visit. According to the staff, the isolation room had not been in use. Leaving without permission was sanctioned by deprivation of days out; its duration could be anywhere between one day and one week. Deprivation of days out did not mean being locked in, but they could not leave the premises unaccompanied. There had been occasions when, due to the small number of the staff, they could not provide adults who could accompany the children, so they could not go out.

Isolation period, isolation room and deprivation of days out notwithstanding, the provisions on restricting personal liberty in the professional program of the Zita Children's Home were limited to repeating the text of the relevant legal regulation and did not contain any further detailed rules or guarantees. I also pointed out that, considering the regulations (on ordering and terminating isolation, monitoring, notifying, and exercising the right to complain) prevailing in other types of institutions (healthcare, social care or penitentiary institutions), the inadequate rules of safety isolation as a form of deprivation of liberty do not provide adequate guarantees.

In my report, I requested the head of the Zita Children's Home to revise the institutional practices of depriving children of their liberty. All cases of deprivation of liberty shorter than 48 hours should be properly documented, any case of "isolation" or deprivation of liberty exceeding 48 hours should be reported to the competent Guardianship Office. I also requested the head of the institution to ensure that the staff members had appropriate knowledge of the legal background and the practical application of deprivation of liberty.

Home for Children with Special Needs of the Károlyi István Children's Center

At the time of the visit, there were 32 children residing and 28 staff members working in the children's home. At the time of the visit, the system of double registration (locally and, e.g., also in the penitentiary institutions) of minors

absent for an extended period of time was not transparent. While capacities for children with special needs are scarce both locally and at the national level as well, there were only 24–25 children taken care of on a permanent basis in the home with an authorized capacity of 32, i.e., irrespective of the vacancies, many children in need could not get the care they are entitled to, or they had to wait for a long time. In the context of double registration children who were permanently absent and children who were away without permission were placed in a fictitious group. As a result, they were providing for more than eight children in the truly functioning three groups, which means that they exceeded the statutory capacity.

It is unreasonable that, in the case of all newly arrived children, the provision of care started with an isolation period of one to two weeks. The placement of children in the reception room resulted in a serious restriction of the children's personal liberty. If deprivation of liberty exceeded 48 hours, the head of the institution should have ordered educational supervision – it had never happened in the cases investigated. The form of isolation applied by the Home jeopardizes the enforcement of the rights to personal liberty and safety. In order to prevent such situations from recurring, I suggested that the Minister of Human Capacities should initiate the amendment of legal provisions on the restriction of the personal liberty of children placed in homes for children with special needs, special foster homes and in the special groups of any children's home.



provisions on the restriction of the personal liberty of children placed in homes for children with special needs, special foster homes and in the special groups of any children's home.

Corridor in the reception unit of the Home for Children with Special Needs of the Károlyi István Children's Center

The provisions of the house rules providing fewer opportunities for communication than the Guardianship Office's resolution and the absence of an adequate meeting room caused an impropriety in connection with the right to privacy.

On the positive side, as far as the children's right to complain is concerned, the children were familiar with the children's rights representative and knew that they could put forward their complaints through him. However, there was no complaint box installed in the Home, and the Stakeholder Forum did not operate with the required intensity and frequency.

In addition to a pediatrician, a psychiatrist also visits the Home on a weekly basis. The physician must be immediately notified of the application of safety isolation. It causes an impropriety related to the right to physical and mental health if the medical examination does not take place irrespective of the order of the head of the institution. The same fundamental right is jeopardized if a nurse decides to drug an aggressive child upon consulting only with the head of the Home.

Although there are only a few pediatric and youth psychiatrists in the country, it gives cause for concern if children cannot consult with a pediatric psychiatrist, at least occasionally, in order to ensure a treatment fitting their age and conditions. Treatment of minors in an adult psychiatric ward should be avoided in the interest of protecting the children and preserving their health.

In addition to the Home's staff, developmental pedagogues and psychologists also participate in the development and remedial education of the children, as a result of which several types of therapeutic, free-time and sports activities have become accessible. The children's favorite pass-time is the computer. It is unfortunate that no filtering and parental control programs, preventing the children from visiting dangerous websites, were installed on the personal computers of the Home. In the visiting delegation's experience, the children were often busy doing nothing. The lack of meaningful forms of engagement may lead to an increase in the number of acts of vandalism and to intensified aggression, thus jeopardizing the enforcement of the prohibition of inhuman treatment and the child's right to protection and care.

Since it is a boys-only institution, the slight prevalence of men among the staff members is explicitly recommended. Most of the interviewed children could single out someone among the staff members whom they could accept as a role model. It gives cause for concern if the age spectrum of children is not taken into account when hiring new employees (e.g., they employ baby- and child-care nurses, and kindergarten teachers), there is no prior preparation, appropriate training, and continuous supervision. High staff turnover could be reduced through the employment of well prepared, mental hygienically supported persons. Specific, practice-oriented training could contribute to effective stress and conflict management, efficiently curbing aggressive, hostile behavior, and suppressing violent reactions among the children. In my report, I suggested that the operator should organize regular training for the employees that could assist them to efficiently handle aggressive, hostile behavior, manage stress and conflicts and introduce regular supervision.

Home for Children with Disabilities of the Károlyi István Children's Center

At the time of the visit, there were 24 children residing and 18 staff members working in the institution in Fót. There were only women employed in care-

taking positions, as a result of which only female staff could assist the bathing of the boys. This situation was prone to induce a sense of shame in the children concerned, thus causing an impropriety related to degrading treatment. To remedy this situation,



I suggested that, in the future, the institution should pay due attention to gender balance when selecting and employing staff members.

*Developmental room,
Home for Children
with Disabilities of
the Károlyi István
Children's Center*

Due to the lack of barrier-free accessibility, children in wheelchairs could not move around freely even on the premises of the Károlyi István Children's Center. There is a threshold at the entrance of the building used by Group 51, and children in wheelchairs could not access the building used by Group 53 without assistance. The playground between the buildings used by Groups 51 and 52 could hardly be used by children with reduced mobility. In connection with barrier-free accessibility, I pointed out that restricting mobility causes an impropriety related to the right to free movement. In my report on the visit, I suggested that the Head of the Children's Center should ensure that the institution is made barrier-free so that residents using wheelchairs could exercise their right to mobility and free movement.

In connection with terminating placement in the children's home, I pointed out that facilitating adoption and placement with foster parents were missing from the professional program of the Home for Children with Disabilities. In this context, it seems to be justified to work out a government strategy with an appropriate timeframe in order to make it possible for children with special needs placed in children's homes to grow up in a family environment instead. In my report, I recommended the amendment of the children's home's professional program so that adoption and placement with foster parents could be major considerations when terminating placement in the institution.

Although the staff did not apply physical punishment of the children, there had been examples of emotional blackmail, and there had been a case

when they had taken away a child's favorite object. According to a staff member, there were cases when one of the children complained that he could not go home because he had done "this and that." In my report on the visit, I pointed out that various forms of punishment jeopardizing the children's right to psychological health or restricting communication and home leaves would result in fundamental-rights-related improprieties, so they should be abolished as soon as possible.

The visiting delegation got the impression that the children were tolerant with and helpful to each other; however, there were cases when they yelled at and fought with each other and used foul language for no apparent reason. According to one of the staff members, one of the children had been ostracized by the others because "he could not be nice." When he was agitated, he was taken to his room and put on the bed. The National Preventive Mechanism pointed out that, by taking an agitated or ostracized child to his/her room, putting him/her—as an object—on his/her bed, and leaving him/her there on his/her own, the staff had caused an impropriety related to the right to human dignity and the prohibition of inhuman treatment.

Cseppkő (Dripstone) Children's Home

The Cseppkő Children's Home is one of the largest single-location children's homes in the country, consisting of three independent professional units qualifying as separate care providers with a capacity of 40 each, and an after-care home. At the time of the visit planned for two days, the institution with an authorized capacity of 137 took care of 111 children and young adults. The living space, the number, size, and tidiness of the rooms, with the exception of certain circumstances, e.g., in some cases, the lack of doors and door handles, were adequate. In the absence of separation, and depending on the actual utilization rate, the institution provided care to 100–120 children and young adults in three independent professional units located on the premises; therefore, the institution complied only formally with the provision of the Child Protection Act stipulating that the children's home shall not provide care to more than 48 children.¹⁹⁹

During the two days of the visit, due to an off-site program, ordered by the director of the Home, my colleagues were not able to interview the majority of the children. Therefore, interviewing was continued on April 26, 2016, within the frameworks of an unannounced visit. During the three days of the visit, my colleagues talked to 57 residents of the Home.

The way of taking care of sick children, the everyday presence of a nurse, and the bi-weekly possibility to consult a pediatric psychiatrist were all con-

¹⁹⁹ See Section 59, Subsection (1) of the Child Protection Act.

sidered as best practices. The fact that documents containing data on the state of health and treatment of certain children living in the Home were put on display in a place accessible to both the staff and the residents caused an anomaly related to the right to the protection of personal data. It is unacceptable that the staff tacitly agreed to the children's smoking at quite a young age and did not take any measures to prevent them from smoking.

I highly appreciated the educators' efforts aimed at avoiding home-schooling as well as the ever-growing role of the district's public schools in the education of the residents of the Children's Home. The various free-time and sports programs organized for the children were exemplary. However, it gives cause for concern that a significant rate of children under school-leaving age fails—occasionally or regularly—to participate in compulsory schooling, often staying in the Home under day watch with no justified reason. Skipping school, the way the duty system works, the furnishing of the duty room, and, in particular, the deficiencies of catering to children staying in the duty room

caused an impropriety in connection with the children's rights to education, to care, and to the protection necessary for their proper development.



*Duty room,
Cseppekő Children's
Home*

It also gives cause for concern that neither the specialist nor the parents were duly involved in the preparation of the individual education and care plans. One of the children was registered in the individual education and care plan as Roma without the consent of either the parents or the legal representative. Instead of visitation rooms, children often could communicate with their parents only in the entrance hall. That environment is unfit for deepening parent-child relations and, through it, facilitating home care.

On the positive side, most of the children felt that they could turn with their problems to the educators or the head of the Children's Home. The children's right to complain was hindered by the fact that there were no ways to submit complaints anonymously, and maintaining contact with the guardians and children's rights representatives was also faltering.

Ignoring the children's violence directed towards each other or themselves or considering it as a prank, game or pastime made taking effective counter-measures and prevention difficult. It caused an impropriety in connection with the prohibition of ill-treatment that some educators tried to wield influence through abuse (yelling at, threatening to slap, intimidating or humiliating the children). It infringed upon the children's rights when educators were unable to protect the children from violence directed towards them by their peers or themselves. It may cause a fundamental-rights-related impropriety if the institution's staff members fail to comply with their notification duty when there is a risk of child prostitution.²⁰⁰

Although the total number of the professional staff employed in the Children's Home was above the statutory minimum, there were two groups where the requirement of five staff members per group was not met.²⁰¹ It gives cause for concern that half of the staff did not have professional qualifications, and there were no developmental pedagogues or educators with a degree in special education in the institution taking care of 30 children with special needs. Employing staff members with no professional knowledge necessary for providing care and education in conformity with the special needs of the children caused an impropriety in connection with the right of the child to protection and care, and the right of children with special needs to equal treatment.

11.1.2. Children in the penitentiary system

Juvenile Penitentiary Institution

The states "shall seek to promote the establishment of laws, procedures, authorities, and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law."²⁰²

In the view of the CPT, "all juveniles deprived of their liberty because they are accused or convicted of criminal offenses ought to be held in detention centers specifically designed for persons of this age, offering regimes tailored to their needs and staffed by persons trained in dealing with the young."²⁰³

The prime objective of the 2016 visit was to check the implementation of the recommendations set forth in the report on the previous year's visit.²⁰⁴

²⁰⁰ See Section 17 of the Child Protection Act.

²⁰¹ See Annex 1 of Minister of Public Welfare Decree 15/1998. (IV. 30.) NM on vocational obligations and conditions in child welfare organizations and child care services and persons involved in these activities.

²⁰² See Article 40, Paragraph (3) of the United Nations Convention on the Rights of the Child.

²⁰³ See CPT/Inf (99) 12, Clause 28.

²⁰⁴ See Report A/B-1423/2015.

In the course of the 2015 visit, the NPM established that the cells in the lock-up section, the sanitary units, in particular, were in deplorable condition. Furthermore, the ventilation and lighting of the cells were not adequate, and the statutory minimum living space was not ensured, either. The transfer cell (“csurma”) was overcrowded to the extent that several detainees had to stand as there were not enough seats for everyone. The detainees complained that they had been abused by the guards.

Although the basic task of the Juvenile Penitentiary Institution (hereinafter the “Institution”) is to provide placement for juvenile offenders, at the time of the 2015 visit only 158 among the 761 detainees were juveniles. After receiving my report, on May 01, 2016, Tököl National Prison got separated from the Juvenile Penitentiary Institution and started its independent operation. After the separation, only juvenile offenders remained in the Institution.

At the time of the visit, there were 149 detainees in the Institution with a capacity of 218, among them 120 minors and 11 young adults under the age of 21.²⁰⁵ There were 3 detainees in the healing/therapeutic group, eleven in the psycho-social group, and three in the drug prevention unit. As regards the juvenile detainees, the utilization rate stood at 55.3%.

Following the previous visit, the cells in the cell block had been renovated, toilet bowls, wash basins, light fittings, doors, and windows had been replaced. The Institution ensured the provision of statutory living space through chiseling away parts of the cells’ walls.

Toilet in the cell block



At the time of the 2015 visit



At the time of the 2016 visit

²⁰⁵ Pursuant to Section 82, Paragraph 1 of the Prison Act, “juvenile also means a young adult older than 18 but younger than 21 serving his/her juvenile prison sentence.”

The transfer cells had been renovated, the toilet bowls and the doors had been replaced, and new benches had been installed. The number of detainees matched the number of seats. The separation of detainees (minors/adults, women/men, and pre-trial detainees/convicts) was carried out in the five renovated cells. In order to protect non-smokers, no tobacco products may be taken in the transfer cell. To ensure personal and property safety, cameras had been installed on the premises.

In 2015, some detainees claimed to have been abused by their fellow inmates. In my report, I pointed out to the management of the Institution that the guards were obliged to protect them from each other as well. Following my recommendation, training programs were held for the staff of the Institution in order to reduce the ill-treatment of and the violence between the detainees.

Several international legal documents, e.g., the Nelson Mandela Rules, stress that the education of illiterate prisoners and of young prisoners shall be compulsory. I drew the attention of the Director General of the Hungarian Prison Service to the fact that illiterate detainees should be encouraged to participate in primary education in order to facilitate their reintegration into society. Graduation from primary school would provide additional opportunities to young prisoners to reintegrate, e.g., to obtain their driving license. The knowledge acquired by them would give them moral strength, earn them recognition and provide them with an opportunity to escape their earlier, disadvantaged social environment. In my report on the follow-up inquiry, I suggested that the Governor of the Institution should work out a plan for the involvement of illiterate detainees and those who have not graduated from primary school in primary education.

11.2.

Detainees in the penitentiary system

Somogy County Remand Prison

At the time of the visit, there were 138 detainees registered, six among them not present, in the institution with a capacity of 129. With 132 persons—129 men and three women—held in the institution, the utilization rate was 102%. Most of the detainees, 93 persons, were in pre-trial detention, but there were light, medium and strict regime convicts held in the Institution as well.

Since there was no separate unit for juvenile detainees, they were placed in two regular cells. The floor-space of the four-bed cell, inhabited by two under-age men, was 12 square meters. In the other cell that had its own shower room, there were three women in pre-trial detention. One of them was a minor; the other two were adults. The placement of a juvenile

woman with two adult women in the same cell caused a fundamental-rights-related anomaly.

The visiting delegation found two cells where the open regime was ensured for the detainees so that the doors did not open directly to the corridor, but to an area of about 0.75–1.0 square meter surrounded by bars.



*“Open regime”
in the Somogy County Remand
Prison*

Several detainees claimed that, upon the visitors’ departure, in the chapel or in another room available they had had to strip naked in the presence of the guards and other inmates. The naked detainees had to pull back the foreskin

over the head of their penis, then they had to squat. This procedure is aimed at checking whether they had hidden any forbidden objects, including psychotropic substances, between their legs or in the private parts of their body.

The relevant legal regulations stipulate three levels of examining the convict’s clothes and body.²⁰⁶ The oral cavity may be inspected by a staff member of the opposite sex of the penal institution as well. Body search and examining the convict’s clothing may be conducted only by a person of the same gender. Body cavities may be examined only by a physician. In the absence of the legal definition of body cavities, it is unclear whether the provision for body search or the provision for examining body cavities should be applied during the inspection of the foreskin-covered part of the convicts’ penis or while looking for forbidden objects between the convicts’ leg or in their rectum. The practice established as a result of this unclear legal situation jeopardizes the enforcement of the prohibition of degrading treatment, so I requested the Minister of Justice to take the necessary measure to abolish it.

In connection with exercising the right to freedom of religion, the State has to provide the preconditions for the realization of the freedom of religion, i.e., to ensure the protection of the values and life situations related to the freedom of religion.²⁰⁷ In the Institution, the chapel was the place designated for the practice of religion, providing a venue for religious acts and services, and providing the conditions for individual or collective practice of religion for the

²⁰⁶ See Section 145 of the Prison Act.

²⁰⁷ See Constitutional Court decision 6/2013 (III. 1.) AB.

detainees. It is generally considered that loud and inappropriate speech, cursing, wearing blatantly scant attire or being naked in a place designated for the practice of one's religion may be offensive. The Institution caused an anomaly related to the rights to freedom of conscience and freedom of religion by letting the staff search the bodies, private parts, and certain body cavities of naked detainees in a place designated for the practice of religion (in the chapel). In my report, I suggested that, in the future, guards should check the detainees' clothing, body and body cavities somewhere else, not in the chapel.

11.3.

Police detention

The Holding Facility of the National Bureau of Investigation of the Emergency Response Team of the National Police Headquarters

According to Section 39/B, Subsection (3) of the Ombudsman Act, the National Preventive Mechanism "may enter without any restriction the places of detention and other premises of the authority under inquiry." The written agreement between the National Preventive Mechanism and the National Police Headquarters notwithstanding, the visiting delegation could enter the Holding Facility of the National Bureau of Investigation of the Emergency Response Team of the National Police Headquarters (hereinafter the "Holding Facility of the NBI NPHQ") only 30 minutes after presenting the letter of authorization and their ID cards. The delayed compliance with the statutory obligation to cooperate and the inadequate preparedness of the institution's staff hindered the performance of the tasks of the National Preventive Mechanism.

At the time of the visit, the 15 cells of the Holding Facility of the NBI NPHQ could accommodate 36 persons. There were nine male detainees, including three Syrian nationals, held there at the time of the visit. Among them, five were in criminal and four in pre-trial detention. There were no juveniles among the detainees. There were no new arrivals during the visit. Information material on the detainees' rights and obligations and the rules of their detention were available, in addition to Hungarian, in 17 languages. Every detainee gets a copy upon reception.



A cell in the Holding Facility of the NBI NPHQ

In the 12 two-bed and three four-bed cells, the tables fixed to the floor were unsafe and hindered free movement. The cells received little natural light and, in many places, the light bulbs were missing from the lamps. There were no separate toilet and shower rooms in the cells. The air in the common bathroom was damp, the walls and the equipment were moldy. The building had been renovated 2–3 years prior to the visit. The conditions in the cells, the lack of natural light, the bad artificial lighting, and the dilapidated condition of the restrooms jeopardized the enforcement of the prohibition of inhuman and degrading treatment.

