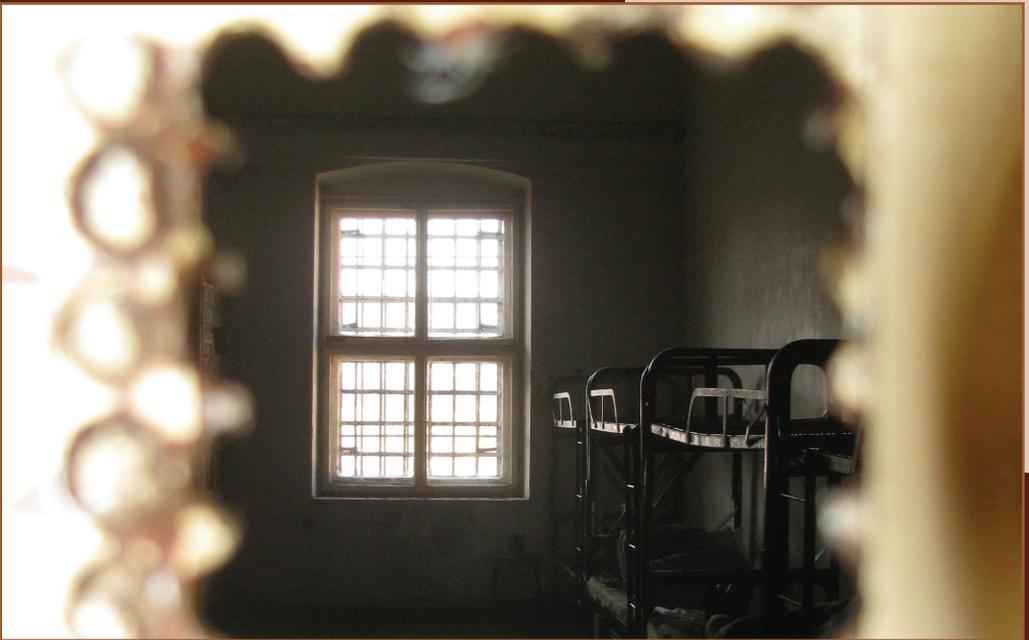




COMMISSIONER FOR FUNDAMENTAL RIGHTS  
UN NATIONAL HUMAN RIGHTS INSTITUTION

# Comprehensive Report

by the Commissioner  
for Fundamental Rights  
on the Activities  
of the OPCAT National  
Preventive Mechanism  
in 2018



APRIL 2019



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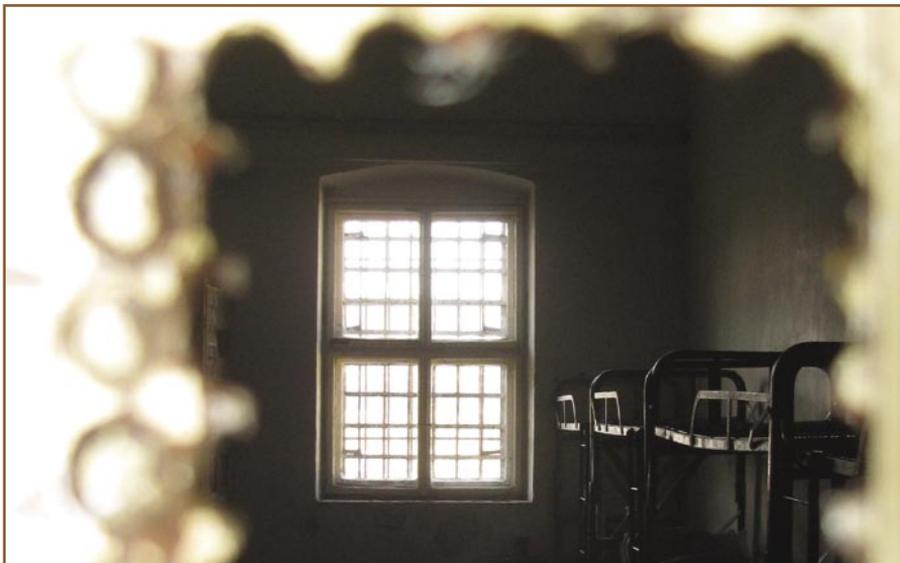




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# Abbreviations

<b>CCB</b>	Civil Consultative Body
<b>Committee (CAT)</b>	UN Committee against Torture
<b>CPT</b>	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
<b>CRPD</b>	Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007
<b>Department</b>	OPCAT National Preventive Mechanism Department
<b>ECHR</b>	European Court of Human Rights
<b>ELTE</b>	Eötvös Loránd University
<b>European Convention on Human Rights</b>	Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, promulgated by Act XXXI of 1993
<b>HDG for SACP</b>	Hungarian Directorate-General for Social Affairs and Child Protection
<b>HNPB</b>	Hungarian National Police Headquarters
<b>MoHC</b>	Ministry of Human Capacities
<b>MoI</b>	Ministry of Interior
<b>MoJ</b>	Ministry of Justice
<b>MoSFA Decree</b>	Minister of Social and Family Affairs Decree 1/2000. (I. 7.) SzCsM on the professional duties of social institutions providing personal care and on the conditions of their operation
<b>MPHB</b>	Metropolitan Police Headquarters of Budapest
<b>NPM</b>	National Preventive Mechanism
<b>NUPS</b>	National University of Public Service
<b>Office</b>	Office of the Commissioner for Fundamental Rights
<b>Ombudsman Act</b>	Act CXI of 2011 on the Commissioner for Fundamental Rights
<b>OPCAT</b>	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment promulgated by Act CXLIII of 2011
<b>Place of detention</b>	Any place under the state's 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 (Article 4 of the OPCAT)

<b>Prison Code</b>	Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention for Misdemeanour
<b>Staff Regulations</b>	Minister of Interior Decree 30/2011. (IX. 22.) BM of the on Staff Regulations of the Police
<b>Subcommittee on Prevention of Torture (SPT)</b>	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
<b>UN</b>	United Nations
<b>UN Convention Against Torture (UNCAT)</b>	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment promulgated by Legislative Decree 3 of 1988
<b>UN Convention on the Rights of the Child</b>	Convention on the Rights of the Child, signed in New York on 20 November 1989, promulgated by Act LXIV of 1991

# Introduction

Ever since the establishment of the ombudsman institution in Hungary, Hungarian ombudsmen – responsible to the Parliament – have been regularly visiting state and local institutions where the residents were persons deprived of or restricted in their liberty. The objective of the ombudsman’s inspections has been to learn to what extent the fundamental rights of persons who are detained in institutions or are restricted in their liberty for shorter or longer periods of time due to their age, health condition, difficult situation, or as a result of a judicial order, are respected.

As a general rule, the Commissioner for Fundamental Rights launches investigations on the basis of submissions;<sup>1</sup> however, in connection with the activities of the authorities,<sup>2</sup> he/she as ombudsperson may also conduct ex officio proceedings “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.”<sup>3</sup> As the defender of fundamental rights, I have mostly initiated ex officio inquiries in order to protect the rights of society’s most vulnerable groups whose members are not or are only partially able to voice their complaints or submit them to the competent local or state authorities.<sup>4</sup> Similarly to my predecessors in the Office, I consider persons living in institutional care as a vulnerable group of society; therefore, I have conducted regular inquiries into their treatment even in the absence of formal submissions.

In recognition of the professional knowledge and practical experience in the examination of the treatment of persons living in institutional care obtained by the Ombudsman and the ombudsman institution’s staff, the Parliament has decided to entrust the Commissioner for Fundamental Rights, responsible solely to the Parliament, with the tasks of the National Preventive Mechanism (hereinafter the “NPM”) pursuant to Article 3 of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment (hereinafter the “OPCAT”<sup>5</sup>).<sup>6</sup> In addition to my activities in the

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<sup>1</sup> Section 18(1) of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter: the Ombudsman Act).

<sup>2</sup> Section 18(1)a)–l) of the Ombudsman Act.

<sup>3</sup> Section 18(4) of the Ombudsman Act.

<sup>4</sup> Section 1(2)d) of the Ombudsman Act.

<sup>5</sup> Optional Protocol to the Convention against Torture and other Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011 (hereinafter: the “OPCAT”).

<sup>6</sup> Section 2(6) of the Ombudsman Act.

domain of the protection of fundamental rights stipulated in Article 30 of the Fundamental Law, I have been performing the NPM tasks, as the first Hungarian Ombudsman with such a mandate, since 1 January 2015.

In order to perform my tasks related to the NPM, I regularly examine the treatment of persons deprived of their liberty and held at various places of detention (hereinafter “place of detention”), specified in Article 4 of the Protocol, also in the absence of any petition or alleged impropriety.<sup>7</sup> In performing my tasks related to the NPM, I conducted 52 inspections till 30 December 2018, which accounts for a significant part of my activities.

I have regularly published my reports on the unannounced, multidisciplinary visits at various places of detention on the homepage of my Office. The reports by the NPM have been receiving attention from and processed by not only the printed and electronic press but also the professional circles concerned.

I have reviewed my activities on the basis of the observations and recommendations<sup>8</sup> put forth by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the “Subcommittee on Prevention of Torture”, SPT)<sup>9</sup> in its report on its visit to Hungary from 21 to 30 March 2017, and I have informed the Subcommittee on Prevention of Torture about it in writing.<sup>10</sup>

This is the fourth time that I am complying with my obligation<sup>11</sup> to prepare a comprehensive report on the performance of the tasks related to the National Preventive Mechanism.

In addition to reporting on the visits performed by the NPM, this comprehensive report on the performance of these tasks in 2018 is also to inform the reader about the challenges, the dialogue with the competent ministries and authorities, and the cooperation with non-governmental organizations, foreign partner institutions, and international human rights organizations, as well as my response to the conclusions and recommendations of the Subcommittee on Prevention of Torture, and my measures with a view to their implementation.

Budapest, April 2019

*László Székely*

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<sup>7</sup> Section 39/B(1) of the Ombudsman Act.

<sup>8</sup> Article 2 of OPCAT.

<sup>9</sup> SPT Visit to Hungary, 21-30 March 2017: Conclusions and Recommendations for the National Preventive Mechanism (CAT/OP/HUN/R.2). I have published the report of the Subcommittee on Prevention and my response to it on the website of the Office in both Hungarian and English. Available at: [www.ajbh.hu/opcat-SPT-jelentes-2017](http://www.ajbh.hu/opcat-SPT-jelentes-2017)

<sup>10</sup> See: Annex 1.

<sup>11</sup> Section 39/C of the Ombudsman Act.

# 1.

## The legal background of the operation of the National Preventive Mechanism

The State shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.<sup>12</sup>

### 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(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(3) of the Fundamental Law<sup>13</sup>]

### 1.2. International treaties

According to the Fundamental Law, in Hungary, the “*rules for fundamental rights and obligations shall be laid down in an Act*”.<sup>14</sup> *Acts shall be adopted by the Parliament*.<sup>15</sup> International treaties containing rules pertaining to fundamental rights and obligations shall be promulgated by an act.<sup>16</sup>

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<sup>12</sup> See Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988.

<sup>13</sup> Text established by the seventh amendment of the Fundamental Law, entered into force on 29 June 2018.

<sup>14</sup> See Article 1(3) of the Fundamental Law.

<sup>15</sup> See Article 1(2)b) of the Fundamental Law.

<sup>16</sup> See Section 9(1) of Act L of 2005 on the procedure related to international treaties.

### 1.2.1. UN instruments

Pursuant to Article 7 of the **International Covenant on Civil and Political Rights**, adopted by the 21st Session of the UN General Assembly on 16 December 1966, promulgated by Law-decree 8 of 1976,<sup>17</sup> *“no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment”*.

From the aspect of performing tasks related to the National Preventive Mechanism, Article 10.1 of the Covenant, stipulating that *“all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person”*, has special significance.

According to Article 37 of the Convention on the Rights of the Child, signed in New York on 20 November 1989 (hereinafter the “UN Convention on the Rights of the Child”), promulgated by Act LXIV of 1991, the 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 offences committed by persons below eighteen years of age”*.

Pursuant to Article 15 of the **Convention on the Rights of Persons with Disabilities** (hereinafter the “CRPD”), promulgated by Act XCII of 2007, *“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”*. The *“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 treatment or punishment”*.

In Hungary, the **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** (hereinafter the “UN Convention against Torture”), promulgated by Law-decree 3 of 1988, entered into force on 26 June 1987. The definition of torture was introduced to Hungarian law upon the entering into force of the UN Convention against Torture. Pursuant to Article 1 of the UN Convention against Torture, 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 from 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

<sup>17</sup> Before January 1988, in the field of legislation, the Presidium of the People’s Republic (hereinafter the “PPP”) had the power of substitution as regards the Parliament, with the exceptions that it could not amend the Constitution or adopt any source of law named “act”. Statutory-level legal sources adopted by the PPP were called law-decrees. No law-decree may be adopted since the abolishment of the PPP. Prevailing law-decrees may be amended or repealed only by an act. See Clause IV/2 of Constitutional Court Decision 20/1994 (IV. 16.).

- 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.

In addition to the above, pursuant to Article 16.1. of the UN Convention against Torture, each State Party shall undertake to prevent in any territory under its jurisdiction other acts of “*cruel, inhuman or degrading treatment or punishment* (hereinafter collectively: “ill-treatment”)<sup>18</sup> 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”.

In accordance with Article 3 of the UN Convention against Torture, “no State Party shall expel, return (“refouler”) 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”.

The States Parties shall inform the UN Committee against Torture (hereinafter the “Committee”), in the form of periodic reports, on the performance of their obligations deriving from the UN Convention against Torture and any new measures taken by them. The Committee may inquire into complaints, submitted by states or private persons, that claim that any State Party fails to comply with its obligations deriving from the UN Convention against Torture. The Committee may launch an inquiry if it receives reliable information which appears to it to contain well-founded indications that torture is systematically practised in the territory of a State Party.<sup>19</sup> Documents published by the Committee, including, in particular, its general comments, the periodic reports of the States Parties,<sup>20</sup> documents generated within the frameworks of the complaints mechanism, and the Committee’s annual reports provide important guidelines to the National Preventive Mechanisms.<sup>21</sup>

The Optional Protocol to the **Convention against Torture and Other Inhuman or Degrading Treatment or Punishment**, promulgated by Act CX-LIII of 2011, is open to accession by only those States that have ratified or acceded to the Convention.<sup>22</sup>

<sup>18</sup> See: UN Committee Against Torture (CAT) *General Comment No. 2* (Clause 3 of CAT/C/GC/2).

<sup>19</sup> See Articles 19 to 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

<sup>20</sup> Information on the periodic reports submitted by Hungary are available at [http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=HUN&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=HUN&Lang=EN)

<sup>21</sup> The documents of the UN Committee against Torture (CAT) are available at <http://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>

<sup>22</sup> See Article 27(3) of the OPCAT.

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 ensured not through judicial means but via regular, preventive visits to the various places of detention. In the system established by the OPCAT, regular visits are 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.<sup>23</sup>

Pursuant to Article 4(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”*.

The OPCAT has established the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. One of the main tasks of the Subcommittee on Prevention of Torture is to inspect places where persons are deprived of their liberty; on the other hand, it advises and assists States Parties, when necessary, in establishing and operating their independent national bodies conducting regular visits to places of detention.<sup>24</sup> From the aspect of the operation of the National Preventive Mechanisms and in addition to the general directives<sup>25</sup> of the Subcommittee, the specific directives and recommendations<sup>26</sup> made in its reports on the Subcommittee’s visits to the States Parties are also applicable. I received the Report of the Subcommittee on Prevention of Torture about its first visit to Hungary which contained its conclusions and recommendations concerning the activities of the NPM on 8 December 2017.<sup>27</sup>

### 1.2.2. Instruments of the Council of Europe

Pursuant to Article 3 of the European Convention on Human Rights, signed in Rome on 4 November 1950, promulgated by Act XXXI of 1993 (hereinafter the *“European Convention on Human Rights”*), *“no one shall be subjected*

<sup>23</sup> See Article 1 of the OPCAT

<sup>24</sup> See Article 11 of the OPCAT

<sup>25</sup> SPT: *Guidelines on national preventive mechanisms* (CAT/OP/12/5); SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (CAT/OP/1/Rev.1); *Compilation of SPT Advices to NPMs*. The documents are available at <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Brief.aspx>

<sup>26</sup> See: SPT: *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 72/c of CAT/OP/MDV/1)

<sup>27</sup> SPT Visit to Hungary, 21-30 March 2017: *Conclusions and Recommendations for the National Preventive Mechanism* (CAT/OP/HUN/R.2). Available at: [www.ajbh.hu/opcat-SPT-jelentes-2017](http://www.ajbh.hu/opcat-SPT-jelentes-2017)

to torture or to inhuman or degrading treatment or punishment". Unlike the UN instruments, Article 3 of the European Convention on Human Rights does not use the expression "cruel."

Compliance with the obligations stipulated in the European Convention on Human Rights and its protocols, including the prohibition of torture, inhuman, degrading treatment or punishment, provided for in Article 3, is monitored *mainly* by the European Court of Human Rights (hereinafter the "ECHR"). Pursuant to 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 a period of six months after all domestic remedies have been exhausted.<sup>28</sup> In addition, any High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention by another High Contracting Party.<sup>29</sup> In the course of its proceedings, the European Court shall determine whether the authorities of the state concerned have violated any article of the European Convention on Human Rights.

According to the ECHR's case-law, *torture* means serious and deliberate cruelty that cannot be established in the absence of serious physical and/or mental injuries. *Inhuman treatment or punishment* causes, if not actual bodily injury, at least intense physical and mental suffering. *Degrading treatment or punishment* is such as to arouse in their victims feelings of fear, anguish, and inferiority, capable of humiliating and debasing them and possibly breaking their physical or moral resistance.<sup>30</sup>

From the aspects of the National Preventive Mechanism's activities, particularly those, Article-3-related, judgements of the ECHR have relevance which deal with the conditions of detention and issues related to the treatment of persons deprived of their liberty (hygienic conditions, abuse by fellow detainees or guards, crowdedness, solitary confinement, detention of minors, detention under immigration laws, physical and mental health of the detainees, etc.).<sup>31</sup>

Hungary acceded to the **European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment**, signed in Strasbourg on 26 November 1987, promulgated by Act III of 1995, on 4 November 1993; its provisions are to be applied as of 1 March 1994.<sup>32</sup>

<sup>28</sup> Articles 34 and 35 of the European Convention on Human Rights.

<sup>29</sup> Article 33 of the European Convention on Human Rights.

<sup>30</sup> Judgement of the European Court of Human Rights, Ireland v. the United Kingdom (18 January 1978), Clause 167.

<sup>31</sup> Factsheets on ECHR's case-law. Available at: <http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets>

<sup>32</sup> See Section 3 of Act III of 1995.

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the “CPT”) has been established by Article 1 of the European Convention for the Prevention of Torture. The CPT shall, by means of regular visits to the territories of the High Contracting Parties, “*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*”. Following every visit, the CPT prepares a report containing, in addition to the facts discovered in the course of the visit, the comments of the body and its recommendations to the authorities concerned.

The CPT met the Parliamentary Commissioner for Civil Rights for the first time during its 1999 periodic visit;<sup>33</sup> since then, the CPT has visited the ombudsman institution during every visit paid to Hungary.<sup>34</sup> I received the delegation of the CPT on 19 November 2018, during its visit to Hungary.<sup>35</sup>

Since the provisions of the OPCAT “*do not affect the obligations of States Parties under any regional convention instituting a system of visits to places of detention,*”<sup>36</sup> the CPT’s reports on its visits to Hungary are of major importance for me. When drafting the National Preventive Mechanism’s first-ever schedule of visits, I relied on the conclusions of the CPT’s reports on its visits to Hungary, its recommendations made to the Government, as well as the latter’s response thereto.<sup>37</sup>

The comprehensive standards<sup>38</sup> of treating persons deprived of their liberty, elaborated by the CPT, interpret the prohibition of torture, inhuman or degrading treatment, stipulated in Article 3 of the European Convention on Human Rights, from the aspects of the practical operation of various places of detention (e.g. prisons, police lock-ups, psychiatric institutions, detention centres for refugees) and various vulnerable groups, such as women and juveniles.

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<sup>33</sup> The first Parliamentary Commissioner for Civil Rights (Ombudsman) was inaugurated on 1 July 1995.

<sup>34</sup> Information related to the CPT’s visits to Hungary is available at: <http://www.coe.int/en/web/cpt/hungary>

<sup>35</sup> On the CPT’s visit to Hungary between 20 and 29 November 2018, see: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-hungary>

<sup>36</sup> Article 31 of OPCAT

<sup>37</sup> See: CPT *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 12 April 2013* [CPT/Inf (2014) 13] and The Hungarian Government’s Response to the CPT’s Report [CPT/Inf (2014) 14].

<sup>38</sup> See: CPT standards <https://www.coe.int/en/web/cpt/standards>

## 1.3.

## Preventive activities of the National Preventive Mechanism

The “Commissioner for Fundamental Rights shall perform fundamental rights protection activities”<sup>39</sup> which also cover the enforcement of the prohibition of torture, inhuman, degrading treatment or punishment.

Pursuant to Article 2.1 of the UN Convention against Torture, “each State shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”. “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency,”<sup>40</sup> or “an order from a superior officer or a public authority”<sup>41</sup> may be invoked as a justification of torture. In the opinion of the Constitutional Court, the prohibition of torture and cruel, inhuman, and degrading treatment or punishment is an absolute prohibition, and “thus no other constitutional right or task may be weighed against it”.<sup>42</sup>

Pursuant to Article 11 of the UN Convention against Torture, “each State Party 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”. By virtue of Article 16 of the UN Convention against Torture, the State Party’s obligation to take effective measures, stipulated in Article 2 of the UN Convention against Torture, shall also cover the prevention of ill-treatment.<sup>43</sup>

The State Party also has an obligation to prevent torture and ill-treatment, stipulated in Articles 2 and 16 of the UN Convention against Torture, whether committed by public officials, other persons acting in an official capacity or private individuals. It is the responsibility of States Parties to prevent acts of torture and ill-treatment in all contexts of deprivation or restriction of liberty, including, for example, in prisons, hospitals, schools, institutions that engage in providing care for children, older persons, persons with mental illness or persons with disabilities, in military service and in other institutions as well as in contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.<sup>44</sup> Prevention extends to any type of treatment of any individual deprived of

<sup>39</sup> Section 30(1) of the Fundamental Law.

<sup>40</sup> Article 2.2 of the UNCAT.

<sup>41</sup> Article 2.3 of the UNCAT.

<sup>42</sup> 36/2000. Chapter IV, Clause 2.4 of Constitutional Court Decision 36/2000 (X. 27.)

<sup>43</sup> CAT General Comment No. 2 (Clause 3 of CAT/C/GC/2).

<sup>44</sup> SPE Prevention of torture and ill-treatment of women deprived of their liberty (Clause 13 of CAT/OP/27/1).

liberty that, without checks, may lead to torture or any other cruel, inhuman or degrading treatment or punishment.<sup>45</sup>

Under its obligation to respect and protect fundamental rights, the State shall also provide the conditions necessary for their enforcement of those fundamental rights.<sup>46</sup> The efficient implementation of the provisions related to the prevention and prohibition of torture and ill-treatment is the State's responsibility; therefore, the OPCAT also compels the States Parties to provide for the domestic legal conditions of the efficient operation of the National Preventive Mechanisms.<sup>47</sup>

Both in his activities of the protection of fundamental rights and in performing tasks related to the National Preventive Mechanism, the Commissioner for Fundamental Rights is entitled to review the practical implementation of international treaties constituting part of the domestic legal system. His "*mandate*,"<sup>48</sup> necessary for the operation of the National Preventive Mechanism, and the required material and procedural legal rules<sup>49</sup> are set forth in the Ombudsman Act.<sup>50</sup>

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<sup>45</sup> See: SPT 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 of CAT/OP/MDV/1)

<sup>46</sup> See Constitutional Court decision 64/1991 (XII.10.)

<sup>47</sup> See Part IV of the OPCAT

<sup>48</sup> See Article 19 of the OPCAT

<sup>49</sup> See Articles 3, 4, 17, 18, 20–22, and 23 of the OPCAT

<sup>50</sup> See Section 2(6) and Section 39/A–39/E of the Ombudsman Act.

## 2.

# Staff members participating in performing tasks related to the NPM and the costs related to performing the tasks of the NPM

### 2.1.

## Public servants in the Office of the Commissioner for Fundamental Rights

Pursuant to Article 18.2 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 the performance of my tasks related to the NPM, I may act in person or by way of the members of my staff authorised by me. Staff members authorised by me shall have the investigative powers of the NPM,<sup>51</sup> and the obligation for cooperation of the authorities concerned as well as their management and staff, pursuant to Section 25 of the Ombudsman Act, shall be complied with also in their respect.<sup>52</sup>

To perform tasks related to the NPM, I have to authorise, on a permanent basis, at least eleven public servants from among the staff members of my Office. The “authorised public servant staff members shall have outstanding knowledge in the field of the treatment of persons deprived of their liberty or have at least five years of professional experience”.<sup>53</sup> 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 authorised public servant staff

<sup>51</sup> See Sections 21, 22 and 26, and 27(1)-(2) of the Ombudsman Act.

<sup>52</sup> See Section 39/D(1) of the Ombudsman Act.

<sup>53</sup> See Section 39/D(3) of the Ombudsman Act.

members, the number of the representatives of either sex may exceed that of the other by one at the most.<sup>54</sup>

The staff members of my Office permanently authorised to perform tasks related to the NPM<sup>55</sup> carry out their activities within a separate organizational unit, the OPCAT National Preventive Mechanism Department<sup>56</sup> (hereinafter the “Department”). On 1 January 2018, the Department started to operate with three psychologists and six lawyers on board, but one of the lawyers left a couple of weeks later. The Department’s gender composition was in compliance with the provisions of the Ombudsman Act.

In 2018, while performing the tasks related to the NPM, I faced two major challenges. On the one hand, due to the lack of applicants, we could not fill the two physician positions stipulated in Section 39/D(4) of the Ombudsman Act. My Office employed the physicians participating in the NPM’s visits on an ad hoc basis, using civil law contracts. On the other hand, staff turnover was rather high among the lawyers participating in the performance of tasks related to the NPM. The vacated lawyer position was filled through an open call for application, in accordance with the Ombudsman Act’s provisions on gender composition.

Taking over and completing the ongoing tasks of the departing colleague, and filling the vacated position placed a heavy burden on the staff members of the Department. Due to the permanently vacant physician and the temporarily vacant lawyer positions, the Department worked, on average, with eight public servant staff members during the year.

## 2.2.

### Ad hoc experts

In addition to the public servant staff members, I may also authorise, either permanently or on an ad hoc basis, other experts to contribute to performing the tasks related to the NPM.<sup>57</sup>

In its report on the country visit to Sweden between 10 and 14 March 2008, the Subcommittee on Prevention of Torture pointed out that *“prevention 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.”*<sup>58</sup>

<sup>54</sup> See Section 39/D(4) of the Ombudsman Act.

<sup>55</sup> See Section 39/D(3)-(4) of the Ombudsman Act.

<sup>56</sup> SPT: *Guidelines on national preventive mechanisms (Clause 32 of CAT/OP/12/5)*.

<sup>57</sup> See Section 39/D(3) of the Ombudsman Act.

<sup>58</sup> See: SPT: *Report on the Visit of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment to Sweden (10 September 2008)*, (Clause 36 of CAT/OP/SWE/1).

External experts contributing to the performance of tasks related to the NPM are selected in an autonomous way, from the roster of experts recommended by the members of the Civil Consultative Body, following consultations with the recommending civil organization. My Office employed the non-public-servants participating in the NPM's visits on an ad hoc basis, using civil law contracts. Their activities and remuneration were based on civil law contracts and in accordance with the prevailing regulations<sup>59</sup> on forensic experts. The experts issued written statements on confidentially handling any and all data and information learned in connection with performing their tasks, not disclosing them to third persons without my written consent, and not making any statements to the media and/or any third person.

On some occasions, during the preparation of the visits, I also involved experts by experience, i.e. persons with practical knowledge of the operation of the place of detention to be visited.

On 11 April 2018, I convened a workshop for the non-public-servants taking part in the performance of the tasks of the National Preventive Mechanism, and for the staff members of the Department. The aim of the workshop was to ensure the consistence of the working methods for both my team composed of public servants and the experts delegated by the member organizations of the Civil Consultative Body, as well as appropriate information flow between the members of the visiting delegations.



*Workshop for the ad hoc experts of the NPM*

The following persons participated as ad hoc experts in the visits of the NPM in 2018:<sup>60</sup> *dr. Krisztina Baraczka dr. Szegedyné*, psychiatrist, neurologist, forensic psychiatrist; *dr. Ádám Lelbach*, internist, geriatrician, gastroenterologist;

<sup>59</sup> See Act XXIX of 2016 on Judicial Experts and Minister of Justice's Decree 3/1986 (II. 21.) on the Remuneration of Judicial Experts.

<sup>60</sup> Pursuant to Section 39/D(3) of the Ombudsman Act.

*Dr. János Nemes*, infantologist and paediatrician, infant and child cardiologist; *dr. Zsolt Petke*, psychiatrist, addictologist; *Dr. János Réthelyi*, psychiatrist, psychotherapist, clinical geneticist; and *Gabriella Hartmann*, dietitian.

### 2.3.

## Costs related to performing the tasks of the NPM in 2018

The 2018 budget of the Office of the Commissioner for Fundamental Rights was planned in consideration of the financial coverage necessary for the performance of the tasks of the NPM. The resources at the NPM's disposal covered the costs of the performance of the tasks in connection with his mandate.<sup>61</sup>

Expenditure for 2018	Amount
Personal allowances (8 persons*)	57,310,663
Contributions	12,338,534
Professional and administrative materials	806,859
IT and communication expenses	1,150,977
Services supporting professional activities	1,141,718
Delegation expenses	580,219
International membership fees	236,827
Maintenance and repair costs	312,546
Public utility fees	871,904
Operational services	5,764,188
VAT	2,274,708
<b>Total in HUF</b>	<b>82,789,143**</b>

\* In 2018 the Department operated with eight public servant staff members on average. Personal allowances, contributions and delegation expenses indicate amounts allocated to the Department separately.

\*\* The NPM's budget was HUF 69,647,352 in 2015, HUF 63,760,490 in 2016, and HUF 76,217,024 in 2017.

<sup>61</sup> SPT Visit to Hungary, 21–30 March 2017: Conclusions and Recommendations for the National Preventive Mechanism (Clause 24 of CAT/OP/HUN/R.2).

# 3.

## The NPM's cooperation with civil society organizations

Pursuant to Article 3 of the OPCAT, the Commissioner for Fundamental Rights has to perform the tasks related to the NPM independently.<sup>62</sup> However, in my activities aimed at promoting the enforcement and protection of human rights, I have to cooperate with *“organizations and national institutions aiming at the promotion of the protection of fundamental rights”*.<sup>63</sup>

### 3.1.

#### The tasks of the Civil Consultative Body

The Civil Consultative Body (hereinafter the “CCB”), established 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, which consists of four invited members and another four members selected as a result of a public call for application, assists the activities of the National Preventive Mechanism with its recommendations and comments.

The mandate of the CCB set up three years ago, in 2014, expired on 19 November 2017. The NPM published its public call for applications on 19 October 2017 on the website and social media site of the Office of the Commissioner for Fundamental Rights, as well as in the weekly newsletter edited and disseminated by the Non-profit Information and Training Center Foundation, containing the information necessary for the everyday operation of civil society organizations operating in Hungary.<sup>64</sup>

Members of the CCB selected as a result of a public call for application are the Cordelia Foundations for the Rehabilitation of Torture Victims, the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union, and the Validity Foundation (its earlier name was Mental Disability Advocacy Center – MDAC).

<sup>62</sup> See Section 2(6) of the Ombudsman Act.

<sup>63</sup> See Section 2(5) of the Ombudsman Act.

<sup>64</sup> The public call for applications was published in the newsletter on four occasions: on 26 October, and 2, 8 and 15 November 2017.

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 operates as a body. In the course of the CCB's operation, its members may make recommendations relative to the contents of the annual schedule of visits of the NPM and the inspection priorities; initiate visits to certain places of detention; recommend the involvement of experts with special knowledge who may be affiliated with the organization they represent. The CCB may review the NPM's working methods, reports, information materials, and other publications; discuss the training plan designed for developing the capabilities of the staff members authorised to perform the tasks related to the NPM; furthermore, it may participate in conferences, workshops, exhibitions, and other events organized by the NPM.<sup>65</sup>

Similarly to the practice of the previous years, the 2018 schedule of visits was devised in consideration of the CCB's recommendations. The CCB's recommendations were taken into account also during the designation of the places to visit as well as while approving the schedule of visits.