The staff's office and recreational rooms (e.g., the kitchen) did not receive enough natural light, either; artificial lighting had to be used even during daytime. On the second floor, one of the guards' recreation rooms had no window, so it lacked natural lighting and ventilation. The conditions found on the premises of the Holding Facility of the NBI NPHQ caused an impropriety related to the personnel's right to human dignity. Furthermore, as regards the detainees, such conditions also jeopardized the implementation of the ban on inhuman, degrading treatment.

The Central Holding Facility of the Metropolitan Police Headquarters of Budapest

The part of the Central Holding Facility of the Metropolitan Police Headquarters of Budapest (hereinafter the "Central Holding Facility of the MPHQoB") in operation at the time of the visit could hold 67 persons, 22 on the first floor and 45 on the second floor of the facility. The cells on the third and fourth floors were being renovated. At the visit's beginning, there were 16 detainees, including one woman and fifteen men, held in the building. Among them, 14 were in criminal and two in pre-trial detention. There were neither juveniles nor persons living with disabilities among the detainees. One was diabetic, and two suffered from impetigo infection. None of them was intoxicated, aggressive or a danger to himself. With the exception of one Chinese and two Ukrainian nationals, all of them were Hungarian citizens. There were four persons waiting to be received at the beginning of the visit and detainees would arrive one after another later on.

The cells were small, per capita living space was less than three square meters.²⁰⁸ There were grease stains on the walls, and the linoleum was peeling off the floor in many places. The tables in the cells were unsafe, fixed to the floor, and their edges were sharp. There were no control knobs on many of the radiators. During the nighttime visit, the delegation could not take the appropriate measurements of the proportion of light-transmitting surfaces

²⁰⁸ See Section 3, Subsection (2) of Minister of Interior Decree 56/2014 (XII. 5.) BM on the rules of police detention facilities.

in the cells; nevertheless, it could be established that the cells received little natural light. There were no separate toilets and shower rooms in the cells. The premises of the common sanitary unit were plagued with leaks, dirt, and mold. Two of the “boxes” in the courtyards of the holding facility had several centimeters of water. The dates of the graffiti suggested that the parts of the building used for open-air activities had not been renovated since 2003. In the absence of statutory living space, and due to the inadequate conditions of placement, little natural light, unsafe furnishing, dilapidated state of the restrooms, and the courtyards’ unfitness for use, the Holding Facility was in a state unsuitable for lasting human stay at the time of the visit.

Several of the surveillance monitors, being in a rather poor state, located in the office of the guard commander, displayed practically nothing. There are many blind spots in the areas monitored by cameras; i.e., some parts of the building (e. g., the landings) could not be surveilled through the cameras. The poor technical state of the displays and the existence of blind spots jeopardized the safety of both the detainees and the personnel.

The rooms where staff members could stay and the kitchens were dilapidated, the linoleum on the floor was worn. The windows of the staff recreation room on the second floor faced a firewall, so natural lighting was very scarce. There was little space in the staff locker room; it was difficult to move around between opposite lockers if their doors were open. The staff’s shower room was also in a very bad shape. Light fittings were missing in many places; bare lightbulbs provided some light. The gas pipes were rusty, and their painting was flaking off. The absence of proper material conditions for the staff’s everyday work, in combination with the increased mental strain, may affect the treatment of the detainees, jeopardizing the enforcement of the prohibition of inhuman or degrading treatment.

The site of the house arrest

House arrest is a coercive measure, applicable in criminal proceedings, restricting the accused person’s right to freedom of movement and residence.²⁰⁹ Pursuant to Section 1, Subsection (2) Joint Decree 6/2003 (IV. 4.) IM-BM of the Ministers of Justice and Interior on house arrest, when ordering house arrest, the court shall inform the accused that he/she may leave the designated site of house arrest only for the reason, at the time and within the distance (for the destination) specified in the judicial decision. Under Article 4 of the OPCAT, the site of the house arrest qualifies as a place of detention.

In the course of the criminal proceedings, the police are ordered to monitor, with the detainee’s consent, compliance with the rules of house arrest

²⁰⁹ See Section 138 of Act XIX of 1998 on Criminal Proceedings.

using technical means as well. The on-site inspection ordered by the court established that the proper conditions for the use of the tracking device could be ensured in the apartment designated as the site of the house arrest.

The detainee lived alone in an upstairs, terraced, two-room apartment with a well-equipped kitchen, separate bathroom, and restroom. Public utilities, including electricity and water, internet connection and cable television service were all accessible in the apartment. Under the court's decision, the detainee was not allowed to leave the apartment.

According to the records on putting on the tracking device, the detainee was duly briefed on the system's operation, its proper use, and on the handling of his personal and special data. During the visit, the detainee confirmed that he had received this information and he had been shown how to use the device. The device had to be charged from time to time, but it

could be conveniently done in the bedroom, even while sleeping. The waterproof device could resist the impacts of everyday life, it did not have to be taken off even while showering.



Tracking device on the body of the person under house arrest

The internal unit, connected to the mains outlet in the apartment, could monitor the detainee's movement within 25 meters, with the help of the device attached to his ankle. He could go out to the terrace, but, when leaving the apartment, he had to turn back from the elevator door. When out of range, the device started to vibrate and whistle.

The ankle device also enabled satellite monitoring, i.e., with the court's permission, he could have left the apartment under technical surveillance. The detainee's assets were sequestered, his bank card withdrawn. According to him, he was living on the money that her mother had given him from her pension. His family members assisted him in getting provisions: once a week they went shopping for him using the shopping list prepared by him. He prepared his meals himself.

Earlier, while he was in pre-trial detention, he spent a week in hospital when he underwent surgery. After the operation, he had to take medications; however, he could not leave the site of the house arrest even for a medical examination. Pursuant to Section 11 of Act LXXXIII of 1997 on the benefits of compulsory health insurance, the insured person is entitled to medical examination and treatment at home only if warranted by his/her state of health. Although the detainee's state of health would have allowed him to go to the

doctor's to have the necessary medications prescribed, he could not leave his home because of the house arrest. So, instead of the detainee, his sibling went to the pharmacy. Without a prescription, the required medications were issued on the basis of the hospital's certificate, at full price. The fact that the detainee could not leave his home even for a medical examination caused an impropriety related to the detainee's right to physical health.

In accordance with the Act on Criminal Proceedings, in the event of a house arrest, the defendant may only leave the dwelling designated by the court and the enclosed area attached to it for the reason, at the time and within the distance specified in the court decision, thus especially, for the purpose of complying with everyday basic necessities or medical treatment. Pursuant to this provision, depending on the court decision, the detainee may leave the site for shopping, medical treatment or other reasons. Since, pursuant to Section 18, Subsection (3), Paragraph e) of the Ombudsman Act, I may not inquire into the courts' actions, I could not make any recommendation in order to remedy the aforementioned situation.

11.4.

Assisted living centers for the elderly

Assisted Living Center, Pécel

There were 48 persons, including 19 men and 29 women, residing at the Assisted Living Center for the Elderly in Pécel (hereinafter the "Pécel Center") at the time of the visit. Among them, 23 persons were under guardianship. By age group: 19 persons under the age of 69, and 29 were above 70. In the one two-bed, two four-bed, one five-bed, and two six-bed rooms in Building "A," there were altogether 27 demented persons requiring close monitoring; in the three three-bed and three four-bed rooms of Building "B," there were altogether 21 ambulant persons not requiring constant monitoring. The placement of the residents is primarily determined by whether they arrive at the institution as ambulant or bed-patients. The newly arrived are asked with



*Bedroom
in the Pécel Center*

whom they would like to live together. If possible, their requests are fulfilled. If someone indicated later (or the nurses realize) that he/she does not get along with his/her roommate, he/she, if possible, can move to another room.

At the time of the visit, two residents were in a relationship, but there was no room suitable for marital or partnership cohabitation in the institution. According to one of the staff members of the Pécel Center, it would have been possible to designate a conjugal room, but, in his opinion, not all residents were fit to live in a partnership. According to another staff member, there was no need for a conjugal room since "*the residents were wearing diapers.*" It is not a problem if they take each other's hand, but there are cases when the demented patients "*bill and coo,*" "*act uninhibitedly on their instincts*" or, occasionally, "*put their hands into their pants.*" In such cases, they are told that "*they have been naughty, acted improperly.*" The above statements demonstrate the prejudiced mindset of the nursing staff, which may have an adverse effect on the residents' treatment.

In the Pécel Center, barrier-free accessibility was not fully implemented, and the rooms, generally speaking, were in a run-down condition. At the time of the NPM's visit, the main building was being painted. There were not enough restrooms in Building "A," and the number of showers was insufficient, too. The number of restrooms and showers was—temporarily—reduced by the fact that the first floor of Building "B" was flooded, so the upstairs sanitary units had to be closed.

The residents of the Center could take a bath every other day, first the women, then, on the following day, the men. The more independent residents were bathed by the nurses on the night shift, the less mobile by those on the day shift. There were only female nurses working in the Center, so male residents also were bathed by them. In connection with an earlier visit to an institution taking care of persons with psycho-social and intellectual disability,²¹⁰ I already pointed out that due attention must be paid to gender balance when selecting and employing staff members. The residents told the delegation that the nurses do not pay proper attention to ensuring that, when opening the bathroom's door, those outside the bathroom could not see their naked fellow residents waiting to be bathed. The fact that male patients are being bathed by female staff members and the fact that opening the bathroom door gives sight of other patients being in there constitute an impropriety related to the prohibition of degrading treatment.

The residents said that they had to buy themselves toilet paper, shower gel, and soap. The nursing staff confirmed that they provided soap or toilet paper to the residents when they had run out of their own stock. According to the prevailing legal regulations, residential institutions have to provide

²¹⁰ See Report AJB-372/2015, p. 14.

their residents full service,²¹¹ including the provision of appropriate quantities of toilet paper and diapers. It caused an impropriety related to the prohibition of degrading treatment that the Pécel Center did not provide its residents with appropriate quantities of toilet paper and diapers.

During daytime, residents watched TV, read books, smoked, had coffee, and those who could, walked around the courtyard. They could rarely leave the institution for a short walk. Some residents claimed to have organized programs weekly or every other week; others remembered having them monthly. Some residents spoke highly of the creative programs and the person conducting them, who was making Christmas decorations together with two residents at the time of the visit. Some of the rooms were decorated with small objects and hand-made articles made by the residents; however, there were remarkably few personal items or pictures of the residents' family lives.

The tension between the management and the personnel had an adverse effect also on the relations between the residents and the caretakers. Staff members performed their basic tasks adequately; however, they were unable to create a loving, caring atmosphere. According to one of the female residents, the nurses were extremely busy, she had practically no relations with them; however, she was not aware of any ill-treatment. Some male residents said that although staff members were usually very kind to them, sometimes they became irritated. The fact that some staff members showed signs of burn-out may have contributed to the fact that the residents could not always get the care meeting their physical and psychological needs.

*Assisted Living Center for the Elderly in Écs,
operated by the Segítő Kéz Public Benefit Foundation*

The Assisted Living Center for The Elderly, operated by the Segítő Kéz (Helping Hand) Public Benefit Foundation (hereinafter the "Segítő Kéz Center"), providing high-level care to 50 residents, is located in Écs, a village of nearly 1,800 inhabitants, 14 kilometers away from the city of Győr, in Western Hungary. According to its professional program, the Center provides care primarily to persons over the retirement age who are only partially capable of taking care of themselves but do not require regular, institutional medical supervision. Furthermore, it takes upon itself providing care to persons who, due to their state of health and/or social circumstances could not take care of themselves even with assistance. There was no local public transportation in

²¹¹ See Section 67, Subsection (1) of the Social Act and Section 44, Subsection (1) of Minister of Health, Social and Family Affairs Decree No. 1/2000 (I. 7.) SzCsM on Professional Tasks and Conditions for Operation of Institutions Providing Personal Care.

the settlement; however, both the motor coach and the train services were accessible in the institution's vicinity.

There were 50 residents in the Segítő Kéz Assisted Living Center on the day of the visit. The Center took care of one person with mild, and 15-20 persons with serious disability. Their majority was diagnosed with dementia; however, they were capable of conducting most of their daily routines (getting dressed, having meals) independently. Three of them were under guardianship invoking fully limited legal competency. One of them had a professional guardian. There were several persons in wheelchairs or otherwise limited mobility residing in the institution.

There was no reception service operated in the Segítő Kéz Assisted Living Center. The doors were closed; people could not leave the building without a key. The residents lived in single and double rooms in three separate, properly maintained and fastidiously furnished, two-storied buildings. The two smaller buildings were not barrier-free; however, even the third, allegedly barrier-free building had a threshold at the entrance. The residents with a wheelchair or otherwise limited mobility were placed in the largest building with an elevator and a barrier-free bathroom. There were no persons with reduced mobility living in the other two, hardly accessible buildings.

The residents in Building 1 lived in one double and five single rooms. The management's office, the staff restroom, the nurses' room, a storage room, and



Mess room in the Segítő Kéz Assisted Living Center

a finishing kitchen are also in this building. Residents could have their meals on the first or the second floor. Building 2 had six single rooms, and Building 3 had 19 single and seven double rooms. The nurses' desk and the mess room also used for common activities were on the first floor of Building 3.

The single rooms' floor space was 18 square meters, while that of the double rooms was 28.5 square meters. The two married couples residing in the Segítő Kéz Assisted Living Center lived in double rooms. The inhabitants of the other double rooms did not complain about their roommates, either. All rooms had landlines through which the inhabitants could be reached anytime. The spacious rooms had adequate natural lighting and ventilation. According to the chairman of the board of trustees, newly arriving residents are requested not to bring furniture to the institution. Residents were free to lock the door of the room where they kept their personal items (smaller objects, clothes, electronic equipment, books, etc.). Each room had its own bathroom and toilet. Toiletry utensils (toilet paper, shower gel) are distributed by the institution on a monthly basis. If extra quantities were required due to illness or any other reason, the staff took care of it.

There were several billboards in the building displaying, among others, the contact points of the patients' rights representative, names of the members of the interest representation forum, the house rules, the list of available basic medications, and the weekly menu. Although the house rules were displayed on every billboard, their complete accessibility is questionable. The billboards were at eye level for an adult standing in front of them, so residents using a wheelchair had only limited access to the information displayed on them.

There were 20 employees working in the institution at the time of the visit. In addition to the professional supervisor, two persons were employed part-time: one as a mental hygienist and program organizer, and another as a dietitian. There were 13 nurses and 4 cleaners working in the institution. Among the staff members in direct contact with the residents, 12 were qualified nurses, and another two were in the process of getting their qualification. Most of the employees had attended hospice training in recent years. According to one of the nurses, once a month they attended an internal training in the course of which, under the guidance of the professional supervisor, they discussed actual topics mostly related to the illnesses of the recently arrived residents. Upon completing the training, they have to take an examination whose results and potential deficiencies would be discussed by them later on.

12.

The authorities' responses to the NPM's more important measures²¹²

12.1.

Zita Home for Children with Special Needs

There were two exchanges of correspondence with the Ministry of Interior in connection with the recommendation to develop a crime prevention and victim support strategy in connection with the sexual exploitation of children and child prostitution. As already explained by the Ministry in connection with the Report on the visit to the Reménysugár ("Ray of Hope") Children's Home of Debrecen,²¹³ the National Strategy for Social Crime Prevention and the National Strategy against Trafficking in Human Beings give an adequate response to the issue, so, in the Ministry's opinion, there is no need for developing an independent strategy in connection with the sexual exploitation of children and child prostitution.

Since, in the meantime, I started a follow-up inquiry²¹⁴ in connection with an earlier, comprehensive investigation into child prostitution,²¹⁵ I am going to continue the dialog within the frameworks of my general fundamental-rights-protection activities. The Ministry of Human Capacities (hereinafter the "MoHC") has established a working group for reviewing and, if necessary, revising the legal regulations related to the restriction of the personal liberty of children living in children's homes. The working group had its only meeting in 2016 on May 18, 2016.²¹⁶

The MoHC has promised to amend the relevant material and procedural legal regulations in a way that would compel the Guardianship Authority

²¹² Responses by the authorities in cases closed between January 01 and December 31, 2016. Responses by the authorities in cases still in process on December 31, 2016, will be included in that year's annual report when those cases are closed.

²¹³ The documents related to the visit to the Reménysugár Children's Home of Debrecen, conducted on January 29, 2015, are filed under number AJB-1227/2016.

²¹⁴ See Report AJB-1835/2017.

²¹⁵ See Report AJB-1227/2011.

²¹⁶ See the section herein on the Home for Children with Special Needs of the Károlyi István Children's Center.

to communicate all decisions concerning the child not only to the legal representative of the minor but also to the minor himself/herself. The Ministry of Justice has expressed its readiness to contribute to the drafting of the amendment if and when it receives the relevant legislative proposal from the Ministry of Human Capacities.

12.2.

Home for Children with Special Needs of the Károlyi István Children's Center

I recommended considering that, if there is a proposal to place a child in a home for children with special needs, the child protection expert committees of the capital and the counties should state whether they deem necessary the restriction of the child's personal liberty after reception.

The Director of the Pest County Child Protection Center and Regional Child Protection Directorate returned my report stating that he was not the operator of the Home for Children with Special Needs.²¹⁷ In my response, I drew the Director's attention to the fact that, should he disagree with my recommendation, he has to submit it, together with his position, to his supervisory organ. The supervisory organ has to inform me of its position on the merits of the initiative and on the measures taken within thirty days after receiving the submission.²¹⁸ Since I may not deprive the supervisory organ of its aforementioned powers, I informed the Director-General of the General Directorate of Social Affairs and Child Protection about the position of the Director of the Pest County Child Protection Center and Regional Child Protection Directorate, requesting him to comply with his obligation specified in Section 32, Subsection (3) of the Ombudsman Act. Responding to my letter to his supervisory organ, the Director of the Pest County Child Protection Center and Regional Child Protection Directorate reiterated his position that proposing a child's placement in a home for children with special needs falls within the competence of the National Council of Child Protection Experts. In addition, he communicated that he could not respond on the merits of my recommendation because I had not enclosed the report.²¹⁹

²¹⁷ The letter of the director of the Pest County Child Protection Center and Regional Child Protection Directorate, dated February 08, 2016, sent under file number Ig/81/2016, has been filed under case number AJB-705/2016/2016.

²¹⁸ See Section 32, Subsection (3) of the Ombudsman Act.

²¹⁹ The letter of the director of the Pest County Child Protection Center and Regional Child Protection Directorate, dated February 08, 2016, sent under file number Ig/161/2016, has been filed under case number AJB-705-36/2016.

I requested the Minister of Human Capacities to take the appropriate measure to ensure, through the amendment of the relevant ministerial decree,²²⁰ that children's homes providing care and education to children with special needs should employ only people with the professional expertise necessary for providing education fitting the child's age. The Minister accepted my recommendation and, on December 06, 2016, sent me the draft of the amendment that would take effect on February 17, 2017.²²¹

I requested the Minister of Human Capacities to initiate the amendment and completion of the Child Protection Act²²² in the interest of establishing the rules of restricting the personal liberty of the child. In its response, the MoHC communicated that preparations were under way to amend the legal regulations on restricting the personal liberty of minors, including, in particular, the use of safety isolation, the ordering of educational supervision, and on isolation within an institution; a working group was established whose first meeting, with the participation of one of my colleagues, was held on May 18, 2016.²²³

12.3.

Home for Children with Disabilities of the Károlyi István Children's Center

The head of the institution reported that measures had been taken in order to ensure the effective exercise of the right to complain by the residents of the Home for Children with Disabilities. The placement of billboards had been adjusted to the children's height, the buildings of the Home for Children with Disabilities had been made accessible, and works had started to make the outside environment barrier-free.

The head of the institution promised to try to provide regular supervision of the personnel. The human rights institutions training of the staff was completed, annual training plans would be prepared for them in the future.

The management made efforts to ensure proper communication between the children and their relatives. As of May 2016, staff members were working on the basis of a new professional program which gives priority to facilitating adoption and placement with foster parents. The institution paid extra

²²⁰ See Minister of Public Welfare Decree 15/1998. (IV. 30.) NM on vocational obligations and conditions in child welfare organizations and child care services and persons involved in these activities.

²²¹ See Section 23, Subsection (1), Paragraph b) MoHC Decree 1/2017. (II. 14.) EMMI on amending certain ministerial decrees on social issues and child protection.

²²² See the Child Protection Act.

²²³ See the section herein on the Zita Home for Children with Special Needs.

attention to facilitating the children's independent living and to ensuring that the individual educational plans contained more and detailed information on the child's scope of interest and on talent promotion.

According to the information provided by the Director General of the supervisory organ, the General Directorate of Social Affairs and Child Protection, they attach prime importance, in addition to developing a foster parent network, to developing foster parent skills and competences.

The General Directorate of Social Affairs and Child Protection organizes regular training programs for those working in child protection services. In the near future, within the framework of the Human Resource Development Operational Program (EFOP), following a questionnaire-based needs analysis, public calls will be published for organizing on-site training programs matching the staff's actual professional needs. Within the program's frameworks, anti-burn-out, affective communication, and conflict management training programs, and continuous supervision will be provided. The General Directorate of Social Affairs and Child Protection is organizing internal training programs on the topic of the international legal standards related to the proper treatment of persons living with a disability. Institutional inspections will focus on obligations deriving from international treaties. In connection with the strategy aimed at replacing institutional capacities in the case of children living with disability or long-term illness, the Director General indicated that they were planning to complete the replacement, transformation process, the renovation and modernization of small-capacity, integrated foster homes and children's homes within the frameworks of the EFOP 2.1.1 Project.

Pursuant to Section 7, Subsection (2), Paragraph a) of the Child Protection Act, effective as of January 01, 2017, placing a child with severe disability or long-term illness with foster parents may be forgone only if it is not in the child's interest, or it is not possible due to the child's state of health.²²⁴

²²⁴ See Section 24 of Act CLXVI of 2016 on the amendment of certain acts on social issues and child protection.

13.

International activities, international relations

The wide-ranging professional connections and experiences of the National Preventive Mechanism were further expanded in 2016. In addition to attending various international events, staff members of the Department held consultations on professional issues on several occasions with our partners, in the framework of which they provided information to their counterparts primarily on the operation of the Hungarian National Preventive Mechanism. Among our partners, there were international organizations monitoring the activities of the national preventive mechanisms and organizations conducting similar activities.

13.1.

International relations

I submitted the first comprehensive, annual report on the performance of the tasks of the National Preventive Mechanism to the Subcommittee on Prevention of Torture – the report is publicly available on the SPT’s home page.²²⁵ Reactions to the annual report were appreciative and positive.

I maintained continuous contacts with some members of the Subcommittee on Prevention in 2016 as well. The numerous international conferences and meetings provided excellent opportunities for informal exchanges.

Malcolm Evans and Mari Amos, members of the Subcommittee on Prevention, who had paid an unofficial visit to my Office on September 17, 2015, indicated on several occasions, through the Hungarian Helsinki Committee, their intention to pay another unofficial visit in 2016 as well. The aforementioned members of the SPT eventually called off the visit.

On December 31, 2015, I turned to the Chair of the South-East European Network of National Preventive Mechanisms (hereinafter the “SEE NPM Network”) requesting to upgrade the status of the Hungarian National Preventive Mechanism from observer (as of May 2014) to full member.

²²⁵ <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/AnnualreportsreceivedfromNPM.aspx>

The visits conducted by the NPM in 2016 focused on the isolation, “*solitary confinement*” of persons deprived of their liberty at the place of their detention. While working out the aspects of the visits, my colleagues contacted the representative of the British National Preventive Mechanism, requesting to share their relevant experiences. Louise Finer provided me with relevant working papers and access to the British National Preventive Mechanism’s annual reports online in electronic format. My colleagues adapted the contents of the working papers to the working methods of the NPM and the Hungarian conditions and used them in every place of detention visited in 2016.

The Association for Prevention of Torture (hereinafter the “APT”), a Switzerland-based civil organization requested the Hungarian National Preventive Mechanism to join the campaign organized on the occasion of the 10th anniversary of the OPCAT’s entry into force. Within the frameworks of the campaign, on June 22, 2016, I held a press briefing in my Office, during which I presented my first comprehensive annual report on the performance of the tasks of the NPM, and my colleagues screened a short film made by the APT.

At the end of 2016, I sent the APT a summary of my reports on the anomalies found in 2015 in the transfer cells of the lock-up unit of the Juvenile Penitentiary Institution and the conclusions of the follow-up inspection.

On July 14, 2016, I received two members of Médecins Sans Frontières (hereinafter the “MSF”). In early July, the President of the MSF had a meeting with the representatives of the Police and the Office of Immigration and Nationality, during which they voiced their concerns in connection with the situation on the Hungarian–Serbian border. In this context, my colleagues gave a detailed briefing to the representatives of the MSF.

In September 2016, the Department informed the Latvian Ombudsman on the rights of persons detained in Hungarian penitentiary institutions as regards correspondence and visitation.

On November 24, 2016, Gergely Fliegauf and Anita Karácsony-Pápai met the representatives of the Hungarian Office of the International Organization of Migrants (hereinafter the “IOM”) and provided assistance in compiling a checklist for a newly launched, EU-financed program on providing uniform care to unaccompanied minors.

On December 07, 2016, Gergely Fliegauf and Anita Karácsony-Pápai had a meeting in the Office with Hindpal Singh Bhui, a prison and refugee expert of the British National Preventive Mechanism, and held consultations on the activities of the Hungarian and British NPMs.

In December 2016, I was requested by the Ministry of Foreign Affairs and Trade to recommend someone to the soon to be vacant position of the Hungarian member of the European Committee for the Prevention of Torture

(hereinafter the “CPT”) of the Council of Europe. In my response, I recommended Gergely Fliegauf, Head of the Department, and Margit Katalin Haraszti, Deputy Head of the Department.

13.2.

International activities

On February 15, 2016, Gergely Fliegauf and Fanni Murányi attended the final conference of the project “*Children’s Rights Behind Bars*” held in Brussels, in the office building of the European Economic and Social Council. The conference presented a Handbook (Practical Guideline) on visiting places of detention holding children deprived of their liberty. The Department made good use of the handbook in the course of its later visits.

On February 15-16, 2016, in Vienna, Katalin Haraszti participated in an event jointly organized by the European Union Agency for Fundamental Rights (hereinafter the “FRA”), the Council of Europe, the Equinet, and the European Network of National Human Rights Institutions, focusing on the reception and integration of migrants, including children.

The meeting of the Working Group on Migration of the European Network of National Human Rights Institutions was held in Vienna, on February 16-17, 2016; the meeting’s main topic was the thematic cooperation between the members of the Network. This meeting was also attended by Katalin Haraszti. (*Meeting between FRA, the Council of Europe, Equality Bodies, National Human Rights Institutions and Ombudsperson Institutions*)

The meeting of the SEE NPM Network and the related conference on the elderly (*Homes for the elderly/care institutions and dementia – standards in health care and medication-based restrictions to freedom*), held in Salzburg, between April 20 and 22, 2016, was attended by Gergely Fliegauf. The most important result of the meeting was that, accepting my request, the Hungarian National Preventive Mechanism was adopted as a full member of the SEE NPM Network. The materials of the meeting were made available by the Department to the other organizational units of the Office.

On the meeting of the V4 Ombudsmen, held in Slovakia on September 26-27, 2016, Hungary was represented by Elisabeth Sándor-Szalay, my Deputy in charge of the protection of nationalities living in Hungary. One of the topics of the meeting was the performance of the tasks of the National Preventive Mechanism.

Between October 10 and 12, 2016, in Vienna, István Sárközy and Gergely Fliegauf participated in the meeting of the SEE NPM Network. In the course of the meeting, they had an opportunity to visit an assisted living center for the elderly, operating on the basis of “best practices,” and to join as observers an inspection by the Austrian National Preventive Mechanism.

On October 13-14, 2016, in Vienna, Gergely Fliegau attended the Annual Meeting of NPMs from the OSCE Region. The meeting focused on the activities and positions of National Preventive Mechanisms, and on the experiences of cooperation between themselves and with civil society organizations.

On November 3-4, 2016, Katalin Haraszti delivered a presentation²²⁶ under the title *"Asylum Seeking Unaccompanied Children in Hungary"* at the conference *"Access to the Right to Asylum and Formal/Informal Return of Migrants/Refugees"* on the development of the legal protection system of refugees, organized in Ohrid by the Macedonian Ombudsman institution. The conference focused on access to asylum, with a special view to the experiences of the human rights institutions of the South-Eastern European countries.

Between June 06 and 08, 2016, in Vienna, at the first conference of the program *"Increasing the cooperation between judiciary and NPMs: An opportunity to strengthen fundamental rights in the implementation of EU law,"* organized by the Ludwig Boltzmann Institute and the Academy of European Law, I was represented by Krisztina Izsó. Later on, the organizers held a telephone conference, using a questionnaire sent out in advance to the representatives of all participants, on the possibilities of cooperation between the courts and the National Preventive Mechanisms, and on the conclusions and effects of the conference. During the telephone conference held on August 31, 2016, my position was conveyed by Krisztina Izsó and István Sárközy. The program's second conference was held between November 15 and 17, 2016. The participants discussed the possibilities of cooperation between the judiciary and the NPMs and the topic of EU framework decisions related to detention. The event was attended by Krisztina Izsó and István Sárközy.

The conference organized within the frameworks of the SEE NPM network in Zagreb, between November 28 and 30, 2016, was attended by Gergely Fliegau and István Sárközy. The presentations touched upon the tenth anniversary of the OPCAT, the effect of the UN's Nelson Mandela Rules on the operation of the NPMs, the role of follow-up inquiries, and the issues of migration.

On December 08-09, 2016, in Stockholm, Katalin Haraszti participated in the conference *"Promoting Good Practices in Protecting Unaccompanied Children and Finding Solutions for the Children, Families, Societies and States,"* organized by the Council of the Baltic Sea States and the Central European Initiative, dealing with the issues of the protection of minor migrants.

²²⁶ The text of the presentation was published in Macedonian (pp. 89 through 93), Albanian (pp. 212 through 216) and English (pp. 333 through 337) in the final publication of the conference entitled *"Access to the right to asylum and formal/informal return of migrants/refugees."*

I could not attend either personally, or through my colleagues, the conference on the activities of National Preventive Mechanisms in connection with the refugee crisis, organized by the Serbian Ombudsman institution in Belgrade, on December 13-14, 2016. I sent my answers to the Serbian party's questions in writing on December 08, 2016.²²⁷

13.3.

NPM Observatory

In 2016, Marcus Jaeger, a high-ranking official of the Council of Europe,²²⁸ approached me several times, first informally through the Head of the Department, then formally with a request to support the establishment and operation of NPM Observatory, a civil society organization registered in France. As far as I am concerned, I do share the view of the majority of European National Preventive Mechanisms, according to which the operation of NPM Observatory, in the absence of a clear mandate, may give cause for concern. For this reason, I respectfully declined the request.

²²⁷ See case file AJB-8886/2016.

²²⁸ Head of Division, Human Rights Policy and Development Department.

14.

Dissemination, media

In 2016, the Department conducted a training for the staff members of the department in charge of the protection of children within my general competence, in the course of which they were briefed on the interviewing techniques applied during the NPM's visits, the peculiarities of preventive inspections conducted in child protection institutions, the internal dynamics of the visiting delegations, and the importance of jointly processing the information and experiences obtained in the course of the visits.

According to the guidelines issued for National Preventive Mechanisms, disseminating the OPCAT's spirit, working methods, and the experience gained in the course of performing the NPM's tasks is a basic obligation that could contribute to the prevention of torture and ill-treatment.²²⁹

Performing the NPM's tasks requires direct contact with the widest possible strata of society. This relationship is rather complex since the NPM's activities simultaneously affect various actors of public administration, representatives of civil society organizations, researchers, as well as ordinary citizens.

In order to promote communication and to meet international expectations, my Office uploaded the NPM's own homepage to the worldwide-web already in late 2014. It can be reached both in Hungarian and English on the institution's website.²³⁰ The NPM's homepage may also be reached from the SPT's website.²³¹ On the homepage, those interested may find information on the NPM's operation, e.g., the ways to submit complaints, information having relevance to the places of detention, info materials for children, short news items on the visits, and the reports on the CCB's meetings.

I also made publicly available on the homepage all my reports, prepared within the frameworks of performing the tasks of the NPM, and their English language summaries. In 2016, due to the lack of financial resources, I could not have any of my reports, prepared as NPM, translated into English.

²²⁹ See "*Guidelines on national preventive mechanism*", CAT/OP/12/5, Clause 29.

²³⁰ <http://www.ajbh.hu/opcat>

²³¹ <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/NationalPreventiveMechanisms.aspx>

Schedule 6 – press reports on the NPM’s activities in 2016

Name of the visited institution / the main topic of the report	Year of the visit	Number of independent press reports
Zita Home for Children with Special Needs – over-crowdedness, violence among children, isolation period	2015	68
Central Holding Facility of the MPHQoB and the Holding Facility of the National Bureau of Investigation of the Emergency Response Team of National Police Headquarters – monitoring with cameras, living space, courtyard	2015	43
Home for Children with Disabilities of the Károlyi István Children’s Center	2015	36
Somogy County Remand Prison	2015	35
Cseppkő (Dripstone) Children’s Home	2016	30
Home for Children with Special Needs of the Károlyi István Children’s Center	2015	26
Assisted Living Center, Pécel	2015	8
Altogether		246 press reports

14.1.

Press coverage of the NPM’s reports published in 2016

In 2015, my colleagues registered 660 media reports on the NPM’s visits. In 2016, in connection with *my reports published as NPM*, this number was 246. These two numbers may not be compared, since the 2015 data referred to the visits, while in my first annual report I did not have yet the ways and means to examine the press interest generated by my reports. Last year, altogether 22 independent press reports were published on *my visits* conducted during the year in question. This decrease in numbers may probably be explained by the fact that, in 2016, OPCAT-related activities were not a novelty anymore.

A speciality of the 2016 press coverage is that press reports covered mainly visits that had taken place in 2015. It may be explained by the fact that preparing reports on the visits is time-consuming, and these reports are not published until after I am convinced that all the parties concerned have already received them. Press reports facilitate, in a broader sense, the prevention of ill-treatment. Typically, the reports on the NPM’s visits caught the attention of a single medium, the daily Magyar Nemzet. Those articles were written by one journalist on the basis of my reports published on my Office’s homepage, then taken over—almost word for word—by other, mainly online media. Television stations, unfortunately, expressed interest only towards issues with a potential to make a sensation. In 2016, such an issue was child prostitution in the context of children’s homes.

At first, the media paid the most attention to the Zita Home for Children with Special Needs because of its issues of over-crowdedness, violence between children, drug problems, and the isolation period; later, in connection with my report on the Cseppkő children's home, the media revisited my report on the Zita children's home in the context of child prostitution.

The press reports on the Home for Children with Special Needs and the Home for Children with Disabilities of the Károlyi István Children's Center are rather mixed up; they keep on referring to my report on the Zita Home for Children with Special Needs. In connection with the home for children with special needs, the media dwelled on the topic of aggressive children at great length, pointing out that the personnel had not been prepared for it. Press reports also often mentioned that the staff members' qualifications were not adequate for the nature and challenges of their work, and they did not have proper qualifications. The press reports also cited my report's findings as regards high staff turnover in the institution. They also pointed out that the records were not transparent, isolation and separation were applied in violation of the relevant legal regulations. They also mentioned that children received sedatives on the nurses' recommendation and that the guardians lacked any sense of responsibility.

In connection with the Cseppkő Children's Home, in addition to the aforementioned issues of child protection, a TV report also raised the issue of the proper moral and financial appreciation of persons working in children's homes. The press reports also mentioned that the institution's staff members had hindered the NPM's on-site inspection, pointing out that they had taken away the children from the institution for the time of the inspection. Several media platforms reported the fact uncovered by the NPM, that there were actually three different children's homes on the same premises, which constitutes an infringement of the prevailing legal regulations. The press also covered judicially uncontrolled deprivation of liberty, failure to report child prostitution, and sexual and physical abuse among children. There was a report mentioning the fact uncovered by the NPM that fighting and vandalism in the children's home had reached a point when the police's involvement had become necessary.

Parts of the content of my report on the assisted living center for the elderly in Pécel were also published in the electronic media. In connection with this report, the media also paid attention to the personnel, pointing out that they are overworked, and the tense atmosphere among them. Furthermore, issues of hygiene, lack of barrier-free access, generally poor conditions, apathy among the residents, the absence of leisure activities, and hospitalization were also covered in the press.

In the press reports on police holding facilities, special emphasis was laid on the deficiencies of video monitoring, the lack of adequate living

space, and the condition of the courtyard. In connection with this report, the media also covered the working conditions of the policemen on duty in the holding facilities.

There were some media reports on the NPM's visit conducted in 2016 as well; however, their number did not reach ten per site. In order to increase publicity and transparency, and to promptly inform members of the CCB, I publish a news flash on each and every NPM visit on the homepage of the National Preventive Mechanism.

It deserves special mention that on June 22, 2016, on the tenth anniversary of the OPCAT, I held a press conference in my Office.

Upon the APT's request, I also joined the campaign organized on the occasion of the tenth anniversary. Within the campaign's frameworks, during the press conference, I presented the first comprehensive annual report of the NPM, as well as a short film with Hungarian subtitles, made by the APT to commemorate the anniversary.

A short report on the lessons of the NPM's visit to the Juvenile Penitentiary Institution in Tököl was published in English on the APT's homepage.²³² In this short report, I pointed out, inter alia, that the holding unit of the institution had been renovated, in compliance with the relevant international and domestic regulations, in the wake of my visit and my report published thereon.

14.2.

Dissemination

Educating the professionals of the future, participating in conferences are an efficient means of disseminating knowledge necessary for the prevention of torture and other inhuman or degrading treatment. Staff members of the Department deliver, both regularly and on ad hoc basis, lectures in various domestic higher education institutions. Students majoring in law or psychology at several universities (ELTE, University of Pécs, University of Debrecen, Pázmány Péter University, Semmelweis University, University of Szeged) were lectured on interpreting the concept of places of detention, on the concept and prevention of torture. The non-mandatory course *"The Lucifer effect and beyond. How to prevent torture, cruel, inhuman or degrading treatment in closed institutions?"* was launched for the second year at the Faculty of Law and Political Sciences of the University of Pécs.