The NPM has to develop coherent and transparent rules of procedure for the employment of external experts with necessary qualifications and practical knowledge.<sup>66</sup> Since the statutory provision regarding the employment of two physicians could not be complied with due to the lack of applicants, some members of the Hungarian Medical Chamber and the Hungarian Psychiatric Association contributed as external experts to the NPM's visits. When selecting external experts, in addition to the recommendations of the Hungarian Medical Chamber and the Hungarian Psychiatric Association, I also took into account the relevant provisions of the legal regulation on judicial (forensic) experts.<sup>67</sup> I forwarded the reports on the NPM's visits to the members of the CCB as well.

In 2018 the CCB had two meetings: on 16 May and 4 December.<sup>68</sup> The one held in May happened to be the first meeting of the CCB set up for three years for the second time now.<sup>69</sup>

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<sup>65</sup> See Section 6 of Normative Instruction 3/2014 (IX. 11.) of the Commissioner for Fundamental Rights on the establishment and the rules of procedure of the Civil Consultative Body facilitating the performance of the tasks of the National Preventive Mechanism.

<sup>66</sup> See SPT: *Analytical self-assessment tool for National Prevention Mechanisms* [Clause 16(e) of CAT/OP/1/Rev.1].

<sup>67</sup> See Act XLVII of 2005 on the activities of judicial experts and the provisions of Minister of Justice's Decree 9/2006 on the specialities of judicial experts and on the qualification and other professional conditions related to them.

<sup>68</sup> The materials of the 16 May meeting of the CCB are filed in my Office under number AJB-1915/2018, and the materials of the 4 December meeting under number AJB-4623/2018. The minutes of the CCB meetings are accessible to the public on the NPM's homepage. See <http://www.ajbh.hu/opcat>

<sup>69</sup> The first ever meeting of the CCB was held on 19 November 2014.

## 3.2.

### The meetings of the CCB

The participants of the **CCB meeting on 16 May 2018** were informed that on 8 December 2017 the UN sent its report (hereinafter the “Report”) to the National Preventive Mechanism on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter the “SPT”) to Hungary in 2017. The NPM published the Report as well as its Hungarian translation on the Office’s website, and it was also transmitted to the participants of the CCB meeting. The National Preventive Mechanism was to react to the observations and recommendations of the Report in writing by 7 June 2018 the latest. Similarly to the Report, the NPM’s response would be public.

As it was mentioned at the CCB meeting, the NPM published four reports after the last meeting of the CCB, which were also sent to those present. With that all the reports of the NPM were completed on its visits in 2016, and were made available on the website. The staff members of the Department have been working on the reports on the visits carried out in 2017. In 2018 the NPM visited three places of detention of the police so far.

The Head/Deputy Head of the OPCAT Department informed the participants that the comprehensive report on the performance of the NPM’s tasks for 2017 would soon be completed, and the Parliament would discuss it within the framework of the annual report on the activities of the Commissioner for Fundamental Rights. The Commissioner for Fundamental Rights noted that his annual report – with the exception of certain cases – is usually received with modest interest by the Members of Parliament.

The focus point of the visits in 2018 was the means of communication. This criterion was selected on the basis of the petitions of a member of the Hungarian Bar Association, who called the NPM’s attention to certain problems that he/she had faced as a defender or as a legal representative.

On 11 April 2018, the NPM held a workshop with the participation of the representatives of the CCB member organizations for non-lawyer experts taking part in the visits. The NPM appreciates all feedback on how the experts engaged as well as the civil society organizations delegating them consider the joint work, and what they suggest with a view to improving it.

It was announced that the week after the CCB meeting the NPM and its staff would travel to Celje upon the Slovenian NPM’s invitation, where they would discuss the findings of the follow-up visit made to the juvenile penitentiary institution, and would then visit the local prison. On 21 June 2018 the Commissioner for Fundamental Rights would travel to Austria upon the invitation of the Austrian NPM. In the framework of the bilateral cooperations with the Austrian and Slovenian NPMs, visits

and exchanges of experience are held twice a year in each of the countries, respectively.

The Hungarian Helsinki Committee consulted with the Prosecutor General. The professional materials resulting from their correspondence were published on the HHC's website. The HHC also consulted with the Hungarian National Police Headquarters (hereinafter the "HNPH") concerning the restrooms to be set up inside the cells. As far as the Committee knows, the financial resources had been made available for these works, but the refurbishment did not start yet.

It is unclear why – despite the follow-up visit made to the Central Holding Facility of the Metropolitan Police Headquarters of Budapest – the changes initiated by the NPM and promised by the Police did not yet materialize. In response to the NPM's recommendation, the HNPH replied that they had approximately HUF 300 million for the above purpose at their disposal; however, the integration of restrooms within the cells would require such major transformations which – realistically speaking – could be undertaken by the organization only in 1-2 years of time. The NPM would consider to meet with the officials of the police places of detention concerned in person to further discuss that matter.

The NPM selects the sites of the follow-up visits by considering two aspects. Firstly, the NPM examines whether there is a risk of serious improprieties affecting a lot of people, as it had been the case at the Tököl Juvenile Penitentiary Institution ("high-security" issues). Second, there are places of detention such as Platán Integrated Social Institution, where the institution moved back to its headquarters from its temporarily premises, and where it was reasonable to examine whether the recommendations put forth in the report were honoured or not ("low-security" issues).

The staff members of the Hungarian Helsinki Committee conduct inquiries continuously into the regularity of arrest and handcuffing. It is regrettable that they could not engage the Ministry of Interior in a meaningful dialogue on this matter. According to the Ministry of Interior's position concerning the automatic handcuffing practice used by the Police during the transfer of the detainees, it is not only the detainees' interests that should be taken into consideration, but the personal integrity and safety of the police officers as well. Based on its experience, the NPM believes that the problem is rooted in the fact that the Staff Regulations of the police exceeded the latter's authorization set forth by the Police Act and created an additional reason for handcuffing.

The representative of the Hungarian Helsinki Committee suggested that due to the overwork of the NPM's staff members working as public servants, as well as the high turnover, the employees of the member organizations of the CCB should be involved in visits and in the writing of draft

reports. The operation of the NPM could be more efficient if for instance, the staff members of the Hungarian Helsinki Committee, who have substantial experience in this field, could take part in the visits of the police holding facilities. The Hungarian Helsinki Committee intends to take part in the monitoring of the places of detention so that its staff members could transmit their professional expertise and notes – completed by analytical comments – to the person leading the visit, who could then integrate that into his/her own report at his/her discretion. According to the Hungarian Helsinki Committee's position, their activity would be no different from the assistance of a medical expert.

The Deputy Head of Department said that the main reason for the high turnover rate was the employees' ambition of higher salaries. The NPM relies on the capacities of the civil society organizations mostly in the selection and involvement of non-lawyer experts. The Ombudsman Act differentiates between staff members who are public servants and have the NPM's permanent authorisation for this task and those external experts who are involved and authorised on a one-off or a regular basis. Regarding the external experts involved, the Ombudsman Act stipulates that in addition to staff members who are public servants, the Commissioner for Fundamental Rights may authorise other experts as well on an ad hoc or a permanent basis. External experts involved in the given visits are entitled to access only those data that are necessary for the preparation of their expertise. It is only the public servant staff members of the NPM authorised on a permanent basis who have the full scope of eligibilities listed and provided by the Ombudsman Act as National Preventive Mechanism. The writing of the draft reports on the visits is the task of the NPM staff composed of authorised public servants, and it may not be delegated to the staff members of civil society organizations. The performance of the tasks of the NPM is the duty of the Commissioner for Fundamental Rights, who may proceed both in person and through his authorised staff members. The necessary legal expertise for the performance of the task is available at the Office of the Commissioner for Fundamental Rights. Non-lawyer experts – especially medical experts, dietitians, interpreters – involved in the performance of the NPM's tasks are employed by the National Preventive Mechanism on an ad hoc basis through civil law contracts.

Based on the experience so far acquired during the activities of the NPM, following the preparation of a specific visit, participation in it, and then writing their expertise, public servants qualified in fields other than law (e.g. physicians) are unable to contribute efficiently to regular office work. The NPM intends to initiate the amendment of the Ombudsman Act in such a way that would allow the NPM to employ lawyers to fill vacancies reserved for physicians. The requirements regarding non-lawyer experts can be met by involv-

ing external experts delegated by civil society organizations, which would guarantee more flexibility and transparency for the execution of the task.

The representative of the Hungarian Helsinki Committee assumes that not all of the more than one hundred lawyer staff members of the Office of the Commissioner for Fundamental Rights have broad experience in monitoring places of detention. If the civil society organizations could take part without asking for remuneration for their work, the reports could be completed faster, in line with the SPT's expectations.

The Deputy Head of Department agreed that the Office has insufficient human resources indispensable for drafting the reports. There is no statutory provision based on which the Commissioner for Fundamental Rights could divide his competence as NPM with civil society organizations or others. No one can work for free in the performance of the tasks of the National Preventive Mechanism. In such cases, statutory provisions pertaining to voluntary work carried out without remuneration should be applied.

The Commissioner for Fundamental Rights called attention to the fact that not even judges involve external legal experts to draft their judgements because it is the judges that must have the necessary legal competence to be able to decide in a case.

The Deputy Head of Department pointed out that the fund set up in accordance with Article 26 of OPCAT (hereinafter the "Fund") made it possible to aid the funding of the implementation of the recommendations formulated in the wake of the visits paid to the States Parties by the Subcommittee on Prevention of Torture as well as that of the educational programmes of the National Preventive Mechanisms. The deadline for the submission of applications for 2018 was 28 February. In his response to the Report, the Commissioner for Fundamental Rights proposed that based on Article 11 of OPCAT, the SPT could help reinforce the NPM's capacities by holding trainings. The Deputy Head of Department informed those present that the NPM would consult with the representative of each and every member organization of the CCB regarding the applications for 2019.

According to the Deputy Head of Department, the NPM's schedule of visits for 2018 includes several police places of detention and penal institutions. The NPM welcomes any warnings in connection with the operation of all types of places of detention as well as with the ill-treatment of the detainees. The Deputy Head of Department asked the participants to inform the NPM if they had information about or learn of any relevant facts or circumstances.

The Commissioner for Fundamental Rights reported that the director of the Cseppkő Children's Home had brought a lawsuit against the Commissioner for Fundamental Rights claiming to have suffered damage to the reputation of the institution as a result of the conclusions and recommen-

dations contained in the report on the NPM's visit to the institution. The court dismissed the action at first instance. The claimant appealed against the decision whereas the Office brought a defence and a cross-appeal. The proceedings on appeal are pending. The case could set a precedent as to whether a civil court may review the unfavourable conclusions, critical remarks and recommendations of the NPM concerning any institution in consideration of personality rights. The Commissioner for Fundamental Rights thanked the participants for their attendance and closed the meeting.

At the **CCB meeting on 4 December 2018**, the Commissioner for Fundamental Rights gave a brief overview of the results of his four-year activity carried out while performing the NPM's tasks. By the time of this meeting, the NPM visited 51 places of detention, published 27 reports and additional reports were under publication. The NPM responded to and published the SPT's report addressed to the NPM, after which it became possible to submit an application to the Fund set up in accordance with Article 26 of OPCAT. In the year 2018, the Hungarian NPM discussed its findings with the staff members of the Serbian, Slovenian and Austrian National Preventive Mechanisms. During these meetings, the Hungarian NPM had an occasion to visit places of detention operating in the territory of other states. In November 2018 the Office received the delegation of the CPT. The staff members of the Department attended international professional events on several occasions.

The Head of Department presented the NPM's and the Department's activities carried out since the last CCB meeting. In 2018, the NPM made six visits up until the meeting. The NPM inspected the police lock-ups and custody rooms in Nógrád County in January, an integrated home in Borsodivánka in May, Facility III of the Szeged Strict and Medium Regime Prison in June, the custody rooms of the police of Baranya County in September, foster parent homes in Vas County in October, and it paid a follow-up visit to the Central Prison Hospital in November. In the period following the CCB meeting of 4 December 2018, the NPM was planning to carry out one more inspection.

By the time of the meeting, the NPM had published five reports about its visits made at the following sites: the juvenile correctional institutions of Debrecen and Nagykanizsa; the police custody units in the 14<sup>th</sup> district of Budapest; the integrated home in Nagymágocs; the Fejér County police lock-up; the follow-up visit to the Central Holding Facility of the MPH. The report on the Márianosztra Strict and Medium Regime Prison had been completed. The NPM posted it to the entities concerned, and also published it on its website shortly after the meeting. The staff members of the Department were working on nine reports in December 2018, three of which were ready for publication. In connection with four of the reports

(in the cases of the Fejér County police lock-up, Forensic, Psychiatric and Mental Institution, the juvenile correctional institutions and the 14<sup>th</sup>-district custody room of the MPH), the NPM was consulting with the authorities concerned. The NPM's website had been significantly transformed, and its contents were continuously updated.

At the second CCB meeting held in 2018, the representative of the Hungarian Helsinki Committee inquired about the response received by the NPM regarding its objection to the so-called "caged" isolation ward in its report on the Debrecen Reformatory of the MoHC. The leader of the inquiry said that in response to the NPM's initiatives, the institution informed the NPM that the "caged" isolation ward would be transformed or completely eliminated, and another room would be set up for the purposes of isolation. The NPM asked the institution to report on the practical implementation of the latter.

The representative of the Hungarian Helsinki Committee remarked in connection with the report on the Márianosztra Strict and Medium Regime Prison that in 2016 the Hungarian Helsinki Committee also visited the institution. Their staff members, who visited the premises on several occasions, exposed numerous serious problems, including the use of the security isolation ward and the impossibility to identify the members of the operational team. As a result of their report, the Hungarian Prison Service Headquarters executed a targeted control in the Márianosztra Strict and Medium Regime Prison, and subsequently, the management was also replaced. The HHC expected to read about the happenings of 2016 and the current situation that evolved in their wake, but the document contained no information on that. The representative of the Hungarian Helsinki Committee missed reading observations regarding the practice of camera use, nor did she find information on whether the protective equipment (such as dust masks) of detainees involved in labour programmes had been replaced as proposed by the Hungarian Helsinki Committee. Although problems related to the use of the security isolation ward did appear in the report, they only did so in few paragraphs. According to her, the report did not adequately reflect on the especially serious and objectionable practice of the use of physical violence, which, according to the visiting experience of the Hungarian Helsinki Committee, was common at that institution. She inquired whether the methodology followed during the visits of the NPM makes it possible for the visiting delegation to return on site at a later date if the inspection was hindered or restricted. The staff members of the Hungarian Helsinki Committee were hindered in the performance of their inspection at the Márianosztra Strict and Medium Regime Prison, so they went back several times, partly to put pressure on the facility, and partly to investigate the problems discovered more thoroughly. She wanted to know whether the visiting delegation also faced hindrance in the Márianosztra Strict and

Medium Regime Prison, and if in the event of such hindrance, it was possible to visit the institution once again.

The Head of Department said that the visiting delegation did not see the operational team at work, but none of the detainees objected to them. The visiting delegation examined the use of the security isolation ward; what is more, he spoke to a detainee who was held there at the time of the visit. The members of the visiting delegation recorded the information gained during the interviews in subreports, checked the operation of the cameras, analysed their footage, and took pictures. One of the pictures taken on site is included in the annex of the report. The visiting delegation has to make sure that no one is put at a disadvantage as a result of the on-site inspection, thus the observations of the visiting delegation must be written down in the reports with great care. In this specific case, the tattoos of the detainee shown in the picture (in the annex of the report) were obscured in order to prevent his identification. Although the visiting delegation did not notice any anomalies regarding the functioning of the cameras, video surveillance is prohibited in certain facilities (e.g. showers, lavatories), which are, nonetheless, crucial with a view to the prevention of ill-treatment. The staff members of the Department will strive to emphasize the circumstances of camera use even more in their reports in the future.

The visiting delegation encountered no hindrance in their activities in Márianosztra. One of the reasons for that is that penitentiary organs are aware of their obligation to cooperate with the visiting delegation during the visit of the National Preventive Mechanism. On the other hand, it is possible that the head of institution appointed after the visit of the Hungarian Helsinki Committee had a different attitude than the earlier chief officer. The NPM, too, has recourse to that method: if it is unable to carry out its tasks fully while visiting a certain place of detention, it returns to complete it at a later, unannounced date. This was the case, for instance, with Cseppekő Children's Home. It is an integral part of the NPM's practice to request further information in writing if necessary.

The Deputy Head of Department stressed that the NPM's report is based mostly on interviews made on site. The document contains the information shared by the interviewees with the members of the visiting delegation. Pursuant to Article 20 of OPCAT, places of detention are obliged to provide unrestricted access to their facilities and rooms for the NPM. The reports refer to the abovementioned issue only if a particular place of detention does not meet this obligation or meets it only with a delay. The visiting delegation was able to access the Márianosztra Strict and Medium Regime Prison without delay, and was allowed to move in its premises without restriction.

In penitentiary institutions, the legality of treatment is reviewed by the Prosecution Service, and this competence must also be respected by the

NPM. In its report on its visit at the Márianosztra Strict and Medium Regime Prison, based on Section 33(1) of the Ombudsman Act, the NPM asked the Prosecutor General to have the competent public prosecutor to inquire into the practice of the use of the security isolation ward.

The representative of the Hungarian Helsinki Committee thanked the Deputy Head for the detailed information, and based on the information received at the meeting, but not described in the report, she concluded that the series of visits conducted by the Hungarian Helsinki Committee in 2016 was successful because apparently, numerous problems highlighted by them came to be resolved. She was not convinced that the efficient rights enforcement could be expected from the competent public prosecutor concerning the use of the security isolation ward. She deemed it advisable to ask at least the detainees during the inspections whether they have a possibility to talk to the public prosecutor, and if yes, in what circumstances.

The Head of Department briefed the participants about the applications to be submitted to the Fund set up in accordance with Article 26 of OPCAT. He said that applications may be submitted to the Fund following the SPT's visit, and if the State or National Preventive Mechanism concerned publishes the report drafted on the visit. The SPT's report about its visit to Hungary in 2017 addressed to the NPM was published by the Commissioner for Fundamental Rights; its report for the state, however, is not public. Applications may be submitted for the implementation of the recommendations put forth in the SPT's report. According to the regulations on the Fund (*"Guidelines for the Applicants and the Grantees"*), applications must be submitted by 1 March of each year, and they may be implemented in the next calendar year. The SPT has not yet announced the public call for applications for 2019, but it is expected to do so by 1 January.

The NPM intends to submit its application in 2019, but the project would be implemented in 2020. The amount the NPM will be applying for would cover the costs of a workshop on special interviewing techniques to be held with the participation of foreign partners (e.g. experts of the South-East Europe NPM Network, APT,<sup>70</sup> SPT, OSCE<sup>71</sup> and UNHCR<sup>72</sup>) and the members of the CCB. The NPM hopes to have an exchange of experience on four topics, about the specificities of interviews made with children, persons with psychosocial disability, foreigners and/or members of national/ethnic minorities, and LMBTQ persons. The exchange would take place in panels moderated by a member of a Hungarian or international civil society organization. The NPM would welcome the contribution of the CCB member

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<sup>70</sup> Association for the Prevention of Torture. See: <https://www.ap.t.ch>

<sup>71</sup> Organization for Security and Co-operation in Europe. See: <https://osce.org>

<sup>72</sup> United Nations High Commissioner for Refugees. See: <https://unhcr.org>

organizations. Considering that applicants must provide at least 35% of the project costs as own funds to complete the grant, the civil society organizations can support the organization of the workshop financially. The NPM asked the CCB member organizations to signal by the end of January at the latest if they wished to participate in the project and if yes, in what form. Furthermore, CCB members may also submit an application to the Fund on their own. There are two important criteria for that: firstly, the project must be connected with one or two recommendations of the SPT, and secondly, the application material must include the NPM's declaration of consent. He recommended for reading the information displayed on the SPT's website about previous successful applications.

Answering a question from the representative of the Hungarian Psychiatric Association, the Deputy Head of Department said that the SPT supports practice-oriented and interactive events. Therefore the workshop planned by the NPM would be organized with 40-50 participants. In the planning phase of the application, it is advisable to find a topic for discussion in which no trainings were recently funded by the SPT.

The representative of the Hungarian Helsinki Committee expressed her thanks for the proactive approach, and signalled the HHC's interest in attending the workshop, but she also deemed it unlikely that on top of their ongoing projects, they would apply to the Fund on their own. She brought it up for consideration that a whole day should be dedicated to the discussion of each and every topic. In addition to facilitating meaningful work, this would also make it possible for the representatives of several civil society organizations with relevant expertise to participate in the moderation of a given panel. In her view, the Hungarian Helsinki Committee could contribute more substantially to the panel discussing the special needs of foreigners or ethnic minorities than the one about LMBTQ issues. She wondered if it was reasonable to have all participants take part in all the panels of the event. In her experience, this type of arrangement does not enhance in-depth work.

According to the Head of Department, all participants should be given an opportunity to attend those panels that might be of interest for them.

The representative of the Cordelia Foundation suggested that the clearly defined interviewing techniques of the Istanbul Protocol could be integrated into this project.

The representative of the Hungarian Civil Liberties Union said that they would be happy to take part in the workshop, but they could contribute more efficiently to the discussion about the interviewing of children with disabilities than to the topic of LGBTQ. He suggested the involvement of Háltér Society in connection with these issues.

The representative of the Hungarian Psychiatric Association asked whether it would be possible to print out – in the framework of an application – the

information brochure on patients' rights elaborated earlier, as well as to create a related website.

According to the Head of Department, it would be worth looking into how the information brochure on patients' rights could be connected to the SPT's recommendations for the NPM. If an opportunity arose, the NPM would support such an application. He recommended that those CCB member organizations that are interested should signal their intention to participate in the project, as well as give their suggestions regarding the project, which could be discussed at a meeting to be held in January.

The Head of Department reminded the participants of the possibility to propose places of detention for the schedule of visits to be drawn up for 2019. He emphasized that in consideration of the unannounced visits of the NPM, this information would not be recorded in the memo on this meeting.

The representatives of the Hungarian Helsinki Committee, the Hungarian Civil Liberties Union and the Hungarian Psychiatric Association suggested some places of detention.



*The second meeting of the Civil Consultative Body in 2018*

## 3.3.

## Further cooperation with civil society organizations

Name of the civil society organization	Form of cooperation
Validity Foundation – Mental Disability Advocacy Centre	A first meeting to discuss application opportunities to the OPCAT Special Fund (14 March 2018)
KAPSZLI – Students' club of Psychology majors at Károli Gáspár University of the Reformed Church in Hungary*	Giving a lecture about the OPCAT National Preventive Mechanism, entitled <i>"Prison, Psychology, Human Rights"</i> (OPCAT) (6 April 2018)
Ludwig Boltzmann Institute of Human Rights (Austria), Hungarian Helsinki Committee, Helsinki Foundation for Human Rights (Poland), Peace Institute (Slovenia)	Participation in an interview in the framework of the preparatory phase of the EU project <i>"Reinforcement of the Rights of Persons Suspected or Accused with the Involvement of National Human Rights Institutions"</i> (24 May 2018) and filling in a questionnaire (14 August 2018)
Subcommittee on Law Enforcement and Penitentiary Law of the Hungarian Academy of Sciences, and Scientific Council of Internal Affairs	Participation in a roundtable discussion entitled <i>"Overview of Prison Affairs in the Member States of the European Union and in Hungary"</i> (14 June 2018)
Budapest Center for Mass Atrocities Prevention	Participation in the presentation of the final paper of the project entitled <i>"The Prevention of Radicalization in Penitentiary Institutions"</i> – in the framework of an international conference (26 June 2018)
Hungarian Prison-Cursillo	Participation in the preparation of a prison visit, personal meeting, professional guidance (24 July 2018)
Háttér Society	Topic for exchange of views about the rights of LGBTQ persons at places of detention (15 August 2018)
Mai Manó House	Interactive opening ceremony and guided tour of the exhibition of criminal photographer Weege (Arthur Fellig) (23 November 2018)
Vipassana Hungary	Lecture on prison affairs – commenting on short films and reports on prison affairs (27 November 2018)
Family, Child, Youth Association	Participation in group interview in the framework of the project entitled <i>"Unaccompanied Minors: Knowledge Transfer for Experts with a View to Increasing Placements with Foster Parents"</i> (FORUM) (27 November 2018)
Hungarian Criminological Association	Participation in an academic session entitled <i>"Straightforward Communication and Comprehensible Legal Jargon in Criminal Proceedings and Law Enforcement"</i> (6 December 2018)
Hungarian Charity Service of the Order of Malta and General Directorate of Social Affairs and Child Protection	Holding attitude-forming trainings and case discussion groups

\* See 13.1.

# 4.

## Register of domestic places of detention and the NPM's annual schedule of visits

Pursuant to Article 20(a) of the OPCAT, the States Parties, in order to enable the National Preventive Mechanisms to fulfil their mandate, grant them “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”.

Type	Number of places	Capacity	Number of detainees
Social care institutions	1,436	88,761	83,658
Child protection services	614 <sup>1</sup>	29,215 <sup>2</sup>	20,967 <sup>3</sup>
Juvenile correctional institutions	5	564	413
Penitentiary system	36	13,923	17,081
Two healthcare institutions of the penitentiary system (separately)	2	608	374
Police	1,354	2,598	312 <sup>4</sup>
Airport Police Directorate (separately)	4	50	0
Healthcare <sup>5</sup>	154	9,510	4,783
Guarded refugee reception centres	3	790	5 <sup>6</sup>
Administration of justice (number of persons in detention rooms on the last business day of December 2017)	159	320	35 <sup>7</sup>
<b>Total</b>	<b>3,767</b>	<b>146,339</b>	<b>127,628</b>

The aggregate list of places of detention under Hungarian jurisdiction as of 31 December 2017 (unless indicated otherwise in the table).

[1] Exclusive of the own homes of foster parents.

[2] Exclusive of the external venues reserved for persons in post-care.

[3] Number of minors receiving child protection services (exclusive of the number of persons in post-care).

[4] In 2017 there were altogether 99,573 persons detained for 7.08 hours on average in police places of detention, exclusive of persons detained at guarded lodgings where 520 persons were restricted in their freedom for 55.43 days on average.

[5] Data for the following wards of hospitals: psychiatry; addictology; psychiatric rehabilitation; addictological rehabilitation; child and youth psychiatry; child and youth psychiatric rehabilitation; child and youth addictology; child and youth addictological rehabilitation; gerontology; infectology; AIDS care; tropical diseases care.

[6] In 2017 there were altogether 378 persons detained for 46.12 days on average at the premises of the Guarded Refugee Reception Centre.

[7] In 2017 there were altogether 6,845 detainees detained for 2 hours on average on the premises of courts suitable for apprehension.

On 12 December 2017, referring to Article 20(a) of the OPCAT, I sent letters to the heads of the governmental organs concerned, requesting them to provide me with the data, as of 31 December 2017, of all places of detention as defined in Article 4 of the OPCAT.<sup>73</sup>

All the requested organs complied with my data request. According to the data provided to me, on **31 December 2017**, in the nearly **4,000** places of detention under Hungarian jurisdiction with a total capacity of **146,339** detainees, there were **127,628** persons being detained.<sup>74</sup>

#### 4.1.

### The 2018 schedule of visits of the NPM

Pursuant to Article 20(e) of the OPCAT, the NPMs shall be granted the liberty to choose the places they want to visit.

On 15 December 2017, based on the list of places of detention, I determined the 2018 schedule of visits of the NPM.<sup>75</sup> When preparing the schedule of visits, in addition to selecting institutions of different types and geographical locations and with different supervising authorities, my colleagues also tried to take into account the age of detainees and the experiences gained during the visits of the previous years. Nearly half of the places included in the schedule of visits were selected upon the proposals of CCB members.<sup>76</sup> In addition to institutions with a capacity of several hundred persons, the 2018 schedule of visits of the NPM also included the homes of foster parents raising and educating a small number of children.

The locations of the follow-up visits are selected on the basis of the impressions of previous visits, keeping in mind two criteria. On the one hand, follow-up visits were conducted at places of detention where the visiting delegations had detected ill-treatment or the threat thereof, affecting a large number of detainees.<sup>77</sup> On the other hand, follow-up visits were paid also to institutions that, due to refurbishment works, had been operating on temporary premises at the time of the first inspection. In these cases, the follow-up visits' objective was to inspect to what extent my recommendations made as regards the temporary premises and the

<sup>73</sup> The letters requesting data provision are registered under file number AJB-6415/2017 in my Office.

<sup>74</sup> The data provided to my Office are registered under file number AJB-293/2018 in my Office.

<sup>75</sup> SPT: *Guidelines on national preventive mechanisms* (Clause 33 of CAT/OP/12/5).

<sup>76</sup> SPT Visit to Hungary 21–30 March 2017: Conclusions and Recommendations for the National Preventive Mechanism (Clause 31 of CAT/OP/HUN/R.2).

<sup>77</sup> See my report AJB-496/2018 on the follow-up visit to the Central Holding Facility of the MPHB.

treatment of detainees had been implemented after moving back to the permanent premises.<sup>78</sup>

My Office handled the schedule of visits confidentially; my colleagues working at other organizational units could not have access thereto.

## 4.2.

### Locations visited by the NPM in 2018

Under Article 19 of the OPCAT, the NPM's task is to regularly examine the treatment of 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.

In 2018, while performing the tasks related to the NPM, I inspected **753** units of detention in **15** places of detention. The table below shows the dates of the visits, the names of the places of detention as well as the number of detention units visited.

Number	Date of the visit 2018	Place of detention	At the time of the visit				Number of interviewees
			Authorised capacity (persons)	Number of detention units inspected*	Utilisation rate (%)	Number of detainees	
1.	30 January	County Holding Facility of the Nógrád County Police Headquarters	51	51	23.5	12	9
2.	30 January	Salgótarján Police Department	6	6	16.6	1	5
3.	31 January	Balassagyarmat Police Department	1	1	0	0	8
4.	12-13 May	Integrated Social Care Institution of South Borsod	240	240	100	240	60
5.	13-14 June	Chronic Post-care Unit of Facility III of Szeged Strict and Medium Regime Prison	80	80	80	64	41
6.	17 September	Unit II of Siklós Police Department	11	11	0	0	6
7.	17 September	Central Police Station of Pécs Police Headquarters	0	0	0	0	8
8.	18 September	Gyárváros Police Station of Pécs Police Headquarters	0	0	0	0	7

<sup>78</sup> See my Report No. AJB-3772/2017 on the follow-up visit to Platán Integrated Social Care Institution of Bács-Kiskun County.

Number	Date of the visit 2018	Place of detention	At the time of the visit				Number of interviewees
			Authorised capacity (persons)	Number of detention units inspected*	Utilisation rate (%)	Number of detainees	
9.	18 September	Komló Police Department	6	6	0	0	8
10.	25 October	Foster Parent Network of the Child Protection Centre, Primary School and Territorial Child Protection Service of Vas County, foster family no. 1	7	7	100	7	9
11.	25 October	Foster Parent Network of the Child Protection Centre, Primary School and Territorial Child Protection Service of Vas County foster family no. 2	8	8	100	8	3
12.	25 October	Foster Parent Network of the Child Protection Centre, Primary School and Territorial Child Protection Service of Vas County foster family no. 3	6	6	100	4** +2PC	5
13.	25 October	Foster Parent Network of the Child Protection Centre, Primary School and Territorial Child Protection Service of Vas County foster family no. 4	4	4	100	4	5
14.	30 November	Central Prison Hospital, Tököl	297	297	63.9	190	45
15.	11 December	Visegrád Aranykor Foundation Retirement Home	36	36	100	36	44
	<b>Total</b>	<b>Number of visited places: 15</b>	<b>753</b>	<b>753</b>	<b>52.27</b>	<b>566</b>	<b>263</b>

\* The number of inspected units of detention includes both authorised and additionally created units.

\*\* The foster family was raising 4 minors and 2 youths receiving post-care, thus the family's capacity was utilised at 100%.

# 5.

## The NPM's visits

In order to perform my tasks related to the NPM, I have to regularly examine the treatment of persons deprived of their liberty and held at various places of detention specified in Article 4 of the OPCAT also in the absence of any petition or alleged impropriety.<sup>79</sup>

The primary objective of the NPM's visits is to establish which elements of the treatment of persons deprived of their liberty may lead to torture or other cruel, inhuman, and degrading treatment or punishment, and how to prevent them. Another important task of the NPM is to make recommendations in order to prevent these from happening or recurring.<sup>80</sup>

As a general rule, the staff members of the Department do not inquire into complaints lodged with the Office. The only exceptions are submissions containing data or information indicative of the violation of the provisions on the prohibition of sanctions, stipulated in Article 21.1 of the OPCAT, which are investigated by the staff members of the Department authorised to perform tasks related to the NPM. The Department forwarded all individual complaints submitted to the e-mail address displayed on the NPM's homepage or to my colleagues during the visits to the competent organizational unit of my Office. Although inquiring into the individual complaints submitted to my Office falls outside the Department's jurisdiction, studying them provides guidelines for selecting the locations of visits and the focal points.

### 5.1.

#### Planning and preparing the visits

By virtue of Section 30 of the Ombudsman Act, *"the Commissioner for Fundamental Rights shall determine the rules and methods of his inquiries in normative instructions"*.<sup>81</sup>

<sup>79</sup> See Section 39/B(1) of the Ombudsman Act.

<sup>80</sup> SPT: *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 5 of CAT/OP/MDV/1).

<sup>81</sup> See Commissioner for Fundamental Rights Directive 3/2015. (XI. 30.) A/B on the professional rules and methods of his/her inquiries.

The preventive visits of the NPM are conducted in accordance with a schedule of visits approved in the previous year. Upon selecting a place of detention to inspect, I also appoint the head of the visiting delegation, and the preparations begin.

The head of the visiting delegation studies the conclusions and recommendations of the Ombudsman's reports on investigations conducted at the selected place of detention or other places of detention of the same type, the reports of other National Preventive Mechanisms, international organizations, foreign and domestic civil organizations conducting visits to places of detention, as well as the provisions of the relevant legal regulations. The visiting delegations also check the implementation of my earlier recommendations made in reports on earlier visits made within the frameworks of performing my general fundamental-rights-protections duties.

In certain cases, upon the initiative of the head of the visiting delegation, experts by experience possessing practical knowledge of the operation of the selected place of detention are also involved in the visit's preparation. The reports of the experts by experience contribute to recognizing facts and circumstances potentially resulting in ill-treatment. My Office handles both the personal data and the reports of the experts by experience confidentially.<sup>82</sup>

Visits are conducted in accordance with the visiting plan drafted by the head of the visiting delegation and approved by me. In addition to naming the place of detention selected, the visiting plan also contains the date and time of the visit, the names and qualifications of the members of the visiting delegation, as well as their official positions. The inspection criteria are approved together with the visiting plan, as an annex thereto.

### 5.1.1. Composition of the visiting delegations

Pursuant to Article 18.2 of the OPCAT, the experts of the NPM shall have the required capabilities and professional knowledge.

*The composition of the NPM's visiting delegations in 2018*

Number	Location	Composition of the visiting delegation	
		Headcount	Qualification*
1.	County Holding Facility of the Nógrád County Police Headquarters	5	2 lawyers; 3 psychologists; 1 psychiatrist
2.	Salgótarján Police Department	5	2 lawyers; 3 psychologists; 1 psychiatrist
3.	Balassagyarmat Police Department	4	2 lawyers; 3 psychologists

<sup>82</sup> See Article 21(2) of the OPCAT.

Number	Location	Composition of the visiting delegation	
		Headcount	Qualification*
4.	Integrated Social Care Institution of South Borsod	6	2 lawyers; 2 psychologists; 1 education professional; 1 psychiatrist; 1 dietitian
5.	Chronic Post-care Unit of Facility III of Szeged Strict and Medium Regime Prison	6	1 lawyer; 3 psychologists; 1 education professional; 1 psychiatrist; 1 dietitian
6.	Facility II of Siklós Police Department	4	2 lawyers; 2 psychologists; 1 education professional;
7.	Central Police Station of Pécs Police Department	4	2 lawyers; 2 psychologists; 1 education professional;
8.	Gyárváros Police Station of Pécs Police Department	4	2 lawyers; 2 psychologists; 1 education professional;
9.	Komló Police Station	4	2 lawyers; 2 psychologists; 1 education professional;
10.	Foster Parent Network of the Child Protection Centre, Primary School and Territorial Child Protection Service of Vas County, foster family no. 1	4	2 lawyers; 2 psychologists; 1 education professional;
11.	Foster Parent Network of the Child Protection Centre, Primary School and Territorial Child Protection Service of Vas County, foster family no. 2	4	2 lawyers; 2 psychologists; 1 education professional;
12.	Foster Parent Network of the Child Protection Centre, Primary School and Territorial Child Protection Service of Vas County, foster family no. 3	4	2 lawyers; 2 psychologists; 1 education professional;
13.	Foster Parent Network of the Child Protection Centre, Primary School and Territorial Child Protection Service of Vas County, foster family no. 4	4	2 lawyers; 2 psychologists; 1 education professional;
14.	Central Prison Hospital, Tököl	5	2 lawyers; 3 psychologists; 1 infantologist and paediatrician
15.	Visegrád Aranykor Foundation Retirement Home	6	2 lawyers; 2 psychologists; 1 education professional; 1 psychiatrist; 1 dietitian
Total number of experts per visit:		4.6 persons	1.93 lawyers; 2.33 psychologists; 0.73 education professional; 0.33 physician, 0.2 dietitian
Total number of places visited by		lawyers: 15; psychologists: 15; education professionals: 11; physicians: 5; dietitians: 3	

\* One person may hold several qualifications.

In 2018, visits were conducted by delegations consisting of four to six members, whom I appointed upon the recommendation of the heads of the visiting delegations. In addition to the professional skills of my colleagues, I also

took into consideration the size and capacity of the selected place of detention, as well as the gender and age composition of the persons deprived of their liberty when selecting the members of the delegation. In addition to maintaining gender balance, I also tried to ensure multi-disciplinarity and involve experts in the field of the protection of national and ethnic minority rights when setting up the visiting delegations.

To perform the tasks related to my general activities aimed at protecting fundamental rights, my Office employs mainly public servants with a law degree. Whenever necessary, lawyers from other organizational units, possessing the professional knowledge required for conducting an effective visit to the place of detention concerned, also participated in the visits. In addition to lawyers, medical, psychological, educational, and dietitian experts also participated in the NPM's visits in 2018.

## 5.2.

### Conducting the visits

#### 5.2.1. Access to places of detention, proving the mandate to proceed

Pursuant to Article 20 b) and c) of the OPCAT, the NPM shall be granted 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.

When acting within the powers of the NPM, as Commissioner for Fundamental Rights, I may proceed without any restriction. When proceeding in person, I notify the management of the place of detention and the detainees held therein that I am proceeding within the competence of the NPM. When performing the tasks related to the NPM through my authorised colleagues, they also shall have the rights pursuant to Sections 21, 22 and 26, Subsection (1) of Section 27, and Section 39/B, and the obligation for cooperation pursuant to Section 25 shall be complied with also in their respect.<sup>83</sup>

My public servant colleagues possess investigator's photo ID cards issued by the Office of the Commissioner for Fundamental Rights, displaying their names as well as their official positions. Upon arriving at the place of detention, the members of the visiting delegation introduce themselves and inform the management and the detainees that they are proceeding in order to perform tasks related to the NPM's mandate. They announce the purpose of the visit, present their investigator's photo ID cards and hand

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<sup>83</sup> See Section 39/D(1) of the Ombudsman Act.

over their commission letter signed by me, proving their being authorised to proceed in order to perform tasks related to the NPM. The commission letter also contains the names of external experts participating in the visit and their authorisation to cooperate in conducting the visit.

In the commission letter, I call the attention of the management and the personnel of the place of detention concerned to the fact that *“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”*.<sup>84</sup>

In 2018, all places of detention were visited without prior notification. The timing of the visits was usually adjusted to the normal working hours. The timing of visits to some institutions holding extremely vulnerable detainees was adjusted to the peculiarities of the given place of detention. The visiting delegations were given access to all places of detention without any delay.

### 5.2.2. Inspecting a place of detention

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

In 2018, the visits by the NPM were all conducted in accordance with the professional rules and methods specified in Commissioner for Fundamental Rights Directive 3/2015. (XI. 30.) AJB on the professional rules and methods of his/her inquiries (hereinafter the *“CFR Directive”*).<sup>85</sup>

The members of the visiting delegations inspected the premises, equipment, and furnishing of the places of detention, as well as the documents related to the number, treatment, and conditions of detention of the persons deprived of their liberty, made copies of some of those documents, and, among others, observed the engagement of those persons deprived of their liberty. In order to prevent the ill-treatment of persons deprived of their liberty, the members of the visiting delegations inspected the vacant detention units as well.<sup>86</sup>

During the visits, my colleagues took pictures of their observations and measured the size and temperature of the premises where the persons deprived of their liberty were placed.

<sup>84</sup> Article 21(1) of the OPCAT.

<sup>85</sup> The special professional rules and methods related to the performance of the tasks of the NPM are stipulated in Chapter X of CFR Directive.

<sup>86</sup> See: SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 25 of CAT/OP/1/Rev.1).

### 5.2.3. Interviews

Pursuant to Section 39/B(3)c) of the Ombudsman Act, the NPM shall *“hear any person present on the site, including the personnel of the authority under inspection and any persons deprived of their liberty”*.

By virtue of Article 20(e) of the OPCAT, the NPMs shall have the liberty to choose *“the persons they want to interview”*. The management and the personnel of the place of detention inspected as well as their supervisors shall cooperate with the visiting delegation and its members.<sup>87</sup> The members of the visiting delegation conduct, on the basis of pre-compiled questionnaires, interviews with the head and the personnel of the place of detention, as well as any other persons staying on the premises at the time of the visit.

Pursuant to Section 39/B(4) of the Ombudsman Act, in the hearing, *“apart from the person who is given a hearing, no other person may participate, unless the Commissioner for Fundamental Rights authorized their participation”*.

The visiting delegations aim at conducting tête-à-têtes, but, occasionally, group hearings are conducted as well.

Interviews are usually conducted with no witnesses present; in exceptional cases, members of the security personnel may be present outside hearing distance. The only exception to that was the visit made to Unit I of the Budapest Remand Prison. Here, despite the multiple warnings of the visiting delegation, one of the custodial officers stayed within hearing distance and was taking notes throughout the interviews conducted with the detainees and the members of the staff. In my report on this visit, I asked the Director General of the Hungarian Prison Service to call the attention of the personnel under his command to comply fully with their obligations with a view to the enforcement of my rights and those of my authorised colleagues<sup>88</sup> during the performance of the NPM’s tasks, as stipulated by Section 39/B(3)c) of the Ombudsman Act and Section 39/B(4) of the Ombudsman Act.<sup>89</sup>

The persons deprived of their liberty, unlike the head and the personnel of the place of detention concerned, are not compelled to cooperate with the visiting delegation. In the case of persons deprived of their liberty who, due to their age, state of health, or any other circumstance, are not able or willing to give an account of their detention-related experiences, the visiting delegation inspects the conditions of their placement. The objective of the members of the visiting delegation is to meet, if possible, all persons deprived of their liberty staying on the premises at the time of the visit.

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<sup>87</sup> See Sections 25(1) and 39/D(1) of the Ombudsman Act.

<sup>88</sup> See Section 39/D(1) of the Ombudsman Act.

<sup>89</sup> See in details in Report No. A/B-501/2018.

The members of the visiting delegation make notes on all hearings conducted with both the persons deprived of their liberty and the personnel of the given place of detention. The interviewees, should they be members of the staff or visitors, are always notified that no one “shall suffer any disadvantage for providing information to the NPM”.<sup>90</sup>

#### 5.2.4. Document inspection

Pursuant to Section 39/B(3) 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”.

Prior to starting the inspection, the head of the visiting delegation hands over the list of those documents that he/she or any member of the delegation wishes to inspect or make copies thereof. If, during the visit, inspection of additional documents or making extracts from or copies of those documents becomes necessary, the members of the visiting delegation shall notify thereof the competent staff member of the given place of detention.

In the absence of prior notice, the staff members of the places of detention cannot prepare for the inspection; therefore, they often cannot immediately present some documents or make the requested copies by the end of the visit. Should it be the case, the requested documents shall be presented to the NPM within the deadline set by the head of the visiting delegation, which may not be shorter than fifteen days.<sup>91</sup>

In 2018, I received all the documents required for performing the tasks related to the NPM within the statutory deadline.

#### 5.2.5. Concluding the visit

The duration of the NPM's visits in 2018 ranged between three hours and two days. All the visits were concluded, stressing partnership, by giving feedback to the personnel of the given place of detention.<sup>92</sup>

<sup>90</sup> See Section 39/E of the Ombudsman Act.

<sup>91</sup> Pursuant to Section 21(1)a) of the Ombudsman Act, “in the course of his 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”. By virtue of Section 21(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.”

<sup>92</sup> See: SPT: Analytical self-assessment tool for National Prevention Mechanisms (Clause 27 of CAT/OP/1/Rev.1).

During the feedback session, the members of the visiting delegation summarize their experience gained in the course of the visit, including the documents inspected and/or copied, and point out the additional documents that shall be submitted to the NPM by the staff members of the given place of detention.

They also share their positive and/or negative impressions in connection with the detainees' treatment and the conditions of detention with the head of the given place of detention, which promotes best practices and facilitates the promptest possible solution of problems.

The head of the visiting delegation draws the attention of the head and the personnel of the given place of detention to the prohibition of sanctions stipulated in Article 21.1 of the OPCAT.

#### 5.2.6. Processing and evaluating experiences gained and information obtained in the course of the visits

The members of the visiting delegation process the experiences gained and information obtained at the given place of detention. During the discussion, they may identify situations causing trouble and the responses given to them. Visiting various types of places of detention, meeting children and adults deprived – to various extents – of their personal liberty may be overwhelming even in the absence of circumstances indicative of ill-treatment. In addition to helping the members of the visiting delegation to keep their psychological well-being, joint analyses increase the efficiency of future visits by pointing out the reasons and effects of their decisions made on the spot.

The head of the visiting delegation prepares a brief memo for me on the most important lessons of the visit. Following this memo summarizing the visit's most important lessons, the head of the visiting delegation prepares a short summary of the on-site inspection which, upon my approval, is published, both in Hungarian and English, on the NPM's homepage.

## 6. Focal points of the visits conducted within the powers of the NPM

To prevent ill-treatment, each State Party “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”.<sup>93</sup>

The goal of the NPM’s visits is to encourage the respective authorities and institutions to improve the effectiveness of their measures aimed at the prevention of ill-treatment.<sup>94</sup> I 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”.<sup>95</sup>

In the course of the visit of places of detention, the NPM examines the conditions of placement of persons deprived of their liberty and their treatment. The visiting delegations examined those aspects of placement and treatment which presented the highest risk of the insufficient enforcement of the fundamental rights of persons deprived of their liberty.

A special feature of the visits conducted in connection with performing tasks related to the NPM is that the detection and identification of signs of torture and other cruel, inhuman or degrading treatment or punishment, physical and psychological abuse, in particular, is carried out with the use of medical and psychological methods.

The focal points were determined on the basis of the CPT’s reports on visiting places of detention in the territory of Hungary, the reports of the UN Committee against Torture, the reports of the Subcommittee on Preven-

<sup>93</sup> See Article 11 of the UN Convention against Torture.

<sup>94</sup> See: SPT: *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 5 of CAT/OP/MDV/1).

<sup>95</sup> See: SPT: *First annual report* (Clause 12 of CAT/C/40/2).

tion on its country visits, as well as the conclusions of the on-site inspections conducted as part of my general activities aimed at protecting fundamental rights, and the CCB's recommendations.

## 6.1. Reception

Since persons deprived of their liberty are extremely vulnerable in the early stages of their detention, the NPM conducts a thorough examination of the reception procedure in every place of detention. In addition to the procedural acts of reception, e.g. medical examination, designation of the detainee's bed, providing them with clothing, bedding, toiletry, the inspection also covers the in-house rules of the given place of detention, the contents of the briefing on the rules of behaviour, the security personnel, and the ways and conditions of keeping in touch with relatives.

## 6.2. Material conditions of detention

The members of the visiting delegations inspect the premises, equipment, and furnishing of the places of detention. They examine the dimensions of the rooms used by the detainees, the size of the per capita living space, the conditions of the natural lighting and ventilation of the premises, the furnishing, access to drinking water and restrooms, the conditions of spending time in the open air, the washing facilities, the condition of the sanitary units and community rooms, as well as catering.

## 6.3. Vulnerable groups

In my activities, I have to pay special attention to protecting the rights of children, nationalities living in Hungary, other most vulnerable groups of society, and persons living with disabilities, as well as to facilitating and monitoring the implementation of the related international treaties.<sup>96</sup> Since this obligation of mine is relevant to performing tasks related to the NPM as well, the visiting delegations pay special attention to the prevention of the ill-treatment of women, young adults, homosexual, bisexual, and transsexual persons, as well as persons deprived of their liberty who are in need of medical care.

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<sup>96</sup> See Section 1(1)–(3) of the Ombudsman Act.

## 6.4.

### Medical care

In Hungary, *“everyone shall have the right to physical and mental health”*.<sup>97</sup> All *“patients have the right, within the frameworks specified by the law, to proper medical care that is corresponding to their state of health, continuously accessible, and meeting the requirement of equal treatment”*.<sup>98</sup>

Medical services available to persons deprived of their liberty, such as medical treatment, nursing, providing an appropriate diet, therapeutic appliances and equipment, rehabilitation or any other special treatment, shall be provided in a way that is generally accessible to the members of society. The barrier-free access to the furnishing and equipment of healthcare institutions, as well as the medical, nursing, and technical staff thereof should also meet the aforementioned requirements.

## 6.5.

### Nutrition

A proper diet is an immanent element of the detainees’ right to health, guaranteed by Article XX of the Fundamental Law. Unhealthy diets, overweight and obesity caused by sedentary lifestyle contribute to a large proportion of cardiovascular diseases, type 2 diabetes, and some cancers, which, according to the WHO’s data, together are the main causes of death in Europe.<sup>99</sup> According to the visits’ findings, the places of detention usually provide the detainees with nutrition meeting the statutory requirements; however, the inadequate composition of the meals and the sedentary lifestyle resulting from detention often lead to obesity and diseases caused by being overweight. During the visits, I examine the detainees’ nutrition with the assistance of a gastroenterologist or a dietitian.

## 6.6.

### Activities, free time

Measures aimed at counterbalancing isolation and meaningless activities caused by the deprivation of liberty are of major importance in all detention sectors. The NPM’s inspections pay special attention to the community, cultural, educational, and open-air programmes organized by the places of detention for the persons deprived of their liberty.

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<sup>97</sup> See Article XX, Paragraph 1 of the Fundamental Law.

<sup>98</sup> See Section 7(1) of Act CLIV of 1997 on Healthcare.

<sup>99</sup> <http://www.euro.who.int/en/health-topics/disease-prevention/nutrition/nutrition>

## 6.7.

## Coercive, disciplinary, and restrictive measures

Deprivation of liberty and the application of coercive and restrictive measures in themselves affect the enforcement of fundamental rights. The risks emerging therefrom may be mitigated through the adoption of adequate legal regulations and their appropriate implementation.

The visiting delegations also inquire after incidents that have occurred at the given place of detention and the conflict management methods used by its personnel. They examine how the application of coercive and disciplinary measures by the personnel against persons deprived of their liberty violating the house rules of the given place of detention and the restrictive measures applied in health- and social care institutions are documented. The inspection of the available documents related to the application of coercive, disciplinary, and restrictive measures, including the notes of the health care personnel, is also aimed at finding out who checks the justification and legality of such measures and in what manner, and if the extent of these measures is in compliance with the prevailing legislation.

## 6.8.

## Relations between persons deprived of their liberty and their relations with the personnel of the place of detention

Balanced personal relations between persons deprived of their liberty and between detainees and the personnel of the given place of detention are one of the most efficient ways to prevent ill-treatment. The visiting delegations inquire into the relations of persons deprived of their liberty using the same premises, paying special attention to gathering information indicative of peer-to-peer abuse among the detainees.

*“Mixed-gender staffing is another safeguard against ill-treatment in places of detention.”*<sup>100</sup> As persons deprived of their liberty should only be searched by staff of the same gender and any search which requires a detainee to undress should be conducted out of the sight of custodial staff of the opposite gender,<sup>101</sup> I examine the gender composition of the persons deprived of their liberty, guards, nurses, etc. during every visit.

The findings of the on-site inspections conducted during the twenty-year operation of the ombudsman institution show that the staff of the places of detention, if they are frustrated in the hierarchical structure or continuously

<sup>100</sup> See: See Clause 26 of 9<sup>th</sup> General Report on CPT’s activities [CPT/Inf (99) 12].

<sup>101</sup> See: See Clause 23 of 10<sup>th</sup> General Report on CPT’s activities [CPT/Inf (2000) 13].

dissatisfied with the circumstances and/or conditions of their work, may vent their frustration on their subordinates or on persons deprived of their liberty, being otherwise at their mercy. In order to recognize and/or prevent such situations, my colleagues examine whether the staff members of the given place of detention have the proper skills and if they have access to professional training necessary for the prevention of ill-treatment,<sup>102</sup> and how accessible and efficient supervision is. When examining the premises, furnishing, and equipment of the places of detention, the visiting delegations also inspect the rooms designated for the personnel, including locker rooms, bathrooms, dining rooms, recreational rooms and restrooms.

## 6.9.

### Complaints mechanism

In Hungary, everyone has *“the right to submit, either individually or jointly with others, written applications, complaints or proposals to any organ exercising public power”*.<sup>103</sup>

Keeping in mind Article 4.2 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.

One of the most efficient ways of eliminating or preventing ill-treatment is if the personnel of the place of detention learns about the placement- or treatment-related grievances of the persons deprived of their liberty as soon as possible, investigates those grievances within a reasonable period of time, and takes the measures necessary to remedy them.<sup>104</sup>

Considering the vulnerable situation of persons deprived of their liberty and their worries about possible sanctions, I expect the places of detention to provide the opportunity to submit anonymous petitions. At every place of detention, my colleagues examine the ways in which the persons deprived of their liberty may lodge their complaints, the way the personnel registers those complaints, and the means by which the complaints are inquired into and the complainants are informed of the results.

<sup>102</sup> See also Articles 10 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988.

<sup>103</sup> See Article XXV of the Fundamental Law.

<sup>104</sup> See also Articles 13 and 16 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988.

# 7.

## Follow-up visit

The National Preventive Mechanism shall 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.<sup>105</sup>

The follow-up visit is part of the NPM's activities aimed at preventing the ill-treatment of persons deprived of their liberty. The primary objective of the follow-up visit is to get information about the measures aimed at the implementation of my recommendations. The secondary objective is to encourage the personnel of the places of detention and the authorities to implement my recommendations.<sup>106</sup>

In the course of the follow-up visits, I strive to re-examine the most problematic fields. In the framework of the follow-up visits, I assess the implementation of measures taken in the interest of eliminating fundamental-rights-related improprieties uncovered during the previous visit and factors threatening the enforcement of fundamental rights. Follow-up visits provide an opportunity to discuss the findings of the previous visit and, in their light, the practical implementation of my measures with the personnel of the places of detention.

Since neither the OPCAT nor the Ombudsman Act contains provisions on follow-up-type visits, the general rules apply.

### 7.1.

#### Selecting the subject of the follow-up visit

While performing the tasks of the NPM, I conducted four follow-up visits in 2018. The locations for the follow-up visits were selected on the basis of the impressions of previous visits, keeping in mind the following criteria.

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<sup>105</sup> See: SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 33 of CAT/OP/1/Rev.1).

<sup>106</sup> See: BIRK Moriz, ZACH Gerrit, LONG Debra, MURRAY Rachel, SUNTINGER Walter: *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, p. 10. Available at: [http://www.bristol.ac.uk/media-library/sites/law/hric/2015-documents/NPM%20Study\\_final.pdf](http://www.bristol.ac.uk/media-library/sites/law/hric/2015-documents/NPM%20Study_final.pdf).

The first and the third locations, the Juvenile Penitentiary Institution<sup>107</sup> and the Central Holding Facility of the MPH<sup>108</sup> were selected because, during the first visit, the visiting delegation had found signs of serious ill-treatment or the threat thereof affecting a large group of detainees. Follow-up visits were paid also to an institution that had been operating on temporary premises at the time of the first inspection, due to refurbishment works. In the latter case, the objective of the follow-up visit was to inspect to what extent my recommendations made as regards the temporary premises and the treatment of detainees had been implemented after moving back<sup>109</sup> to the permanent premises.<sup>110</sup>

In 2018, while performing the tasks of the NPM, I made a follow-up visit to the Central Prison Hospital of Tököl.<sup>111</sup>

## 7.2.

### Planning and preparing a follow-up visit

The follow-up visits are preceded by a written consultation with the detention authority, in the course of which I analyse and evaluate the responses received from the addressees of the recommendations made in my report. If necessary, I also involve in this consultation civil organizations or authorities that I think should be informed of the fundamental-rights-related improprieties uncovered in order to facilitate their activities aimed at improving detention conditions and the detainees' treatment. The visiting plan is based on the recommendations made in the report on the previous visit and is aimed at re-examining circumstances causing or potentially leading to fundamental-rights-related improprieties. The primary objective of the new visit is to check the implementation of the recommendations made in the report on the previous visit.

## 7.3.

### Setting up the follow-up visiting delegation

When setting up the visiting delegation, in addition to maintaining gender balance, ensuring multi-disciplinarity, and involving experts in the field of the pro-

<sup>107</sup> See Report No. AJB-1423/2015 and Report No. AJB-685/2017 on the first visit and the follow-up visit, respectively.

<sup>108</sup> See Report No. AJB-151/2016 and Report No. AJB-496/2018 on the first visit and the follow-up visit, respectively.

<sup>109</sup> See my Report No. AJB-3772/2017 on the follow-up visit to Platán Integrated Social Care Institution of Bács-Kiskun County.

<sup>110</sup> Regarding the follow-up visit, see the sections of Chapter 10 on Platán Integrated Social Care Institution of Bács-Kiskun County.

<sup>111</sup> [http://www.ajbh.hu/documents/10180/2806238/OPCAT+NMM+utankövető+látogatás+Tökölön\\_honlap\\_rövífhír.pdf](http://www.ajbh.hu/documents/10180/2806238/OPCAT+NMM+utankövető+látogatás+Tökölön_honlap_rövífhír.pdf)

tection of national and ethnic minority rights, I also sought to include as many colleagues as possible who were familiar with the given place of detention.

#### 7.4.

### Conducting the follow-up visit

Follow-up visits are conducted in accordance with the relevant provisions of the Ombudsman Act and the professional rules and methods specified in CFR Directive 3/2015 (XI. 30.).

The follow-up visit provides an opportunity to pursue the constructive dialogue with the personnel of the given place of detention on the findings of the previous visit, the recommendations of the report prepared thereon, the ways and means of their implementation, and the changes that occurred in the meantime. As a result of the above, the staff members may cooperate more eagerly in the implementation of the recommendations aimed at improving detention conditions and the detainees' treatment.

#### 7.5.

### Concluding the follow-up visit

Upon completing the follow-up visit, the members of the visiting delegation summarize and share their experiences with the staff of the given place of detention,<sup>112</sup> and specify the documents that the personnel of the given place of detention must submit to me. During this feedback session, the members of the visiting delegation share with the management of the place of detention their newly gathered positive and negative experiences in connection with the implementation of the recommendations of the previous report, the detainees' treatment, and the detention conditions.

#### 7.6.

### Processing and evaluating the experiences of the follow-up visit

The members of the visiting delegation process the experiences gained and information obtained at the given place of detention. The head of the visiting delegation drafts a short memo for me on the most important findings of the visit as compared to those of the previous inspection, then prepares a short summary report on the visit which, upon my approval, is published, both in Hungarian and English, on the NPM's homepage.<sup>113</sup>

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<sup>112</sup> See SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 27 of CAT/OP/1./Rev.1).

<sup>113</sup> [www.ajbh.hu](http://www.ajbh.hu)

# 8.

## The report of the NPM

The NPM makes reports on the visits he has conducted; *“it shall contain the uncovered facts and the findings and conclusions based on those facts”*.<sup>114</sup> In addition to indicating the location, the cover of the reports also states that I have published it not under my general activities aimed at protecting fundamental rights, but while performing my tasks related to the NPM.

### 8.1.

#### Preparation of the report

Pursuant to Article 21.2 of the OPCAT, *“confidential information collected by the national preventive mechanism shall be privileged”*.

The Commissioner for Fundamental Rights, *“in the course of his proceedings, 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”*.<sup>115</sup>

The members of the visiting delegations forward their subreports, summarizing their observations, the results of the measurements they have taken and the interviews they have conducted, the pictures taken on site, and the documents obtained in the course of the visit to the head of the visiting delegation; the external experts also submit their opinions. Neither the subreports nor the expert opinions contain any data suitable for personal identification.

As *“the documents and material evidence obtained in the course of the proceedings of the Commissioner for Fundamental Rights are not public”*,<sup>116</sup> third persons may not have access, either prior to or following the proceedings, to notes taken and the documents obtained during the preparation or the conduct of the visit.

<sup>114</sup> See Section 28(1) of the Ombudsman Act.

<sup>115</sup> See Section 27(1) of the Ombudsman Act.

<sup>116</sup> See Section 27(3) of the Ombudsman Act.

## 8.2. Introduction

This part of the report gives a short introduction of the competence of the NPM, the reasons for and the circumstances of selecting the location, as well as the criteria based on which, pursuant to Article 4(2) of the OPCAT, persons are deprived of their liberty there. It contains the date of the visit, the names and qualifications of the members of the visiting delegation, the positions of my colleagues who are public servants, and the method of the inspection. Since the preventive monitoring visits of the NPM also cover the practice-oriented review of the relevant legal regulations, the introduction also specifies the applied domestic and international sources of law, as well as the list of fundamental rights touched upon by the report.

## 8.3. Prohibition of sanctions

In the report, I call the attention to the fact that *“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”*.<sup>117</sup>

## 8.4. The facts and findings of the case

From the aspect of performing the tasks related to the NPM, the detailed description of the treatment and conditions observed is of major importance.

The facts of the case include the place of detention’s basic data, as well as the detailed description of the observations, interviews, and documents obtained, on which the NPM bases his findings and measures.<sup>118</sup> The head of the visiting delegation drafts the report using the subreports prepared by the members of the visiting delegation and the opinions of the external experts. The application of the method of triangulation, i.e. cross-checking information (allegations), provided by various persons, as well as documents, facilitates objectivity.<sup>119</sup>

The findings of the report shall include those aspects of placement conditions and treatment which may lead to an impropriety related to a fundamental right or the threat thereof.<sup>120</sup> Under findings, I also present those

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<sup>117</sup> Article 21(1) of the OPCAT.

<sup>118</sup> See Article 32(1) of CFR Directive.

<sup>119</sup> See SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 26 of CAT/OP/1/Rev.1).

<sup>120</sup> See Article 33(1) of CFR Directive.

facts and circumstances that indicate that the staff members of certain places of detention have failed to comply or complied belatedly with their obligation to cooperate, stipulated in Section 25(1) of the Ombudsman Act. Under findings, I also have to elaborate whether the fundamental-rights-related impropriety, uncovered during the visit, is the result of the wrong interpretations of the law, a redundant, unclear, or inadequate provision of a legal act, or the absence or the deficiency of the given issue's legal regulation.<sup>121</sup>

Pursuant to Article 16(1) of the UN Convention against Torture, 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"*. The UN Convention against Torture does not give a definition of "other acts" of ill-treatment which do not qualify as torture as defined in Article 1. The prohibition of "other acts" when performing my tasks related to the National Preventive Mechanism compels me to raise my voice against various types of treatment that fall outside the concept of torture but cause suffering to the persons deprived of their liberty.

My experience shows that, in the case of detainees, enduring not only treatment and/or placement conditions violating the prohibition of torture and other cruel, inhuman or degrading treatment or punishment but also treatment and/or placement conditions resulting in an impropriety related to fundamental rights may cause serious physical or psychological ordeal. Since the *"full respect for the human rights of persons deprived of their liberty"* is a common responsibility shared by all,<sup>122</sup> in my reports published within my activities as NPM, in addition to preventing torture and other cruel, inhuman or degrading treatment or punishment, I also consider myself tasked with establishing and preventing other fundamental-rights-related improprieties and the threat thereof.<sup>123</sup>

When establishing a fundamental-rights-related impropriety or the threat thereof, in my argument I refer, in particular, to the interpretation of the law by the European Court of Human Rights, the CPT, the Committee on the Rights of Persons with Disabilities,<sup>124</sup> the other organs of the UN and the Council of Europe, as well as by the Constitutional Court.