Gergely Fliegaufer regularly delivered lectures and practice lessons at the graduate school of criminology of the Faculty of Law and Political Sciences

²³² <http://www.apr.ch/opcat10/#26> [January 20, 2017]

of the Eötvös Loránd University on the subjects of prison sociology and prison psychology.

On four occasions (April 01, June 16, October 07, December 02), he delivered lectures to medium- and high-ranking police officers from Serbia, the Republic of Macedonia, Montenegro, Kosovo, Albania, the Ukraine, Hungary and Kazakhstan within the frameworks of the International Law Enforcement Academy's course entitled *"Relevance of human rights in police practicing."*

*Gergely Fliegauf (center)
with Linda Mézes
and Darrin Kowitz during
the International
Law Enforcement
Academy's course entitled
"Relevance of human rights
in police practicing"*



Gergely Fliegauf also participated in the education of post-graduate students working on their Ph.D.

On February 05, 2016, Katalin Haraszti, Gergely Fliegauf, and Sándor Gurbai delivered lectures to the participants of my Office's Internship Program.

On March 18, 2016, Katalin Haraszti delivered a lecture entitled *"Unaccompanied minors in asylum law and child protection"* to the graduate students of the Faculty of Law and Political Science of the University of Pécs, specializing in family law.

On March 24, 2016, Gergely Fliegauf delivered a lecture on the NPM's operation and the international standards relevant to places of detention and the police to ancillary police and healthcare workers.

On May 10, 2016, I organized a conference and workshop on my experiences gained from my inspection conducted at places of detention specified in Article 4, accommodating persons living with disabilities and psychiatric patients.

On May 11, 2016, as part of the OCFR's series of lectures called "An evening at the Ombudsman's," Gergely Fliegauf presented an analysis of prison drawings. On November 04, 2016, he delivered an opening speech and presentation at the prison art exhibition entitled "Kilépő" (Release Permit) of the Moravcsik Foundation. At the reception following the exhibition, he held informal consultations with ex-detainees and persons living with a psycho-social disability on the NPM's operation.

On September 28, 2016, at the invitation of the Circle of Student Scholars of Criminal Law of the Faculty of Law and Political Sciences of the Eötvös

Loránd University, Katalin Haraszti delivered a lecture entitled *“Prohibition of torture and the case-law of the European Court of Human Rights relative to Article 3 of the European Convention on Human Rights.”*



*Katalin Haraszti
at the meeting of the Circle
of Student Scholars
of Criminal Law
of the Faculty of Law
and Political Sciences
of the Eötvös Loránd
University*

On November 17, 2016, in my Office, with the cooperation of the Terre des Hommes Hungary Foundation and the Barnahus Project of Szombathely, I organized a children’s rights conference under the title *“Up close and personal with the rights of the child – The dimensions of vulnerability and the way out.”* Within the frameworks of this event, with the cooperation of the Unit for Children’s Rights proceeding within my general competences and the



Interactive roundtable discussion during the conference entitled “Up close and personal with the rights of the child – The dimensions of vulnerability and the way out”

Department, an interactive round-table discussion was held whose participants also discussed my experiences gained while performing the tasks of the National Preventive Mechanism.

On November 24, 2016, Eszter Gilányi and Rita Rostás participated in the training "*Torture and trauma in asylum*," organized by the Cordelia Foundation. The training focused on the identification of trauma victims or asylum seekers and refugees with other psychological problems and on the symptoms of post-traumatic stress disorder (PTSD). Extra attention was paid to PTSD's potential impact on asylum interviews and asylum proceedings.

Within the frameworks of a course launched for law students, on November 25 and December 02, 2016, Krisztina Izsó, Rita Rostás, and István Sárközy delivered lectures at the Faculty of Law and Political Sciences of the University of Pécs on the efficient prevention of torture and other cruel, inhuman or degrading treatment or punishment.

On December 09, 2016, Gergely Fliegauf delivered a lecture at the University of Miskolc for law students specializing in juvenile law.

15.

Summary

My task as NPM is to regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4 of the OPCAT, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.²³³ The ultimate objective of the NPM's visits is to persuade the authorities and institutions concerned to improve the system of functioning safeguards to prevent all forms of ill-treatment.

I have to perform the tasks of the NPM as of January 01, 2015. The special rules of performing this task are stipulated in the provisions of Section III/A of the Ombudsman Act, effective as of the same date. The legal environment is suitable for the performance of my tasks.

In performing the tasks of the NPM, I may proceed personally or through authorized public servant members of my Office. In 2016, my Office had to face two major challenges while performing the tasks of the NPM. First, due to the lack of applicants, we could not fill the two public servant posts reserved for physicians, as stipulated in Section 39/D, Subsection (4) of the Ombudsman Act, in 2016 either. My Office employed the physicians participating in NPM visits on ad hoc basis, within the frameworks of civil law contracts. Second, the frequent changes in the ranks of public servants/lawyers in the Department made the performance of the NPM's tasks more difficult. Of the six lawyers working at the Department on January 01, 2016, three left during the year. These job vacancies were filled via a public call for applications, in accordance with the Ombudsman Act's provisions on gender composition.²³⁴ As a result of the circumstances above, the Department's staff comprised seven public servants on the average.

Visits were carried out by visiting delegations consisting of four to eight members. When setting up the visiting delegations, in addition to the gender balance, I tried to ensure the groups' multidisciplinary and include experts in the field of protecting the rights of national minorities.

Although I have to perform the tasks of the NPM independently, I received valuable support from the members of the CCB, consisting of orga-

²³³ See Section 39/B, Subsection (1) of the Ombudsman Act.

²³⁴ See "Guidelines on national preventive mechanism", CAT/OP/12/5, Clause 16.

nizations, registered and operating in Hungary, with outstanding practical and/or high-level theoretical knowledge relative to the treatment of persons deprived of their liberty.

Using the data received from the competent governmental organs, my colleagues updated, as at December 31, 2016, the list of places of detention as defined in Article 4 of the OPCAT, originally compiled by the middle of November 2014. Based on the data at my disposal, on December 31, 2016, there were some **4,000 places of detention** under Hungarian jurisdiction with a **total capacity of about 123 thousand detainees**.

During the second year of the NPM, I inspected **ten places of detention** with a **total capacity of 3,061 detainees**. The average utilization rate of these places of detention stood at 71.6%.²³⁵ The visiting delegations found the highest utilization rate (101%) in the Sátoraljaújhely Strict and Medium Regime Prison.

Although there had been no prior notifications, the visiting delegations were given access to almost all the places of detention without delay. There was one exception: my colleagues could enter the Holding Facility of the National Bureau of Investigation of the Emergency Response Team of the National Police Headquarters only 30 minutes after having presented their letter of authorization.

The visiting delegation's objective was to meet, if possible, all persons deprived of their liberty present at the given place of detention at the time of the visit. The visiting delegations inspected the premises of the places of detention, their furnishing and equipment, documents related to the number, treatment, and conditions of placement of the detainees, made photocopies of some of the documents, reviewed the engagement of the persons deprived of their liberty and conducted interviews with the detainees and the staff members as well.

The staff members of the places of detention, with one exception, fully complied with their obligation to cooperate in performing the tasks of the NPM. On the second day of the two-day visit, the Director of the Cseppkő (Dripstone) Children's Home took the children on an off-site program, so the visiting delegation could not interview them. To fully implement the objectives set in the schedule of visits, my colleagues conducted interviews with the children on April 26, 2016, within the frameworks of an unexpected, unscheduled visit.

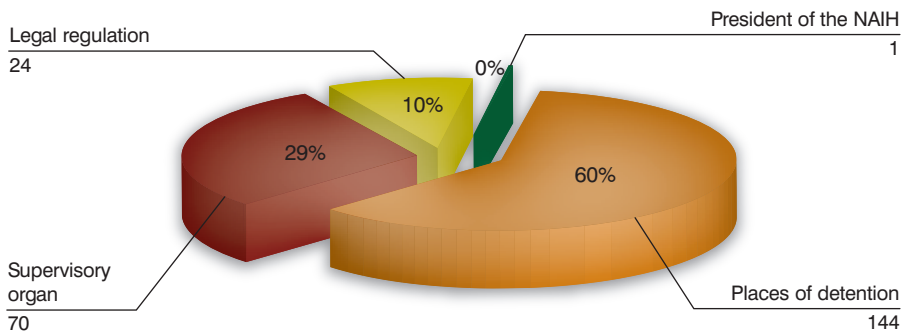
The National Preventive Mechanism prepared *reports on his inspections, specifying their findings and the conclusions based thereon*.²³⁶ In 2016, I published **ten reports** altogether within the frameworks of performing the tasks of the National Preventive Mechanism. The visiting delegations did not detect any circumstances indicative of intentional abuse by the staff of the places of detention, potentially resulting in severe physical or psychological trauma.

²³⁵ See Schedule 3.

²³⁶ See Section 28, Subsection (1) of the Ombudsman Act.

With a view to the tasks of the NPM, in my reports on the inspections, I recommend taking measures aimed at terminating and preventing the recurrence of the ill-treatment of persons deprived of their liberty. In 2016, I took measures on **239** occasions. I made recommendations in **144** cases to the heads of the places of detention,²³⁷ in **70** cases to the heads of the supervisory organ of the institution subject to inquiry,²³⁸ and on **one** occasion to the National Authority for Data Protection and Freedom of Information (hereinafter the “NAIH”).²³⁹ In 2016, I recommended measures relative to the legal regulation on **24** occasions.²⁴⁰

Recommendations made when performing the tasks of the NPM by addressees 2016



In the second year of the NPM’s operation, the addressees of these measures studied my recommendations and responded on their merits within the statutory deadline. If formulating their position or implementing my recommendation seemed impossible within the deadline stipulated in the relevant provision of the Ombudsman Act, the addressees notified me thereof before the deadline and requested its prolongation.

The authorities’ responses to my recommendations prove that the heads of both the institutions subject to inquiries and their supervisory organs tackled those recommendations in a meaningful manner and demonstrated a willingness to implement them. The conclusion above was confirmed by my follow-up inquiry conducted in the Juvenile Penitentiary Institution, aimed at checking the implementation of my recommendations made in 2015.

The NPM’s operational costs in 2016 amounted to 69,760,490 Forints; this amount was allocated by my Office from its budget provided by the Parliament.

²³⁷ See Section 32, Subsection (1) of the Ombudsman Act.

²³⁸ See Section 31, Subsection (1) of the Ombudsman Act.

²³⁹ See Section 36 of the Ombudsman Act.

²⁴⁰ See Section 37 of the Ombudsman Act.

Annex 1 – Glossary

APT	Association for the Prevention of Torture
CCB	Civil Consultative Body
Central Holding Facility of the MPHQoB	Central Holding Facility of the Metropolitan Police Headquarters of Budapest
Child Protection Act	Act XXXI of 1997 on the Protection of Children and the Administration of Guardianship
Committee (CAT)	UN Committee against Torture
Covenant	International Covenant on Civil and Political Rights, promulgated by Law-decree 8 of 1976
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
Criminal Code	Act C of 2012 on the Criminal Code
Department	OPCAT National Preventive Mechanism Department
ECHR	European Court of Human Rights
ELTE	Eötvös Loránd University
European Convention for the Prevention of Torture	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, promulgated by Act III of 1995
European Convention on Human Rights	Convention for the Protection of Human Rights and Fundamental Freedoms, promulgated by Act XXXI of 1993
FRA	European Union Agency for Fundamental Rights
GDSACP	General Directorate of Social Affairs and Child Protection
Holding Facility of the NBI NPHQ	Holding Facility of the National Bureau of Investigation of the Emergency Response Team of the National Police Headquarters
Healthcare Act	Act CLIV of 1997 on Healthcare
Institution	Juvenile Penitentiary Institution, Tököl
IOM	International Organization for Migration
KICC	Károlyi István Children's Center
Merényi Hospital	Psychiatric Ward of the Psychiatric and Addiction Treatment Center (Merényi Gusztáv Hospital premises) of the Unified Szent István and Szent László Hospital and Outpatient Care Clinic
MoHC	Ministry of Human Capacities

MoJ	Ministry of Justice
MSF	Médecins Sans Frontières
NPM	National Preventive Mechanism
Office	Office of the Commissioner for Fundamental Rights
Ombudsman Act	Act CXI of 2011 on the Commissioner for Fundamental Rights
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011
Pécel Center	Assisted Living Center, Pécel
Presidium	Presidium of the People's Republic
Prison Act	Act CCXL of 2013 on the execution of punishments, criminal measures, certain coercive measures and confinement for administrative offenses
Prison Rules	Minister of Justice Decree 16/2014 (XII. 19.) IM on the Detailed Rules of Confinement Replacing Prison Sentencing, Confinement, Pretrial Detention and Disciplinary Fines
SEE NPM Network	South-East Europe NPM Network
Social Act	Act III of 1993 on Social Governance and Social Benefits
Subcommittee on Prevention of Torture (SPT)	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UN	United Nations Organization
UN Convention (UNCAT)	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988
UN Convention on the Rights of the Child	Convention on the Rights of the Child, signed in New York on November 20, 1989, promulgated by Act LXIV of 1991
Zita Home for Children	Zita Home for Children with Special Needs, operated by the Child Protection Directorate of Somogy County

Annex 2 – Full text of the OPCAT

Act CXLIII of 2011 on the promulgation of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment²⁴¹

Section 1 – The Parliament hereby gives its consent to be bound by this Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on December 18, 2002, by the General Assembly of the United Nations (hereinafter the “Protocol”).

Section 2 – The Parliament hereby promulgates the Protocol.

Section 3 – The authentic English language text [...] of the Protocol is as follows:

“Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

PREAMBLE

The States Parties to the present Protocol, Reaffirming that torture and other cruel, inhuman or degrading treatment or punishment are prohibited and constitute serious violations of human rights,

Convinced that further measures are necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) and to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment,

Recalling that articles 2 and 16 of the Convention oblige each State Party to take effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under its jurisdiction,

Recognizing that States have the primary responsibility for implementing those articles, that strengthening the protection of people deprived of their

²⁴¹ Promulgated on November 03, 2011

liberty and the full respect for their human rights is a common responsibility shared by all and that international implementing bodies complement and strengthen national measures,

Recalling that the effective prevention of torture and other cruel, inhuman or degrading treatment or punishment requires education and a combination of various legislative, administrative, judicial and other measures,

Recalling also that the World Conference on Human Rights firmly declared that efforts to eradicate torture should first and foremost be concentrated on prevention and called for the adoption of an optional protocol to the Convention, intended to establish a preventive system of regular visits to places of detention,

Convinced that the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment can be strengthened by non-judicial means of a preventive nature, based on regular visits to places of detention,

Have agreed as follows:

PART I

General principles

Article 1

The objective of the present Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

Article 2

- 1 A Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (hereinafter referred to as the Subcommittee on Prevention) shall be established and shall carry out the functions laid down in the present Protocol.
- 2 The Subcommittee on Prevention shall carry out its work within the framework of the Charter of the United Nations and shall be guided by the purposes and principles thereof, as well as the norms of the United Nations concerning the treatment of people deprived of their liberty.
- 3 Equally, the Subcommittee on Prevention shall be guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity.

- 4 The Subcommittee on Prevention and the States Parties shall cooperate in the implementation of the present Protocol.

Article 3

Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism).

Article 4

- 1 Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its jurisdiction and control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). These visits shall be undertaken with a view to strengthening, if necessary, the protection of these persons against torture and other cruel, inhuman or degrading treatment or punishment.
- 2 For the purposes of the present Protocol, deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.

PART II

Subcommittee on prevention

Article 5

- 1 The Subcommittee on Prevention shall consist of ten members. After the fiftieth ratification of or accession to the present Protocol, the number of the members of the Subcommittee on Prevention shall increase to twenty-five.
- 2 The members of the Subcommittee on Prevention shall be chosen from among persons of high moral character, having proven professional experience in the field of the administration of justice, in particular criminal law, prison or police administration, or in the various fields relevant to the treatment of persons deprived of their liberty.
- 3 In the composition of the Subcommittee on Prevention due consideration shall be given to equitable geographic distribution and to the representation of different forms of civilization and legal systems of the States Parties.

- 4 In this composition consideration shall also be given to balanced gender representation on the basis of the principles of equality and non-discrimination.
- 5 No two members of the Subcommittee on Prevention may be nationals of the same State.
- 6 The members of the Subcommittee on Prevention shall serve in their individual capacity, shall be independent and impartial and shall be available to serve the Subcommittee on Prevention efficiently.

Article 6

- 1 Each State Party may nominate, in accordance with paragraph 2 of the present article, up to two candidates possessing the qualifications and meeting the requirements set out in article 5, and in doing so shall provide detailed information on the qualifications of the nominees.
- 2 (a) The nominees shall have the nationality of a State Party to the present Protocol;
(b) At least one of the two candidates shall have the nationality of the nominating State Party;
(c) No more than two nationals of a State Party shall be nominated;
(d) Before a State Party nominates a national of another State Party, it shall seek and obtain the consent of that State Party.
- 3 At least five months before the date of the meeting of the States Parties during which the elections will be held, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall submit a list, in alphabetical order, of all persons thus nominated, indicating the States Parties that have nominated them.

Article 7

- 1 The members of the Subcommittee on Prevention shall be elected in the following manner:
 - (a) Primary consideration shall be given to the fulfilment of the requirements and criteria of article 5 of the present Protocol;
 - (b) The initial election shall be held no later than six months after the entry into force of the present Protocol;
 - (c) The States Parties shall elect the members of the Subcommittee on Prevention by secret ballot;
 - (d) Elections of the members of the Subcommittee on Prevention shall be held at biennial meetings of the States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum,

the persons elected to the Subcommittee on Prevention shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of the States Parties present and voting.

- 2 If during the election process two nationals of a State Party have become eligible to serve as members of the Subcommittee on Prevention, the candidate receiving the higher number of votes shall serve as the member of the Subcommittee on Prevention. Where nationals have received the same number of votes, the following procedure applies:
 - (a) Where only one has been nominated by the State Party of which he or she is a national, that national shall serve as the member of the Subcommittee on Prevention;
 - (b) Where both candidates have been nominated by the State Party of which they are nationals, a separate vote by secret ballot shall be held to determine which national shall become the member;
 - (c) Where neither candidate has been nominated by the State Party of which he or she is a national, a separate vote by secret ballot shall be held to determine which candidate shall be the member.

Article 8

If a member of the Subcommittee on Prevention dies or resigns, or for any cause can no longer perform his or her duties, the State Party that nominated the member shall nominate another eligible person possessing the qualifications and meeting the requirements set out in article 5, taking into account the need for a proper balance among the various fields of competence, to serve until the next meeting of the States Parties, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.

Article 9

The members of the Subcommittee on Prevention shall be elected for a term of four years. They shall be eligible for re-election once if renominated. The term of half the members elected at the first election shall expire at the end of two years; immediately after the first election the names of those members shall be chosen by lot by the Chairman of the meeting referred to in article 7, paragraph 1 (d).

Article 10

- 1 The Subcommittee on Prevention shall elect its officers for a term of two years. They may be re-elected.

- 2 The Subcommittee on Prevention shall establish its own rules of procedure. These rules shall provide, inter alia, that:
 - (a) Half the members plus one shall constitute a quorum;
 - (b) Decisions of the Subcommittee on Prevention shall be made by a majority vote of the members present;
 - (c) The Subcommittee on Prevention shall meet in camera.
- 3 The Secretary-General of the United Nations shall convene the initial meeting of the Subcommittee on Prevention. After its initial meeting, the Subcommittee on Prevention shall meet at such times as shall be provided by its rules of procedure. The Subcommittee on Prevention and the Committee against Torture shall hold their sessions simultaneously at least once a year.