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<sup>121</sup> See also Article 11 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, promulgated by Law-decree 3 of 1988.

<sup>122</sup> See the Preamble of the OPCAT.

<sup>123</sup> See Article 30(1) of the Fundamental Law.

<sup>124</sup> See Article 34 of the United Nations Convention on the Rights of Persons with Disabilities, promulgated into law by Act XCII of 2007.

In addition to critical remarks regarding placement and treatment, positive practices observed during the visit are also to be commented on and evaluated in this part of the report.<sup>125</sup>

I deem it important that the reports should be concise and to the point. To ensure “*full respect*” for the human rights of persons deprived of their liberty, I strive to elaborate on those aspects of their treatment and placement which may result in a fundamental-rights-related impropriety or the threat thereof.

## 8.5.

### Measures taken by the NPM

Pursuant to Article 19(b) of the OPCAT, the National Preventive Mechanisms 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 shall detail those measures that are necessary for remedying fundamental-rights-related improprieties related to the treatment and placement of the detainees, as well as for eliminating circumstances threatening the enforcement of fundamental rights.<sup>126</sup> In every case, the provision of the Ombudsman Act giving grounds to a particular measure has to be indicated.<sup>127</sup>

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 specified in my reports on the NPM’s visits, I try not only to prevent torture and other cruel, inhuman or degrading treatment or punishment, but also to prevent and eliminate improprieties related to other fundamental rights of persons deprived of their liberty, as well as treatments and circumstances potentially resulting in the threat thereof.

The report must clearly indicate the fundamental-rights-related impropriety or the circumstance threatening the enforcement of a fundamental right to which the given measure is related.<sup>128</sup> The measures with different addressees and the different measures to the same addressee must be clearly separated.<sup>129</sup>

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<sup>125</sup> See SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 30 of CAT/OP/1/Rev.1).

<sup>126</sup> See Article 34(1) of CFR Directive.

<sup>127</sup> See Article 34(3) of CFR Directive.

<sup>128</sup> See Article 34(2) of CFR Directive.

<sup>129</sup> See Article 34(4) of CFR Directive.

### 8.5.1. Initiative

If the authority subject to inquiry is able to terminate the impropriety related to fundamental rights within its competence, I may initiate its redress by the head of the authority subject to inquiry. Such an initiative may be made directly by phone, orally or by e-mail. In such cases, the date, method, 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.<sup>130</sup> 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.<sup>131</sup> Almost all addressees of the initiatives formulated in my reports on the NPM's visits in 2018 responded within the period specified by the law.

### 8.5.2. Recommendation

If, on the basis of an inquiry conducted, the NPM 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 initiative, the supervisory organ shall inform me of its position on the initiative and on the measures taken.<sup>132</sup> If the authority subject to inquiry has no supervisory organ, I shall address the recommendation to the authority subject to inquiry.<sup>133</sup> The addressees of the recommendations formulated in my reports on the NPM's visits in 2018 responded on the substance within the period specified by the law.

### 8.5.3. Initiation of proceedings by the prosecution

In order to redress an impropriety related to a fundamental right, I may initiate proceedings by the competent prosecutor through the Prosecutor General. Within sixty days, the competent prosecutor shall inform me of his/her position on the initiation of proceedings and his/her measure, if any.<sup>134</sup>

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<sup>130</sup> See Section 32(1) and (2) of the Ombudsman Act.

<sup>131</sup> See Section 32(3) of the Ombudsman Act.

<sup>132</sup> See Section 31(1) of the Ombudsman Act.

<sup>133</sup> See Section 31(4) of the Ombudsman Act.

<sup>134</sup> See Section 33(1) of the Ombudsman Act.

In 2018, I exercised this power in my reports on the visits to two places of detention: Márianosztra Strict and Medium Regime Prison,<sup>135</sup> and Unit I of Budapest Remand Prison.<sup>136</sup>

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

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. I did not exercise this power in 2018.

#### 8.5.5. Legislative initiative

If, in the interest of eliminating ill-treatment or the threat thereof, I suggest to modify, repeal a piece of legislation or issue a new one, the requested organ shall inform me of its position and of any measure taken within sixty days.<sup>137</sup>

#### 8.5.6. Summary

*Number of measures and initiatives contained in the reports on performing tasks related to the NPM in 2018 according to place of detention<sup>138</sup>*

Number	Name of the place of detention	Total number of measures <sup>1</sup>	Addressee of measures			
			Institution subject to inquiry <sup>2</sup>	Supervisory organ <sup>3</sup>	Prosecutor <sup>4</sup>	Legislation <sup>5</sup>
1.	Central Holding Facility of the MPH	15	15			
2.	MPHB 14 <sup>th</sup> District Police Department	8	1	4		3
3.	Debrecen Reformatory of the MoHC and its Nagykanizsa Premises	40	29	4		7
4.	Nagymágocs Castle Home of the Aranysziget Integrated Retirement Home of Csongrád County	26	24	2	–	–
5.	Holding facility of the Fejér County Police Headquarters	9	8	1	–	–
6.	Márianosztra Strict and Medium Regime Prison	36	24	7	2	3

<sup>135</sup> See Case File No. AJB 474/2018.

<sup>136</sup> See Case File No. AJB 501/2018.

<sup>137</sup> See Section 37 of the Ombudsman Act.

<sup>138</sup> See Section 11 of the Ombudsman Act.

Number	Name of the place of detention	Total number of measures <sup>1</sup>	Addressee of measures			
			Institution subject to inquiry <sup>2</sup>	Supervisory organ <sup>3</sup>	Prosecutor <sup>4</sup>	Legislation <sup>5</sup>
7.	Unit I of Budapest Remand Prison	24	19	3	1	1
8.	Integrated Social Care Institution of South Borsod	18	14	4	–	–
9.	Psychiatric Department of Balassa János Hospital of Tolna County	14	9	4	–	1
Total		190	143	29	3	15

[1] Total number of recommendations.

[2] See Section 32(1) of the Ombudsman Act.

[3] See Section 31(1) of the Ombudsman Act.

[4] See Section 33(1) of the Ombudsman Act.

[5] See Section 37 of the Ombudsman Act.

## 8.6.

### Publishing the NPM's reports

*"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."*<sup>139</sup>

In every case, I send my report on a visit by the NPM to the head of the place of detention concerned, the addressees of the recommendations, and the members of the CCB.

I have to publish my reports on my Office's homepage in digital format, accessible without restriction, free of charge to anyone.<sup>140</sup> Within a few days after sending the NPM's reports, in Hungarian, to the addressees, my colleagues make them accessible to the public,<sup>141</sup> as well.<sup>142</sup> The NPM's reports shall also be published in the electronic archives within 30 days of their disclosure.<sup>143</sup>

Due to the lack of financial resources, I have had but one opportunity so far to publish the full English text of a report on the NPM's visit. My Office published the English translation of the summary of the reports on the NPM's visits in 2018 on the official homepage of the NPM.<sup>144</sup>

<sup>139</sup> See Section 28(2) of the Ombudsman Act.

<sup>140</sup> See Article 39(1) of CFR Directive.

<sup>141</sup> See Article 39(2) CFR Directive.

<sup>142</sup> <https://www.ajbh.hu/en/opcat-jelentesek-2018>

<sup>143</sup> See Article 39(3) CFR Directive.

<sup>144</sup> <https://www.ajbh.hu/en/web/ajbh-en/opcat-reports-2018>

# 9.

## Persons deprived of their liberty at the places of detention visited by the NPM

Number	Date of the visit	Place of detention		At the time of the visit			Number of interviewees
		Name	Authorised capacity (persons)	Number of detention units inspected*	Utilisation rate (%)	Number of detainees	
1.	13-14/09/2016; 26-27/09/2016	Debrecen Reformatory of the MoHC and its Nagykanizsa Unit**	108/140	108/140	66.7	165	133
2.	06/12/2016	MPHB 14 <sup>th</sup> District Police Department	10	10	10.0	1	4
3.	08/02/2017	Central Holding Facility of the MPHB	133	133	15.03	20	29
4.	13-14/03/2017	Márianosztra Strict and Medium Regime Prison	524	624	119.08	624	117
5.	28/03/2017	Unit I of Budapest Remand Prison	153	258	168.63	258	43
6.	31/05-01/06/2017	Psychiatric Department of Balassa János Hospital of Tolna County	89	89	73.03	65	51
7.	12-14/09/2017	Nagyágocs Castle Home of Aranysziget Integrated Retirement Home of Csongrád County	300	302	100.67	302	85
8.	19/10/2017	Holding facility of the Fejér County Police Headquarters	34	34	20.58	7	10
9.	22-23/05/2018	Integrated Social Care Institution of South Borsod	240	240	100	240	60
Total			1,731	1,938	75	1,682	532

\* The number of inspected places of detention includes both authorised and additionally created places.

\*\* A thematic report was prepared on the visits made to the Debrecen Reformatory of the MoHC and its Nagykanizsa Unit.

## 9.1.

### Children deprived of their liberty

Minors deprived of their liberty are more vulnerable than adults, irrespective of the reasons for their detention. Due to minors' vulnerability deriving from their age, the personnel of places of detention holding minors has to be particularly vigilant to ensure that their physical and mental well-being is adequately protected.<sup>145</sup>

There is no children's rights ombudsman in Hungary; however, while performing tasks related to the NPM, I have to pay special 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"*.<sup>146</sup>

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

#### 9.1.1. The Debrecen Reformatory of the Ministry of Human Capacities and its Nagykanizsa Unit<sup>147</sup>

The Debrecen Reformatory of the MoHC and its Nagykanizsa Unit receives boys aged 12-18 ordered to correctional education and held in pre-trial arrest. Juveniles who have committed a crime or are accused thereof may be educated in such institutions up until the age of 21 years. In the year of the visit, the utilisation rate of the Nagykanizsa Unit was nearly 50% whereas the Debrecen premises operated at more than 80% of their holding capacity. In the Nagykanizsa Unit with a capacity of 108 places, 48 juveniles were being resocialized, whereas in Debrecen there were 117 juveniles for 140 places.

The aim of correctional education is to eliminate socialization deficiencies potentially leading to the perpetration of a crime, and to facilitate successful integration into society. With a view to their successful resocialization, it may occasionally become necessary for the juveniles taken into correctional education to remain in the institution in aftercare. Both locations had some aftercare places (12 in Nagykanizsa and 8 in Debrecen), but no juvenile was living there in aftercare in either of the facilities. The above situation can be put down to the fact that according to the legislation in force, juveniles may

<sup>145</sup> See Clause 20 of 9<sup>th</sup> General Report on CPT's activities [CPT/Inf (99) 12].

<sup>146</sup> See Article 1 of the UN Convention on the Rights of the Child.

<sup>147</sup> Report No. AJB-493/2018.

apply for aftercare only after having served the entire term of correctional education. Due to the above reason, juveniles who, on account of good behaviour, are discharged on temporary release prior to having served their entire term of correctional education may not apply for aftercare. Due to the above, I requested the amendment of Article 384(1) of Act CCXL of 2013 on the Enforcement of Penalties, Measures, Certain Coercive Measures and Detention for Misdemeanour (hereinafter the “Prison Code”).

*A landing in the Debrecen Reformatory of the MoHC*



In accordance with the regulations of the house rules, 100% of the detainees were participating in education at both correctional facilities. Unfortunately, those detainees who had exceeded the age of compulsory school attendance and did not wish to take part in school education were allowed – regardless of their educational attainment level – to attend only development classes. For the sake of the successful resocialization of the juveniles detained in correctional facilities, I recommended that they should not be subject to the general rules of compulsory education. According to the legal amendment that I proposed, for those juveniles detained in correctional facilities who have not finished primary school, primary education should be made compulsory even if they are no longer in the age of compulsory school attendance.

The risk of recidivism among juvenile delinquents may be mitigated by intervening in the family dynamics. Despite the above, neither of the institutions took advantage of the opportunities provided by family consultations and family therapy sessions (among the contact forms granted by the Prison Code). In correctional facilities such occasions to meet must be requested by the juvenile or his/her legal representative, whereas in the case of juveniles detained in penitentiary institutions, decree-level regulations make it possible for the institutions, too, to initiate family therapy sessions. I recommended that the correctional facilities facilitate the propagation of these training forms by more efficient communication, and that by amending Minister of Human Capacities Decree 1/2015 (I. 14.) EMMI on the operation of reformatory institutions (hereinafter the “Operation Decree”), correctional facilities should also be provided an opportunity to make such initiatives.

The physical conditions of placement were excellent in Nagykanizsa. In Debrecen I turned to the maintainer and to the director of the facility especially in connection with the renovation of the sanitary units and the creation of a safe waiting room.

The visiting delegation noticed that the operating rules of closed and special groups became blurred. In these correctional facilities, juveniles were placed in extraordinarily restricted units as a form of punishment, in such conditions that the requirement of legal certainty guaranteed by the principle of the rule of law was not met. I asked the director of the correctional facility to take action and review the practice of punishments, stop humiliating, collective punishments, elaborate the rules of procedure concerning placement into closed-type groups as a disciplinary measure, and I also requested that juveniles living with mental and/or psycho-social or other disabilities be placed in special groups appropriate for their condition.

The visiting delegation made altogether 133 interviews at the two locations. Two thirds of the subjects of the interviews conducted confidentially were juveniles whereas one third of them were professionals working at these facilities. In Debrecen and Nagykanizsa, 114 and 79 employees had a direct relationship with the juvenile detainees, respectively. 98% of the positions were filled at both locations.

The Operation Decree stipulates<sup>148</sup> that if necessary, the custodial service must be able to provide permanent supervision. The above requirement was satisfied by both locations. Debrecen and Nagykanizsa employed 17 and 18 law enforcement officers, respectively. At the same time, the Operation Decree prescribes the employment of only one law enforcement officer per facility,<sup>149</sup> but this number does not suffice to provide permanent supervision. Due to the above reason, I suggested that the Operation Decree's provision regarding the number of law enforcement officers should be completed and clarified.

## 9.2.

### Detainees in penal institutions

#### 9.2.1. Márianosztra Strict and Medium Regime Prison<sup>150</sup>

At the time of the visit, the Márianosztra Strict and Medium Regime Prison (hereinafter the "Prison") had a holding capacity of 524 detainees. In contrast with that, the number of detainees according to the register was 731

<sup>148</sup> Section 10(1) of the Operation Decree.

<sup>149</sup> Annex 1, Clause 2.2 of the Operation Decree.

<sup>150</sup> Report No. AJB-474/2018.

at the time of the visit; with 624 detainees actually staying at the Prison, the facility was operating at 119.08% of its capacity.

Despite the fact that shortly before the visit, some renovation works had been carried out in the Prison, all in all, the physical conditions observed by the visiting delegation gave serious cause for concern. In numerous cells, the number of detainees exceeded the cells' holding capacity, so the space and volume per person were significantly below the minimum living space prescribed by the Hungarian and international regulations. I therefore asked the Director General of the Hungarian Prison Service to take action in order to assure the living space prescribed by law<sup>151</sup> – in accordance with the international standards<sup>152</sup> – for the detainees held in the Prison. I also initiated that the warden take measures in order to improve the detention conditions.



*Prison cell  
in the Márianosztra Strict  
and Medium  
Regime Prison*

Despite regular pest controls, bedbug infestation continued to be a problem. I requested that the warden take action to ensure effective pest control.

It was worrisome that if security isolation was carried out in the isolation ward, on each of those occasions, this action was executed with the use of some mobility limitation device (i.e. handcuffs and belt with handcuff

<sup>151</sup> Pursuant to Section 121(1) of the Decree of the Minister of Justice No. 16/2014 (XII. 19.) on the Detailed Rules of Confinement Replacing Prison Sentencing, Confinement, Pre-trial Detention and Disciplinary Fines, "the number of detainees allowed to be placed in a cell or a living quarter shall be determined so that each detainee would have six cubic meters of volume and (...) in the case of multiple occupancy, at least four square meters of living space per person", and according to Subsection (2), "when calculating the living space, the area occupied by the sanitary facilities (...) must be subtracted from the floor area of the cell or the living quarter".

<sup>152</sup> According to Clauses 9 and 10 of the CPT's provisions for personal living space in prison establishments [CPT/Inf (2015) 44], the minimum standards should be at least four square metres of living space per person in a multiple-occupancy cell excluding the area taken up by the sanitary units.

fasteners) and by ordering the wearing of clothes that would prevent the detainee from hiding forbidden objects or causing self-harm. By way of the Prosecutor General, I asked the competent prosecutor to examine – bearing in mind the enforcement of rights promoting lawful treatment and respect for human dignity<sup>153</sup> – the use of the security ward and the joint deployment of the other security measures.<sup>154</sup>

The staff exceeded its powers and committed a fundamental-rights-related impropriety while checking the detainees' visitors during the inspection of their clothes upon entry. Women, for instance, were asked to loosen their outerwear, their underwear was also inspected, and children had to open their mouth. There were several cases when visitors felt so humiliated by the manner of the entry procedure that they no longer came to visit the detainees. I asked the warden to take action to ensure that the guards conduct the entry procedure and inspection of visitors in compliance with both the regulations in force<sup>155</sup> and in consideration of their human dignity.

The heavy workload of the medical personnel had an impact on the care provided for the detainees. The head of the health department would have deemed it necessary to employ an additional full-time physician, as well as a nurse. The number of detainees per psychologist was extremely high despite the fact that the Prison had been employing two psychologists from September 2016. It was especially worrisome that detainees suffering from asthma could not keep their asthma inhaler with them in their cells. I asked the warden to remedy the circumstances that were causing concern. I also initiated that, with a view to increasing the number of the medical personnel of the health department and of psychologists, the Director General of the Hungarian Prison Service consider hiring additional staff members for the Prison.

Self-harm committed by one of the detainees during the visit shed light on a systemic problem. Reviewing the rules regarding single placement and isolation revealed that prior to the application of these types of placement, the mental and physical condition of the detainees was not examined at all. In certain cases, doubts arose as to the proper assessment of the detainees' mental condition. I requested that the Minister of Justice inquire into the relevant regulations with the assistance of the Minister of Interior, and take action with a view to the creation and efficient implementation of govern-

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<sup>153</sup> Pursuant to Section 54(1) of the Decree of the Minister of Justice No. 16/2014. (XII.19.), *"during the application of the mobility limitation device, special attention shall be paid to ensuring lawful treatment and respect for human dignity"*.

<sup>154</sup> Pursuant to Section 145(3) of the Prison Code, *"several security measures may be applied if the circumstances so require"*.

<sup>155</sup> Pursuant to Section 14(3) of Act CVII of 1995 on the Prison Service, *"In order to prevent that objects endangering the order and security of the penitentiary organ – specified in a separate act – are taken inside the facility, the clothing and baggage of the person wishing to enter may be inspected."*

ing provisions on the assessment of mental and physical condition prior to single placement or isolation.

In connection with the treatment provided to sexual criminals, I uncovered that the scope of criminal acts specified as the condition for participation is different for convicts and those held in pre-trial detention.<sup>156</sup> I asked the Minister of Justice to review, in cooperation with the Minister of Interior, the relevant legislation and take action in order to terminate inappropriate variances.

In connection with the legal background of the nutrition of detainees, I pointed out that no decrees had been issued on the detailed rules of the nutrition of detainees that I had already initiated in a previous report of mine.<sup>157</sup> I asked the Minister of Human Capacities to inquire into – with the involvement of the Minister of Interior and the Minister of Justice – the relevant rules, and take action with a view to drafting the provisions in accordance with Section 247(2)sz of Act CLIV of 1997 on Healthcare.<sup>158</sup>

The Prison did not ensure the adequate involvement of illiterate detainees in education, and several detainees complained that there were no opportunities to take part in organised leisure time programmes, either. I underlined the importance of the factors that may mitigate the effects of overcrowdedness and poor detention conditions, especially to providing detainees with a possibility to spend part of their days working, studying, and attending trainings outside their cells. I asked the warden to take the necessary measures to ensure the involvement of the detainees in education and labour programmes outside their cells.

Concerning the work of the detainees, the occasional lack of protective equipment and the condition of sanitary units and dining rooms also gave reason for concern. I asked the executive manager of Bv. Holding Kft. as the

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<sup>156</sup> According to the legislation in force at the time of the visit: Section 132 of the Prison Code: *“If the convicted person has committed a criminal offence specified in Chapter XIX of the Penal Code against a person under eighteen years of age, or the sexual motive can be established from the circumstances in which the violent crime was committed against a victim under eighteen based on a risk assessment examination, then following the admission of the convicted person, the probability of the convict committing similar crimes after his or her release must be assessed. In case of potential recidivism, participation (on a voluntary basis) in psychotherapy or other trainings reducing the likelihood of repeated infringement must be offered to the convict.”* Section 394(2) of the Prison Code: *“If criminal proceedings were instituted against a pre-trial detainee for a criminal offence under Chapter XIX of the Penal Code, participation (on a voluntary basis) in appropriate psychotherapy or other trainings reducing the likelihood of repeated infringement must be offered to the pre-trial detainee.”*

<sup>157</sup> In this matter, I had turned to the Minister of Human Capacities in my Report No. 793/2017 on the NPM’s visit to the National Prison of Szombathely. I present the details of the dialogue related to the recommendation in Point 9 of the comprehensive report.

<sup>158</sup> The Minister should establish the nutritional provisions regarding food supplied in the framework of organised catering and regular meals, as well as the personal requirements for catering, diet planning and the preparation of dietetic food, and the rules of official control.

head of the company group composed of the corporations of the penitentiary system to take action in order to ensure protective equipment in compliance with the regulations as well as recreational and dining rooms suitable for the consumption of civilised meals, and hygienic sanitary units.

Line officers were struggling with a vacancy of 12.5%, due to which they had to cope with a high number of detainees per person and overwork. I called attention to the fact that unfavourable working conditions, especially the heavy workload of the employees could impact the execution of their everyday tasks, the staff's attitude towards the detainees, as well as the successful prevention of violence between the detainees. I proposed that the warden take action in order to fill vacant positions with a view to alleviating the workload of the personnel.

Based on the accounts of the detainees, there was a lot of tension within the Prison, which provoked conflicts and occasionally physical acts of violence. Regarding the behaviour of the staff vis-à-vis the detainees, I was informed about racist comments, other forms of verbal abuse, and physical ill-treatment. I requested that the warden take action to prevent physical aggression between the detainees and eliminate racist behaviour among the members of the staff. I asked that he take action against the inappropriate, occasionally violent behaviour of the officers and ensure the proper investigation of disciplinary offences and the professionally adequate execution of disciplinary proceedings.

### 9.2.2. Unit I of the Budapest Remand Prison<sup>159</sup>

On its visit to Unit I of the Budapest Remand Prison, the NPM was joined by the SPT's delegation visiting Hungary.<sup>160</sup> At the time of the visit, the Budapest Remand Prison had 258 detainees for 158 authorised places, which means that the utilisation rate was 168%.

One of the custodial officers stayed within hearing distance and was taking notes throughout the interviews conducted with the detainees and the members of the staff. The visiting delegation was obliged to warn the note-taking guard repeatedly to go further away. Due to the above, numerous interviews were conducted in a rather tense atmosphere, and the requirement of confidentiality could not be observed. I asked the Director General of the Hungarian Prison Service to call the attention of the commanders and personnel of penitentiary institutions to comply fully with their obligations to cooperate with a view to the efficient performance of the NPM's tasks.

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<sup>159</sup> Report No. AJB-501/2018.

<sup>160</sup> SPT Visit to Hungary 21–30 March 2017: Conclusions and Recommendations for the National Preventive Mechanism (Clauses 43–48 of CAT/OP/HUN/R.2).

During their reception, detainees undergo a medical examination. The empathic behaviour of the nurses to the detainees was exemplary; however, due to the inadequate size, lighting and ventilation of the admission rooms, no confidentiality could be assured between the physician and the detainee. Several detainees felt humiliated by the fact that police officers also stayed in the doctor's office during the medical examination. I asked the warden of the Budapest Remand Prison to ensure that the size, lighting and ventilation of doctor's offices are appropriate. Moreover, efforts should be made to ensure that only medical personnel is present at medical examinations, and guards assuring the security of the health professionals stay outside hearing distance.

In several cells that were designed for single occupancy, the living space per detainee was less than 6 m<sup>2</sup>. In the case of multiple-occupancy cells, 4 m<sup>2</sup> of living space was ensured per detainee, in accordance with the law. I asked the director of the Institution to ensure the minimum living space prescribed by law in each of the cells.

In numerous cells, lighting and ventilation were inadequate due to the view-blockers installed in front of the windows and the breakdown of the ventilation equipment. The toilet seats and covers were missing in many cells. In the showers for the detainees, the knobs were missing, pipes and pointed tap stubs were sticking out from the mouldy walls. I initiated that the warden of the Institution ensure the proper lighting and ventilation of the cells, provide for the replacement or repair of the missing or damaged toilet seats and covers, and taps.



*Washrooms  
for detainees in Unit  
I of the Budapest  
Remand Prison*

Detainees reported about the fact that the guards talked to them in a humiliating and debasing manner, and responded to their communication only with delay. Several detainees complained that at the Budapest Remand Prison the guards handcuffed them to radiators and ill-treated them. Based on their accounts, in order to prevent that the physically abused persons hit their head in the wall during the abuse, the guards made them wear

a headgear. As far as they knew, the guards deleted the video recordings showing these cases of abuse.

In order to verify the statements of the detainees, I asked the warden of the Institution to provide me with the video recordings made at various times and on various days. At first, instead of the recordings made at the time indicated by me, I received the recordings of the next day. When I called the warden's attention to the error, he also sent me the recordings that I had requested.

In one of the videos, it is clearly visible as the guards handcuff a detainee to the radiator by his hands, and put a headgear-like object on his head. According to the recording of about 30 minutes, several persons going by – detainees and staff members alike – saw the detainee handcuffed to the radiator, but none of them were shocked by the sight. After about half an hour, the guards took off the handcuffs from the detainee's hands. Based on this video, it could not be established with certainty whether the guards had abused the detainee handcuffed to the radiator or not.

According to the information received from the Budapest Remand Prison, the guards handcuffed the detainee shown in the video to the radiator in order to prevent self-harm and eventual attacks. The protective headgear used in boxing was put on the detainee's head to prevent any eventual head injuries caused by self-harm. I asked the Prosecutor General to inquire into the practice of the Budapest Remand Prison concerning the attaching of detainees to objects. I initiated that the Director General of the Hungarian Prison Service prohibit the handcuffing of detainees to objects.

According to the detainees, the Budapest Remand Prison barely provides any programmes for them. Most of them just watch television, and go outside to get some fresh air. I asked the head of the Budapest Remand Prison to take action to ensure that the detainees could choose from a variety of programmes as broad as possible, and that the personnel strive to involve as many detainees in the programmes as possible. I pointed out that reintegration officers should make a constant effort to involve as many detainees in the individual activities as possible. The Institution's effort to provide educational possibilities for the detainees should be maintained.

The detainees' diet did not contain enough fruit and vegetables, milk and dairy products. The carbohydrate content of special diets was uneven. There were cases when due to the quick deterioration and belated replacement of the poor-quality cutlery at their disposal, the detainees had to eat without cutlery. I initiated that the warden of the Budapest Remand Prison ensure appropriate catering for the detainees – including the steady carbohydrate content of special diets –, and provide for the immediate replacement of deteriorated cutlery.

Pursuant to the authorisation stipulated in Section 247(2)sz of Act CLIV of 1997 on Healthcare (hereinafter the "Healthcare Act"), the Minister re-

sponsible for Healthcare shall establish “*the nutritional provisions regarding food supplied in the framework of organised catering and regular meals, as well as the personal requirements for catering, diet planning and the preparation of dietetic food, and the rules of official control*”. As opposed to that, provisions concerning catering for persons detained in the penitentiary system are contained in a normative instruction inferior to a ministerial decree: the special order of the Director General of the Hungarian Prison Service. I asked the Minister of Human Capacities once again<sup>161</sup> to inquire into – with the involvement of the Minister of Justice and the Minister of Interior – the possibilities of regulating the issues regarding the catering of detainees in a decree, and take action with a view to the drafting of the provisions in compliance with Section 247(2)sz) of the Healthcare Act.

I also examined the practice of the application of means of restraint in arbitrarily selected cases. Based on the documents at my disposal, the use of means of restraint was necessary, proportionate and legitimate in the given cases, and the principle of gradualism was also respected.

The personnel had an excessive workload. Regular overwork increases the quantity of stress, which may lead to burnout and a risk of ill-treatment vis-à-vis the detainees. I asked the Director General of the Hungarian Prison Service that with a view to mitigating overwork, he consider increasing the headcount of the Budapest Remand Prison.

### 9.3.

#### Police custody

##### 9.3.1. Central Holding Facility of the Metropolitan Police Headquarters of Budapest<sup>162</sup>

The aim of the follow-up visit made to the Central Holding Facility of the Metropolitan Police Headquarters of Budapest (hereinafter the “MPHB”, together referred to as the “Central Holding Facility”) was to monitor the implementation of the recommendations formulated in the previous report<sup>163</sup> and the repeated inspection of the issues that had been the most problematic. At the time of the visit, the Central Holding Facility had 20 detainees for 46 authorised places, which means that the utilisation rate was 43.4%.

Detention conditions did not improve at all since the previous visit. During the medical check-up prior to admission, besides the medical personnel,

<sup>161</sup> See also my Report No. AJB-474/2018 on the follow-up visit to the Márianosztra Strict and Medium Regime Prison.

<sup>162</sup> Report No. AJB-496/2018.

<sup>163</sup> Report No. AJB-151/2016.

police officers also stayed in the doctor's room within hearing distance. I asked the Commissioner of Police for Budapest to take action to ensure that only medical personnel are present during medical examinations. If the presence of police officers is indispensable during the examination, they should be waiting outside hearing distance.

There were cases when detainees could not notify their relatives after their admission into the Central Holding Facility. I asked the head of MPHB to make it possible in such cases for detainees to notify their relatives.

Some detainees who were taken to the Central Holding Facility late at night claimed that since the guards did not ask them whether they wanted anything to eat, they went hungry till morning. I asked the Commissioner of Police for Budapest to ensure that the Central Holding Facility provide food for detainees taken there past dinner time if necessary.

The Central Holding Facility did not have any concise and easily understandable information materials that would have facilitated the comprehension of the lengthy and unintelligible admission brochure for the detainees. I asked the Commissioner of Police for Budapest to take action to ensure that such a brief and reader-friendly information brochure is made available.

In several cells of the Central Holding Facility, the window handles did not work, neither ventilation, nor lighting was appropriate, sanitary units were dilapidated, and the hot water supply was not continuous. There was no toilet inside the cells. Detainees could use the toilet only by asking the guards to accompany them to the lavatories. The detainees complained that the guards often made them wait. The courtyard was in an extremely decrepit state. I asked the head of the MPHB to take action with a view to renovating the cells and the courtyard, ensuring continuous hot water supply, as well as to ensure that the guards react immediately to the requests of those detainees who wish to use the lavatories.



*Courtyard  
of the Central Holding  
Facility of the MPHB*

In certain cases, detention in single cells may have an effect similar to solitary confinement. The solitary placement of the detainee must not result in the substantial reduction of communication possibilities and must not lead to segregation. In the course of detention, bearing in mind separation provisions and the requirement of safe custody, an effort should be made to prevent, if possible, the placement of detainees in single cells. Upon visits, in justified cases, the physician of the Central Holding Facility may also recommend that the detainee be placed in a multiple-occupancy cell. Based on the doctor's recommendation or the guards' observations, detainees are placed in multiple-occupancy cells. I asked the head of the MPH B to make an effort to ensure – while also bearing in mind the result of the medical examination preceding the detainee's admission, the rules of separation and the requirement of safe custody – that detainees are not placed in single cells if possible.

The working conditions of the staff did not change, either. According to the guards, the recreational room and the locker room needed to be refurbished the most. Natural lighting was still rather poor in the guards' recreational room. I initiated that the head of the MPH B take actions with a view to improving the working conditions of the staff.

### 9.3.2. The custody unit of the 14<sup>th</sup> District Police Department of the MPH B<sup>164</sup>

The custody unit of the 14<sup>th</sup> District Police Department of the MPH B (hereinafter the "Police Department") is located on the ground floor of Building B of the Police Department. The custody unit with a capacity of 10 arrestees consists of three custody rooms, a recreational room for the staff, a hallway, a cold food storage / finishing kitchen, two lavatories and restrooms. At the time of the visit, there was only one arrestee at the place of detention.<sup>165</sup>

The decrepit and uncared-for condition of the rooms of the custody unit as well as the lack of certain physical amenities threatened the enforcement of the detainees' right to human dignity. I recommended that the Commander of the Police for Budapest ensure the renovation of the custody unit of the Police Department, and requested that the head of the Police Department ensure the proper cleaning of the rooms of the custody unit.

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<sup>164</sup> See Report No. AJB 1522/2018.

<sup>165</sup> Upon taking someone into custody, the police may restrict a person's personal liberty only for the necessary period, not longer than eight hours. If the objective of police custody is not reached, the head of the competent police organ may extend this period, if justified, on one occasion, by four hours. The period of police custody shall be counted from the beginning of the police measure. The rules of police custody are stipulated in Section 33 of Act XXXIV of 1994 on the Police (Police Act).

Despite the fact that in a previous report of mine,<sup>166</sup> I had already called attention to the fact that the detainees' right to notify a relative or a third party without delay must be ensured from the first moment of their deprivation of liberty,<sup>167</sup> there were no indications in the report on the execution of taking into custody that the officer would have informed the man taken into custody at the Police Department about this right or would have ensured the conditions thereof. The arrestee claimed that he could exercise his right to notify a relative<sup>168</sup> not from the beginning of his deprivation of liberty, but only after his arrival at the Police Department and not personally, but only through the dispatch commander. I requested that the head of the MPHB ensure that arrestees may exercise their right to notify their relatives indirectly at the police departments under his supervision.

The fact that there is no legislation to ensure the possibility for detainees to ask to be examined by a physician of their choice jeopardizes the enforcement of the prohibition of torture, inhuman or degrading treatment or punishment. I called for the joint action of the Minister of Interior and the Minister of Human Capacities with a view to making it possible for all detainees to request an independent medical examination by the appropriate amendment of Governmental Decree No. 217/1997. (XII.1.) on the execution of Act LXXXIII of 1997 on Compulsory Health Insurance and of Decree No. 56/2014. (XII.5.) of the Minister of Interior on the Order of Police Holding Facilities.

According to the Fundamental Law, the *"rules for fundamental rights and obligations shall be laid down in an Act"*. In contrast, besides the exhaustive list of the Police Act, the provision of the Decree of the Minister of Interior on Police Staff Regulations (hereinafter the *"Staff Regulations"*)<sup>169</sup> regarding the handcuffing of a detainee deemed dangerous by the police officer states one additional reason for handcuffing. In order to remedy the situation, I requested that the Minister of Interior specify the stipulations of the Staff Regulations in connection with handcuffing.

In their complaints lodged against the Police Department concerning placement during the two months prior to the visit, in four cases, detainees complained about the degrading stripping in the custody room; in one other case, they complained about the unjustified arrest and its duration, and also

<sup>166</sup> Report No. AJB-151/2016.

<sup>167</sup> CPT/Inf (2001), Clauses 2, 23 and 30; CPT: *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 12 April 2013* [CPT/Inf (2014) 13], Clause 22.

<sup>168</sup> According to Section 18(1) of the Police Act at the time of the visit: *"detainees must be provided an opportunity to notify one of their relatives or a third party on the condition that this does not threaten the aim of the measure. If the detainee is not in the position to enforce this right of his or her, the police shall have the obligation of notification."*

<sup>169</sup> Minister of Interior Decree 30/2011. (IX. 22.) BM on Staff Regulations of the Police.

in one case, about the lack of food and something to drink. According to the complaints about clothes inspection, the detainees had to take off their clothes in the custody unit, drop their trousers and underwear, squat on their heels and cough. As a result of that, the private parts and anuses of the detainees – squatting with their lower body uncovered – became visible to the person conducting the inspection, and the detainees felt aggrieved by the degrading and humiliating manner of inspection. In my report I drew attention to the fact that the objective of making the detainees squat on their heels with their lower body uncovered was to find forbidden objects hidden not in their clothes but on their body, between their legs, in their private parts, or in their anuses. In the case of the complainants, the policemen conducting the inspection acted in excess of their power regarding clothes inspection, and they submitted the arrestees to a body search not applicable in the case of persons taken into police custody, by which they violated the prohibition of degrading treatment pursuant to Article III(1) of the Fundamental Law. I asked the head of the MPH to ensure that in the case of arrestees, the staff members of the police departments under his supervision apply the rules of clothes inspection rather than those of body search.

Pursuant to Articles 10 and 16 of the UN Convention Against Torture, each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of all personnel who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment. According to the staff members of the Police Department, they had no training sessions whatsoever on the treatment and human rights of detainees, or on conflict and aggression management. They had monthly, four-hour training sessions held by a tactical instructor on the use of means of restraint, securing a location, using collective force, and drugs. I suggested that the Metropolitan Police Headquarters of Budapest should organize training sessions on the treatment and human rights of detainees, managing conflicts and aggression for the staff of the Police Departments under his supervision.

### 9.3.3. Holding Facility of the Fejér County Police Headquarters<sup>170</sup>

At the time of the NPM's visit to the Holding Facility of the Fejér County Police Headquarters (hereinafter the "Holding Facility"), the establishment had 34 places, and 7 male detainees. The utilisation rate of the Holding Facility was 21%. Of the seven detainees, four were in pre-trial detention, and three were in criminal custody. There were no juveniles or persons with disabilities among the detainees.

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<sup>170</sup> Report No. AJB-510/2018.

The members of the visiting delegation visited the rooms of the Holding Facility, inspected the relevant documents, made interviews with the detainees and the staff members of the Holding Facility on duty, and had a look at the detainee transport vehicle parked in the courtyard and its equipment. The visiting delegation examined the detainees' nutrition, healthcare and methods of maintaining contacts.

The visiting delegation found cleanliness and order in the Holding Facility; however, the unique window-opening device used in the cells and its handling was dangerous and suitable for inflicting self-harm. I requested that the head of the Fejér County Police Headquarters take action to have the window-opening devices replaced in the cells of the Holding Facility.



*Hallway  
of the Holding Facility  
of the Fejér County Police  
Headquarters*

It was worrisome that at the Holding Facility, the medical documentation on detainees, as well as the other official documents of the detainees, was stored in an open wooden crate in the office of the commanding officer, and they were thus accessible for the members of the custodial officers. The lack of various life-saving and other medical appliances, disinfectants, disposable gloves, and the insufficient equipment of the doctor's office jeopardized not only the medical care provided for the detainees but the health of the medical personnel as well. I asked the head of the Fejér County Police Headquarters to take action with a view to the proper storage and safeguarding of the medical documentation in connection with the detainees, as well as to procuring the missing equipment from the doctor's office.

Concerning the catering of the detainees, the visiting delegation did not remark any fundamental-rights-related impropriety. Nevertheless, I asked the head of the Fejér County Police Headquarters to ensure that the food for the detainees is delivered in a special food transporting vehicle, that the

staff uses the special detergents required with bactericidal and antifungal effect, and that the food carrying containers are not stored on the floor of the hallway of the Holding Facility.

There were no seatbelts in the detainees' compartment of the service transport vehicle, which endangered the physical well-being of the detainees. I requested that the head of the Fejér County Police Headquarters take action so that the detainees' compartment of the official vehicle for the transport of detainees would be equipped with seatbelts as soon as possible.

The Holding Facility had a 20-member staff. When organizing the service, efforts were made to ensure that there would always be a woman on duty who could inspect female detainees potentially arriving. Usually, there is one commanding officer and two custodial guards on duty. There were two accompanying guards in the staff of the holding facility who substituted for the custodial guards and also carried out custodial duties on a daily basis. In order to prevent burnout, the guards were working as custodial guards for two weeks and as accompanying guards for two weeks. The police recreational/dining room was in a rather poor condition; and there were neither separate lockers, nor separate showers for the female custodial staff. I asked the head of the Fejér County Police Headquarters to ensure civilised working and dining conditions for the guards.

I also requested that the head of the Fejér County Police Headquarters organize training sessions on the treatment and human rights of detainees, and on conflict and aggression management for the staff under his supervision, and make sure that the guards acquire the skills necessary for the proper handling of life-saving devices.

## 9.4.

### Social care institutions

#### 9.4.1. Nagymágocs Castle Home of the AranySZiget Integrated Retirement Home of Csongrád County<sup>171</sup>

The Nagymágocs Castle Home of the AranySZiget Integrated Retirement Home of Csongrád County (hereinafter the "Institution") provides personalized and direct physical care for its elderly residents. At the Institution with a 300-person holding capacity, based on the oral communication of the management, there were 302 residents at the time of the visit, which means that the utilisation rate of the Institution was 100.67%. There were 52 persons on the waiting list of the Institution, of whom 32 had submitted extraordinary applications.

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<sup>171</sup> Report No. AJB-406/2018.

88 residents of the Institution were placed under guardianship, and the guardianship procedure of another 21 residents was in progress. Out of the 88 residents under guardianship, 46 were under guardianship invoking fully limited legal capacity, and 42 were under guardianship invoking partially limited legal capacity. In 26 cases, relatives acted as guardians, whereas in the remaining 16 cases, the task was carried out by a professional guardian. One professional guardian carried out guardianship-related tasks for several persons under guardianship. Supporters with no effect on legal capacity had not been assigned to any of the residents. I suggested that upon requesting guardianship procedures, the head of the Institution take into consideration that in those cases where no restriction on the legal capacity to act is necessary, it is possible to assign a supporter.

According to the document entitled "Rules of Moving into a Residential Room", residents may request to be placed in one- or two-bed rooms, residential homes or apartments, and they may also name the person with whom they would like to share their room. As opposed to that, several residents complained that they were not allowed to choose their own room-mates. Some residents were on extremely bad, overtly hostile terms with their room-mates. Another resident was devastated by the fact that the room-mate she loved dearly would move out two days later, and she would be left alone. I asked the head of the Institution to take into consideration, when assigning residents to specific rooms, their wishes concerning the person whom they would like to live with, and inform them in advance about changes in the distribution of the rooms.

In 2017, 55 residents passed away, of whom the youngest was 59 years old whereas the oldest was 97. In most cases, the cause of death was respiratory failure, cardiovascular failure, pneumonia or sepsis. Residents in terminal stage were moved to the two medical rooms on the ground floor. Several extraordinary deaths had taken place within the Institution. In 2015 one of the residents hanged himself/herself in the garden of the Institution. This resident had been examined by a physician the week prior to the suicide for the purposes of placing him/her under guardianship. In the same year, another resident jumped out from the first floor in the lobby of the Institution. Based on the accounts of the residents, one of the residents jumped out of the window after he/she had been beaten by his/her room-mates with a stick. In 2016, one of the residents, who was being treated at the otolaryngological ward of the Hospital of Szentes due to physical abuse suffered at the Institution, committed suicide by throwing himself/herself out of the window. The residents received assistance in coping with their loss, anxiety and fear provoked by these deaths from the mental health personnel. I called the attention of the head of the Institution to the fact that the work of the mental health professionals could be facilitated by group sessions and individual conversations held for the residents by a psychologist.

The building was not barrier-free, and its accessibility could not be ensured in the future, either, due to certain regulations pertaining to listed monuments. I pointed out that the buildings in which the Institution operated were not suited to the placement of 300 residents. The practicality of using a castle as a retirement home as such is generally questionable. In my view, the above-mentioned problem could be solved through the process of de-institutionalisation.

The big castle building had two three-bed, four four-bed, one six-bed, two eight-bed, one nine-bed, one eleven-bed and one twelve-bed rooms on the ground floor. On the first floor, residents lived in five four-bed, two five-bed, two six-bed, three seven-bed, one ten-bed, one twelve-bed and one thirteen-bed rooms. There was no lift in the two-storey building. On the ground floor of the nursing unit, there were altogether 128 residents living with dementia, physical disabilities, or confined to bed in six two-bed, ten three-bed, two four-bed, four five-bed, three six-bed, two seven-bed, two eight-bed and one nine-bed rooms. There was also a room for the isolation of one or two persons with infectious diseases. Apart from that, there was a dining room, as well as three rooms for registered partners in the building. The residential rooms of the Institution did not provide 6 m<sup>2</sup> of living space per resident,<sup>172</sup> bearing in mind that in many cases, there were 5, 6, 7, 8, and even 9, 10, 11 or 12 beds crammed into a single room. I requested that the head of the Institution structure the distribution of the rooms in a way that each resident would be ensured 6 m<sup>2</sup> of personal living space as prescribed by law, and that there would be maximum four residents living in the same room.

Three rooms of the nursing unit were occupied by residents living in a registered partnership. Due to the lack of a conjugal room, the circumstances were not ensured for intimate relations among other residents. I drew the head of the Institution's attention to the fact that residents not engaged in a registered partnership must also be ensured proper circumstances for their intimate relations.

The Institution did not employ a full-time physician. Medical treatment for the residents was provided by a physician engaged by the Institution, in addition to his/her duties as a general practitioner. Several residents were affected by cardiovascular diseases and some of them had cancer. The residents' medical history also included some cases of heart surgery and heart attack. Typical conditions included diabetes, increased cholesterol, osteoporosis, as well as gallstones, gastro-intestinal disorders and hypertension. At the time of the visit, one person was isolated due to a contagious infection caused by

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<sup>172</sup> See Section 41(4)a) of Decree 1/2000 (I. 7.) of the Ministry of Social and Family Affairs on the professional duties of social institutions providing personal care and on the conditions of their operation (hereinafter the "MoSFA Decree").

MRSA bacteria. There were no indications of bedsores or insufficient fluid consumption noted by the medical expert. According to the interviews made with the residents, the majority of the residents were taking several medications on a regular basis. Some reported about taking more than 10 pills a day, but some even talked about taking 32, 20 or “half of a handful” of pills per day. The medical expert did not observe any circumstance that would have indicated exaggerated quantities of medication consumption. Most likely due to the heavy workload and other duties of the physician, the regular medical control of the residents and the regular review of the medications taken by them were not ensured at the Institution.

Patients can see a psychiatrist – working with an agency contract – in the Institution every two weeks. The psychiatrist examines each resident moving in to the Institution, and he/she also examines those patients whose examination is initiated by the head nurse due to their symptoms. Having “set” the appropriate combination and dose of medication, the psychiatrist no longer examined those residents who were taking these medications regularly. I drew attention to the fact that in consideration of the advanced age of the residents, their regular medical check-up would be more than advisable. The physician and – in the case of psychiatric conditions – the psychiatrist must regularly examine residents regularly taking medicine even if they do not have specific complaints.

At the time of the visit, the Institution employed 1 head of unit, 1 head nurse of institution, 59 nurses-carers, 6 social and mental health workers, 1 social worker, 12 auxiliary nurses – of whom 9 were required by the Institution to get an appropriate qualification –, and 1 care assistant. From the headcount of nurses and carers, 7 persons were absent due to sick leave or maternity leave. Of the nurses and carers, 13 had a general nursing degree, and 44 were qualified social workers and nurses. The auxiliary nurses had secondary and secondary technical qualifications, primary school certificates or secondary vocational certificates. The social workers and the mental health personnel were qualified as cultural managers, social workers, librarians, advanced-level social pedagogues, kindergarten teachers or mental health development specialists. The social assistant had a qualification in social care and nursing. The number of persons working as nurses and carers, including those auxiliary nurses who had agreed to obtain a certificate as specialized nurses, did not reach the norm concerning the number of professional staff stipulated by law.<sup>173</sup> There were more than three times as many carers as nurses in the Institution.<sup>174</sup>

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<sup>173</sup> Pursuant to Section 6(5) and (12) of the MoSFA Decree.

<sup>174</sup> Annex 2 of the MoSFA Decree does not contain a specific provision on the proportion of nurses and carers.

Based on the accounts of the staff, they could not ensure the presence of a qualified nurse or a specialized nurse in each of the shifts. I requested that after reaching the professional headcount norm prescribed by law,<sup>175</sup> the head of the Institution do his/her best to increase the number of nurses and carers, and while filling vacancies, strive to employ as many specialized nurses as possible. As there were 128 advanced-aged residents in need of permanent care in the nursing unit, it would be reasonable to ensure the permanent presence of a qualified nurse or a specialized nurse.

According to the Institution's protocol regarding the administration of injections, carers without a qualification as healthcare specialized nurses were also allowed to administer intramuscular injections, which – based on the staff interviews – was effectively a normal routine. I asked the head of the Institution to amend the protocol regarding the administration of injections so that intramuscular injections could be administered only by qualified nurses, and to make sure that the employees of the Institution comply with this regulation in practice.

Based on the accounts of the staff, efforts were made to ensure that female residents are bathed only by female nurses and male residents are bathed only by male nurses, but this was not feasible in all cases. It caused an additional problem that the window of the bathroom located on the first floor opened onto the hallway. One of the members of the visiting delegation gained first-hand experience of the fact that the naked residents getting ready to have a shower could be seen through the open window not only by their carers and peers of the other sex but also by visitors roaming freely in the building. I pointed out that residents who are in a vulnerable situation and need help with their personal hygiene are embarrassed by the fact that they are occasionally assisted by a nurse of the other sex, and that anyone can peek into the bathroom from the hallway through the open window.

The catering unit operated with 15 workers (1 catering manager, 1 store-room manager, 10 cooks, including a dietetic cook, and 3 kitchen assistants). At the time of the visit, the dietitian did not have an operating licence according to the register kept by the Registry and Further Education Department of the National Healthcare Service Centre. I asked the head of the Institution to make sure that the dietitian obtain the operating licence prescribed for the independent execution of his/her activities.

The Institution provided catering for the residents from its own kitchen. The residents had 5 meals a day (breakfast, morning snack, lunch, afternoon snack, dinner). Based on the doctor's prescription, the residents could receive a special diet. 40, 35 and 45 residents were on a diabetic, low-fat and pureed diet, respectively. Although the dishes tasted by the members of the

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<sup>175</sup> Annex 2 of the MoSFA Decree.

visiting delegation were savoury and their consistency was appropriate, several residents (including an emaciated person just recovering from a serious illness) complained about the insufficient quantity and bad taste of the food. The Institution did not prepare nutrient portion sheets, so it could not be established in what quantities the food portions contained the given nutrients. The nutritional values presented on the menus did not attain the standard daily calorie needs prescribed by law, that is, 2000–2500 kcal per day until the age of 69 and 2000–2400 kcal per day from the age of 70.<sup>176</sup> I asked the head of the Institution to make sure that a nutrient portion sheet is prepared in every case, to take into consideration, as much as possible, the residents' various tastes when composing the menu, as well as to ensure that emaciated or sick residents consume sufficient quantities of food. I pointed out that the age-appropriate calorie intake prescribed by law must be ensured for the residents.

Many residents consumed alcoholic beverages on a regular basis. In the withdrawal period (i.e. when they run out of money), those residents who were addicted to alcohol were affected by anxiety disorder – in such times they received medical help from the psychiatrist, who prescribed medication for them. I drew attention to the fact that due to the State's objective obligation to protect institutions, it is the task of the personnel to prevent and stop tension as well as verbal and at times physical aggression between the residents.

At the Institution, residents were never strapped to their bed as a means of physical restraint; however, one of the nurses admitted that there had been cases when residents were strapped into their wheelchair. I pointed out that strapping someone into his/her wheelchairs is also a means of physical restraint, and the Institution must respect the relevant regulations concerning the documentation of such restrictive measures in those cases as well. The regulation concerning the use of measures of restraint is contained in Annex 3 of the House Rules of the Institution. The regulation did not use the terms employed by the legal provisions in force; what is more, it entitled the director of the Institution to order the use of restrictive measures. I asked the head of the Institution to revise the regulation in order to harmonize it with the legislation in force.

According to the House Rules, the residents wore primarily their own clothes that had to be marked by a personal identifier. If a resident did not have enough own clothes and underwear of proper quality, the Institution supplied him/her with 3 sets of underwear and sleepwear, as well as 2 sets of outerwear and shoes appropriate for the season. At the time of the visit, there were also "common" pieces of clothing in use. In relation to clothes in common use, I pointed out that wearing their own clothes would not only ensure

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<sup>176</sup> Annex 3 of Minister of Human Capacities Decree 37/2014. (IV. 30.) EMMI on Nutritional Health Provisions related to Mass Catering.



*Objects prepared  
by the residents  
in handicraft class*

the general well-being of the residents but would also make them feel at home within the Institution. The clothes of the residents should be individualized, and everyone should get back their own clothing after they were washed.

Visitors could be received in the Institution any time. There were numerous residents in the Institution who did not have relatives, or who had lost all contact with their families, and so they did not have any visitors. The residents were allowed to leave the premises of the Institution, but they had to announce their wish to do so beforehand to the shift manager nurse, and they also had to state their intent at the door. The doorman kept a registry of who left and who came back. There were also some residents who could leave the Institution only under supervision due to their condition. They went for walks in the company of the mental health specialists.

The complaints of the residents were noted in writing by the members of the staff, who also made notes of personal offences and occasional (physical) fights. Although the Institution had a complaint box, the residents rarely used it. I pointed out that the residents should be encouraged to use the complaint box, prompting them to express their potential grievances, recommendations regarding the circumstances, and wishes, even if anonymously.

#### 9.4.2. Integrated Social Care Institution of South Borsod<sup>177</sup>

Buildings B and C of the Integrated Social Care Institution of South Borsod (hereinafter the "Institution") accommodated 120 persons each, mostly living with psycho-social disabilities. The utilisation rate of the Institution was 100%, and the residents' distribution by sex was 50-50 per cent.

<sup>177</sup> Report No. AJB-2479/2018.

The two eldest residents (a man and a woman) were aged 88 while the youngest was 25. There were 5 other residents (4 men and 1 woman) in their twenties living in the Institution. Most of the residents were aged between 50 and 70, but the Institution looked after persons in other age groups as well.

According to the statement submitted to me by the Institution, 23 residents' legal capacity to act was not restricted, but one of them was assisted by a supporter in decision-making. 101 residents were under fully restrictive guardianship,<sup>178</sup> whereas 112 were under partially restrictive guardianship.<sup>179</sup> In the case of 4 additional residents under guardianship, the type of guardianship was not indicated.

During the preliminary care preceding a person's moving-in, the staff members of the Institution visited the would-be resident in his/her home or at the hospital treating him/her. Apart from some minor discrepancies on the data sheet, the visiting delegation did not remark any fundamental-rights-related impropriety in relation to the preliminary care procedure. The majority of the residents were admitted by the Institution at the request of their relatives, in relation to which I called the head of the institution's attention to Article 19 of the CRPD about living independently and being included in the community.

There were 8 rooms on each of the two storeys of both Building B and Building C where the residents were accommodated. In both buildings, there was a wing for men and a wing for women, and both buildings could accommodate 120 residents. The placement of residents was arbitrary, on the basis of places becoming vacant; the only criterion was that residents confined to a wheelchair would be lodged on the ground floor. Both buildings were equipped with a lift; however, the one in Building C had been out of order for about one and a half years. The use of the



placement of residents was arbitrary, on the basis of places becoming vacant; the only criterion was that residents confined to a wheelchair would be lodged on the ground floor. Both buildings were equipped with a lift; however, the one in Building C had been out of order for about one and a half years. The use of the

*A residential room  
in the Integrated Social Care Institution  
of South Borsod*

<sup>178</sup> See Section 2 (21) of Act V of 2013 on the Civil Code.

<sup>179</sup> See Section 2 (19) of Act V of 2013 on the Civil Code.

stairs was facilitated by handrails. 8-bed rooms accommodated more than 4 persons, and the personal living space prescribed by law was not ensured. There were no rooms for the joint accommodation of married couples and registered partners.

Some of the residents established intimate relations with each other. In Building C, there was a conjugal room of 7 m<sup>2</sup> with two beds placed next to each other, which the couples could use any time and as long as they wanted. In order to use the conjugal room, the couples had to ask for the key from the carer. The couples received a clean bedsheet, and condoms were also available in the room. Upon the residents' request, the physician prescribed contraceptive pills or injections. There were some relationships in which no sexual intercourse took place, but the residents found a soulmate in each other, and they went for a walk together in the garden, or accompanied each other to the village. The emotional bonds between the couples became manifest during the joint interviews as well: they were holding hands during the conversation, or they said that they *"only cared for each other in this place"*. The Institution could not ensure joint accommodation for partners in the same room. Nevertheless, there were several couples who managed their finances together. I asked the head of the Institution to set up rooms allowing for the joint placement of couples, in consideration of those couples who nurture a stable emotional relationship and also manage their finances together.

The number of restrooms available for the residents did not attain the number prescribed by law. When choosing carers to bathe residents, the personnel try to take into consideration the sex of residents in need of help. As there are few male nurses, the rule of thumb is to have male nurses bathe residents of a heavier build. If a female resident indicates that she does not want to be bathed by a man, the staff make sure that she is assisted by one of the female carers. Due to the composition of the staff, however, there are cases when – in the absence of an available male nurse – male residents are also bathed by female nurses. Based on the accounts of the personnel, the residents are allowed to choose the clothes they wish to wear, but they often put on too many garments, and in such cases, the personnel points that out to them and helps them to dress up appropriately. When laundry has been done, the residents always get back their own clothes, and the labels of the garments are marked with their names.

One of the residents said that he/she regularly helped the nurses look after the ill, and also assisted them in bathing and changing nappies. In accordance with the statements of the 8<sup>th</sup> General Report on the CPT's activities, I pointed out that if possible, the residents should not be involved in providing care for their fellow residents.<sup>180</sup>

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<sup>180</sup> See Clause 29 of the 8<sup>th</sup> General Report on CPT's activities [CPT/Inf (98)12].

I underlined that during the planned refurbishment of the Institution, it must be ensured that the conditions of the residents' placement prescribed by law are ensured. Involving the Institution in the Government's strategic plan regarding deinstitutionalisation, with a view to providing for at least some of the residents through social community care, could be a development concerning the problems of placement as well as with a view to compliance with Article 19 of the CRPD.

The general practitioner who provided medical treatment for the residents came to see patients twice a week, while the psychiatrist came once a week to the Institution. If the medical condition of a resident so required, the general practitioner came to see him/her at the Institution outside his/her regular hours. The psychiatrist examined those residents, on the one hand, in relation to whom the nurses noticed some problems, and on the other, he/she continuously monitored the psychiatric condition of all of the residents even if they did not seem to have any complaints (each resident's condition was reviewed once a year). The medication prescribed for residents living with psycho-social disabilities was in compliance with advanced medical standards. The psychiatrist also conducted therapy sessions with the residents. Most of the residents were familiar with the type of illness for which they had to take medication. Dental services began to be provided once a week in the properly equipped dentist's office of the Institution a couple of weeks prior to the time of the visit.

The rules of ordering restrictive measures are set forth in Chapter 9 of the House Rules of the Institution. The regulation did not use the terms employed by the legal provisions in force; what is more, it entitled the director as well as the unit head to order the use of restrictive measures. I asked the head of the Institution to revise the regulation in order to harmonize it with the legislation in force.

Based on the information provided by the management, restrictive measures were used in the case of an autistic resident. Due to his/her direct self-endangering behaviour, the resident had to be taken to hospital. Later on the ambulance took him/her back (strapped down) to the Institution, where the resident's hands were strapped to the bed and he/she was also given an injection. During the application of the means of physical restraint, the form provided in Annex 6 of the MoSFA Decree was filled in. However, the log of the auxiliary sheet contained only the reason for ordering the restrictive measure, and did not indicate the events of the periodical reviews applied during the measure. I called attention to the fact that during the documentation of restrictive measures, observations made during the use of the restrictive measure and a description of the condition must be noted down in detail on the auxiliary sheet, in compliance with Section 101/A(3) of the MoSFA Decree.

The management could not report about any other cases of the use of restrictive measures recently. Nevertheless, one of the staff members and some residents unanimously affirmed that the week before the visit, a female resident – having become aggressive – was administered a sedative injection, and one of her arms was tied down. Another nurse admitted that if someone needs to be strapped down, the event is usually not documented. In light of the accounts of the above case, the scarce documentation (the Institution provided the delegation with documentation for only one case of the use of restrictive measures) was an indication of the fact that physical restrictions must not have been documented in each and every case. Medications involving chemical restriction, given to the residents from time to time, were supplied to the residents “at their own request”. One of the nurses reported that such medication is registered as an action carried out at the residents’ own request because in that case, it does not qualify as a restrictive measure. I asked the head of the Institution to make sure that in the case of the use of chemical restrictive measures, the documentation prescribed by law is properly filled in.

In March, April and May (up to the time of the visit), there had been 4, 3 and 2 cases of death at the Institution, respectively. The causes of death were mostly cancer, stroke, pneumonia and old age. One of the residents reported about having had several suicidal attempts. A psychologist could provide substantial help to high risk residents in coping with their psychological burdens. It is reasonable to assume that access to psychological care would reduce the doses of medication and the proportion of combined treatments. The physical well-being of the residents could be improved by regular sessions of corrective-gymnastic therapy conducted by a physiotherapist (in addition to medical treatment).

Catering for the residents was provided by the Institution’s own kitchen: residents received breakfast, a morning snack, lunch, an afternoon snack and dinner. In addition to a regular diet, dietetic meals and pureed diets were also available on the physician’s prescription. The dietetic menu was composed by a dietitian, and the dishes of the menu were prepared by a dietetic cook in accordance with the menu and the nutrition portions. The pureed diet was not specifically designed: the dishes of the regular menu were pureed with the help of a blender. In the fluid menu, soup was added to the purees prepared in the above manner in order to turn them into a liquid. The residents were served tea or some dairy liquid (and additional quantities of tea if they were suffering from a febrile illness), as well as occasionally fruit juice for the afternoon snack. In hot weather, lemonade was also available for them to ensure proper rehydration. The residents, including those on dietetic meals, were generally satisfied with the catering. Concerning the preparation technology of the pureed and fluid dishes (i.e. the blending of regular dishes), the only reason the investigation did not reveal

any fundamental-rights-related impropriety was because it focused on the chief objective, i.e. that residents are provided sufficient nutrition. Nonetheless, I pointed out that special attention should be paid to the adequate nutrition of residents receiving a fluid diet, and if necessary, their diet must be supplemented by formulas with controlled nutritional content.

According to the physician, maintaining the blood sugar level of residents affected by diabetes was a frequent problem, which could most likely be put down to the non-compliance with the dietetic menu. The members of the staff also reported that the residents sitting at the same table would eat from each other's plates. I pointed out that during their care, the residents need to be monitored appropriately in that respect as well. I asked the head of the Institution to do his/her best to ensure that residents on a special diet keep to their diet, including their continuous supervision and dietetic education.

Some residents received visitors more frequently than others. Some of them were visited by their relatives on a weekly basis, and were taken home by their beloved every two weeks as well as for Christmas and major holidays. Half of the residents were never visited by their family members. There were cases when a relative or a guardian could not make it, but called on the phone to say that he/she would come at another time. One of the staff members was of the view that professional guardians came to visit more frequently. Relatives who were appointed as guardians often failed to come.

On the basis of the minutes of the 2016 and 2017 meetings of the Advocacy Forum, it could be established that the Forum discussed some important issues on the substance. The Advocacy Forum did not operate at the time of the visit because due to the passing away of one of its members; the election of the new member was still in progress. The patients' rights representative had consulting hours once a month. There was no complaint box at the Institution that could have been an efficient means of lodging complaints. I requested that the head of the Institution make a complaint box available for submitting complaints anonymously.

At the time of the visit, the Institution employed 1 manager, 46 nurses-carers (including 2 unit manager nurses), 4 social workers, 1 social administrator, 2 employment managers and 3 developmental class assistants. One of the nurses-carers on maternal leave was substituted by another staff member.

The nurses were overworked. In one shift, there were two qualified nurses and a nurse trainee looking after 60 residents. The number of persons working as nurses and carers, including those auxiliary nurses who had agreed to obtain a certificate as specialized nurses, did not reach the norm concerning the number of professional staff stipulated by Annex 2 of the MoSFA Decree.<sup>181</sup> I requested that the Institution increase the number of nurses and carers in

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<sup>181</sup> Pursuant to Sections 6(5) and (12) of the MoSFA Decree.

order to meet the norm concerning staff headcount as set forth in Annex 2 of the MoSFA Decree, and in doing so, employ as many specialized nurses as possible. At the time of the visit, nursing and care duties were carried out – in the framework of the Human Resources Development Operational Programme – with the assistance of 15 persons having completed only primary school. The Institution was planning to send them to a training specialized in healthcare, so their work was actually part of professional traineeship. The presence of nurse trainees at the Institution was a positive development as regards the increased number of nurses, but it could not substitute for the headcount of nurses and carers prescribed by law.

In addition to the mandatory credit-earning training courses, the employees also participated in a further training on hand hygiene. Those employees who did not have a baccalaurate diploma could attend school or a healthcare vocational training. I pointed out that with a view to preventing ill-treatment, it is advisable to expand the training opportunities of the employees, and make it possible for them to become familiar with the provisions of the CRPD and the OPCAT.