PART III

Mandate of the subcommittee on prevention

Article 11

- 1 The Subcommittee on Prevention shall:
 - (a) Visit the places referred to in article 4 and make recommendations to States Parties concerning the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
 - (b) In regard to the national preventive mechanisms:
 - (i) Advise and assist States Parties, when necessary, in their establishment;
 - (ii) Maintain direct, and if necessary confidential, contact with the national preventive mechanisms and offer them training and technical assistance with a view to strengthening their capacities;
 - (iii) Advise and assist them in the evaluation of the needs and the means necessary to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
 - (iv) Make recommendations and observations to the States Parties with a view to strengthening the capacity and the mandate of the national preventive mechanisms for the prevention of torture and other cruel, inhuman or degrading treatment or punishment;
 - (c) Cooperate, for the prevention of torture in general, with the relevant United Nations organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all

persons against torture and other cruel, inhuman or degrading treatment or punishment.

Article 12

In order to enable the Subcommittee on Prevention to comply with its mandate as laid down in article 11, the States Parties undertake:

- (a) To receive the Subcommittee on Prevention in their territory and grant it access to the places of detention as defined in article 4 of the present Protocol;
- (b) To provide all relevant information the Subcommittee on Prevention may request to evaluate the needs and measures that should be adopted to strengthen the protection of persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment;
- (c) To encourage and facilitate contacts between the Subcommittee on Prevention and the national preventive mechanisms;
- (d) To examine the recommendations of the Subcommittee on Prevention and enter into dialogue with it on possible implementation measures.

Article 13

- 1 The Subcommittee on Prevention shall establish, at first by lot, a program of regular visits to the States Parties in order to fulfil its mandate as established in article 11.
- 2 After consultations, the Subcommittee on Prevention shall notify the States Parties of its program in order that they may, without delay, make the necessary practical arrangements for the visits to be conducted.
- 3 The visits shall be conducted by at least two members of the Subcommittee on Prevention. These members may be accompanied, if needed, by experts of demonstrated professional experience and knowledge in the fields covered by the present Protocol who shall be selected from a roster of experts prepared on the basis of proposals made by the States Parties, the Office of the United Nations High Commissioner for Human Rights and the United Nations Centre for International Crime Prevention. In preparing the roster, the States Parties concerned shall propose no more than five national experts. The State Party concerned may oppose the inclusion of a specific expert in the visit, whereupon the Subcommittee on Prevention shall propose another expert.
- 4 If the Subcommittee on Prevention considers it appropriate, it may propose a short follow-up visit after a regular visit.

Article 14

- 1 In order to enable the Subcommittee on Prevention to fulfil its mandate, the States Parties to the present Protocol undertake to grant it:
 - (a) Unrestricted access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
 - (b) Unrestricted access to all information referring to the treatment of those persons as well as their conditions of detention;
 - (c) Subject to paragraph 2 below, unrestricted access to all places of detention and their installations and facilities;
 - (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the Subcommittee on Prevention believes may supply relevant information;
 - (e) The liberty to choose the places it wants to visit and the persons it wants to interview.
- 2 Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defense, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.

Article 15

No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee on Prevention or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

Article 16

- 1 The Subcommittee on Prevention shall communicate its recommendations and observations confidentially to the State Party and, if relevant, to the national preventive mechanism.
- 2 The Subcommittee on Prevention shall publish its report, together with any comments of the State Party concerned, whenever requested to do so by that State Party. If the State Party makes part of the report public, the Subcommittee on Prevention may publish the report in whole or in part. However, no personal data shall be published without the express consent of the person concerned.
- 3 The Subcommittee on Prevention shall present a public annual report on its activities to the Committee against Torture.

- 4 If the State Party refuses to cooperate with the Subcommittee on Prevention according to articles 12 and 14, or to take steps to improve the situation in the light of the recommendations of the Subcommittee on Prevention, the Committee against Torture may, at the request of the Subcommittee on Prevention, decide, by a majority of its members, after the State Party has had an opportunity to make its views known, to make a public statement on the matter or to publish the report of the Subcommittee on Prevention.

PART IV

National Preventive Mechanisms

Article 17

Each State Party shall maintain, designate or establish, at the latest one year after the entry into force of the present Protocol or of its ratification or accession, one or several independent national preventive mechanisms for the prevention of torture at the domestic level. Mechanisms established by decentralized units may be designated as national preventive mechanisms for the purposes of the present Protocol if they are in conformity with its provisions.

Article 18

- 1 The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
- 2 The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
- 3 The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.
- 4 When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

Article 19

The national preventive mechanisms shall be granted at a minimum the power:

- (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with

- a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment;
- (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;
 - (c) To submit proposals and observations concerning existing or draft legislation.

Article 20

In order to enable the national preventive mechanisms to fulfil their mandate, the States Parties to the present Protocol undertake to grant them:

- (a) Access to all information concerning the number of persons deprived of their liberty in places of detention as defined in article 4, as well as the number of places and their location;
- (b) Access to all information referring to the treatment of those persons as well as their conditions of detention;
- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses, either personally or with a translator if deemed necessary, as well as with any other person who the national preventive mechanism believes may supply relevant information;
- (e) The liberty to choose the places they want to visit and the persons they want to interview;
- (f) The right to have contacts with the Subcommittee on Prevention, to send it information and to meet with it.

Article 21

- 1 No authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the national preventive mechanism any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.
- 2 Confidential information collected by the national preventive mechanism shall be privileged. No personal data shall be published without the express consent of the person concerned.

Article 22

The competent authorities of the State Party concerned shall examine the recommendations of the national preventive mechanism and enter into a dialogue with it on possible implementation measures.

Article 23

The States Parties to the present Protocol undertake to publish and disseminate the annual reports of the national preventive mechanisms.

**PART V
Declaration***Article 24*

- 1 Upon ratification, States Parties may make a declaration postponing the implementation of their obligations under either part III or part IV of the present Protocol.
- 2 This postponement shall be valid for a maximum of three years. After due representations made by the State Party and after consultation with the Subcommittee on Prevention, the Committee against Torture may extend that period for an additional two years.

**PART VI
Financial provisions***Article 25*

- 1 The expenditure incurred by the Subcommittee on Prevention in the implementation of the present Protocol shall be borne by the United Nations.
- 2 The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Subcommittee on Prevention under the present Protocol.

Article 26

- 1 A Special Fund shall be set up in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, to help finance the implementation of the recommendations made by the Subcommittee on Prevention after a visit to a State Party, as well as education programs of the national preventive mechanisms.
- 2 The Special Fund may be financed through voluntary contributions made by Governments, intergovernmental and non-governmental organizations and other private or public entities.

PART VII

Final provisions

Article 27

- 1 The present Protocol is open for signature by any State that has signed the Convention.
- 2 The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
- 3 The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
- 4 Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
- 5 The Secretary-General of the United Nations shall inform all States that have signed the present Protocol or acceded to it of the deposit of each instrument of ratification or accession.

Article 28

- 1 The present Protocol shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
- 2 For each State ratifying the present Protocol or acceding to it after the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession, the present Protocol shall enter into force on the thirtieth day after the date of deposit of its own instrument of ratification or accession.

Article 29

The provisions of the present Protocol shall extend to all parts of federal States without any limitations or exceptions.

Article 30

No reservations shall be made to the present Protocol.

Article 31

The provisions of the present Protocol shall not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention. The Subcommittee on Prevention and the bodies established under such regional conventions are encouraged to consult and cooperate with a view to avoiding duplication and promoting effectively the objectives of the present Protocol.

Article 32

The provisions of the present Protocol shall not affect the obligations of States Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, nor the opportunity available to any State Party to authorize the International Committee of the Red Cross to visit places of detention in situations not covered by international humanitarian law.

Article 33

- 1 Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the present Protocol and the Convention. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
- 2 Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act or situation that may occur prior to the date on which the denunciation becomes effective, or to the actions that the Subcommittee on Prevention has decided or may decide to take with respect to the State Party concerned, nor shall denunciation prejudice in any way the continued consideration of any matter already under consideration by the Subcommittee on Prevention prior to the date on which the denunciation becomes effective.
- 3 Following the date on which the denunciation of the State Party becomes effective, the Subcommittee on Prevention shall not commence consideration of any new matter regarding that State.

Article 34

- 1 Any State Party to the present Protocol may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to the present Protocol with a request that they notify him whether they favor a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favor such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States Parties present and voting at the conference shall be submitted by the Secretary-General of the United Nations to all States Parties for acceptance.
- 2 An amendment adopted in accordance with paragraph 1 of the present article shall come into force when it has been accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.

- 3 When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendment that they have accepted.

Article 35

Members of the Subcommittee on Prevention and of the national preventive mechanisms shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions. Members of the Subcommittee on Prevention shall be accorded the privileges and immunities specified in section 22 of the Convention on the Privileges and Immunities of the United Nations of 13 February 1946, subject to the provisions of section 23 of that Convention.

Article 36

When visiting a State Party, the members of the Subcommittee on Prevention shall, without prejudice to the provisions and purposes of the present Protocol and such privileges and immunities as they may enjoy:

- (a) Respect the laws and regulations of the visited State;
- (b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

Article 37

- 1 The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.
- 2 The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States."

Section 4 – Pursuant to Article 24 of the Protocol, upon ratifying the Protocol, the Republic of Hungary shall make a declaration as regards the present Protocol. The authentic English language text and its official Hungarian translation are as follows:

- "In accordance with Article 24 of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Republic of Hungary declares the postponement for three years of the implementation of the obligations under Part IV of the Optional Protocol, concerning national preventive mechanisms."
- „A Magyar Köztársaság a kínzás és más kegyetlen, embertelen vagy megalázó bánásmód vagy büntetés elleni egyezmény fakultatív jegyzőkönyvének 24. cikkével összhangban kijelenti, hogy a fakultatív jegyzőkönyv IV. részéből származó, a nemzeti megelőző mechanizmussal kapcsolatos kötelezettségeinek teljesítését három évvel elhalasztja."

- Section 5** – (1) The present Act shall take effect, with the exceptions stipulated in Subsections (2) to (4), on the day following its promulgation.
- (2) Sections 2 and 3 of the present Act shall take effect on the date stipulated in Article 28, Paragraph 2 of the Protocol.²⁴²
- (3) Sections 8 to 10 of the present Act shall take effect on January 01, 2015.
- (4) Section 11 of the present Act shall take effect on January 02, 2012.
- (5) The calendar date of the entry into force of the Protocol and the present Act shall be communicated in a specific resolution by the minister responsible for foreign policy, to be published in the Hungarian Official Gazette immediately after its becoming known.²⁴³
- (6)²⁴⁴ The measures necessary for the implementation of the present Act shall be determined by the minister responsible for the penitentiary system, the minister responsible for healthcare, the minister responsible for youth protection, the minister responsible for national defense, the minister responsible for immigration and refugee policies, the minister responsible for justice, the minister responsible for education and the minister responsible for law enforcement.

Sections 6-7²⁴⁵

Sections 8-10²⁴⁶

Section 11 – Sections 6 and 7 of the present Act shall become ineffective.

²⁴² Took effect on February 11, 2012, by virtue of Statement 9/2012. (II. 24.) KüM of the MoFA.

²⁴³ See Statement 9/2012. (II. 24.) KüM

²⁴⁴ Amended by Section 420 of Act CCI of 2011

²⁴⁵ Repealed by Section 11 of the same Act Ineffective as of January 02, 2012

²⁴⁶ Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2015

Annex 3 – Full text of the Ombudsman Act

Act CXI of 2011 on the Commissioner for Fundamental Rights²⁴⁷

In the interest of ensuring the effective, coherent and most comprehensive protection of fundamental rights and in order to implement the Fundamental Law, Parliament hereby adopts the following Act pursuant to paragraph (5) of Article 30 of the Fundamental Law:

CHAPTER I

General provisions

1. *The tasks and competences of the Commissioner for Fundamental Rights and of his/her Deputies*

Section 1²⁴⁸ – The Commissioner for Fundamental Rights shall—in addition to his/her tasks and competences specified in the Fundamental Law—perform the tasks and exercise the competences laid down in this Act.

(2) In the course of his/her activities the Commissioner for Fundamental Rights shall pay special attention, especially by conducting proceedings ex officio, to the protection of

- a) the rights of the child,
- b) the values determined in Article *P* of the Fundamental Law (hereinafter referred to as “the interests of future generations”),
- c) the rights determined in Article XXIX of the Fundamental Law (hereinafter referred to as “the rights of nationalities living in Hungary”), and
- d) the rights of the most vulnerable social groups.

(3)²⁴⁹ In the course of his/her activities the Commissioner for Fundamental Rights shall—especially by conducting proceedings ex officio—pay special attention to assisting, protecting and supervising the implementation of the Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007.

²⁴⁷ Promulgated on July 26, 2011

²⁴⁸ Shall enter into force with the text specified in Section 6, Subsection (1) of Act CXLIII of 2011

²⁴⁹ Shall enter into force with the text specified in Section 6, Subsection (2) of Act CXLIII of 2011

- Section 2** – (1)²⁵⁰ The Commissioner for Fundamental Rights shall survey and analyze the situation of fundamental rights in Hungary, and shall prepare statistics on those infringements of rights in Hungary which are related to fundamental rights. At the request of the Commissioner for Fundamental Rights the public administration organ monitoring the enforcement of the requirement of equal treatment, the National Authority for Data Protection and Freedom of Information, the Independent Police Complaints Body and the Commissioner for Educational Rights shall supply aggregate data not containing personal data for the purpose of statistical reports.
- (2) The Commissioner for Fundamental Rights shall give an opinion on the draft legal rules affecting his/her tasks and competences, on long term development and spatial planning plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations, and may make proposals for the amendment or making of legal rules affecting fundamental rights and/or the expression of consent to be bound by an international treaty.
- (3)²⁵¹ The Commissioner for Fundamental Rights may initiate at the Constitutional Court the review of legal rules as to their conformity with the Fundamental Law, the interpretation of the Fundamental Law and, within thirty day after their promulgation, the review of the adherence to the procedural requirements stipulated by the Fundamental Law as regards the adoption and promulgation of the Fundamental Law and its amendments.
- (4) The Commissioner for Fundamental Rights shall participate in the preparation of national reports based on international treaties relating to his/her tasks and competences, and shall monitor and evaluate the enforcement of these treaties under Hungarian jurisdiction.
- (5)²⁵² The Commissioner for Fundamental Rights shall promote the enforcement and protection of fundamental rights. In doing so, he/she shall engage in social awareness raising and information activities and cooperate with organizations and national institutions aiming at the promotion of the protection of fundamental rights.
- (6)²⁵³ The Commissioner for Fundamental Rights shall perform the tasks related to the national preventive mechanism pursuant to Article 3 of the Optional Protocol of the Convention against Torture and other

²⁵⁰ Amended by Section 1 of Act CLXXXVI of 2012 and Section 22, Subsection (6) of Act CLXXXIII of 2013

²⁵¹ Stipulated by Section 1 of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵² Stipulated by Section 2 of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵³ Enacted by Section 8 of Act CXLIII of 2011 Effective as of January 01, 2015

Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011.

- Section 3** – (1) The Deputy Commissioner for Fundamental Rights responsible for the protection of the interests of future generations shall monitor the enforcement of the interests of future generations, and
- a*)²⁵⁴ shall regularly inform the Commissioner for Fundamental Rights, the institutions concerned and the public of his/her experience regarding the enforcement of the interests of future generations,
 - b*)²⁵⁵ shall draw the attention of the Commissioner for Fundamental Rights, the institutions concerned and the public to the danger of infringement of rights affecting a larger group of natural persons, the future generations in particular,
 - c*) may propose that the Commissioner for Fundamental Rights institute proceedings ex officio,
 - d*) shall participate in the inquiries of the Commissioner for Fundamental Rights,
 - e*) may propose that the Commissioner for Fundamental Rights turn to the Constitutional Court,
 - f*)²⁵⁶ shall monitor the implementation of the sustainable development strategy adopted by the Parliament,
 - g*)²⁵⁷ may propose the adoption, amendment of legislation on the rights of future generations, and
 - h*)²⁵⁸ shall promote, through his/her international activities, the presentation of the merits of domestic institutions related to the interests of future generations.
- (2) The Deputy Commissioner for Fundamental Rights responsible for the protection rights of nationalities living in Hungary shall monitor the enforcement of the interests of future generations, and
- a*)²⁵⁹ shall regularly inform the Commissioner for Fundamental Rights, the institutions concerned and the public of his/her experience regarding the enforcement of the interests of future generations,
 - b*)²⁶⁰ shall draw the attention of the Commissioner for Fundamental Rights, the institutions concerned and the public to the danger of infringement of rights affecting nationalities living in Hungary,

²⁵⁴ Stipulated by Section 3, Subsection (1) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵⁵ Stipulated by Section 3, Subsection (1) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵⁶ Enacted by Section 3, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵⁷ Enacted by Section 3, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵⁸ Enacted by Section 3, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁵⁹ Stipulated by Section 4, Subsection (1) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁶⁰ Stipulated by Section 4, Subsection (1) of Act CCXXIII of 2013 Effective as of December 19, 2013

- c) may propose that the Commissioner for Fundamental Rights institute proceedings ex officio,
 - d) shall participate in the inquiries of the Commissioner for Fundamental Rights,
 - e) may propose that the Commissioner for Fundamental Rights turn to the Constitutional Court,
 - f)²⁶¹ shall review the Government's social inclusion strategy and monitor the implementation of its objectives concerning nationalities living in Hungary,
 - g)²⁶² may propose the adoption, amendment of legislation on the rights of future generations, and
 - h)²⁶³ shall promote, through his/her international activities, the presentation of the merits of domestic institutions related to the interests of future generations.
- (3) If a Deputy Commissioner for Fundamental Rights makes a proposal within his/her competence pursuant to point a) of subsection (1) or point a) of subsection (2) for the Commissioner for Fundamental Rights to institute proceedings ex officio or to turn to the Constitutional Court, the Commissioner for Fundamental Rights shall be bound to act accordingly or to inform Parliament in the annual report of the reasons for his/her refusal to do so.
- (4)²⁶⁴ In the course of their activities, the Deputy Commissioner for Fundamental Rights responsible for the protection of the interests of future generations may use the title of "Ombudsman for Future Generations", and the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary may use the title of "Ombudsman for the Rights of National Minorities".

CHAPTER II

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

2. Election of the Commissioner for Fundamental Rights and of his/her Deputies

Section 4 – (1) Parliament shall elect the Deputy of the Commissioner for Fundamental Rights responsible for the protection of the interests of future generations and the Deputy of the Commissioner for Funda-

²⁶¹ Enacted by Section 4, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁶² Enacted by Section 4, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁶³ Enacted by Section 4, Subsection (2) of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁶⁴ Enacted by Section 5 of Act CCXXIII of 2013 Effective as of December 19, 2013

mental Rights responsible for the protection of the rights of nationalities living in Hungary at the proposal of the Commissioner for Fundamental Rights.

- (2) The employer's rights regarding the Deputies of the Commissioner for Fundamental Rights—with the exception of those pertaining to the coming into existence and the termination of the mandate—shall be exercised by the Commissioner for Fundamental Rights.

Section 5 – (1) Any Hungarian citizen may be elected Commissioner for Fundamental Rights or his/her Deputy if he/she has a law degree, has the right to stand as a candidate in elections of Members of Parliament and meets the requirements laid down in this Section.

- (2) Parliament shall elect the Commissioner for Fundamental Rights from among those lawyers who have outstanding theoretical knowledge or at least ten years of professional experience, have reached the age of thirty-five years and have considerable experience in conducting or supervising proceedings concerning fundamental rights or in the scientific theory of such proceedings.
- (3) Parliament shall elect the Deputy of the Commissioner for Fundamental Rights responsible for the protection of the interests of future generations from among those lawyers who have reached the age of thirty-five years, have outstanding theoretical knowledge or at least ten years of professional experience, and have considerable experience in conducting or supervising proceedings affecting the rights of future generations or in the scientific theory of such proceedings.
- (4) Parliament shall elect the Deputy of the Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary from among those lawyers who have reached the age of thirty-five years, have outstanding theoretical knowledge or at least ten years of professional experience, and have considerable experience in conducting or supervising proceedings affecting the rights of nationalities living in Hungary or in the scientific theory of such proceedings.
- (5)²⁶⁵ No one may become Commissioner for Fundamental Rights or his/her Deputy who—in the four years preceding the proposal for his/her election—has been a Member of Parliament, Member of the European Parliament, President of the Republic, Member of the Government, state secretary, permanent state secretary, deputy state secretary, member of a local government body, mayor, deputy mayor, member of a nationality self-government, notary, professional member of the

²⁶⁵ Shall enter into force with the text amended by Section 410, Subsection (1) of Act CCI of 2011 Amended by Section 158, Subsection (28) of Act XXXVI of 2012

Hungarian Defense Forces, professional member of the law-enforcement organs or of organs performing law-enforcement tasks, or the officer or employee of a political party.

Section 6 – (1) The President of the Republic shall make a proposal for the person of the Commissioner for Fundamental Rights between the ninetieth day and the forty-fifth day preceding the expiry of the mandate of the Commissioner for Fundamental Rights.

- (2) If the mandate of the Commissioner for Fundamental Rights has terminated for a reason specified in points *b) to g)* of Subsection (1) of Section 16, the President of the Republic shall make a proposal for the person of the Commissioner for Fundamental Rights within thirty days of the termination of the mandate.
- (3) If the proposed person is not elected by Parliament, the President of the Republic shall make a new proposal within thirty days at the latest.
- (4) The person proposed for Commissioner for Fundamental Rights shall be given a hearing by the committee of Parliament competent according to the tasks of the Commissioner for Fundamental Rights.
- (5) The Commissioner for Fundamental Rights may be re-elected once.

Section 7 – (1) The Commissioner for Fundamental Rights shall make a proposal for the person of a Deputy Commissioner for Fundamental Rights between the ninetieth day and the forty-fifth day preceding the expiry of the mandate of the Deputy Commissioner for Fundamental Rights.

- (2) If the mandate of a Deputy Commissioner for Fundamental Rights has terminated for a reason specified in points *b) to g)* of subsection (1) of Section 16, the Commissioner for Fundamental Rights shall make a proposal for the person of the Deputy Commissioner for Fundamental Rights within thirty days of the termination of the mandate.
- (2a)²⁶⁶ If the mandates of the Commissioner for Fundamental Rights and his/her Deputy terminate at the same time, the newly elected Commissioner for Fundamental Rights shall make a proposal for the person of the Deputy Commissioner for Fundamental Rights within thirty days after his/her election.
- (3) If the person proposed for Deputy Commissioner for Fundamental Rights is not elected by Parliament, the Commissioner for Fundamental Rights shall make a new proposal within thirty days at the latest.
- (4) The Commissioner for Fundamental Rights shall—before making his/her proposal for the person of the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of the nationalities living in Hungary—request an opinion from the national nationality self-governments.

²⁶⁶ Enacted by Section 6 of Act CCXXIII of 2013 Effective as of December 19, 2013

- (5) The person proposed for Deputy Commissioner for Fundamental Rights shall be given a hearing by the committee of Parliament competent according to the tasks of the Deputy Commissioner for Fundamental Rights.
- (6) Deputy Commissioners for Fundamental Rights may be re-elected once.

3. Conflict of interests

Section 8 – (1) The mandate of the Commissioner for Fundamental Rights and of his/her Deputies shall be incompatible with any other state, local government, social or political office or mandate.

- (2)²⁶⁷ The Commissioner for Fundamental Rights and his/her Deputies may not pursue any other gainful occupation, nor accept pay for their other activities, with the exception of scientific, educational, artistic activities, activities falling under copyright protection, or proof-reading or editing activities.
- (3) The Commissioner for Fundamental Rights and his/her Deputies may not be executive officers of a business undertaking, members of its supervisory board or such members of a business undertaking as have an obligation of personal involvement.

4. Declaration of assets

Section 9 – (1) The Commissioner for Fundamental Rights and his/her Deputies shall make a declaration of assets, identical in contents to those of Members of Parliament, within thirty days of their election, then each year till January 31 and within thirty days of the termination of their mandates.

- (2) The Commissioner for Fundamental Rights and his/her Deputies shall attach to their own declaration of assets the declaration of assets of their spouse or partner and children living in the same household (hereinafter referred to together as “family members”), the contents of which shall be identical to those of the Commissioner for Fundamental Rights and his/her Deputies.
- (3) In the event of failure to make a declaration of assets—until submission of the declaration of assets—the Commissioner for Fundamental Rights and his/her Deputies may not perform the tasks deriving from their mandate, and may not receive remuneration.
- (4) With the exception of the declaration of assets of family members, the declaration of assets shall be public, and an authentic copy thereof—

²⁶⁷ Stipulated by Section 78 of Act CI of 2014 Effective as of January 01, 2015

with the exception of the personal data of family members—shall be published without delay by the Secretary General of the Office of the Commissioner for Fundamental Rights (hereinafter referred to as “the Office”) on the website of the Office. The declarations of assets may be removed from the website after a period of one year following the termination of the mandates of the Commissioner for Fundamental Rights or of his/her Deputies.

- (5) The declarations of assets shall be processed by the Secretary General of the Office.
- (6) Only the members of the Conflict of Interests Committee of Parliament (hereinafter referred to as “the Conflict of Interests Committee”) may have access to the declaration of assets of family members in proceedings related to the declaration of assets of the Commissioner for Fundamental Rights or of his/her Deputies.
- (7) Anyone may initiate proceedings related to the declaration of assets of the Commissioner for Fundamental Rights or of his/her Deputies by the chairman of the Conflict of Interests Committee with a statement of facts specifically indicating the contested part and content of the declaration of assets. If such initiative does not meet the requirements contained in this subsection, if it is manifestly unfounded or if a repeatedly submitted initiative does not contain new facts or data, the chairman of the Conflict of Interests Committee shall reject the initiative without conducting proceedings. The veracity of those contained in the declaration of assets shall be checked by the Conflict of Interests Committee.
- (8) In the course of the proceedings related to the declaration of assets, at the invitation of the Conflict of Interests Committee, the Commissioner for Fundamental Rights or his/her Deputies shall notify without delay and in writing the supporting data on property, income and interest relations indicated in their own declaration of assets and in that of their family members. Such supporting data may be accessed only by members of the Conflict of Interests Committee. The chairman of the Conflict of Interests Committee shall inform the Speaker of Parliament of the outcome of the check and the latter shall inform Parliament at its next sitting of the facts established by the Conflict of Interests Committee.
- (9) The supporting data submitted by the Commissioner for Fundamental Rights or his/her Deputies shall be deleted on the thirtieth day following the termination of the proceedings related to the declaration of assets. The Secretary General of the Office shall keep the declaration of assets of a former Commissioner for Fundamental Rights and of his/her former Deputies, as well as of their family members, for a period of one year following the termination of their mandates.

5. The Legal status and remuneration of the Commissioner for Fundamental Rights and of his/her Deputies

Section 10 – (1) The Commissioner for Fundamental Rights and his/her Deputies shall take office upon the expiry of the mandate of their predecessors or, if they are elected after the termination of the mandate of their predecessors, upon their election.

(2) After their election, the Commissioner for Fundamental Rights and his/her Deputies shall take an oath before Parliament.

Section 11 – In conducting his/her proceedings, the Commissioner for Fundamental Rights shall be independent, subordinated only to Acts, and may not be given instructions regarding his/her activities.

Section 12 – (1) The Commissioner for Fundamental Rights shall be entitled to a salary and allowances identical to those of a Minister; the salary supplement for management duties, however, shall be one and a half times that of a Minister.

(2) The Deputy Commissioners for Fundamental Rights shall be entitled to a salary and allowances identical to those of a state secretary.

(3) The Commissioner for Fundamental Rights and his/her Deputies shall be entitled to forty working days of leave per calendar year.

Section 13 – (1) From the point of view of entitlement to social security benefits, the Commissioner for Fundamental Rights and his/her Deputies shall be considered insured persons employed in a public service legal relationship.

(2) The term of office of the Commissioner for Fundamental Rights and of his/her Deputies shall be considered as time served in a public service legal relationship with an organ of public administration.

6. Immunity

Section 14 – (1) The Commissioner for Fundamental Rights and his/her Deputies shall enjoy the same immunity as Members of Parliament.

(2) To proceedings related to immunity the rules of procedure applicable to the immunity of Members of Parliament shall apply.

7. Deputizing for the Commissioner for Fundamental Rights

Section 15 – If the Commissioner for Fundamental Rights is prevented from acting or the office is vacant, the powers of the Commissioner for Fundamental Rights shall be exercised by the Deputy designated by him/her or, in the absence of a designated Deputy, by his/her Deputy who is senior in age.

8. Termination of the mandates of the Commissioner for Fundamental Rights and of his/her Deputies

Section 16 – (1) The mandate of the Commissioner for Fundamental Rights shall terminate

- a) upon expiry of the term of his/her mandate,
 - b) upon his/her death,
 - c) upon his/her resignation,
 - d) if the conditions necessary for his/her election no longer exist,
 - e) upon the declaration of a conflict of interests,
 - f) upon his/her dismissal, or
 - g) upon removal from office.
- (2) The termination of the mandate of the Commissioner for Fundamental Rights pursuant to points *b*) and *c*) of Subsection (1) shall be established by the Speaker of Parliament. Termination pursuant to points *d*) to *g*) of subsection (1) shall be decided by Parliament.
- (3) Resignation from office shall be communicated in writing to the Speaker of Parliament. The mandate of the Commissioner for Fundamental Rights shall terminate on the date indicated in the resignation, or, in the absence thereof, on the day of communication of the resignation. No statement of acceptance shall be necessary for the validity of the resignation.
- (4) If the Commissioner for Fundamental Rights fails to terminate a conflict of interests within thirty days of his/her election or if in the course of the exercise of his/her office a conflict of interests arises, Parliament shall—at the written motion of any Member of Parliament, after obtaining the opinion of the Conflict of Interests Committee—decide on the declaration of a conflict of interests within thirty days of receipt of the motion. No conflict of interests shall be established if, during the conflict of interests proceedings, the Commissioner for Fundamental Rights terminates the reason for the conflict of interests.
- (5) The mandate of the Commissioner for Fundamental Rights may be terminated by dismissal if, for reasons not imputable to him/her, the Commissioner for Fundamental Rights is not able to perform the duties deriving from his/her mandate for more than ninety days. A motion for dismissal may be submitted by any Member of Parliament. In the event of dismissal, the Commissioner for Fundamental Rights shall be entitled to three months' additional salary.
- (6) The mandate of the Commissioner for Fundamental Rights may be terminated by removal from office if, for reasons imputable to him/her, the Commissioner for Fundamental Rights fails to

perform the duties deriving from his/her mandate for more than ninety days, if he/she deliberately fails to comply with his/her obligation to make a declaration of assets, or if he/she deliberately makes a false declaration on important data or facts in his/her declaration of assets. A motion for removal from office may be submitted by the Conflict of Interests Committee after examination of the reasons justifying the removal.

Section 17 – (1) The mandate of the Commissioner for Fundamental Rights shall terminate

- a)* upon expiry of the term of his/her mandate,
 - b)* upon his/her death,
 - c)* upon his/her resignation,
 - d)* if the conditions necessary for his/her election no longer exist,
 - e)* upon the declaration of a conflict of interests,
 - f)* upon his/her dismissal, or
 - g)* upon removal from office.
- (2) The termination of the mandate of a Deputy Commissioner for Fundamental Rights pursuant to points b) and c) of subsection (1) shall be established by the Speaker of Parliament. Termination pursuant to points d) to g) of subsection (1) shall be decided by Parliament.
- (3) A Deputy Commissioner for Fundamental Rights shall communicate his/her resignation from office in writing to the Speaker of Parliament through the Commissioner for Fundamental Rights. The mandate of the Deputy Commissioner for Fundamental Rights shall terminate on the date indicated in the resignation, or, in the absence thereof, on the day of communication of the resignation. No statement of acceptance shall be necessary for the validity of the resignation.
- (4) If the Deputy Commissioner for Fundamental Rights fails to terminate a conflict of interests within thirty days of his/her election or if in the course of the exercise of his/her office a conflict of interests arises, Parliament shall—at the written motion of any Member of Parliament, after obtaining the opinion of the Commissioner for Fundamental Rights and the Conflict of Interests Committee—decide on the declaration of a conflict of interests within thirty days of receipt of the motion. No conflict of interests shall be established if, during the conflict of interests proceedings, the Deputy Commissioner for Fundamental Rights terminates the reason for the conflict of interests.
- (5) The mandate of the Deputy Commissioner for Fundamental Rights may be terminated by dismissal if, for reasons not imputable to him/her, the Deputy Commissioner for Fundamental Rights is not able to perform the duties deriving from his/her mandate for more than

ninety days. A motion for dismissal may be submitted by the Commissioner for Fundamental Rights or any Member of Parliament. In the event of dismissal, the Deputy Commissioner for Fundamental Rights shall be entitled to three months' additional salary.

- (6) The mandate of the Deputy Commissioner for Fundamental Rights may be terminated by removal from office if, for reasons imputable to him/her, the Deputy Commissioner for Fundamental Rights fails to perform the duties deriving from his/her mandate for more than ninety days, if he/she deliberately fails to comply with his/her obligation to make a declaration of assets, or if he/she deliberately makes a false declaration on important data or facts in his/her declaration of assets. A motion for removal from office may be submitted by the Commissioner for Fundamental Rights or the Conflict of Interests Committee after examination of the reasons justifying the removal.

CHAPTER III

Proceedings and measures of the Commissioner for Fundamental Rights

9. Proceedings of the Commissioner for Fundamental Rights

Section 18 – (1) Anyone may turn to the Commissioner for Fundamental Rights if, in his/her judgment, the activity or omission of

- a) a public administration organ,
- b) a local government,
- c) a nationality self-government,
- d) a public body with mandatory membership,
- e) the Hungarian Defense Forces,
- f) a law-enforcement organ,
- g) any other organ while acting in its public administration competence,
- h) an investigation authority or an investigation organ of the Prosecution Service,
- i) a notary public,
- j)²⁶⁸ a bailiff at a court of law,
- k) an independent bailiff, or
- l) an organ performing public services
(hereinafter referred to together as "authority") infringes a fundamental right of the person submitting the petition or presents an imminent danger thereto (hereinafter referred to together as

²⁶⁸ Shall enter into force with the text amended by Section 409, Subsection (1) of Act CCI of 2011

“impropriety”), provided that this person has exhausted the available administrative legal remedies, not including the judicial review of an administrative decision, or that no legal remedy is available to him/her.

- (2) Regardless of their form of organization, organs performing public services shall be the following:
 - a) organs performing state or local government tasks and/or participating in the performance thereof,
 - b) public utility providers,
 - c) universal providers,
 - d) organizations participating in the granting or intermediation of state or European Union subsidies,
 - e) organizations performing activities described in a legal rule as public service, and
 - f) organizations performing a public service which is prescribed in a legal rule and to be compulsorily consumed.Inquiries into an organ performing public services may be carried out only in connection with its public service activities.
- (3) The Commissioner for Fundamental Rights, with the exceptions specified in Section 2, Subsection (3), may not conduct inquiries into the activities of
 - a)²⁶⁹ –with the exceptions provided in Section 2, Subsection (3)–the Parliament,
 - b) the President of the Republic,
 - c) the Constitutional Court,
 - d) the State Audit Office,
 - e) the courts, and
 - f) the Prosecution Service, with the exception of its investigative service.
- (4) The Commissioner for Fundamental Rights may conduct ex officio proceedings in order to have such improprieties terminated as are related to fundamental rights and which have arisen in the course of the activities of the authorities. Ex officio proceedings may be aimed at conducting an inquiry into improprieties affecting not precisely identifiable larger groups of natural persons or at conducting a comprehensive inquiry into the enforcement of a fundamental right.
- (5) If a final administrative decision has been taken in the case, a petition may be filed with the Commissioner for Fundamental Rights within one year from the notification of the decision.

²⁶⁹ Stipulated by Section 10, Subsection (2) of Act CXXXI of 2013 Effective as of August 01, 2013

- (6) The Commissioner for Fundamental Rights may only inquire into proceedings that started after October 23, 1989.
- (7) The Commissioner for Fundamental Rights may not proceed in cases where court proceedings have been started for the review of the decision or where a final court decision has been rendered.
- (8) The identity of the person who has filed the petition may only be revealed by the Commissioner for Fundamental Rights if the inquiry could not be conducted otherwise. If the person filing the petition requests it, the Commissioner for Fundamental Rights may not reveal his/her identity. No one shall suffer any disadvantage for turning to the Commissioner for Fundamental Rights.

Section 19 – The proceedings of the Commissioner for Fundamental Rights shall be free of charge; the costs of inquiries shall be advanced and borne by the Office.

Section 20 – (1) The Commissioner for Fundamental Rights shall—with the exceptions specified in subsections (2) and (3)—conduct an inquiry on the basis of the petition submitted to him/her, and shall take the measure specified in this Act.

- (2) The Commissioner for Fundamental Rights shall reject the petition if
 - a) it does not meet the requirements specified in subsections (1), (3) or (5) to (7) of Section 18,
 - b) it is manifestly unfounded,
 - c) a repeatedly submitted petition does not contain new facts or data on the substance, or
 - d) the person submitting the petition has requested that his/her identity not be revealed and without this the inquiry cannot be conducted.
- (3) The Commissioner for Fundamental Rights may reject the petition if
 - a) it has been submitted anonymously, or
 - b) in his/her judgment the impropriety referred to in the petition is of minor importance.
- (4) Reasons shall be given in every case when petitions are rejected. The Commissioner for Fundamental Rights shall notify the petitioner of the rejection of his/her petition.
- (5) If the competent organ can be identified on the basis of the available data, the Commissioner for Fundamental Rights shall transfer petitions relating to matters not falling within his/her competence to the competent organ and simultaneously inform the petitioners thereof. If the Commissioner for Fundamental Rights establishes that on the basis of a petition not falling within his/her competence there is a possibility to institute court proceedings, he/she shall inform the petitioner thereof.

10. *Inquiries of the Commissioner for Fundamental Rights*

Section 21 – (1) In the course of his/her inquiries the Commissioner for Fundamental Rights

- a) 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,
 - b) 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,
 - c) may participate in a public hearing, and
 - d) may conduct on-site inspections.
- (2) The request of the Commissioner for Fundamental Rights pursuant to points a) and b) of subsection (1) shall be complied with within the time-limit set by the Commissioner. The time-limit may not be shorter than 15 days.