Both the nurses and carers, and mental health specialists looked after the residents with attentive care, but they were not granted possibilities of supervision. Supervision must be provided for employees working in physically and mentally demanding jobs of responsibility in order to prevent burnout and to support the mental health of the employees. Moreover, it would be useful to create recreational opportunities, and allow for team building in various forms (e.g. by common excursions) in order to improve workplace atmosphere.

There was only one occasion when the employees were provided with occupational wear, which, however, did not fit everyone, and they would have needed a change of working clothes, too. I asked the head of the Institution to supply occupational wear for the persons carrying out tasks in connection with personal care that is due to them pursuant to Section 6(11) of the MoSFA Decree.

## 9.5.

### Healthcare institutions

#### 9.5.1. Persons with disabilities at the Closed Unit of the Psychiatric Department of Balassa János Hospital of Tolna County<sup>182</sup>

Balassa János Hospital of Tolna County located in Szekszárd, which is the Teaching Hospital of the University of Pécs, provided psychiatric care with 89 places (47 acute care beds, 30 rehabilitation beds and 12 sanatorium

<sup>182</sup> Report No. AJB-615/2019.

beds for out-patients). At the time of the visit, the acute unit had 30 patients, the rehabilitation unit had 31, and there were 7 persons in the out-patient sanatorium.

Regarding the staff employed, the psychiatric ward satisfied the legal requirements necessary for the performance of its duties. Psychiatric care for patients was ensured by 5 medical specialists (including the head of the ward), 2 medical specialist trainees, 5 psychologists, 3 social workers with a tertiary degree, 3 healthcare administrators and 38 nurses; however, the latter included only one qualified nurse, and only one fourth of the nurses had a specialized qualification in psychiatry.

The placement conditions were appropriate on the already refurbished first floor: the walls were pleasant and colourful, and clean and modern sanitary units had been installed. In some of the wards of the second floor, patients had limited space to move around. The high temperature, due to the lack of air-conditioning and shading, endangered work as well as the condition of the patients. The lack of safety glasses and/or bars preventing breakout was dangerous. The mixed-gender use of the lavatories violated the right to human dignity, and the lack of basic sanitation products (i.e. toilet paper, hand disinfectant) could potentially lead to infection.

Taking care of those patients who were primarily treated with problems other than mental disorders was overwhelming for the personnel. The hospital management had taken certain measures with a view to preserving the physical and mental well-being of the employees: it used a matrix-type rotation between the wards, it provided recreational opportunities, high-standard further trainings and professional programmes for the staff in order to mitigate the risk of burnout and attenuate the turnover rate.

The patients complained about being placed in the same ward as persons in terminal stage. Changing the patients' nappies in front of others violates the sense of decency of patients, and causes an impropriety in connection with the right to human dignity stipulated by Article II of the Fundamental Law of Hungary. The placement of patients in an agitated state and those suffering from dementia is also a potentially dangerous factor, and increases the chance of conflicts between the patients.

The NPM concluded that the patients' right to self-determination and to seeking legal remedy is infringed by the fact that the reason for their admission into medical care had not been indicated on the patient admission request form. The NPM objected to the fact that in some cases, the signatures of the patient and of the person entitled to make a statement were missing. Similarly, the right to self-determination is violated and the patient's human dignity is endangered if it is not clearly specified prior to an intervention who has initiated it and whether all necessary information

has been provided. The absence of the patient's information and the lack of the patient admission request form (signed by at least the guardian) cause an impropriety in relation to the right to human dignity proclaimed in Article II of the Fundamental Law.

Some patients complained that they were not getting sufficient quantities of food. The staff was familiar with this issue as a 2017 internal audit report had already concluded that the food provided by the hospital was insufficient. The members of the staff remarked that the patients of the psychiatric ward could barely ever count on getting supplementary food from their relatives. The patients' sense of hunger is aggravated by the fact that meals are distributed only three times a day, and morning snacks and afternoon snacks are handed out together with the main meals. Psychiatric patients may feel confused, and disoriented in time, thus they cannot be expected to ration the food they have received. If patients with a psychiatric condition are also affected by diabetes, the fact that food is distributed to them three times a day poses a danger also for their state of health.

It is dubious whether patients can enforce their right to complain if the patients' rights representative does not regularly go to see the patients of the department that the patients themselves are not allowed to leave.

In relation to the conclusions of the visit, I made 14 recommendations. I asked the Minister of Human Capacities to consider that the patients' rights representative be obliged to hold consulting hours at regular intervals in departments providing in-patient care that patients may not leave at their will. With a view to that, I proposed supplementing Section 9(1) of Government Decree 381/2016. (XII. 2.) Korm. on the Integrated Legal Services Office.

In my recommendations addressed to the Minister of Human Capacities and to the Director General of the National Healthcare



*Curtain hugger crafted  
by the psychiatric patients  
in the activity room*

Service Centre as maintainers, I requested the improvement of the working conditions and the conditions of patient care. I recommended the creation of a separate hospice unit and a separate unit for patients with dementia.

I asked the head physician of the hospital department to ensure, as much as possible, that patients have at least 6 m<sup>2</sup> of personal space in the wards, to eliminate the mixed-gender use of lavatories, and ensure that psychiatric patients receive their snacks separately from the main meals as their distorted perception of time and reality makes it difficult for them to ration their food. The hospital had made impressive efforts to engage the patients in activities and improve their condition; they maintained an exemplary relationship with the town's civil society organizations. Nevertheless, several patients complained that they were never or were only exceptionally allowed to go outdoors from the second floor, even under supervision. Therefore I recommended that supervised activities, walks in the open air be regularly organized for in-patients receiving acute care.

# 10.

## Dialogue on the measures taken by the NPM

Pursuant to Article 22 of OPCAT, *“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”*.

In lack of OPCAT requirements regarding the dialogue between the NPM and the competent authorities, it is the fundamental principles defined by the Subcommittee on Prevention that have governing effect in the question mentioned above.<sup>183</sup> The NPM

- should maintain a dialogue with *“both governmental authorities and institution directors/managers regarding the implementation of recommendations”*,<sup>184</sup>
- *“should establish sustainable lines of communication”* and *“a mechanism for communicating and cooperating with relevant national authorities on the implementation of recommendations”*;<sup>185</sup>
- should maintain a dialogue that involves *“both written and oral exchanges”*.<sup>186</sup>

Although the implementation of the measures recommended by the NPM is not mandatory, the Ombudsman Act compels the measures' addressees to respond on the substance of the recommendations aimed at eliminating the improprieties, or the threat thereof, uncovered during the inspection. Maintaining continuing and constructive dialogue serving the monitoring of the implementation of these measures is a statutory obligation of not only the NPM but also the management of the places of detention, authorities, and other organs concerned. The dialogue between the NPM and the addressees of the recommendations is conducted on the basis of the report used as a platform. The Ombudsman Act regulates in detail the method of monitoring, including the deadlines for responding.<sup>187</sup>

<sup>183</sup> Point 1, Section (iii) of Article 11 of OPCAT.

<sup>184</sup> SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 34 of CAT/OP/1/Rev.1)

<sup>185</sup> SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 42 of CAT/OP/1/Rev.1)

<sup>186</sup> SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 34 of CAT/OP/1/Rev.1)

<sup>187</sup> Sections 31-38 of the Ombudsman Act.

The provisions of Section 38(1) of the Ombudsman Act constitute the most important legal guarantees of the dialogue. Under these provisions, 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 ask Parliament to inquire into the matter. If the impropriety is of flagrant gravity or affects a larger group of natural persons, I may 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.

I maintain a dialogue with the addressees of my measures mainly in writing, involving, as necessary, the supervisory organs, as well. There is no legal obstacle to holding oral consultations within the framework of the dialogue. Acting on my recommendation made in the report on the visit to the Forensic Psychiatric and Mental Institution, the Minister of Justice set up an inter-professional working group, with the participation of my colleagues authorized to perform tasks related to the NPM, for reviewing and redressing the systemic problems of compulsory treatment. The working group had two meetings in 2017, and one meeting in 2018.<sup>188</sup>

The civil lawsuit filed for damaging the reputation of the Children's Home related to some of the findings in my report on the visit to Cseppkő Children's Home, which was concluded in 2018, meant a special form of dialogue between the NPM and the place of detention.<sup>189</sup>

The authorities or their supervisory organs under review gave meaningful responses to the measures that I had defined in the 2018 reports of the NPM and no such grave infringements were uncovered by these visits for remedying which I should have turned to the National Assembly.

## 10.1.

### Visit to the Cseppkő Children's Home

My colleagues authorized to perform tasks related to the NPM made preventive visits to the Cseppkő Children's Home (hereinafter the "children's home") on March 1-2 and April 26, 2016. I sent out the report on the visits, containing 17 recommendations, to the director of the children's home and all those concerned on October 6, 2016.<sup>190</sup>

<sup>188</sup> See the details on the inter-professional working group set up for reviewing the systemic problems of compulsory treatment in this chapter.

<sup>189</sup> See the details on Cseppkő Children's Home in this chapter.

<sup>190</sup> Report No. AJB-1603/2016.

My Office put on file the director's letter responding to the report's conclusions and describing the implementation of the measures recommended by me on November 15, 2016.<sup>191</sup> In my letter dated December 13, 2016, I acknowledged the report on the measures taken by the director; however, I reiterated a number of my earlier recommendations, e.g., on preventing unjustified absence from school, on the participation of the children's home's psychologists in preparing individual plans for education and care, as well as on involving the guardians and, if feasible, the parents of as many children as possible in the planning process.<sup>192</sup>

In his letter dated January 5, 2017, the director claimed that the report's conclusions indicated by him are damaging to the children's home's reputation, and asked me to remove them from the report.<sup>193</sup> On January 30, 2017, I informed the director that it was not in my power to remove any conclusions from the report.<sup>194</sup> In my response, I tried to elaborate on some conclusion clearly misinterpreted by him and called his attention to the fact that the visits by the NPM were not aimed at destroying the reputation of the children's home. The recommendations made in my report served the protection of the best interest of children living in the frameworks of the child protection services, including those in the children's home.

In his letter dated November 30, 2017, the director requested me<sup>195</sup> to make available to him all documents (notes, minutes of the interviews, etc.) generated during the visits to the children's home. With a view to the prohibition of sanctions, stipulated in Article 21 of the OPCAT, I refused to comply with his request.<sup>196</sup>

Upon receiving my refusal, the director of the children's home brought a lawsuit claiming that certain conclusions of the report on the visits to the children's home were defaming. In his statement of claim, he requested the Court to establish that the NPM, "*in its report published on November 14, 2016, claiming that children lived in overcrowded conditions in the children's home operated by the petitioner, where incidents of drug use, child prostitution, child abuse by the educators happen, and physical, psychological, and sexual abuse between the children is rampant, had violated the petitioner's right to reputation*". He also requested the Court to oblige my Office, in addition to removing the contested conclusions, to pay three million Forints in tort damages and 1.5 million Forints for material damage, as well as their incidentals, and to publicly apologise.

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<sup>191</sup> Report No. AJB-1603-59/2016.

<sup>192</sup> Report No. AJB-1603-66/2016.

<sup>193</sup> Report No. AJB-662-1/2017.

<sup>194</sup> Report No. AJB-662-2/2017.

<sup>195</sup> Report No. AJB-662-11/2017.

<sup>196</sup> Document No. AJB-662-12/2017 dated on December 4, 2019. See also Section 27(3) of the Ombudsman Act.

The Court of First Instance rejected the claim. In the explanatory part of the ruling, the Court pointed out that the NPM's report is not subject to appeal. Should the party concerned disagree with its contents, they may explain their position in a form provided for by the Ombudsman Act. In the Court's opinion, *"the fact that the NPM's proceedings have led to conclusions unfavourable for the petitioner, does not entitle the petitioner to demand a new report favourable for him or to ask the Court to establish the unlawfulness of the unfavourable conclusions"*.<sup>197</sup>

The children's home lodged an appeal against the first instance decision. In its ruling, the second instance court pointed out that the children's home basically filed its claim on the basis of the press releases on the NPM's report. In the opinion of the National Judicial Council, the NPM holds no responsibility for any communication appearing in the press, which is not accurate enough and is not fully aware of the NPM's responsibilities. The second instance court approved the ruling of the court of first instance, which rejected the claim of the children's home by stating that personality rights *"can be enforced against anyone due to their absolute structure, even if they were violated in the framework of a procedure that otherwise excludes legal remedy"*. *"The provisions ensuring the independence and impartiality of the proceedings conducted by the NPM do not create an obstacle to his obligation to do his best in the case of the violation of personality rights."*<sup>198</sup>

## 10.2.

### Inter-professional working group for overviewing the systemic problems of compulsory treatment

The FPMI, i.e. the Forensic Psychiatric and Mental Institution is a specific healthcare institution combining, in a unique way, classical psychiatric care with the tasks of the penitentiary system.

The experience of the visit to FPMI between February 16 and 18, 2016<sup>199</sup> shows that the conditions necessary for terminating compulsory treatment, i.e., a protective environment, are guaranteed to an ever-decreasing extent. Due to the small number of social care institutions, and in the absence of receiving families, both the issue of adaptive leaves for patients under compulsory treatment and the release of those who did not need such treatment any more became unsolved. I requested the Minister of Justice to consider,

<sup>197</sup> Ruling N<sup>o</sup> 71.P22.475/2017/17 of the Metropolitan Court of Budapest, dated March 6, 2018, was put on file in my Office under N<sup>o</sup> AJB-2354-17/2019.

<sup>198</sup> Ruling N<sup>o</sup> 32.Pf.20.505/2018/7-II of the Budapest Court of Appeal, dated June 13, 2018, was put on file in my Office under N<sup>o</sup> AJB-2354-22/2019.

<sup>199</sup> Report N<sup>o</sup> AJB-766/2017.

in cooperation with the Ministers of Interior and Human Capacities, the establishment of an inter-professional working group (hereinafter the Working Group) for remedying the systemic problems specified in my report.

The participants of the first meeting of the Working Group held on June 12, 2017 agreed on the necessity of establishing a new institution for the provisional placement and rehabilitation of patients to be released from the FPMI. My colleagues noted that segmented forms of care should be provided, and the necessary resources should be allocated. It would be appropriate to set up a two-way system where patients could be sent to the institution both from the FPMI and from “civil” psychiatric institutions as well. According to the representative of the Ministry of Justice, new legislation would be justified only after setting up the necessary infrastructure and the institutional framework, and it should be clarified as soon as possible whether this institution of a new type should operate within the framework of the penitentiary system. He asked the participants to send in the relevant data at their disposal and their proposals regarding the issues raised during the meeting, as well as to indicate the involvement of which organs and experts they deemed necessary.

The second meeting of the Working Group held on December 4, 2017 focused on the forms of establishing and operating an institution facilitating, in a more liberal regime, the reintegration of persons released from the FPMI into society. My colleagues stressed that it gave cause for serious concern that those unable to start an independent life, irrespective of the extent of threat that they pose to society, may have to spend the remaining part of their lives in the FPMI, i.e., in the penitentiary system. It falls under government competence to decide whether this new institution, which is suitable for providing adequate pre-care, should operate within the frameworks of the healthcare or the penitentiary systems. According to the Ministry of Human Capacities, the current system’s biggest shortcoming is that the restriction of personal liberty could be applied in social care institutions only when behaviours presenting direct danger are imminent, even if they had the required capacity. A provisional institution would be needed where both social and healthcare are provided within one institution, and those concerned could be compelled to simultaneously avail themselves of both social and healthcare services. The representative of the Ministry of Justice could accept a solution when adaptive leave, with the possibility of termination, should be spent in a social care institution, with the proviso that the scope of applicable restrictions was provided for in a legal regulation. The members of the Working Group shared the view that it should be specified on an individual basis, based on the proposal made by the institution where the patient is placed, by involving an independent expert, when, during the adaptive period, it should be decided on what type of institution should the given patient be transferred to. As regards

this issue, the representative of the Ministry of Justice deemed it necessary to draft a detailed pre-legislative concept.

On July 5, 2018, the Ministry of Human Capacities and the Ministry of Justice sent a draft proposal to the members of the Working Group, in which, after the description of the current situation, including the institutional developments, it was outlined how the current problems can be remedied.

The participants of the third meeting of the Working Group held on September 24, 2018,<sup>200</sup> discussed the draft proposal revised on the basis of their comments. There was agreement on that the institution planned to be set up would ensure the placement of those persons receiving compulsory treatment and having no protective family background in the case of whom the threat of recidivism is so low that they can be placed in a less restrictive type of institution, where, however, individual case management will become necessary, in order to ensure the adaptation needed for the protection of the patients and the staff.

In the draft proposal that was made as a result of the activities of the Working Group, such legislation was proposed which would allow the detainees receiving compulsory treatment to use services provided by a social care institution, still within the legal framework of the penitentiary system. The representatives of the Ministry of Justice informed the members of the Working Group that the ministry would send the draft proposal on setting up the Special Provisional Institute for Mental Patients, suitable for the placement of 25 detainees, to the Ministry of Human Capacities.

### 10.3.

#### The authorities' responses to the major measures taken by the NPM<sup>201</sup>

##### 10.3.1. The central premises and the Nagykanizsa Unit of the Debrecen Reformatory of the Ministry of Human Capacities<sup>202</sup>

At the central premises and the Nagykanizsa Unit of the Debrecen Reformatory of the Ministry of Human Capacities, boys aged 12-21 sentenced to reformatory education and in pre-trial custody are raised. At the time of the visit, in

<sup>200</sup> In addition to my colleagues, the staff of the Ministry of Human Resources, the Hungarian Directorate-General for Social Affairs and Child Protection, the Ministry of the Interior, the Hungarian Prison Service, the Ministry of Justice, the Head Physician and General Director of FPMI, the expert of the National Institute of Psychiatry and Addictions, as well as the representatives of the National Office for the Judiciary and the General Prosecutor's Office.

<sup>201</sup> Responses put on file between January 1, 2018 and December 31, 2018.

<sup>202</sup> Report No. AJB-493/2018, see also Section 9.1.1.

the central premises with 140 beds, the resocialisation of as many as 117 young persons who have committed or are being suspected of a crime took place, while the same was done for 48 youngsters at the 108-bed Nagykanizsa Unit.

At the time of the visits, no youngsters receiving aftercare lived in either of the two institutions. The expert staff said that the above circumstance is explained by the fact that provisionally freed juveniles are not allowed to stay at the correctional facilities to receive aftercare. In his letter of September 11, 2018, the Minister of Justice<sup>203</sup> informed me that he did not propose that the juveniles provisionally freed from correctional facilities receive aftercare. However, he thinks that it is a good idea that juveniles provisionally freed from correctional facilities should be provided housing in the aftercare units of reformatories, as long as this is the best solution for the young person concerned, either because of their pursuing studies, or due to the conserving force of supportive personal relationships. I have acknowledged that the Government wishes to create the statutory background of the solution proposed by the Minister of Justice by amending Act XXXI of 1997 on the Protection of Children and Guardianship Administration (hereinafter the "PCGA"). The relevant provision of PCGA took effect on January 1, 2019.<sup>204</sup>

In response to the proposal that I made regarding the creation of a central registry of illiterate detainees and the personalised measures taken by the institutions to eliminate illiteracy, the Minister of Justice said that in agreement with the Ministry of Human Capacities, he supports that the fact of illiteracy should also be registered in the Electronic School Diary Registry System, which was implemented in 2017, in addition to the data on family background. The Secretary of State for Social Affairs and Social Inclusion (hereinafter the „Secretary of State“) agreed that the compulsory education of young people raised in correctional facilities with no primary education should be extended. The related new provision of PCGA will take effect on January 1, 2020.<sup>205</sup>

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<sup>203</sup> Letter No. XX-AJFO/102//2018/5 of the Minister of Justice dated on September 11, 2018 was put on file in my Office under number AJB 493-39/2018.

<sup>204</sup> Section 66/Q (2) of the Gyvt stipulates that: *“Care at the aftercare unit of the correctional facility can be provided, at his or her request, for a temporarily released juvenile as well.”* Section 46 of Act CXVII of 2018 on the modification of the laws on social issues and child protection, as well as other related laws also contained provisions regarding the amendment.

<sup>205</sup> Section 66/M (4) of Gyvt stipulates that: *“According to the provisions set out in the ministerial decree on the procedures of correctional facilities, a juvenile residing in a correctional facility, during his stay at the reformatory, is obliged to take part in training programmes aimed at the mastering of general knowledge, in harmony with his abilities and previous studies, as well as in the training programmes of further studies, vocational studies and studies promoting employment, provided by the reformatory. The correctional facility ensures the conditions required for the participation of the youngster in training.”* Section 45 of Act CXVII of 2018 on the modification of the laws on social issues and child protection, as well as other related laws also contained provisions regarding the amendment.

I have proposed that Minister of Human Capacities Decree 1/2015 (I. 14.) EMMI on the operation of reformatory institutions (hereinafter the “Operation Decree”) to be amended in order to achieve that the policing authorities are able to ensure permanent supervision. The Secretary of State<sup>206</sup> supported the increase of the headcount norm of the staff of the policing authorities specified in Appendix 1 of the Operation Decree to 8 but he considered this feasible from 2020 the earliest, due to the coordination efforts preceding the amendment of the law. The Secretary of State agreed with the idea that the contact held by young foreign nationals raised in correctional facilities should be ensured in the same way and to the same extent as for their Hungarian counterparts and he promised that the ministry would prepare the amendment of the Operation Decree by keeping this circumstance in mind. The Secretary of State thinks that my initiatives concerning family consultations and family therapy would be feasible through amending the Prison Code (Act CCXL of 2013 on the Enforcement of Sentences, Measures, Certain Coercive Measures, and Detention). In my response, I maintain my position, i.e. that the change proposed to the Operation Decree could significantly improve the situation.<sup>207</sup>

The Hungarian Directorate-General for Social Affairs and Child Protection and the management of the Institution prepared an action plan for the implementation of the recommendations, which was sent to me by the Director-General of the Hungarian Directorate-General for Social Affairs and Child Protection (hereinafter the “HDG for SACP”).<sup>208</sup> I was informed by the Secretary of State that the preparation of the budget impact calculations required for the extra resources to cover the costs of the repair work and refurbishments to be done in Debrecen has commenced.<sup>209</sup> The director of the correctional facility presented the action plan for the implementation of the recommendations, and reported on the amendment of the founding regulations, which created an opportunity for the distribution of places according to the needs at any time, as well as for the establishment of special groups for youngsters with disability.<sup>210</sup> The director ensured that young

<sup>206</sup> Letter No. 24481-19/2018/GYERGYÁM of the Secretary of State for Social Affairs and Social Inclusion dated on June 21, 2018 was put on file by my Office under number AJB-493-36/2018.

<sup>207</sup> The NPM’s letter dated on July 9, 2018 was put on file in my Office under number AJB 493-37/2018.

<sup>208</sup> Letter No. SZGYF-IKT-10166-9/2018 written by the General Director of the Hungarian Directorate-General for Social Affairs and Child Protection dated on May 4, 2018 was put on file by my Office under number AJB-493-29/2018.

<sup>209</sup> Letter No. 24481-5/2018/GYERGYÁM of the Secretary of State for Social Affairs and Social Inclusion dated on May 4, 2018 was put on file by my Office under number AJB-493-30/2018.

<sup>210</sup> Letter No. 1045-3/2018-0981 of the Director dated on May 3, 2018 was put on file in my Office under number AJB-493-31/2018.

people below or over the age of 16 should only be placed in the same group in exceptional circumstances, at his instruction, which decision is indicated both in the individual education plans and in the minutes of the expert committee. The decoration of the Nagykanizsa Unit began right after the visit, the notice board containing the degrading instructions was removed, and in Debrecen, the traces of mould were covered by sanitary painting.

According to the information provided by the general director of HDG for SACP, in 2018, they wish to ensure the opportunity for 60 of their staff members to take part in different further training programmes, on supervision, conflict management and in other thematic sessions, by relying on tender resources. In order to reduce the risk of burnout and high staff turnover, the director strives to organise further training sessions for his colleagues, in the framework of which in 2018, 10 staff members were provided supervision support, 15 new staff members may take part in a conflict management training session and more attention is paid to the performance of the tasks of the policing authority staff.

I accepted the responses given by the general director of HDG for SACP and the director, and I also asked for some information on a few issues.<sup>211</sup> The director sent over the effective procedures for removing a person from the group, as well as escorting, in which notification of the leader or the leader on duty is made obligatory, there is reference to consultation with a psychologist, and it also stipulates that the decisions on the necessary measures should be made by the competent leader. He also informed us that in Nagykanizsa, the lawyer's contact room was designated as a waiting room and the representative of the Ministry of Human Capacities promised to ensure the budgetary coverage for building a new, secure waiting room in Debrecen in the first quarter of 2019.<sup>212</sup>

### 10.3.2. Legislative amendment initiated following the visit to the Somogy County Remand Prison

My colleagues authorised to perform tasks related to the NPM paid an unannounced visit to the Somogy County Remand Prison on June 24-25, 2016.<sup>213</sup> After the departure of their visitors, the detainees of the institution had to strip naked in the presence of the guards and the other detainees, pull back the foreskin from their sexual organ, then squat on their heels. The objective of inspecting the part of the penis covered by the foreskin and making the

<sup>211</sup> See my letter No. AJB-493-33/2018 dated on May 16, 2018.

<sup>212</sup> Letter No. 1045-9/2018-0981 of the Director dated on December 12, 2018 was put on file in my Office under number AJB-493-42/2018.

<sup>213</sup> Report No. AJB-3865/2016

detainees squat on their heels was to enable the guards to check whether the detainees had hidden forbidden objects and/or psychotropic drugs between their legs or in their private orifices.

The Prison Code regulates the search of the convict's body and clothes in three stages. First, frisking the convicts and checking their clothes, which may be done only by a person of the same sex (except when the clothes are checked using a technical device);<sup>214</sup> second, inspection of the body orifices, which may be done only by a physician;<sup>215</sup> and third, as an exception to the second, inspection of the oral cavity, which may be done by prison service personnel of the opposite gender as well. The Prison Code did not define body orifice; therefore, it was up to discussion whether inspecting the part of the penis covered by the foreskin and searching for forbidden objects hidden between the legs or in the rectum may be done only by a physician, or it may be done by the members of the security personnel in the presence of other detainees, as well. In my view, this unclear legal situation threatened the enforcement of the prohibition of degrading treatment. To eliminate this impropriety, I recommended the amendment of the Prison Code and its implementing regulations.

Instead of amending the Prison Code, the Minister of Justice suggested reaching a consensus regarding acceptable practices. In my response, I pointed out that, based on the taxonomic and logical interpretation of Section 151 of the Prison Code and Section 59<sup>216</sup> of Minister of Justice Decree No. 16/2014. (XII. 19.) IM, the provisions on body search are not clear. I also pointed out that neither the practices of the penitentiary system nor the teaching materials used in training penitentiary service personnel are in compliance with the prevailing legal regulations.

On January 17, 2017, the Ministry of Justice convened a consultation meeting on the methods of body search in the penitentiary system and on implementing the NPM's recommendations. During the consultation held in the building of the Ministry of Justice, in addition to the organisers and my colleagues authorised to perform tasks related to the NPM, the representatives of the Ministry of Interior, the Ministry of Human Capacities, the Hungarian Prison Service Headquarters, and the Office of the Prosecutor General explained their positions. As a result, the representative of the Ministry of Justice promised that the Ministry would propose the amendment of the Prison Code's concept of body search, and consider the regulation of the methods of inspecting "private parts".

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<sup>214</sup> See Section 151 (1) of the Prison Code:

<sup>215</sup> See Section 151 (3) of the Prison Code:

<sup>216</sup> Minister of Justice decree No. 16/2014. (XII. 19.) IM on the detailed rules of the implementation of imprisonment, confinement, pre-trial custody and confinement replacing penalty.

The legislator added the definition of the concept of body search to the provisions of the Prison Code, according to which *"body search means the search of the convicts' body and clothes, and the examination of their personal items"*.<sup>217</sup> Minister of Justice Decree No. 16/2014. (XII. 19.) IM was also complemented by the Minister of Justice in accordance with the NPM's recommendation. Pursuant to Section 59(3), *"orifices of the lower body may be inspected only by a physician or the healthcare personnel"*.<sup>218</sup>

### 10.3.3. National Prison of Szombathely<sup>219</sup>

The National Prison of Szombathely (hereinafter the "Institution") is one of the largest penitentiary institutions in the country and one of the two domestic penal institutions operated on the basis of a PPP<sup>220</sup> Contract. On the day of the visit, there were 1,474 detainees registered in the Institution, which has a capacity of 1,476, of whom 1,432 were actually present, accounting for a utilisation rate of 97%.

It was problematic that neither the text of the House Rules regarding the contact kept by the detainees, nor the Institution's actual practices in this respect were in compliance with the provisions of the Prison Code on the rules of the detainees' correspondence with the penal authorities, the human rights organizations specified by the law, and the defence attorneys.<sup>221</sup> I requested the Institution's warden to modify the House Rules.

The efficient conduct of suicide prevention activities was hindered by insufficient staffing, the uneven distribution of persons belonging to psychological imbalance and suicide risk groups, and by the design of the bathrooms that allowed attempts at suicide by hanging. I was informed by the

<sup>217</sup> The new text of Section 151(1) of the Prison Code that took effect on April 19, 2017 is as follows: *"Frisking means the search of the convicts' body and clothes, and the examination of their personal items. Frisking may be conducted only by a person of the same sex, with the exception of a physician and healthcare personnel assisting the frisking or when the search of clothes is done using a technical device."*

<sup>218</sup> Section 40 of Minister of Justice Decree No. 22/2017 (XII. 22.) IM on the amendment of ministerial decrees on criminal and criminal procedure law issues, as well as the related decrees on justice-related issues. Effective as of: January 1, 2018.

<sup>219</sup> Report № AJB-793/2017.

<sup>220</sup> PPP=Public Private Partnership, i.e. cooperation between the public and private sectors.

<sup>221</sup> Section 174 (4) of the Prison Code stipulates that: *"The contents of the convict's correspondence with the authorities, international human rights organizations recognised by an international instrument promulgated by an Act, the Commissioner for Fundamental Rights, the organization or staff of the National Preventive Mechanism, and the convict's defence counsel may not be checked. If there is good reason to believe that the letters received or sent by the convict are not, in fact, sent by the authority, international organization, or defence counsel indicated on the envelope or meant to the addressee, the envelope shall be opened in the convict's presence, simultaneously with recording the procedure. Checking may only serve the identification of the real sender."*

Institution's warden that the partition between the shower and the toilet was being remodelled, and the headcount of the staff working at the dormitory and the medical-therapeutic unit was going to be increased, depending on the availability of human resources, with a view to ensuring more efficient suicide prevention.

While, pursuant to Section 247(2) of Act CLIV of 1997 on Healthcare, the competent Minister should issue a decree "*on the nutritional standards of food-stuff provided within the framework of organised catering of regular meals, the personal conditions of catering, and preparing dietetic meals, and the rules of official control*", the MoHC Decree on public catering does not cover<sup>222</sup> regular, organised catering for penitentiary institutions. To enforce the detainees' right to health, I requested the Minister of Human Capacities to consider extending the effect of the Decree on mass catering onto penitentiary institutions. The Minister promised to convene a coordination meeting with the Ministry of Justice and the head of the National Prison Service for the elaboration of the requirements regarding the catering provided to the detainees on the level of a decree. I have reiterated my recommendation for the transformation of the regulations in my reports on my visits to the Márianosztra Strict and Medium Regime Prison,<sup>223</sup> as well as to Unit I of the Budapest Remand Prison,<sup>224</sup> with regard to the fact that at the time of the publication of these reports, the amendment of the law that I had initiated was not yet made.

Reintegration activities provided by the Institution (work, education, organised free time activities) did not meet the detainees' requirements. The increased difficulty of access to these activities by inmates belonging to special detainee groups (juveniles, women, foreigners) resulted in discrimination. As a response to my recommendation, the Director General of the Hungarian Prison Service informed me that, with a view to increasing the detainees' opportunities to take part in reintegration activities, he was planning to increase work opportunities provided by external companies, as well as those offered in the framework of inmate labour programmes, and he was also ready to organise some further vocational training programmes for the detainees. The warden of the Institution promised to increase the

<sup>222</sup> Minister of Human Capacities Decree 37/2014 (IV. 30.) EMMI on the nutritional standards of public catering:

*"1.(1) – The scope of this Decree shall cover:*

- a) service providers, as well as educational institutions under the Act on National Public Education and inpatient care institutions (hereinafter together the "institutions") providing basic social services and special care, as well as child protection services,*
- b) all institutions, organs, organisations, economic associations, and natural persons providing public catering service through their own, operating service kitchen."*

<sup>223</sup> Report No. AJB-474/2018, see also Section 9.2.1.