Section 22 – (1) In the course of an on-site inspection the Commissioner for Fundamental Rights or members of his/her staff authorized to conduct the inquiry

- a) may enter the premises of the authority subject to inquiry, unless provided otherwise by a legal regulation,
 - b)²⁷⁰ may inspect all documents which may have any relevance to the case under inquiry, and may make copies or extracts thereof, and
 - c) may conduct a hearing of any employee of the authority subject to inquiry.
- (2)²⁷¹ In the course of an on-site inspection of the Commissioner for Fundamental Rights or of members of his/her staff authorized to conduct the inquiry, the rules of entry into, stay in and exit from the zones serving the operation of the Hungarian Defense Forces, the Military National Security Service, the law-enforcement organs, the organs of the National Tax and Customs Administration performing customs authority tasks, the Directorate General for Criminal Affairs of the National Tax and Customs Administration and its regional organs conducting investigative activities shall be regulated by the Minister responsible for national defense, the Minister responsible for directing the law-enforcement organ or the Minister supervising the National Tax and Customs Administration.

²⁷⁰ Shall enter into force with the text amended in accordance with Section 7, Paragraph a) of Act CXLIII of 2011

²⁷¹ Amended by Section 5. Subsection (2) of Act CLXXI of 2011 and Section 53, Paragraphs a) and b) of Act CLXXXIII of 2015

- (3) No legal rule regulating entry into the premises of the authority subject to inquiry may obstruct on-site inspection in substance.
- (4) Any employee of the authority subject to inquiry may refuse to answer the questions during the hearing if
 - a) the person who is affected by the petition forming the basis of the inquiry conducted by the Commissioner for Fundamental Rights is his/her relative within the meaning of the Code of Civil Procedure, or
 - b) by giving an answer he/she would accuse himself or herself or his/her relative within the meaning of the Code of Civil Procedure of the perpetration of a criminal offense, concerning the questions relating thereto.

Section 23 – (1) In the course of his/her inquiry affecting the Hungarian Defense Forces, the Commissioner for Fundamental Rights may not inspect

- a) documents related to inventions, products or defense investments of outstanding importance for the national defense of Hungary, or documents on the development of national defense capabilities, that contain essential information thereon,
- b) documents containing a battle order extract of the Hungarian Defense Forces up to the level of divisions, or documents containing aggregate data on the formation, maintenance and deployment of stocks of strategic material,
- c) documents containing the plans on the use of the Hungarian Defense Forces under a special legal order,
- d) documents on the protected command system of the higher state and military leaders,
- e) documents concerning the military preparedness, alert and sales system of the Hungarian Defense Forces, compiled documents on mobilization readiness and the level of combat readiness of the Hungarian Defense Forces, aggregate military preparedness plans of the military districts and of military organizations of the same or of a higher level or related documents on the whole organization,
- f) aggregate plans of the organization of communications of the Ministry directed by the Minister responsible for national defense and of the Hungarian Defense Forces, key and other documentation of the special information protection devices introduced or used,
- g) the detailed budget, calculations or development materials of the Hungarian Defense Forces,
- h) international cooperation agreements and plans, or data of military hardware that are classified by common accord as 'top secret' data by the parties to the international cooperation, or

- the infringement of rights and he himself or she herself requests the inquiry thereof,
- f) documents containing technical data relating to the functioning and operation of equipment and methods used by the police for intelligence information gathering or documents enabling the identification of persons using such equipment and methods,
 - g) documents of the police relating to encoded communications of the police or documents containing aggregate data relating to frequency records for government purposes,
 - h) personal data of witnesses, if the closed processing thereof has been ordered on the basis of the Act on Criminal Procedure, or
 - i) cooperation agreements concluded with the Hungarian Defense Forces or the national security services that are classified 'Top secret' data by the parties to the agreement.
- (4) In the course of his/her inquiry affecting the organs of the National Tax and Customs Administration performing customs authority tasks or the National Tax and Customs Administration Directorate General for Criminal Affairs, the Commissioner for Fundamental Rights may not inspect
- a) international cooperation agreements and plans concluded with the customs organs of other countries or international organizations, joint measures taken in the course of international cooperation, or data and information originating from the cooperation and put at the disposal of the relevant organ of the National Tax and Customs Administration, if the contracting parties have requested their protection as classified data,
 - b) classified agreements related to international relations that contain specific commitments for the detection and prevention of international organized crime (including drug trafficking, money laundering and acts of terrorism),
 - c) any document containing data specified in subsection (2) relating to, originating from or pertaining to the cooperation of the national security services with the relevant organ of the National Tax and Customs Administration,
 - d) safeguarding plans of installations and persons guarded by the National Tax and Customs Administration, documents and descriptions pertaining to security equipment, guards and posts,
 - e) documents relating to encoded communications or containing aggregate data relating to frequency records for government purposes,
 - f) documents enabling the identification of a private person covertly cooperating with the relevant organ of the National Tax and

- Customs Administration, except when that person has suffered the infringement of rights and he himself or she herself requests the inquiry thereof,
- g)* documents containing technical data relating to the functioning and operation of equipment and methods used by the National Tax and Customs Administration for intelligence information gathering or documents enabling the identification of persons using such equipment and methods,
 - h)* documents containing aggregate data relating to the equipment used for intelligence activities by the relevant organ of the National Tax and Customs Administration and to the functioning of such equipment, or
 - i)* data of methods used by the relevant organ of the National Tax and Customs Administration in connection with the protection of tax stamps, or documents containing data relating to the traffic of internationally controlled products and technologies, to control plans, to observations and the issuing of search warrants, or to military matters.
- (5) In the course of his/her inquiries affecting the investigative organ of the Prosecution Service, the Commissioner for Fundamental Rights may not inspect
- a)* personal data of witnesses, if the closed processing thereof has been ordered on the basis of the Act on Criminal Procedure,
 - b)* documents of the investigative organ of the Prosecution Service originating from intelligence information gathering,
 - c)* any document specified in subsection (2) to (4), in relation to organs gathering intelligence information, relating to, originating from or pertaining to the cooperation of the investigative organ of the Prosecution Service with organs gathering intelligence information, or
 - e)* documents enabling the identification of a private person covertly cooperating with the police, except when that person has suffered the infringement of rights and he himself or she herself requests the inquiry thereof,
- (6) In the course of his/her inquiry affecting the tasks of the National Security Authority, specified in the Act on the Protection of Classified Information, the Commissioner for Fundamental Rights may not inspect documents relating to the professional direction, authorization or supervision of encoding activities.
- (7) If, in order to ensure the complete clarification of a case, the Commissioner for Fundamental Rights considers it necessary that the documents specified in subsections (1) to (6) also be inspected, he/she may

request the competent Minister to have those documents inspected. The competent Minister shall make the inquiry or shall have it made and inform the Commissioner for Fundamental Rights on the outcome of the inquiry within the time-limit set by the Commissioner. The time-limit may not be shorter than thirty days.

Section 24 – (1) If there are substantiated grounds to believe that if the measure of the Commissioner for Fundamental Rights is delayed, the fundamental rights of a larger group of natural persons will be seriously infringed, the person conducting the inquiry on the basis of the authorization of the Commissioner for Fundamental Rights may draw the attention of the head of the authority subject to inquiry to the danger of infringement and shall simultaneously initiate a measure of the Commissioner for Fundamental Rights. Such indication of danger shall be recorded in the case file.

(2) If, in the course of his/her inquiry, certain circumstances come to the attention of the Commissioner for Fundamental Rights from which circumstances one may conclude that a coercive measure has been unlawfully ordered, he/she shall immediately inform the competent prosecutor through the Prosecutor General. If the coercive measure has been ordered by the Prosecution Service, the Commissioner for Fundamental Rights shall inform the court as well.

Section 25 – (1) In the interest of conducting and planning the inquiries of the Commissioner for Fundamental Rights, the authority subject to inquiry, the head of the authority subject to inquiry, the head of the supervisory organ of the authority subject to inquiry, the head of the organ otherwise authorized by a legal rule to conduct inquiries and the employees of the authority subject to inquiry shall cooperate with the Commissioner for Fundamental Rights in the cases determined in subsection (1) of Section 21.

(2) If the authority subject to inquiry, without a well-founded reason, fails to comply or complies only belatedly with its obligation to cooperate, the Commissioner for Fundamental Rights shall mention this fact in his/her report, and make special mention thereof in his/her annual report.

Section 26 – (1) In the inquiries conducted by the Commissioner for Fundamental Rights, the persons or organizations not qualifying as authority pursuant to this Act as well as the authorities not affected by the inquiry shall be obliged to cooperate.

(2) In a case under inquiry, the Commissioner for Fundamental Rights may request a written explanation, declaration, information or opinion from the organization, person or employee of the organization having the obligation to cooperate.

- (3) If the organization or person having the obligation to cooperate, without a well-founded reason, fails to comply or complies only belatedly with its obligation to cooperate, the Commissioner for Fundamental Rights shall mention this fact in his/her report, and make special mention thereof in his/her annual report.

Section 27 – (1) In the course of his/her proceedings the Commissioner for Fundamental Rights may process—to the extent necessary for those proceedings—all those personal data and data qualifying as secrets protected by an Act or as secrets restricted to the exercise of a profession which are related to the inquiry or the processing of which is necessary for the successful conduct of the proceedings.

- (2) In the course of his/her proceedings the Commissioner for Fundamental Rights may become acquainted with the classified data necessary for the conduct of the inquiry, may prepare extracts or make copies thereof, and may keep the classified data in his/her possession.
- (3) The documents and material evidence obtained in the course of the proceedings of the Commissioner for Fundamental Rights shall not be public.
- (4) Contacts between the Commissioner for Fundamental Rights and the authority, the organization or person with an obligation to cooperate, as well as the organization affected by an exceptional inquiry may also be maintained by electronic documents signed electronically

Section 28 – (1) The Commissioner for Fundamental Rights shall make a report on the inquiry he/she has conducted; it shall contain the uncovered facts, and the findings and conclusions based on the facts.

- (2) The reports of the Commissioner for Fundamental Rights shall be public. Published reports may not contain personal data, classified data, secrets protected by an Act or secrets restricted to the exercise of a profession.
- (3) The report of the Commissioner for Fundamental Rights relating to the activities of organs authorized to use covert operative means and methods may not contain any data from which one could draw conclusions on intelligence information gathering activities in the given case.
- (4) There shall be no legal remedy against decisions of the Commissioner for Fundamental Rights rejecting a petition or against the reports of the Commissioner.

Section 29 – The Commissioner for Fundamental Rights shall inform the petitioner about the outcome of the inquiry and about any measure taken.

Section 30 – The Commissioner for Fundamental Rights shall determine the rules and methods of his/her inquiries in normative instructions.

11. Measures of the Commissioner for Fundamental Rights

Section 31 – (1) If, on the basis of an inquiry conducted, the Commissioner for Fundamental Rights comes to the conclusion that the impropriety in relation to a fundamental right does exist, in order to redress it he/she may—by simultaneously informing the authority subject to inquiry—address a recommendation to the supervisory organ of the authority subject to inquiry. Within thirty days of receipt of the recommendation the supervisory organ shall inform the Commissioner for Fundamental Rights of its position on the merits of the recommendation and on the measures taken.

- (2) If the supervisory organ does not agree with those contained in the recommendation, within fifteen days of receipt of the communication thereof the Commissioner for Fundamental Rights shall inform the supervisory organ of the maintenance, amendment or withdrawal of his/her recommendation.
- (3) If the Commissioner for Fundamental Rights modifies the recommendation, it shall be considered as a new recommendation from the point of view of the measures to be taken.
- (4) If the authority subject to inquiry has no supervisory organ, the Commissioner for Fundamental Rights shall address the recommendation to the authority subject to inquiry.

Section 32 – (1) If, according to the available data, the authority subject to inquiry is able to terminate the impropriety related to fundamental rights within its competence, the Commissioner for Fundamental Rights may initiate redress of the impropriety by the head of the authority subject to inquiry. Such initiative may be made directly by phone, orally or by e-mail; in such cases the date, manner and substance of the initiative shall be recorded in the case file.

- (2) Within thirty days of receipt of the initiative the authority subject to inquiry shall inform the Commissioner for Fundamental Rights of its position on the merits of the initiative and on the measures taken; if the initiative concerns an activity which is harmful for the environment, the authority subject to inquiry shall immediately inform the Commissioner for Fundamental Rights.
- (3) If the authority subject to inquiry—with the exception of the authority specified in paragraph (4) of Section 31—does not agree with the initiative, it shall, within thirty days of receipt of the initiative, submit the initiative to its supervisory organ together with its opinion thereon. Within thirty days of receipt of the submission, the supervisory organ shall inform the Commissioner for Fundamental Rights of its position and on the measures taken.

- (4) For any further proceedings of the supervisory organ and the Commissioner for Fundamental Rights those contained in subsections (1) to (3) of Section 31 shall be applicable, as appropriate, subject to the modification that the Commissioner for Fundamental Rights shall inform the supervisory organ of whether he/she maintains the initiative in an unchanged or modified form as a recommendation.

Section 33 – (1)²⁷² In order to redress the uncovered impropriety related to a fundamental right, the Commissioner for Fundamental Rights may initiate proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General. Within sixty days the competent prosecutor shall inform the Commissioner for Fundamental Rights of his/her position on the initiation of proceedings for the supervision of legality and his/her measure, if any.

- (2) If the Commissioner for Fundamental Rights, in the course of his/her proceedings, establishes no impropriety related to a fundamental right but nevertheless becomes aware of a circumstance pointing to an infringement of a legal rule, he/she may forward the petition to the competent prosecutor through the Prosecutor General.
- (3) In the course of the judicial review of an administrative decision relating to the state of the environment, the Commissioner for Fundamental Rights may participate in the proceedings as an intervener.

Section 34 – The Commissioner for Fundamental Rights may turn to the Constitutional Court in accordance with those laid down in the Act on the Constitutional Court.

Section 34/A²⁷³ – (1) If, in the course of his/her inquiries, the Commissioner for Fundamental Rights finds that a fundamental rights-related impropriety is caused by a conflict between a self-government decree and another legal regulation, he may request the Curia to review the self-government decree's compatibility with the other legal regulation.

- (2) The petition submitted in accordance with Subsection (1) shall contain:
- a) the self-government decree to be reviewed by the Curia,
 - b) the indication of the provision found in breach with the law,
 - c) the indication of the legal regulation that the self-government decree is in breach with,
 - d) the reason why the Commissioner for Fundamental Rights deems the given provision in breach with the law.

Section 35 – (1) If, in the course of his/her inquiry, the Commissioner for Fundamental Rights considers that there is a well-founded suspicion that a crime has been committed, he/she shall initiate criminal proceedings

²⁷² Shall enter into force with the text specified in Section 408 of Act CCI of 2011

²⁷³ Enacted by Section 72, Subsection (1) of Act CCXI of 2012 Effective as of January 01, 2013

with the organ authorized to start such proceedings. If, in the course of his/her inquiry, the Commissioner for Fundamental Rights considers that there is a reasonable suspicion that a regulatory offense or a disciplinary offense has been committed, he/she shall initiate regulatory offense proceedings or disciplinary proceedings with the organ authorized to conduct such proceedings.

- (2) Unless a provision of an Act provides otherwise, the organ specified in subsection (1) shall, within thirty days, inform the Commissioner for Fundamental Rights of its position on the starting of proceedings; where proceedings have been started, the organ shall, within thirty days of the termination of the proceedings, inform the Commissioner for Fundamental Rights of the outcome thereof.

Section 36 – If, in the course of his/her inquiry, the Commissioner for Fundamental Rights notices an impropriety related to the protection of personal data, to the right of access to data of public interest or to data public on grounds of public interest, he/she shall report it to the National Authority for Data Protection and Freedom of Information.

Section 37 – If, according to the Commissioner for Fundamental Rights, the impropriety can be attributed to a superfluous, ambiguous or inappropriate provision of a legal rule or public law instrument for the regulation of organizations, or to the lack or deficiency of the legal regulation of the given matter, in order to avoid such impropriety in the future he/she may propose that the organ authorized to make law or to issue a public law instrument for the regulation of organizations modify, repeal or issue the legal rule or the public law instrument for the regulation of organizations, or propose that the organ in charge of preparing legal rules prepare a legal rule. Within sixty days the requested organ shall inform the Commissioner for Fundamental Rights of its position and of any measure taken.

Section 38 – (1) If the authority subject to inquiry or its supervisory organ fails to form a position on the merits and to take the appropriate measure, or the Commissioner for Fundamental Rights does not agree with the position or the measure taken, he/she shall submit the case to Parliament within the framework of his/her annual report, and may—with the exception of those contained in subsection (2)—ask Parliament to inquire into the matter. If, according to his/her findings, the impropriety is of flagrant gravity or affects a larger group of natural persons, the Commissioner may propose that Parliament debate the matter before the annual report is put on its agenda. The Parliament shall decide on whether to put the matter on the agenda.

- (2) In the case referred to in subsection (1), if the Commissioner for Fundamental Rights has taken the measure specified in Section 34, or if in the case specified in Section 37 he/she has requested Parliament, the

Commissioner for Fundamental Rights shall report on his/her measure and on the measure of the requested organ or the failure of the latter to take any measure in his/her annual report.

- (3) In the case referred to in subsection (1), if the uncovering of the impropriety would affect classified data, the Commissioner for Fundamental Rights shall—simultaneously with his/her annual report, or if the impropriety is of flagrant gravity or affects a larger group of natural persons, prior to the submission of the annual report—submit the case to the competent committee of Parliament in a report of a level of classification determined in the Act on the Protection of Classified Information. The committee shall decide on whether to put the matter on the agenda at a sitting *in camera*.

11/A.²⁷⁴ *Inquiries into public interest disclosures*

Section 38/A²⁷⁵ – The Commissioner for Fundamental Rights shall inquire into the practices of authorities specified under Section 18, Subsection (1), Paragraphs *a)-k)* in handling public interest disclosures made in accordance with the Act on complaints and public interest disclosures, and, upon request, into the proper handling of certain public interest disclosures.

Section 38/B²⁷⁶ – (1) The Commissioner for Fundamental Rights shall provide for the operation of an electronic system for filing and registering public interest disclosures in accordance with the Act on complaints and public interest disclosures (hereinafter referred to as the “electronic system”).

- (2) In connection with public interest disclosures filed through the electronic system and their investigation, the authorities specified under Section 18, Subsection (1), Paragraphs *a)-k)* shall provide the Commissioner for Fundamental Rights with data necessary for performing his/her tasks.

Section 38/C²⁷⁷ – A whistle-blower may submit a petition requesting the Commissioner for Fundamental Rights to remedy a perceived impropriety if

- a)* a public interest disclosure is qualified as unfounded by the organ authorized to proceed under the Act on complaints and public interest disclosures (hereinafter referred to as the “organ authorized to proceed),

²⁷⁴ Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

²⁷⁵ Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

²⁷⁶ Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

²⁷⁷ Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

- b) the whistle-blower does not agree with the conclusions of the investigation,
- c) according to the whistle-blower, the organ authorized to proceed has failed to conduct a comprehensive inquiry into a public interest disclosure.

Section 38/D²⁷⁸ Staff members of the Office performing tasks directly related to public interest disclosures shall carry out their duties in positions falling within the scope of national security checks and requiring a personal security certificate.