<sup>224</sup> Report No. AJB-501/2018, see also Section 9.2.2.

number of female detainees involved in work activities, as well as free time activities available to them.

The authorised number of the prison service staff was 409, of which 385 positions were filled, i.e., there was a 6% staff shortage. Overwork and stress, affecting the personnel, the supervisory staff, in particular, present serious difficulties in performing everyday tasks, even in those units where there is no staff shortage. With a view to remedying the improprieties related to fundamental rights, I suggested that the warden should take all necessary measures to fill the vacant positions, furthermore, I requested the Director General of the Hungarian Prison Service to consider increasing the number of positions at the Institution. I was informed by the warden that they conducted regular recruitment activities in order to fill the vacancies. The Director General indicated that the positions available in the Institution can only be increased after the vacancies are filled.

The Institution did not have any information regarding the identities and the special needs of the detainees living with disabilities, and not even the medical staff was aware of who qualifies as a person with disability on the basis of the relevant laws. It cast serious doubt on whether the protection of the special rights of persons living with disabilities could be ensured in practice. I requested the warden to identify detainees living with disabilities and assess their special requirements. I was informed by the Institution's warden on that he had made the relevant data available to the competent members of the staff, by observing the rules on the management of sensitive data. The Director General of the Hungarian Prison Service took measures to ensure that the penitentiary institution include the presentation of the provisions set out in CRPD in its annual education plan, besides other international human rights treaties.

#### 10.3.4. Central Holding Facility of the Metropolitan Police Headquarters of Budapest

In the Central Holding Facility of the Metropolitan Police Headquarters of Budapest (hereinafter the "Holding Facility"), there were as many as 20 detainees at the 46 authorised places at the time of the follow-up visit, i.e. occupancy was at 43.4%.

The circumstances of detention have not improved at all<sup>225</sup> since the previous visit. I requested the head of the Metropolitan Police Headquarters of Budapest to take measures for the refurbishment of the Holding Facility, by ensuring appropriate lighting and ventilation, uninterrupted hot water supply in the bathrooms, undelayed renewal of the exercise area, and also,

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<sup>225</sup> Report No. A/B-151/2016.

ensuring that every cell has a toilet. The head of Metropolitan Police Headquarters of Budapest informed me that in 2016, the Ministry of the Interior earmarked an amount of 323 million Forints for the refurbishment of the Holding Facility. During the comprehensive refurbishment of the Holding Facility, a new hot water network will be built, taps will be installed and there will be toilets and washbasins in each cell. As a result of the remodeling effort, the exercise areas will also be modernised. The completion of the refurbishment process is planned for the end of October 2018.

It happened that a detainee was not able to notify his relative after having been taken to the Holding Facility, so I requested the head of the Metropolitan Police Headquarters of Budapest to remedy this situation. In his response, he indicated that the notification of the relative was the responsibility of the body acting in the case of the detainee in question. I did not accept the response given by the head of the Metropolitan Police Headquarters of Budapest, I maintained my recommendation.

The head of the Metropolitan Police Headquarters of Budapest did not agree with my initiative, this is why he escalated it to the National Police Headquarters.<sup>226</sup> In his response, the deputy head of the National Police Headquarters informed me that the acting policeman was not in the position to notify a relative or any other person at the site of the police action, neither was he in the position to fulfil the obligation of notification. A policeman on duty in a public area has no such communication device by which such notification could be given. The policeman acting on the site has no information on whether the notification of the detainee's relative jeopardises the effectiveness of the remaining part of the proceedings. It may happen that the detainee notifies a person who can be accused of committing a crime, whose calling to account would thus become more difficult, or even impossible. I acknowledged the response given by the National Police Headquarters but I maintain my recommendation.

In order to ensure that clear information is provided to the detainees, I requested the head of the Metropolitan Police Headquarters of Budapest to ensure that a short and easy to understand information material is constantly available to the detainees. In his response, the head of the Metropolitan Police Headquarters of Budapest indicated that the General Directorate of Law Enforcement of the Hungarian National Police Headquarters would review the admission information leaflet, which I criticised in my report, in 2018.

I requested the head of the Metropolitan Police Headquarters of Budapest to take measures for ensuring that only the healthcare personnel be present at the medical examination of the detainees. As long as the presence of police staff is not essential in these cases, they should be waiting

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<sup>226</sup> See Section 32(3) of the Ombudsman Act.

beyond hearing distance. I was informed by the head of the Metropolitan Police Headquarters of Budapest that police presence at the medical examination of the detainees was also allowed in lack of the detainee's consent, by<sup>227</sup> respecting his human rights and dignity. The police staff stay in the room during the pre-admission medical examination at the request of the medical personnel, in order to guarantee their safety. I did not accept the response given by the head of the Metropolitan Police Headquarters of Budapest, I maintained my recommendation.

As the head of the Metropolitan Police Headquarters of Budapest did not agree with my initiative, he escalated it to the National Police Headquarters.<sup>228</sup> The deputy head of the Hungarian National Police Headquarters said that in the doctor's office, there are many objects within the reach of the detainees that are suitable for jeopardising the physical integrity of the detainees or others. The risk of emergency situations increases if the policeman stays not only out of eyeshot but also beyond hearing distance during the medical examination of the detainee. The majority of medical history information that is shared during the medical examination of the detainee may be of such kind that may exert an unfavourable effect on detention and guarding, so these should definitely be obtained. I acknowledged the response given by the National Police Headquarters but I maintained my recommendation.

I requested the head of the Metropolitan Police Headquarters of Budapest to provide food for those detainees who arrive at the Holding Facility late in the evening after dinner time, if requested. According to the head of the Metropolitan Police Headquarters of Budapest, there is a sufficient quantity of cold food and food that can be warmed up at the Holding Facility. The staff of the Holding Facility asks the detainees arriving after dinner time to make a statement on whether or not they would like food. If requested, each detainee will be given food.

With regard to the adverse effects of detention in single cells, which are similar to those of confinement in a private cell, I proposed that the detainees staying at the Holding Facility be placed in multi-occupancy cells if possible. The head of the Metropolitan Police Headquarters of Budapest promised to provide the space required by law for the joint placement of the detainees in all the cells of the Institution after the refurbishment of the Holding Facility has been completed.

As a response to my recommendation regarding the improvement of the work conditions of the personnel, the head of the Metropolitan Police

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<sup>227</sup> See Note b), Section 14(1) of Act XLVII of 1997 on the Processing and Protection of Medical and Other Related Personal Data.

<sup>228</sup> See Section 32(3) of the Ombudsman Act.

Headquarters of Budapest informed me that at the time of the refurbishment of the Holding Facility, the changing rooms and community rooms of the staff would also be renewed.

### 10.3.5. The custody unit of the 14<sup>th</sup> District Police Department of the Metropolitan Police Headquarters of Budapest<sup>229</sup>

I proposed, to the head of the Metropolitan Police Headquarters of Budapest, that the custody unit of the 14<sup>th</sup> district police department of the Metropolitan Police Headquarters of Budapest (hereinafter the Police Department) be refurbished, furthermore, I requested the head of the Police Department to ensure the appropriate cleaning of the premises of the custody unit. The head of the Metropolitan Police Headquarters of Budapest contacted the National Police Headquarters to ask for the financial resources required for the refurbishment of the custody unit, and also, he informed me that they would pay special attention to the cleaning of the custody unit of the Police Department in the future.

I requested the head of the Metropolitan Police Headquarters of Budapest to ensure that the staff of the police department subordinated to them do not apply the rules of admission to holding facilities in the case of apprehended persons. In order to follow a lawful and uniform practice for the inspection of clothing, the head of the Metropolitan Police Headquarters of Budapest issued an order in which he stipulated that the inspection of clothes cannot involve taking off the underwear of a person whose personal freedom is restricted.<sup>230</sup> As long as the clothes inspection including that of underwear is justified by the circumstances, this can only be done while the underwear is on the detainee's body.

Related to exercising the right to notifying the detainee's relative or a third person, I was informed by the head of the Metropolitan Police Headquarters of Budapest that in the case of apprehended persons, the police fully comply with<sup>231</sup> the provisions set out in Section 18(1) of Act XXXIV of 1994 on the Police (hereinafter the Police Act). I called his attention to that the right to notifying the detainee's relative or a third person without delay

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<sup>229</sup> Report No. AJB 1522/2018.

<sup>230</sup> Section 13 of Budapest Police Headquarters order No. 21/2018 (VI.7.) on the Rules and Operation of the Custody Units of Bodies Subordinated to the Budapest Police Headquarters.

<sup>231</sup> Pursuant to the provision of Section 18 (1) of the Police Act effective at the time of the visit (06.12.2016): *"The detainee shall be given the opportunity to notify his relative or another person, provided that this does not threaten the fulfilment of the goal of the measure. If the detainee is not in the position to use this right, this notification obligation will be fulfilled by the police. If the detainee is under legal age or under guardianship, his legal representative or guardian shall be notified without delay."*

should be ensured from the first moment of the deprivation of liberty<sup>232</sup> but in the report on the implementation of apprehension, it was not mentioned that the police patrol had informed the apprehended person on this right of his, or that they ensured the conditions thereof, so I maintained my recommendation in this respect.

I was informed by the National Police Headquarters that during a police measure, in lack of a communication device and information on the threats to the effectiveness of the procedure, the police patrol is not in the position to allow such notification, or fulfil the notification obligation at the site of taking the police measure. As long as the duration of the police measure increases due to notification on the site, on the one hand, this would increase the risk of the occurrence of an extraordinary event, on the other hand, this may be contrary to the interests of the person subjected to the police measure. The fulfilment of the requirement of *notification without delay*, which is specified in the CPT recommendations, can be expected from the Police in the form of *notification without unjustified delay*, and in the view of the National Police Headquarters, currently there is no such normative provision related to the notification obligation in effect, whose effect extends to the Police as well, which would be contrary to the practice applied by the Police.

I called the attention of the head of the National Police Headquarters to that the provisions on the right to notification set out in Section 18 of the Police Act also list the circumstances that allow the restriction of this right. Pursuant to Section 18(1) of the Police Act, the detainee cannot exercise this right to the extent that this threatens the fulfilment of the objective of the measure. Pursuant to Section 18(3) of the Police Act, a detainee can be restricted in exercising his rights "to the extent that this serves the prevention of escape or hiding, that of changing or annihilating physical evidence, the prevention of committing a new crime, or the security of guarding and the maintenance of the order of the holding facility." The existence of these circumstances should be examined individually in each case and in lack of these, the right of notifying relatives or third persons should be ensured for the detainee from the first moment of the deprivation of liberty. The National Assembly amended Section 18(1) of the Police Act with effect from January 1, 2019. In accordance with the amendment of the law, the obligation to notify the person

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<sup>232</sup> CPT: *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 5 to 16 December 1999* [CPT/Inf (2001) 2], Sections 23 and 30; CPT: *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 3 to 12 April 2013* [CPT/Inf (2014) 13], Section 22.

indicated by the detainee rests with the police, and the notification should be done “*without unjustified delay*”.<sup>233</sup>

I called the attention of the Minister of the Interior to that, while pursuant to the provisions set out in the Fundamental Law of Hungary, “*the rules for fundamental rights and obligations shall be laid down in an Act*”, the provision set out in Minister of Interior Decree 30/2011. (IX. 22.) BM of the on Staff Regulations of the Police, which allows the use of handcuffs in the case of dangerous behaviour demonstrated by the detainee, goes beyond the exhaustive list of the Police Act regarding the cases of handcuffing. With a view to remedying the situation, I proposed that the Minister of the Interior clarify the requirements for handcuffing set out in the Staff Regulations for the Police.

The Minister of the Interior said that it was allowed for the police staff by Section 48 of the Police Act to apply handcuffs in order to prevent the self-harming, attack or escape of persons who are to be restricted, or who are restricted in their personal freedom, as well as to break their resistance. As long as any circumstance indicated in Section 48 of the Police Act exists, this will create a legal basis for handcuffing. The Staff Regulations for the Police help policemen adopt a decision on the application of means of coercion with an indicative list in Section 41 and the interpretation of the frame-like rule of the Police Act. Since a person escorted by a policeman is also deprived of liberty, his handcuffing will not constitute a specific group of cases. The interpretation of Section 48 of the Police Act, according to which, when considering the application of handcuffing, a policeman may only take into account the current behaviour of the person subjected to a measure, is wrong. In relation to Section 76(5) of the Staff Regulations for the Police, the Minister of the Interior pointed out that in determining the level of threat posed by the detainee, the gravity of the crime that he has committed, the behaviour demonstrated at the time of committing the crime, and his criminal history should be taken into account, as well as any potentially available information on whether an

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<sup>233</sup> Section 18 (1) of the Police Act (effective from January 1, 2019) stipulates that: “*The detainee must be given the opportunity to ask for notifying a relative or another person, he should give a statement in this respect. The obligation to notify the person indicated by the detainee is to be fulfilled by the police, such notice will be given by the police without unjustified delay. If the fact of notification jeopardises the fulfilment of the goal of the measure based on the data generated by the procedure, then such notification should be postponed and should be done when the threat does not exist any more. If it is the person indicated by the detainee rather than the fact of the notification that jeopardises the fulfilment of the goal of the measure, then the detainee should be asked to indicate another person to be notified. If the detainee indicated such a person for the second time related to whom there is no obstacle to notification, the police will notify the person who was indicated later. If the detainee is under legal age or under guardianship, his legal representative should be notified without delay. If the rules of criminal or infraction proceedings are to be applied against the detainee, the special rules regarding these proceedings should be followed.*”

escape or an attack can be expected in his case, or whether it is probable that some other persons may make an attempt at freeing him.

In my view, the expression "*threat posed by the escorted person*" as defined in Section 76(5) of the Staff Regulations for the Police can be assessed as a circumstance that requires the compulsory application of handcuffs on the basis of the grammatical interpretation of the text. ("*If this is justified by the level of threat posed by the escorted person, the escorted person shall be handcuffed.*") In one of the cases detailed in my report, this interpretation was valid as well.<sup>234</sup> Pursuant to Section 39(1) of the Staff Regulations, "*the Police Act stipulates that coercive means can only be applied if the behaviour or the extent of resistance of the person subjected to police measure justifies this according to the Police Act.*" The latter provision supports my position on that at the time of adopting a decision on the application of a coercive measure, the current behaviour demonstrated by the detainee should be taken into account. In my view, neither the behaviour of the person subjected to a measure demonstrated several years earlier<sup>235</sup> nor the distant, theoretical threat of an escape are sufficient for substantiating the necessity of handcuffing.<sup>236</sup>

I proposed that the Minister of the Interior and the Minister of Human Capacities take joint action for allowing independent medical examination for all detainees through the appropriate amendment of government decree No. 217/1997. (XII. 1.) Korm. on the Implementation of Act LXXXIII of 1997 on the Benefits of Compulsory Health Insurance, as well as Interior Minister's decree No. 56/2014 (XII. 5.) BM on the Rules of Police Holding Facilities. I was informed by the Minister of Human Capacities that in order to explore the possible legal and professional contents of the law amendments related to allowing the detainees to have independent medical examinations, he started coordination talks with the representatives of the health sector, as well as the National Health Insurance Fund of Hungary and the Ministry of the Interior.

The Minister of the Interior stressed that the right to choose a medical doctor was suspended both during detention<sup>237</sup> and pre-trial custody.<sup>238</sup>

<sup>234</sup> The documents under review suggest that in one of the cases, it was indicated as the reason for applying handcuffs that "*the detainee's behaviour was unpredictable due to his being drunk*". The above-mentioned person did not have to be prevented by the police from self-harming, from an attack or an escape, neither did they have to break any resistance, i.e. in his case, neither of the goals of handcuffing specified in Notes a)-d), Section 48 of the Police Act existed (Report No. AJB-1552/2018, Section 2.6 on the Use of Coercive Means).

<sup>235</sup> See my report No. AJB-3604/2016 prepared in my general legal protection competence.

<sup>236</sup> See my report No. AJB-2085/2015 prepared in my general legal protection competence.

<sup>237</sup> Note e), Section 121 (1) of the Prison Code.

<sup>238</sup> Since the effective date of Act XC of 2017 on Criminal Proceedings, i.e. from July 1, 2018, this legal institution has been called "arrest".

In his opinion, the modification of Interior Minister's decree No. 56/2014 (XII. 5.) BM in line with my recommendation would be contrary to the provisions set out in the Prison Code. Although in the case of apprehended persons, the option of the free choice of medical doctors is not excluded by law, he did not think that ensuring this opportunity was justified for the limited period of the deprivation of liberty.

I repeatedly called the attention of the Minister of the Interior to that, in accordance with the general opinion of the CPT, as long as the medical treatment of the detainees is the responsibility of the medical doctor provided by the police authority, it should be ensured that the detainees may ask to be examined by the physician selected by them, in order to prevent ill-treatment.<sup>239</sup>

#### 10.3.6. Holding facility of the Fejér County Police Headquarters<sup>240</sup>

At the time of my visit to the holding facility of the Fejér County Police Headquarters (hereinafter the Holding Facility), i.e. on October 19, 2017, the number of places was 34, which were occupied by 7 male detainees. The occupancy of the holding facility was 21%. Of the 7 detainees, 4 were in pre-trial custody, while 3 in criminal detention. There were no minors or persons with disabilities among the detainees.

During my visit, I found the mobile window-opening devices used in the cells dangerous and suitable for self-harming, this is why I proposed that they be replaced. The head of the holding facility of the Fejér County Police Headquarters and that of its supervisory body, i.e. the National Police Headquarters informed me that in their opinion, the above-mentioned device and its use did not expose the detainees to any direct threats. The guards always ensured the possibility for the detainees to open and close the windows, at the request of the detainees, so this practice does not involve the humiliation of the detainees, and their right to physical health was thus also enforced. Mobile window-opening devices came to be used in order to ensure that these could not be possessed by the detainees without supervision, that they did not cause any physical injury to the detainees or the security personnel, and thus, to make sure that the earlier exposure to danger decreased. I accepted the response given to my recommendation.

I asked the head of the holding facility of the Fejér County Police Headquarters to take care of the appropriate storage of the medical documentation concerning the detainees. The head of the holding facility of the Fejér County Police Headquarters ensured that the envelopes containing the medical documents were stored in a closed stand-alone safe in the office of the guard com-

<sup>239</sup> Sections 36 and 37 of the 2nd General Report on the CPT's Activities [CPT/Inf (92) 3].

<sup>240</sup> Report No. A/B-510/2018.

mander, rather than in an open wooden box. I was informed by the head of the National Police Headquarters that National Police Headquarters order No. 3/2015. (II. 20.) ORFK on the Holding Facility Rules for the Police (hereinafter Holding Facility Rules) was complemented by a provision on the opening of envelopes containing medical opinions with effect from July 1, 2018.<sup>241</sup>

Since the lack of different life-saving devices and other medical aids, as well as single-use antiseptic safety gloves, and the deficient equipment of the doctor's office jeopardised both the health care services provided to the detainees and the health of the health care staff, I asked the head of the holding facility of the Fejér County Police Headquarters to ensure the necessary devices and equipment. I was informed by the head of the holding facility of the Fejér County Police Headquarters that some of the procurement had already taken place, and a public procurement procedure was launched for obtaining a separate, standard emergency tray, a respiratory balloon and an ECG device. In addition to this, the lighting of the doctor's office was also repaired.

Regarding my initiatives concerning the catering provided to the detainees, I was informed by the head of the holding facility of the Fejér County Police Headquarters that he had taken measures to ensure the cleaning of the dishes and equipment used at the Holding Facility with antibacterial and antifungal disinfectants, the storage of dinner pails in line with the relevant requirement, as well as the use of a special vehicle applied exclusively for food transportation. In addition to this, he requested the head of the Central Transdanubian Remand Prison responsible for providing catering services to the detainees at the Holding Facility to indicate those substances that cause allergies and intolerance in the menus that are part of the weekly catering plan.

No safety belts were installed on the seats for the detainees of the prison van, which jeopardised the physical integrity of the detainees. I asked the head of the holding facility of the Fejér County Police Headquarters to remedy the situation, who informed me that he had taken care of getting the safety belts installed.

In order to improve the unfavourable work conditions of the staff, the head of the holding facility of the Fejér County Police Headquarters took care of the replacement of the furniture in the dining and recreational room

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<sup>241</sup> Holding Facility Rules, Section 51/B: *"In addition to the public prosecutor supervising the legality of law enforcement, it is the head of the investigatory body acting in the case of the detainee, the case officer, as well as the prison warden and the guard commander who are authorised to open the envelopes that contain the medical opinions at the holding facility. The defence attorney appointed or authorised to act on behalf of the detainee may review the medical opinions in the closed envelope, and they may also request a copy based on the written authorisation of the detainee. Regarding the opening of the closed envelope, records should be maintained on a separate registration sheet attached to the order, as specified in Annex 29, and this should be handled together with the documents of the case in question."*

of the personnel, as well as the building of a separate changing room for the female staff members.

I requested the head of the holding facility of the Fejér County Police Headquarters to organise training programmes on the treatment of detainees and their human rights, as well as training sessions on conflict and aggression management for the staff subordinated to him, and to ensure that the security personnel obtain the knowledge necessary for the professional handling of devices applied for averting grave danger. He informed me that the staff directly responsible for performing the tasks related to the detainees, in compliance with the requirements set out in the Holding Facility Rules, takes part in training and sits for exams on the relevant norms, basic first aid knowledge, human rights treaties and the relevant international issues every two years. In addition to this, although in his view, he is not obliged to do so by any normative provisions, he pays special attention to the holding of these training sessions.

### 10.3.7. Follow-up visit at the Platán Integrated Social Institution of Bács-Kiskun County<sup>242</sup>

From the follow-up inquiry into the Platán Integrated Social Institution of Bács-Kiskun County (hereinafter the “Social Institution”), it was concluded that the head of the Social Institution and the supervising authority had not fulfilled the majority of the recommendations specified in report No. AJB-1686/2015.<sup>243</sup> The missed measures are partially a consequence of the change in the supervising authority that took place in the meantime. The structural transformation in itself provided no acceptable explanation for why the majority of improprieties related to fundamental rights, which were established in 2015, still exist, or in some cases, even aggravated.

In order to ensure the reintegration of the residents of the Social Institution into the mainstream society, I drew attention to that pursuant to Article 19 of the CRPD, persons with disabilities have the right “to live in the community”. I requested the Director General of the Hungarian Directorate-General for Social Affairs and Child Protection (HDG for SACP, Hungarian acronym: SZGYF) as the maintainer of the Social Institution to support the residents with providing opportunities for more independent living, with getting admitted to residential care homes, as well as with the process of reintegration into the mainstream society, through assessing all the related opportunities. In his response, the Director General of the Hungarian Di-

<sup>242</sup> Report No. AJB-3772/2017.

<sup>243</sup> See Section 8.4.2 of the 2017 annual report regarding report No. AJB-3772/2017. The Social Institution was first visited by the NPM on June 23, 2015, see report No. AJB-1686/2015.

rectorate-General for Social Affairs and Child Protection promised that he would prepare a deinstitutionalisation plan for the Social Institution in line with the statutory requirements, and also, that they would make the necessary preparations for the tender application for supported housing by keeping the approved number of places. I proposed that the head of the Social Institution support the residents with providing opportunities for more independent living, helping them prepare for living in a residential care home and with the process of reintegration into the mainstream society. In his response, the head of the Social Institution said that the residents were given information on the opportunity to get admitted to residential care homes and also, on the deinstitutionalisation plan already before their admission to the Social Institution and also, later on, on a regular basis. In my response, I requested the head of the Social Institution to support those residents who are self-sufficient with starting more independent living, besides providing them with information, if need be.

In the report, I proposed that the Social Institution consider hiring an exercise therapist, and I asked the maintainer to create the conditions for this, if possible. The Director General of the Hungarian Directorate-General for Social Affairs and Child Protection did not oppose my proposal but indicated that the budget of the Social Institution only covered for the employment of the statutorily required personnel, which does not include an exercise therapist.

In the Social Institution, the statutorily required living space of six square metres per resident was not available in several rooms, which conclusion was drawn from the size of the rooms and the number of residents in each room. I requested the supervising authority to ensure at least six square metres of living space per resident in the residential rooms, furthermore, to renovate the showers and bathrooms in order to ensure the statutory number of bathtubs, showers, and toilets for the residents. In his response, the Director General of the Hungarian Directorate-General for Social Affairs and Child Protection informed me that some rooms that had earlier fulfilled other functions were transformed into residential rooms, as a result of which the Social Institution is now able to provide a living space of six square metres for each resident. Since the refurbishment took place, the sanitary conditions and the toilets have become available according to the statutory requirements.

I proposed that the maintainer provide further training for the personnel on guardianship and its alternative options, as well as on the definition and application of restrictive measures. The Director General of the Hungarian Directorate-General for Social Affairs and Child Protection promised to organise the proposed further training.

At the time of the visit, the quantity of personal items in the residential rooms was varied, in some cases, furnishings were scarce too. I asked the

head of the institution to encourage the residents to surround themselves with personal items. The head of the Social Institution accepted the recommendation and promised to strive to make the residential rooms cosier.

It jeopardised the right to the protection of property that in the residential rooms, lockers for storing personal belongings were not ensured for every resident. The head of the Social Institution informed me that, in accordance with my recommendation, 140 furniture locks were installed and the residents' own clothes were placed in the cabinets.

The furniture in the rooms (beds, cabinets, tables, chairs and bedside tables) was worn down, the covers of the sofas in the lounge were shabby. I asked the head of the Social Institution to place neat furniture in the rooms and the lounge in order to create a pleasant living environment for the residents. I was informed by the head of the Social Institution that he was striving to realise my request depending on the budgetary resources.

The daily menus were not displayed anywhere and they did not indicate either the calorie values of the meals or the lists of macronutrients. From the dietary menus, it could not be concluded what kind of diets they contained, what the nutrient values or carbohydrate contents of the meals were. The catering manager prepared the ingredient portion form in a handwritten form, from which it could not be concluded what quantities of ingredients are used for the individual dietary meals, in lack of quantitative indicators for the preparation of these meals. In my recommendation, I asked the head of the institution to clarify the contents of the ingredient portion form in order to ensure that the residents who need dietary meals always receive the appropriate nutrients. I was informed by the head of the Social Institution that he would propose that the representative of the company obliged to provide catering services complement the data content of the menus. In my response, I made a strong point of that the nutrient content of the meals in the menu should be indicated in harmony with the type and quantity of the ingredients that are contained by the individual meals according to the ingredient portion form. In addition to the indication of the nutrient content of the meals, ingredient portion forms should also be prepared, to make sure that the nutrient content can be calculated and controlled.

The members of the visiting delegation had lunch at the Social Institution on both days of the visit and they had the meals that were provided to the residents in the framework of their regular diet. The meals did not taste good, their texture was not appropriate either. I asked the head of the Social Institution to strive to improve the enjoyment value of the meals. The head of the Social Institution is to introduce the use of a "tasting sheet", in which the comments made by the residents and the staff regarding the served meals will be summarised by the heads of the care units. In my response, I called the attention of the head of the Social Institution to ensuring that

the provider improve the quality of catering as long as the tasting shows that the flavour and texture of the meals are not appropriate.

The regular medical check-ups of the residents, with special regard to those with psycho-social disabilities, should be ensured. The general practitioner should monitor the health condition of each resident, he or she should regularly check their care documentation and the use of medication prescribed for the residents, which should be recorded in the registration form, furthermore, all the residents should be regularly examined. The psychiatrist who visits the institution on a weekly basis should regularly check the condition of the residents with psycho-social disabilities, and those who receive antipsychotics or antidepressants, even in lack of behavioural problems or disorders. I requested the head of the Social Institution to ensure that all the residents are regularly examined by both the general practitioner and the psychiatrist and that their medical documentation and medicines are monitored.

Despite the conclusions drawn by the report on the first visit and the recommendation, the visiting delegation got convinced that the general practitioner did not regularly examine all the residents and the psychiatrist did not regularly check on the condition of those residents who regularly took antipsychotics or antidepressants. I repeatedly requested the head of the Social Institution to ensure that all the residents are regularly examined by both the general practitioner and the psychiatrist and that their medical documentation and the medicines administered to them are monitored. I was informed by the head of the institution that he had requested the general practitioner and the psychiatrist of the Social Institution to fulfil the recommendation.

It was concluded by the medical expert taking part in the follow-up visit that the medication administered in the Social Institution, especially *"the ordering of quantities of medication applied for specific syndromes was unacceptable."* The application of large quantities of tranquillisers, especially those with bromine contents, which are not used in modern psychiatry, caused an impropriety related to the residents' right to human dignity. I asked the head of the Institution to take care, without delay, of supervising the joint application of medicines of equivalent effect and the elimination of the practice of administering bromine-containing substances that are not used in modern psychiatry. I was informed by the head of the Institution that he had entered into a new professional services agreement for the provision of psychiatric care. The practices of administering medication were reviewed by the new psychiatrist and the necessary modifications of the therapies took place. In my response, I asked the head of the Social Institution to provide clear information on whether the application of bromine substances was eliminated in the case of all the residents. I was informed by the head of the Institution that he had stopped the application of bromine substances

in the case of six persons and the suspension of the application of such drugs was in progress in the case of another five residents.

We noticed during the first visit that the majority of the residents had taken their medication without informed consent. At the time of the follow-up visit, many residents had no information on their own condition or the medication that they took. Due to all the above, I repeatedly asked the head of the Institution to ensure that the residents are provided clear information on their conditions and medications, including the explanation for and consent to taking contraceptive pills. I was informed by the head of the Institution that the general practitioner and the psychiatrist had explained to the residents what medication they were taking for what, including the consent to taking contraceptive pills.

In the Social Institution, it was only in the case of one resident that regular physical restrictive measures had to be taken. This resident (one arm and one leg) was tied to the bed each night because he demonstrated a threatening behaviour to his peers and the staff members. I asked the head of the Institution to consider the option of isolation to replace tying down this resident for the night. I was informed by the head of the Institution that a room suitable for isolation had been made available. In my response, I called the attention of the head of the Institution to that, in addition to ensuring a room suitable for isolation, it should be endeavoured to that isolation rather than tying down is applied, if this method is adequate.

The rules for ordering and applying restrictive measures were not fully compliant with the relevant statutory provisions. In my recommendation, I asked the head of the Social Institution to take care of the revision of the rules of procedure concerning restrictive measures in order to establish harmony with the laws. The head of the Social Institution promised to do so.

The psychologist of the visiting delegation established that the placement of residents qualified as "agitated" in a common room increased tension because the circular process leading to tension was not stopped in this way. The side effects of the tranquillisers taken by the residents may have deteriorated their cognitive abilities and increased their communication difficulties. I proposed that the "agitated" residents, who receive ad hoc medication, should not be placed in common rooms by the Social Institution. The head of the Social Institution promised to keep this perspective in mind, however, the affected residents had so far protested against the attempts made at separated placement. I accepted the response.

The members of the visiting delegation noticed that the majority of the residents had bad teeth. In the case of any problems, the residents were sent to an oral surgeon rather than to a dentist where, in most cases, their teeth were extracted, rather than their receiving conservation treatment aimed at keeping the teeth. I asked the head of the Social Institution to take action

for the dental screening of the residents as soon as possible. I was informed by the head of the Social Institution that he had prepared the residents' dental screening plan and in 2018, he would provide all the residents with the opportunity to take part in dental screening.

After the first visit, the outdoor activities and excursions became less frequent, and the residents had not gone out at all for more than six months. During the interviews with the residents, it became clear that they were compelled to spend their whole day in the area of the Social Institution. The missed outdoor activities, in lack of available opportunities, and related to this, the narrowing of the living space of the residents caused an impropriety concerning the right to human dignity. I highlighted, as early as in the report on the first visit, that with a view to preventing and resolving the tensions between the residents, rather than applying ad hoc sedative shots, it should be set as a goal that besides ensuring adequate personal space at the institution, the residents should be given the opportunity to take part in the highest possible number of such regular activities which would mean a way out of the monotony of everyday life at the institution. Despite my proposal, the number and variety of the activities that the residents could take part in significantly decreased, so I maintained my recommendations made in the report on the first visit in an unchanged form. I asked the maintainer and the head of the institution to provide colourful activities and outings for the residents. In his response, the Director General of the Hungarian Directorate-General for Social Affairs and Child Protection promised to provide the support necessary for organising high-standard leisure time activities and participating in the holiday system. I was informed by the head of the institution that he would endeavour to organise outdoor activities and assess the need of the residents for participating in common holidays.