Section 11/B²⁷⁹ *quiry into the review process of national security checks*

Section 38/E²⁸⁰ – (1) In accordance with the stipulations of the Act on national security services, the Commissioner for Fundamental Rights may inquire into ordering and conducting a review of national security checks from the aspects of fundamental rights related improprieties.

- (2) The restrictions stipulated in Section 23, Subsection (2) shall not affect the proceedings of the Commissioner for Fundamental Rights if consulting a document is essential for the successful conduct of the given proceedings.

Staff members of the Office performing tasks directly related to the review process of national security checks shall carry out their duties in positions falling within the scope of national security checks and requiring a personal security certificate.

12. *Exceptional inquiry*

Section 39 – (1) If, on the basis of the petition, it may be presumed that—with the exception of the organs indicated in subsection (3) of Section 18—the activity or omission of the organization not qualifying as authority gravely infringes the fundamental rights of a larger group of natural persons, the Commissioner for Fundamental Rights may proceed exceptionally (hereinafter referred to as ‘exceptional inquiry’).

- (2) To exceptional inquiries subsections (5) to (8) of Section 18, Section 19, Section 20, subsections (1), (3) and (4) of Section 27, Sections 28 to 30 and Sections 34 to 37 shall be applied.
- (3) For the conduct of exceptional inquiries the organizations not qualifying as authority shall be obliged to cooperate.

²⁷⁸ Enacted by Section 21, Subsection (1) of Act CLXV of 2013 Effective as of January 01, 2014

²⁷⁹ Enacted by Section 46 of Act CIX of 2014 Effective as of February 01, 2015

²⁸⁰ Enacted by Section 46 of Act CIX of 2014 Effective as of February 01, 2015

- (4) In order to conduct an exceptional inquiry, the Commissioner for Fundamental Rights may request a written explanation, declaration, information or opinion from the organization not qualifying as authority. In case of an activity which is harmful for the environment, the Commissioner for Fundamental Rights may carry out an on-site inspection.
- (5) On the basis of the outcome of an exceptional inquiry, the Commissioner for Fundamental Rights may initiate proceedings with the competent authority. On the basis of the above initiative, the authority shall start proceedings without delay.

CHAPTER III/A²⁸¹

The proceedings and measures of the commissioner for fundamental rights within the framework of the national preventive mechanism²⁸²

Section 39/A²⁸³ – If the Commissioner for Fundamental Rights conducts proceedings in the performance of his/her tasks related to the national preventive mechanism pursuant to Article 3 (hereinafter referred to as ‘national preventive mechanism’) of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment (hereinafter referred to as ‘the Protocol’) promulgated by Act CXLIII of 2011, the provisions of chapter III shall apply to his/her proceedings with the derogations laid down in this chapter.

Section 39/B²⁸⁴ – (1) In order to perform his/her tasks related to the national preventive mechanism, the Commissioner for Fundamental Rights shall regularly examine the treatment of persons deprived of their liberty and held at a place of detention specified in Article 4 of the Protocol—regardless of subsections (1) to (7) of Section 18—also in the absence of any petition or alleged impropriety.

- (2) In the course of his/her examination the Commissioner for Fundamental Rights may, in addition to those contained in subsection (1) of Section 21, request data, information and copies of documents from the authority under inquiry on the number and geographical location of places of detention and on the number of persons deprived of their liberty who are held there, on the treatment of these persons and on the conditions of their detention.
- (3) In the course of on-site inspections the Commissioner of Fundamental Rights may

²⁸¹ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁸² Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁸³ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁸⁴ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

- a) enter without any restriction the places of detention and other premises of the authority under inquiry,
- b) inspect without any restriction all documents concerning the number and geographical location of places of detention, the number of persons deprived of their liberty who are held there, on the treatment of these persons and on the conditions of their detention, and make extracts from or copies of these documents,
- c)²⁸⁵ hear any person present on the site, including the personnel of the authority under inspection and any person deprived of his/her liberty.
- d)²⁸⁶

(4) In the hearing pursuant to points c) and d) of subsection (3), apart from the Commissioner for Fundamental Rights and the person who is given a hearing, no other person may participate, unless the Commissioner for Fundamental Rights authorized his/her participation.

Section 39/C²⁸⁷ – The Commissioner for Fundamental Rights shall each year prepare a comprehensive report on the performance of his/her tasks related to the national preventive mechanism which report shall be published on the website of the Office.

Section 39/D²⁸⁸ – (1) In the performance of his/her tasks related to the national mechanism, the Commissioner for Fundamental Rights may act in person or by way of the members of his/her staff authorized by him/her to perform the tasks related to the national preventive mechanism. Staff members of the Commissioner for Fundamental Rights authorized by him/her to act shall have the rights pursuant to Sections 21, 22 and 26, as well as to subsection (1) of Section 27, and to Section 39/B, and the obligation for cooperation pursuant to Section 25 shall be complied with also in their respect.

(2) Staff members of the Commissioner for Fundamental Rights authorized by him/her to perform the tasks related to the national preventive mechanism may, if they have the personal security clearance certificate of the required level, obtain access to classified data also without the user permission specified in the Act on the Protection of Classified Information.

(3)²⁸⁹ The Commissioner for Fundamental Rights shall authorize, from among the public servants of the Office of the Commissioner for

²⁸⁵ Shall enter into force with the text amended by Section 9, Subsection (2) of Act CCXXIII of 2013

²⁸⁶ Shall not enter into force by virtue of Section 9, Subsection (1) of Act CCXXIII of 2013

²⁸⁷ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁸⁸ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁸⁹ Shall enter into force with the text amended by Section 9, Subsection (3) of Act CCXXIII of 2013

Fundamental Rights, on permanent basis, at least eleven staff members to perform the tasks related to the national preventive mechanism. The authorized public servant staff members shall be experts with a graduate degree and have an outstanding knowledge in the field of the treatment of persons deprived of their liberty or have at least five years of professional experience. In addition to the public servant staff members, the Commissioner for Fundamental Rights may also authorize, either permanently or on an ad hoc basis, other experts to contribute to performing the tasks related to the national preventive mechanism.

- (4)²⁹⁰ Among the public servant staff members authorized to perform the tasks related to the national preventive mechanism there shall be at least one person who has been proposed by the Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary and at least two persons each with a degree in law, medicine and psychology, respectively. Among the authorized public servant staff members, the number of the representatives of either sex may exceed that of the other by one at the most.

Section 39/E²⁹¹ No one shall suffer any disadvantage for providing information to the Commissioner for Fundamental Rights or to his/her staff members authorized to perform the tasks related to the national preventive mechanism.

CHAPTER IV

The annual report of the Commissioner for Fundamental Rights

Section 40 – (1) The Commissioner for Fundamental Rights shall submit his/her annual report to the Parliament until 31 March of the calendar year following the reporting year.

- (2) In his/her annual report the Commissioner for Fundamental Rights shall
- a)²⁹² give information on his/her fundamental rights protection activities, presenting in separate chapters his/her activities pursuant to the stipulations of Section 1, Subsections (2) and (3) and Section 2, Subsection (6), respectively, and his/her activities conducted in connection with inquiring into public interest disclosures.

²⁹⁰ Shall enter into force with the text amended by Section 9, Subsection (4) of Act CCXXIII of 2013

²⁹¹ Enacted by Section 9 of Act CXLIII of 2011 Effective as of January 01, 2015

²⁹² Stipulated by Section 10 of Act CXLIII of 2011 Effective as of January 01, 2015

- b) give information on the reception and outcomes of his initiatives and recommendations, and
 - c) evaluate the situation of fundamental rights on the basis of statistics compiled on the infringements related to fundamental rights.
- (3) The Parliament shall debate the report during the year of its submission.
- (4) The report of the Commissioner for Fundamental Rights shall be published on the website of the Office after the Parliament has passed a resolution on it.

CHAPTER V

The Office of the Commissioner for Fundamental Rights

Section 41 – (1) The administration and preparation related to the tasks of the Commissioner for Fundamental Rights shall be performed by the Office.

- (2) The Office shall be directed by the Commissioner for Fundamental Rights and managed by the Secretary General.
- (3) The organizational and operational rules of the Office shall be established by way of a normative instruction by the Commissioner for Fundamental Rights.
- (4) The Office shall have a separate chapter in the central budget and the powers of the head of organ directing the chapter shall be exercised by the Secretary General.
- (5) The Commissioner for Fundamental Rights may, in the organizational and operational rules, transfer the right to issue an official copy to the Deputies and, in case of documents not containing any measures, to the Secretary General or a public servant of the Office in an executive position.

Section 42 – (1) Employer's rights over the Secretary General shall be exercised by the Commissioner for Fundamental Rights.

- (2) The Secretary General shall be entitled to a salary and allowances identical to those of a state secretary and to forty working days of leave per calendar year.
- (3)²⁹³ Public servants employed by the Office shall be appointed and dismissed by the Commissioner for Fundamental Rights or, in the case of public servants referred to in subsection (4), by either Deputy Commissioner for Fundamental Rights; in other respects, employer's rights over these public servants shall be exercised by the Secretary General. The Office of the Commissioner for Fundamental Rights

²⁹³ Stipulated by Section 7 of Act CCXXIII of 2013 Effective as of December 19, 2013

shall endeavor to give due representation to women, ethnic, minority and disadvantaged groups in the personnel of the Office.

- (4) The authorized number of posts of public servants placed under the direction of the Deputy Commissioners for Fundamental Rights shall be determined in the organizational and operational rules.

CHAPTER VI

Final provisions

13. *Authorizing provisions*

Section 43 – (1)²⁹⁴ The Minister responsible for national defense shall be authorized to determine in a decree the rules governing the entry, stay and exit of the Commissioner for Fundamental Rights into, in and from the zones serving the operation of the Hungarian Defense Forces and of the military national security services.

- (2) The Minister responsible for directing the law-enforcement organ shall be authorized to determine in a decree the rules governing the entry, stay and exit of the Commissioner for Fundamental Rights into, in and from the zones serving the operation of the law-enforcement organ.²⁹⁵

- (3)²⁹⁶ The Minister supervising the National Tax and Customs Administration shall be authorized to determine in a decree the rules governing the entry, stay and exit of the Commissioner for Fundamental Rights into, in and from the zones serving the operation of the organs of the National Tax and Customs Administration performing customs authority tasks, the Directorate General of Criminal Affairs of the National Tax and Customs Administration and its lower and middle level organs.

14. *Provision on entry into force*

Section 44 – The present Act shall enter into force on January 1, 2012.

15. *Transitional provisions*

Section 45 – (1) The Commissioner for Fundamental Rights shall be the legal successor of the Parliamentary Commissioner for Civil

²⁹⁴ Amended by Section 5, Subsection (2) of Act CLXXI of 2011

²⁹⁵ See Decree 62/2012. (XII. 11.) BM of the Minister of Interior

²⁹⁶ Amended by Section 53, Paragraph b) of Act CXCI of 2015

Rights, the Parliamentary Commissioner for National and Ethnic Minority Rights and the Parliamentary Commissioner for Future Generations.

- (2) The present Act shall not affect the mandate of the Parliamentary Commissioner for Civil Rights who is in office at its entry into force, with the proviso that
 - a) the designation of his/her office shall be Commissioner for Fundamental Rights,
 - b) the provisions contained in Section 8, Section 9, and Sections 11 to 16 shall be applicable to his/her mandate, and
 - c) after the expiry of his/her mandate, he/she may be elected once Commissioner for Fundamental Rights.
- (3) As of the entry into force of the present Act, the Parliamentary Commissioner for National and Ethnic Minority Rights in office shall become Deputy Commissioner for Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary; the Parliamentary Commissioner for Future Generations in office shall become Deputy Commissioner for Fundamental Rights responsible for the protection of the interests of future generations; the provisions of the present Act relating to the Deputy Commissioners for Fundamental Rights shall be applicable to their mandate, with the proviso that
 - a) their mandate may terminate pursuant to Section 17, Subsection (1), Paragraphs *b) to g)* or upon termination of the mandate of the Commissioner for Fundamental Rights, and
 - b) after the expiry of their mandate, they may be elected once Deputy Commissioner for Fundamental Rights.
- (4) The Office shall be the legal successor of the Office of the Parliamentary Commissioner.
- (5) As of the entry into force of this Act, the designation of the head of the Office of the Parliamentary Commissioner shall be Secretary General.
- (6) From the point of view of the application of Section 14, Subsection (1), Paragraph c) of Act XXIII of 1992 on the Legal Status of Public Servants, the Office shall be considered the legal successor of the Office of the Parliamentary Commissioner.

Section 45/A²⁹⁷ – Section 34/A of the present Act, established by Act CCXI of 2012 on the amendment of certain justice-related acts, shall also be applicable in handling cases still running on January 1, 2013.

²⁹⁷ Enacted by Section 72, Subsection (2) of Act CCXI of 2012 Effective as of January 01, 2013

16. Compliance with the requirement of the Fundamental Law on cardinality

Section 46²⁹⁸ – Sections 2, Subsection (3) of this Act shall qualify as cardinal pursuant to Article 24, Paragraph (2) g) of the Fundamental Law.

17. Amending provisions

Section 47²⁹⁹

Section 48 – (1)-(3)³⁰⁰

(4)³⁰¹

(5)-(16)³⁰²

18. Repealing provisions

Sections 49-50³⁰³

²⁹⁸ Stipulated by Section 8 of Act CCXXIII of 2013 Effective as of December 19, 2013

²⁹⁹ Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012

³⁰⁰ Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012

³⁰¹ Shall not enter into force by virtue of Section 410, Subsection (2) of Act CCI of 2011

³⁰² Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012

³⁰³ Repealed by virtue of Section 12 of Act CXXX of 2010 Ineffective as of January 02, 2012

Annex 4 – The CCB’s Rules of Procedure

Directive 3/2014 (November 11) of the Commissioner for Fundamental Rights assisting the National Preventive Mechanism in carrying out its duties on the establishment and rules of procedure of the Civil Consultative Body

The Commissioner for Fundamental Rights, acting as National Preventive Mechanism designated in accordance with Article 3 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011, hereby establishes a Civil Consultative Body (hereinafter referred to as “CCB”) in order to utilize the outstanding practical and/or high-level theoretical knowledge of various organizations registered and operating in Hungary relative to the treatment of persons deprived of their liberty. The CCB shall assist the activities of the National Preventive Mechanism with its suggestions and comments.

- Section 1** – (1) The CCB shall comprise member organizations either invited, or selected as a result of a public call for application. Member organizations of the CCB shall be selected by the Commissioner for Fundamental Rights as a token of recognition of their outstanding professional knowledge relative to the treatment of persons deprived of their liberty.
- (2) The invited member organizations of the CCB are the following:
 Hungarian Medical Chamber,
 Hungarian Psychiatric Association,
 Hungarian Dietetic Association,
 Hungarian Bar Association.
- (3) CCB members selected as a result of a public call for application (hereinafter referred to as “public call”) shall include at least four civil society organizations registered and operating in Hungary whose activities during the last five years preceding the publication of the public call have been aimed at protecting the rights and interests of persons deprived of their liberty and monitoring the treatment of persons held in places of detention within Hungary.
- (4) The Commissioner for Fundamental Rights shall issue the public call for application and publish it on the website of the Office of the Com-

missioner for Fundamental Rights 60 days prior to the establishment of the CCB.

- (5) The applications received shall be evaluated by a committee comprising at least three members; the members of the committee shall be designated by the Commissioner. The committee shall adopt its decision and make its recommendation with consensus or, if consensus cannot be reached, with the consent of the majority of members. The final decision on the winners of the public call shall be made by the Commissioner based on the committee’s recommendation.
- (6) The CCB’s mandate shall be three years from the date of its first session.

Section 2 – (1) Membership in the CCB shall be established upon accepting the written invitation of the Commissioner for Fundamental Rights.

- (2) Member organizations shall inform the Commissioner for Fundamental Rights of the persons representing them simultaneously with confirming the acceptance of the invitation.

Section 3 – Membership in the CCB shall be terminated

- upon completion of a member’s mandate (three years),
- as a result of a member’s resignation or
- if membership is suspended for more than one year.

Section 4 – (1) The CCB is not a legal entity.

- (2) The Commissioner shall publish the roster of the CCB on the homepage of the Office of the Commissioner for Fundamental Rights and in the annual report of the National Preventive Mechanism.
- (3) The member organizations shall bear no responsibility for any statements made by the Commissioner for Fundamental Rights or the contents of the annual report of the National Preventive Mechanism.

Section 5 – The seat of the CCB: Office of the Commissioner for Fundamental Rights (1051 Budapest, Nádor utca 22.)

Section 6 – The CCB shall operate as a body whose members may

- a) make suggestions relative to the contents of the annual schedule of visits of the National Preventive Mechanism and concerning inspection priorities;
- b) initiate visits to certain places of detention;
- c) recommend, on account of the particularities of the places of detention, the involvement of an expert with special knowledge who may be affiliated with the organization they represent;
- d) comment on the working methods, reports, information materials and other publications of the National Preventive Mechanism;
- e) discuss the training plan designed to develop the skills of staff members authorized to carry out the duties of the National Preventive Mechanism;

- f) participate, when possible, in conferences, workshops, exhibitions and other events organized by the National Preventive Mechanism.

Section 7 – (1) The Commissioner for Fundamental Rights shall provide for the appropriate conditions for the CCB’s operation. Members of the CCB shall not be entitled to any remuneration.

- (2) Should an expert recommended by the members of the CCB engage in carrying out the duties of the National Preventive Mechanism, and provided that the given expert is not a staff member of the Office of the Commissioner for Fundamental Rights, the Commissioner for Fundamental Rights shall conclude an engagement contract with the given expert.

Section 8 – (1) The sessions of the CCB shall be convened by the Commissioner for Fundamental Rights as necessary, but at least twice annually, indicating the venue, the time and the agenda of the meeting. Invitations shall be sent out to members not later than eight days before the date of the meeting. The sessions may be convened via email. The Commissioner for Fundamental Rights and the members of the CCB may request the inclusion of an additional item in the agenda in writing not later than the third day before the meeting, and orally during the meeting itself.

- (2) Any member may request the Commissioner for Fundamental Rights to convene a session of the CCB in writing, indicating the reason and purpose thereof.
- (3) A session of the CCB shall have quorum if it was duly convened and its agenda was duly communicated, and if it is attended by at least one invited member and one member selected as a result of a public call.

Section 9 – (1) The meetings of the CCB shall not be open to the public; they may be attended only by the members and those invited by the Commissioner for Fundamental Rights.

- (2) The meetings of the CCB shall be chaired by the Commissioner for Fundamental Rights.
- (3) The CCB shall take its decisions by a majority of the votes cast. Each member shall have one vote; in the event of a tie, the vote of the chair shall decide.
- (4) The minutes of a session shall be kept by a person requested by the Commissioner for Fundamental Rights. The minutes shall indicate the time and venue of the meeting, the names of the participants, the summary of oral contributions, the decisions taken and, if necessary, the reasons prompting their adoption and their serial numbers adjusted to the corresponding item on the agenda. The minutes shall be signed by the keeper and approved by the Commissioner for Fundamental Rights.

- (5) The minutes of the sessions of the CCB shall be open to the public; the Commissioner for Fundamental Rights shall publish them on the homepage of the National Preventive Mechanism and may also publish them in any other publication.

Section 10 – (1) The present directive shall be published by the Secretary General of the Office of the Commission for Fundamental Rights on the institution’s homepage within eight days after its execution.

- (2) The present directive shall take effect on the first day of the month following its execution.

Budapest, September 11, 2014

László Székely