I called the attention of the Social Institution to that the Mother's Day celebration should be organised very cautiously and sensitively, because it has turned out from the interviews conducted with the residents that at the time of the holiday, the pain caused by loneliness and childlessness was also increasing. A mother, who visits her son living in the Social Institution every two weeks, was not able to attend the Mother's Day celebration because she was not aware that one was organised. The head of the institution promised to send written invitations to the relatives of the residents before the Mother's Day celebration. In my response, I proposed that before the Mother's Day celebration and other celebrations and events, it would make sense to display the date of such events on the notice board, so that the visitors were informed of these occasions too.

Anyone walking in the corridor could look into the bathrooms through the eye-level transparent window panel on the doors of the bathrooms. The windows were only covered by curtains in the female bathroom, which were

not pulled at the time of the visit. It often happened that the residents were bathed in two tubs right next to each other without a partition to separate them. I asked the head of the Institution to make sure that no one can look into the bathrooms from the corridor, and that a partition is placed between the bath-tubs. I was informed by the head of the Social Institution that as a result of the modernisation of the bathrooms, no one can look into the bathrooms any more, and the shower stands are also separated from each other by a partition.

The personnel could not pay attention to ensuring that the residents were bathed by nurses of the same sex, and it did not even occur to them that this might be justified. This violates the sense of modesty of the residents who need help with cleaning up and who are in a vulnerable position, this is why the fact that the residents are occasionally helped by nurses of the opposite sex with their washing involves the threat of an impropriety that runs counter to the prohibition of degrading treatment. I asked the head of the Social Institution to ensure that if possible, the residents were helped with their bathing by a same-sex nurse. The head of the institution promised to hire as many male nurses as possible, the chances for which are rather limited, though, in lack of suitable applicants.

There were only a few residents who were allowed to choose their own clothes matching the season. For the majority of the residents, the care provider prepared the clothes for the next day on the previous evening. I mentioned that it may prove to be a positive experience for the residents if they could freely decide what they would like to wear. It should be set as a goal that the residents have a say in choosing their clothes, that they could express their opinion and wishes regarding their clothing and that this should be taken into account by the care providers, if possible.

There was no conjugal room at the Social Institution. Those residents who do not live together as common law spouses could only establish intimate relations in their rooms, while their roommates were out. I proposed that a conjugal room be made available. The head of the institution informed me that he had fulfilled my recommendation.

The House Rules contained the number of the members of the Advocacy Forum incorrectly, I proposed that this be updated, which proposal was executed by the head of the Social Institution.

At the time of the visit, there was no complaints box at the Social Institution, so the residents or their relatives could not make anonymous complaints on the conditions at the institution. I asked the head of the Social Institution to ensure the availability of a complaints box and to ensure its proper use. The head of the Social Institution indicated that a complaints box had been made available.

# 11.

## Legislation-related activities of the NPM

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

### 11.1.

#### Legislative proposals concerning the operation of the NPM

Based on the recommendation made by the Subcommittee, I reviewed the laws governing the operation of the NPM.<sup>244</sup> The responsibilities and competence of the Commissioner for Fundamental Rights are regulated by Article 30 of the Fundamental Law of Hungary, as well as Act CXI of 2011 on the Commissioner for Fundamental Rights. Since I have no right to initiate acts either as the defender of fundamental rights or as the entity responsible for performing the tasks of the National Preventive Mechanism,<sup>245</sup> I requested the assistance of the Minister of Justice as the member of government responsible for the preparation of the regulation that concerns me regarding the amendment of the Ombudsman Act that I had proposed.<sup>246</sup> In my letter, I proposed the following amendments to be made to the Ombudsman Act:

11.1.1. According to Note a), Article 20 of the OPCAT, in order to ensure that the NPM fulfils his mandate, the state ensures 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*”.

Unfortunately, neither the Ombudsman Act nor any other law regulates at what intervals, in what form and within what deadline the government bodies concerned should meet their data supply obligations defined in Article 4 of the OPCAT. In lack of statutory provisions, it has been the practice of the recent years that the NPM asked the heads of the government bodies concerned in a letter to make available the data concerning the places

<sup>244</sup> SPT visit to Hungary between March 21 and 30, 2017: conclusions and recommendations for the National Preventive Mechanism (CAT/OP/HUN/R.2), Section 19.

<sup>245</sup> Pursuant to Article 6 (1) of the Fundamental Law of Hungary, “*The President of the Republic, the Government, any parliamentary committee or any Member of the National Assembly may initiate Acts.*”

<sup>246</sup> The letter to the Minister of Justice was put on file in my Office under number A/B-4496/1/2018.

of detention as at December 31, in mid-December each year, in accordance with Article 4 of the OPCAT. The request for data supply has so far been met by all the bodies that had been contacted, however, the above-mentioned practice is not suitable for ensuring that I become aware, without delay, of the opening, extension or closing of newly established places of detention.

In order to remedy the situation, I proposed that the Ombudsman Act be modified in such a way that would require that *the government bodies concerned make the data of the places of detention as defined in Article 4 of the OPCAT as at December 31 available to the NPM (the location, address of the place of detention, the number of beds, occupancy data, etc.) by January 31 of the next year. As long as any changes should take place in the number of places of detention after the data supply of December 31 (such as closing down of an institution, opening of a new institution, development of, or increase in the number of units and places, etc.), the government body concerned should be obliged to inform the NPM on these without delay but within 15 days after the change has taken place at the latest.*

In the opinion of the Minister of Justice, it is exclusively the Commissioner for Fundamental Rights fulfilling the NPM's responsibilities who is entitled to decide whether a newly established body qualifies as a place of detention as defined by Article 4 of the OPCAT. As long as it is a government body that has to make a decision, during the compulsory annual data supply, on whether the institution that it manages or supervises qualifies as a place of detention, it may qualify as a violation of the provisions set out in the OPCAT if the concept is interpreted in its narrower sense. In each case, it is the Commissioner for Fundamental Rights who should define which bodies qualify as places of detention and it is based on this that he should warn the government bodies concerned to make the relevant data available. As all the bodies that had been contacted met the NPM's data supply request to date, the Minister of Justice does not think that the proposed amendment of the Ombudsman Act is justified.<sup>247</sup>

11.1.2. The Subcommittee voiced its concern about the human and financial resources required for the operation of the National Preventive Mechanism, i.e. that although *"the task has to be performed by at least eleven staff members, at the time of the SPT visit, the NPM had nine staff members, the positions of the two medical doctors were not filled"*.<sup>248</sup> The Subcommittee was concerned that *"only nine staff members were involved in performing the tasks related to the mandate of the NPM, which affects the complete performance of the NPM's tasks arising from the Optional Protocol. An effective, regular system of visits extending*

<sup>247</sup> Point I.1 of Justice Minister's letter No. XX-AJFO/ID/267/2018/8 dated on February 27, 2019.

<sup>248</sup> SPT visit to Hungary between March 21 and 30, 2017: conclusions and recommendations for the National Preventive Mechanism (CAT/OP/HUN/R.2), Section 20.

*to all the places of detention of the state parties cannot work properly with a limited staff and unfilled positions of medical doctors.”<sup>249</sup>*

My Office was not able to fill the two public official’s positions requiring medical qualifications and stipulated by Section 39/D (4) of the Ombudsman Act, despite performing the hiring process several times, in lack of applicants. In the above-mentioned situation, the employment and remuneration of the seven ad hoc medical experts (psychiatrist, gerontologist, gastroenterologist and internal specialist) hired by my Office for participation in the NPM visits were in line with the statutory provisions on forensic experts. The medical doctors participating in the performance of the NPM’s tasks were selected on the basis of the name list compiled based on the recommendations made by the member organisations of the Civil Consultative Body (CCB), after coordination with the nominating civil society organisations (the Hungarian Medical Chamber, the Hungarian Psychiatric Association, the Hungarian Association of Gerontology and Geriatrics, etc.). As ad hoc medical experts are regularly hired, the lack of filling the two public official physician’s positions does not hinder the professional execution of the NPM’s visits. What happened was the very opposite: the circumstance that it is possible for me to select the medical doctor or doctors participating in the visit depending on the special features of the place of detention, increases the professionalism and efficiency of the on-site inquiries.

Based on the experience gained from the performance of the tasks, I think that *the requirement set out in Section 39/D (4) of the Ombudsman Act, according to which, among the staff members authorised to perform the tasks related to the National Preventive Mechanism, there shall be at least two persons each having the professional qualifications of a physician, should be repealed.* Through the amendment of this law, it would become possible for me to decide on whether, depending on the needs arising from the performance of the tasks of the NPM, I should employ persons with the qualification of a physician as public officials, or as experts acting on the basis of a mandate contract. By employing public official lawyers for the unfilled positions of the two physicians, the number of my current public official lawyer colleagues (which is six) would increase by one third, which would make it possible to organise more visits and prepare more reports.

The Minister of Justice thinks that at the time of the visits paid as part of the activities of the National Preventive Mechanism, the participation of physicians seems to be justified in each case, as in this way even those symptoms of physical and emotional abuse which are not noticeable for those who are inexperienced in this respect can be detected, which is of key importance in identifying the cases of torture and other cruel, inhuman or

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<sup>249</sup> SPT visit to Hungary between March 21 and 30, 2017: conclusions and recommendations for the National Preventive Mechanism (CAT/OP/HUN/R.2), Section 21.

degrading treatment or punishment. Indicating the involvement of physicians as a possibility does not seem to be an adequate guarantee. The Minister of Justice hopes that both physician's positions will be filled as soon as possible and also, he drew attention to the fact that part-time employment is also made possible by the effective regulation.<sup>250</sup>

11.1.3. According to Section 18(2) of the OPCAT, the states *"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 its report on the country visit to Sweden between 10 and 14 March, 2008, the Subcommittee pointed out that *"prevention necessitates the examination of the rights and conditions from the beginning of deprivation of liberty until the moment of release. Such examination should take a multi-disciplinary approach, e.g. a physician, a child and gender specialists and a psychologist should be involved, in addition to a strict legal focus."* Being aware of the above-quoted expectation of the Subcommittee, in the amendment of Section 39/D (4) of the Ombudsman Act, it would make sense to add a new Section 5 to Section 39/B of the Ombudsman Act, which would stipulate that *"On-site inquiries should take a multi-disciplinary approach, e.g. a physician, a child and gender specialists and a psychologists should be involved, in addition to a strict legal focus."*

The Minister of Justice thinks that my proposal is primarily a methodological issue, and it should not be represented on the level of the law.<sup>251</sup>

11.1.4. After the visit of the Subcommittee to Hungary between March 21 and 30, 2017, they indicated, among their conclusions drawn regarding the NPM that *"the National Preventive Mechanism does not have an identity which is different from that of the Office of the Commissioner for Fundamental Rights, not only with regard to the legal frameworks of its operation but also, with regard to the institutional frameworks and the guarantees of independence"*.<sup>252</sup> Related to the above-quoted comment made by the Subcommittee, I would like to draw attention to their guidelines meant for National Preventive Mechanisms, in which it is pointed out that as long as a body is obliged to fulfil its NPM responsibilities in addition to its other functions, a separate organisational unit or department should be established for performing the NPM's tasks, with its own staff members and budget.<sup>253</sup> In Hungary, the Commissioner

<sup>250</sup> Point I.2 of Justice Minister's letter No. XX-AJFO/ID/267/2018/8 dated on February 27, 2019.

<sup>251</sup> Section I.3 of Justice Minister's letter No. XX-AJFO/ID/267/2018/8 dated on February 27, 2019.

<sup>252</sup> SPT visit to Hungary between March 21 and 30, 2017: conclusions and recommendations for the National Preventive Mechanism (CAT/OP/HUN/R.2), Section 15.

<sup>253</sup> SPT: *Guidelines on national preventive mechanisms* (Clause 32 of CAT/OP/12/5), Section 32.

for Fundamental Rights performs the tasks of the NPM besides and simultaneously to performing his other tasks. The effective text of the Ombudsman Act only regulates the human conditions of fulfilling the NPM's responsibilities, however, it does not provide on the organisational guarantees of performing these tasks within the Office of the Commissioner for Fundamental Rights.

In order to be able to comply with the guidelines of the Subcommittee, I think that the following modification of Section 41(3) of the Ombudsman Act should be considered: *"The Organisational and Operational Rules of the Office shall be defined in a normative instruction by the Commissioner for Fundamental Rights. At the Office, the responsibilities of the National Preventive Mechanism are fulfilled by an independent organisational unit."*

The Minister of Justice supported this proposal.<sup>254</sup>

11.1.5. Section 28(4) of the Ombudsman Act stipulates that there shall be no legal remedy against decisions of the Commissioner for Fundamental Rights rejecting a petition, or against the reports of the Commissioner. The problem described below has come up in relation to an NPM report, and such may emerge on a general basis and related to any and all Ombudsman's reports.

Related to some of the conclusions drawn by the NPM report on the visit to the Cseppkő Children's Home in the spring of 2016, the Director of the institution brought a personality right lawsuit against the Commissioner for Fundamental Rights for damaging the reputation of the Children's Home. In his statement of claim, he requested the Court to establish that the NPM, *"in its report published on November 14, 2016, claiming that children lived in overcrowded conditions in the children's home operated by the petitioner, where incidents of drug use, child prostitution, child abuse by the educators happen, and physical, psychological, and sexual abuse between the children is rampant, had violated the petitioner's right to reputation"*. He also requested the Court to oblige my Office, in addition to removing the contested conclusions, to pay three million Forints in tort damages and 1.5 million Forints for material damage, as well as their incidentals, and to publicly apologize.

The courts acting in the case rejected the claim, however, the Budapest Court of Appeal acting in the second instance concluded that in a case on personality rights, it may be the subject of investigation whether there is internal coherence between the utterances of the Commissioner for Fundamental Rights, whether there is any contradiction in the empirical descriptions, and the recommendations and initiatives made as a result of the

<sup>254</sup> Section I.4 of Justice Minister's letter No. XX-AJFO/ID/267/2018/8 dated on February 27, 2019.

reports can also be examined from such an aspect. In the interpretation of the Budapest Court of Appeal, the only barrier that the court is faced with is that it cannot examine those specific items of evidence based on which the Commissioner for Fundamental Rights drew conclusions, made assessments, established facts or occurrences that ran counter to the laws.<sup>255</sup> If the above-mentioned interpretation became general in the judicial legal practices, it would result in a situation where the courts would qualify the conclusions drawn and the measures proposed by the Commissioner for Fundamental Rights unlawful in the framework of a lawsuit on personality rights, what is more, they could apply a personality rights-related legal consequence against the Ombudsman if they thought that he did not use an adequately neutral expression related to the judgment, proceedings or omission of the authority that he had examined. Of course, I accept the view that the Commissioner for Fundamental Rights should not be in the position to make any irresponsible statements against anybody, however, in order to defend the independence of the institution, I do not regard it as acceptable if the authorities under review try to get the conclusions of the NPM's report "revised" by using the legal instruments applied in civil law for the protection of personality rights.

It became obvious, related to this case, that the Ombudsman Act contains no provisions whatsoever in defence of the immunity of the NPM. With a view to preventing similar legal disputes, I propose that the amendment of Section 39/A of the Ombudsman Act be considered, which would stipulate that "(2) *With regard to the report issued as part of fulfilling the responsibilities of the National Preventive Mechanism, Section 28(4) of the Ombudsman Act has governing effect. As regards the measures specified in the report of the National Preventive Mechanism, the provisions set out in Chapter 11 of the Ombudsman Act shall be applied*". Furthermore, I propose that the following modification of the provisions set out in Section 28(4) of the Ombudsman Act be considered: *this provision will restrict or exclude the enforceability of the requirements to be fulfilled by the reports of the Commissioner (including the claims for deleting the individual conclusions or proposals of such reports) before the court.*

The Minister of Justice thinks that through the amendment of Section 39/A of the Ombudsman Act that I have proposed, the provisions thereof would change depending on the actual context.<sup>256</sup> Furthermore, he does not think that such an amendment of the law is necessary which would exclude, or in any way restrict the enforcement of personality rights or

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<sup>255</sup> Ruling No 32.Pf.20.505/2018/7-II of the Budapest Court of Appeal was put on file in my Office under No AJB-2354-22/2019.

<sup>256</sup> Section II.1 of Justice Minister's letter No. XX-AJFO/ID/267/2018/8 dated on February 27, 2019.

compensation claims related to the conclusions in the report of the Commissioner for Fundamental Rights. The Minister of Justice thinks that the statutory preconditions of disapproval only exist in exceptional cases, exclusively when the utterance defined in the report occurred beyond the frameworks of the proceedings in question, it was unrelated to the inquiry that had been conducted, in a way that cannot be justified by the latter.<sup>257</sup>

## 11.2.

### Proposals in the NPM's reports

Preventive monitoring visits also cover the practice-oriented review of legal regulations applicable to the operation of the given place of detention; therefore, the NPM, primarily through presenting his observations and impressions from his visits, and via his legislative proposals based on their critical evaluation, generates domestic legislation.<sup>258</sup> If instances of ill-treatment or the threat thereof uncovered during the visit 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 to modify, repeal or prepare a legal rule.<sup>259</sup>

In my reports on the NPM visits published in 2018, I made 15 legislative proposals in connection with prevailing legal regulations.<sup>260</sup>

## 11.3.

### 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.<sup>261</sup> If, in my opinion, a legal regulation is in violation of the Fundamental Law or an international treaty, I may request the Constitutional Court to review it.<sup>262</sup>

In 2018, as part of fulfilling my responsibilities as the NPM, I did not request an ex-post review of norms either from the Curia or the Constitutional Court.

<sup>257</sup> Section II.2 of Justice Minister's letter No. XX-AJFO/ID/267/2018/8 dated on February 27, 2019.

<sup>258</sup> In its reports published in 2017, the NPM made altogether 17 legislative recommendations.

<sup>259</sup> See Section 37 of the Ombudsman Act.

<sup>260</sup> In 2018, while performing my general activities aimed at protecting fundamental rights and the tasks of the NPM, I made altogether 50 legislative proposals.

<sup>261</sup> See Section 34/A(1) of the Ombudsman Act.

<sup>262</sup> See Section 34 of the Ombudsman Act.

## 11.4.

### Powers related to draft legislation

Pursuant to Section 2(2) of the Ombudsman Act, the Commissioner for Fundamental Rights shall give an opinion on the draft legal rules affecting his 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.

In order to let the National Preventive Mechanism exercise his power to make proposals, the State has to submit, *ex officio*, in their preparatory phase, all draft legislation concerning detention conditions to the National Preventive Mechanism.

According to the Act on Legislation, the party drafting legislation shall ensure that any and all organisations empowered by the law to review draft legislation concerning their legal standing or competence may exercise their rights.<sup>263</sup> The parties responsible for preparing legal regulations usually submit their drafts to my Office in order to prove that they have complied with my proposals to modify, repeal or prepare legal rules specified in my reports. I review draft legislation in a complex way, i.e. on the basis of both my experience obtained during the visits conducted in the capacity of the NPM and my investigations conducted in my general competence. I pay special attention to finding out whether the proposed text of the norm is suitable for remedying treatment criticised in my report and for preventing it from recurring in the future.

In the case of legislative concepts and draft bills relative to the application of which it has no investigative experience, the NPM draws the attention of those responsible for the codification to the risks of ill-treatment and to the measures required for the prevention thereof.<sup>264</sup> When reviewing draft legislation, the NPM, depending on its future visits and the conclusions of its future investigations, reserves the right to initiate the amendment or annulment of regulations which will have in the meantime entered into force.

The organs responsible for drafting and preparing legislation requested me to review 154 draft bills in 2018, which is 30 percent less than the 219 drafts in the previous year. More than two-thirds of the draft bills were submitted by the Ministry of Interior (45%), the Ministry of Human Capacities (21%), and the Ministry of Justice (14%).

My remarks on the draft bills are not compelling; however, their fundamental rights protection approach may facilitate efficient codification and the elimination of eventual deficiencies, contradictions.

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<sup>263</sup> See Section 19 (1) of Act CXXX of 2010 on Legislation.

<sup>264</sup> In his capacity as NPM, the Commissioner for Fundamental Rights reviewed 212 draft bills in 2016, and 219 in 2017.

# 12.

## The NPM's international relations

In 2018, the already wide-ranging professional contacts of the NPM were widened further. Attending bilateral meetings and numerous conferences held with the participation of domestic and international organisations, the Commissioner for Fundamental Rights and the staff members of the Department discussed the NPM's activities.

### 12.1.

#### Relations between the NPM and the Subcommittee on Prevention

The Subcommittee on Prevention of Torture paid an ordinary visit to Hungary between March 21 and 30, 2017, in the course of which the delegation met with the Commissioner for Fundamental Rights, in his capacity as the NPM, the staff members of the Department, as well as the representatives of the member organisations of CCB. On March 28, 2017, the delegation, as observers, accompanied my colleagues authorised to perform the tasks of the National Preventive Mechanism to the visit to Unit I of the Budapest Remand Prison. After the visit, the delegation discussed its experience with the staff members of the Department at my Office.

The report prepared for the NPM by the Subcommittee on Prevention of Torture was received by my Office on December 8, 2017, with the request that I should respond to the conclusions and recommendations set out in the document by June 7, 2018. I displayed the report and my responses to the conclusions of the report<sup>265</sup> on the NPM's homepage.<sup>266</sup>

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<sup>265</sup> See Annex 1.

<sup>266</sup> Report No. CAT/OP/HUN/R.2 of the Subcommittee on the Prevention of Torture was put on file under No. AJB-791/2018 in my Office.

## 12.2.

### The NPM's relations with the national preventive mechanisms of other countries

#### 12.2.1. South-East Europe NPM Network

The NPM has participated in the activities of the South-East Europe NPM Network (hereinafter the "SEE Network"), whose members can more efficiently perform the task of preventing ill-treatment in cooperation with each other, as an observer since 2014 and as a full member since April 21, 2016.

The participants of the conference entitled "*Prevention of suicides and overdoses in detention centres and status of NPM staff in the member states*" organised by the South-East Europe NPM Network in Podgorica, Montenegro between 28 and 30, May, 2018 presented how, in the member state that they represent, the admission of the detainees to prisons and police detention facilities, as well as the prevention of self-harming behaviour and suicide attempts take place.

The regional round-table discussion entitled "*Immigration Detention and Effective Alternatives*" organised by the South-East Europe NPM Network in Podgorica, Montenegro between December 12 and 14, 2018, which was supported by the Council of Europe, was about the alternatives of the detention of immigrants. It became clear from the comments made by the participants that the countries of the region that typically fulfil the role of transit states in international migration find it hard to tolerate mass migration and to take care of those foreign nationals who have no personal identification documents. The places of detention are overcrowded, the migrants shortly leave the designated areas serving as alternatives to places of detention for unknown destinations, without notice.

#### 12.2.2. Conferences

The participants of the conference entitled "*NPM Impact Assessment*" organised by the ten-year-old Slovenian National Preventive Mechanism in Ljubljana, Slovenia on April 17-18, 2018 discussed the following topics in four workshops:

- Why does the impact of the NPM need to be analysed, who has to do this and when?
- What are the criteria of the impact assessment of the NPM?
- How can the impact of the NPM be assessed?
- How should the causal relation between the detected changes and the NPM's activity be established?

The workshop called *“Strengthening the follow-up to NPM recommendations”* organised by the International Ombudsman Institute in Copenhagen, Denmark between November 7 and 9, 2018 wished to provide support for the national preventive mechanisms with the performance of the tasks related to the prevention of torture and ill-treatment. The participants exchanged their experience on how the effectiveness of the activities of the NPM can be maximised by refining and developing the recommendations, efficient follow-up, as well as encouraging the appropriate implementation of the recommendations. In the context of interactive working groups, the participants reviewed and analysed the individual elements of the recommendations following the visits paid by the NPM and the implementation thereof, and they discussed the possibilities for and the methods of developing these. Starting out from the visits as the fundamental element of the activities performed by the NPM, the participants analysed the criteria of good recommendations and reviewed how the reports and the recommendations may foster change.

### 12.2.3. Bilateral relations

The NPM and the designated staff members of the Department met with the representatives of the Slovenian National Preventive Mechanism in Celje, Slovenia on May 24-25, 2018. The participants of the meeting paid a visit to the juvenile penitentiary institution, then they discussed the experience that they had gained there.

The NPM and the designated staff members of the Department met with the representatives of the Slovenian National Preventive Mechanism in Zalaegerszeg, Hungary on November 13-14, 2018. The participants of the event paid a visit to the Zala County Remand Prison. The NPM presented the practices of conducting confidential interviews and assessing the cells, then the participants discussed what they had seen and they exchanged their experience on those detainees who have psychosocial disabilities.

On December 12, 2018, the NPM met with the representatives of the Austrian National Preventive Mechanism at the Eisenstadt correctional institution. The participants of the meeting paid a visit to the local prison, then they discussed their experience on those detainees who have psychosocial disabilities.

## 12.3.

### International activities

The head of department, as an independent member delegated by Hungary, took part in the plenary sessions of CPT on March 4-9, July 2-6 and November 5-9, 2018, as well as in the CPT's visits to Georgia (September 8-22) and Russia (October 18-30).

On March 12-13, one of the staff members of the Department attended the training session entitled *"Monitoring homes for the elderly" held in Trier, Germany and organised by the Council of Europe, as well as the Austrian and German national preventive mechanisms.*

On May 17-18, 2018, one of the staff members of the Department attended the seminar entitled *"Financial instruments related to disability" held in Trier, Germany and organised by the Academy of European Law (ERA), supported by the European Union.*

On October 5, 2018, Serbian Ombudsman Zoran Pašalić paid a visit to the Office. The participants of the meeting discussed the experience that they had gained during the performance of the tasks of the national preventive mechanism.

On October 12, 2018, one of the staff members of the Department attended a meeting with the experts of the GRETA delegation, which was held in the Ministry of the Interior as part of the country visit paid on October 9-12, 2018,<sup>267</sup> with a view to assessing how Hungary implemented the provisions set out by the Council of Europe Convention on Action against Trafficking in Human Beings.

On November 16, 2018, one of the staff members of the Department met with the members of the International Organisation for Migration at the Office and answered the questions asked as part of their regional project called *"PROTECT – Preventing sexual and gender-based violence against migrants and strengthening support to victims"*.

On November 19, 2018, the CPT's delegation to Hungary met with the Commissioner for Fundamental Rights and his colleagues.<sup>268</sup>

On November 29, 2018, the head and deputy head of department participated in the closing meeting of CPT, which was held at the Ministry of the Interior.

On December 4, 2018, one of the staff members of the Department met with the experts of the US Department of State's Office to Monitor and Combat Trafficking in Persons at the Office.

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<sup>267</sup> Convention of the Council of Europe on Action against Trafficking in Human Beings announced by Act XVIII of 2013.

<sup>268</sup> On the CPT's visit to Hungary between November 20-29, 2018, see: <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-visits-hungary>

# 13.

## Media and dissemination

In addition to conducting visits, the NPM's tasks also include the publication of his opinion, conclusions, and any other relevant information that may contribute to raising social awareness.<sup>269</sup> I display these at the NPM interface of the homepage of<sup>270</sup> my Office.<sup>271</sup>

### 13.1.

#### Media

In 2018, my colleagues registered 15 independent appearances in the media in connection with my reports published as part of my activities performed as NPM. This year, the press coverage of the NPM's activities was mostly of a general nature.

*Press coverage of the NPM's activities in 2018*

Place of detention	Independent media appearances
On the OPCAT NPM in general	10
The central premises and the Nagykanizsa Unit of the Debrecen Reformatory of the Ministry of Human Capacities	1
Nagymágocs Castle Home of the Aranysziget Integrated Retirement Home of Csongrád County	2
Central Holding Facility of the Metropolitan Police Headquarters of Budapest	2
<b>Total</b>	<b>15</b>

There were two articles on the activities and composition of the CCB.

There was a report on that according to the plans of the Government, it will not be possible to apply the institution of restraining order regarding aliens against the person fulfilling the tasks of the NPM.

It is mentioned in an article that the NPM is a member of the network operated by György Soros. The author thinks that *"It seems like the Office of the*

<sup>269</sup> SPT: *Analytical self-assessment tool for National Prevention Mechanisms* (Clause 9(b) of CAT/OP/1/Rev.1).

<sup>270</sup> <http://www.ajbh.hu/opcat>

<sup>271</sup> See Sections 5.2.6, 7.6, and 8.6.

*Commissioner for Fundamental Rights has also been adequately sensitised: see the secret work plan, the legal protection experts sponsored from abroad, what is more, even Scientologists in the vicinity of the Ombudsman's Office.*"<sup>272</sup>

Several articles were about praising and promoting the talks given by the staff members of the NPM. At the conference of the child protection signalling system called "*Protection with Emotions*" organised by the Crime Prevention Unit of the Bács-Kiskun County Police Headquarters and the Department of Guardianship and Justice of the Bács-Kiskun County Government Office on the occasion of the Universal Children's Day and the International Day for the Elimination of Violence against Women, the presentation entitled "*OPCAT National Preventive Mechanism. The situation of Hungarian social welfare institutions – child protection in the light of OPCAT inquiries*" received great media coverage.<sup>273</sup>

KAPSZLI (group of students of psychology at Károli Gáspár University) displayed a preview of the talk entitled "*Börtön, pszichológia, emberi jogok*" ("*Prison, Psychology, Human Rights*") held at the event called "*KAPSZLI Days of Psychology 2018*" at Károli Gáspár University of the Reformed Church<sup>274</sup> on its homepage.<sup>275</sup>

The NPM report on the visit to the seat of the Debrecen Reformatory of the Ministry of Human Capacities and its Nagykanizsa Unit received detailed media coverage. Among others, it was mentioned in the article that the children were struggling with skin problems, they harmed themselves (e.g. they swallowed needles), some of them were infected with hepatitis C, several children took tranquillisers, violence was rampant, they lived in a highly disciplined atmosphere and the practice of their isolation was also against the rules.<sup>276</sup>

The photo of the exercise area of the Central Holding Facility of the Metropolitan Police Headquarters of Budapest published in the NPM report also appeared in the press. Among others, it was mentioned in the article that an

<sup>272</sup> Demokrata.hu: The network of George Soros, Part 7, appearance: May 30, 2018, <http://www.demokrata.hu/blog/2018-05-30/george-soros-haloja-7-resz> [downloaded on: February 26, 2019]

<sup>273</sup> Kecskeméti Lapok: "*Protection with Emotions*"-conference at the police [appearance: November 21, 2018] <https://kecskemetilapok.hu/rendorseg/vedelemmel--erzelemmel-konferencia-a-rendorsegen> [downloaded on: April 26, 2019]

<sup>274</sup> See Section 3.3.

<sup>275</sup> KAPSZLI: Dr. Gergely Fliegauf: Börtön, pszichológia, emberi jogok (Prison, Psychology, Human Rights) – KAPSZLI Days of Psychology 2018 [appearance: April 2, 2018] <https://krekapszli.hu/2018/04/02/dr-fliegauf-gergely-borton-pszichologia-emberi-jogok-kapszli-pszichologiai-napok-2018/> [downloaded on: April 26, 2019]

<sup>276</sup> Magyarhang.org, Melinda Farkas: Pofonok, gyomrosok, nyugtatózás a hazai javítóintézetekben (Slaps, Low Blows, and Taking Tranquillisers in the Hungarian Penitentiary Institutions) [appearance: June 21, 2018] <https://magyarhang.org/belfold/2018/06/21/pofonok-gyomrosok-nyugtatozas-es-orwelli-szabalyok-a-hazai-javitointezetekben/> [downloaded on: February 26, 2019]

annual 4,200 detainees are kept at the Central Holding Facility, at the time of the NPM's visit, the jail was "dark, stuffy and full of insects", one of the female cells could not be ventilated, lighting was not adequate, the detainees could only reach the toilet after waiting for 15-20 minutes, their days were boring, and their relatives were also notified in an inappropriate way.<sup>277</sup>

The article on the NPM report on the visit to the Nagymágocs Castle Home of the Aranysziget [Golden Isle] Integrated Retirement Home of Csongrád County reports that there is such a room at the Institute where the elderly resident can only get to his own bed by jumping over his roommate's bed, verbal abuse is common among the residents but physical abuse has also occurred, and some residents have committed suicide. The article also mentions the changes that took place at the Institution after the publication of the NPM's report.<sup>278</sup>

## 13.2.

### Dissemination

Purposeful dissemination is an obligation of the NPM. Educating the professionals of the future is an efficient means of disseminating knowledge. The staff members of the Department perform educational tasks in domestic higher education institutions, deliver lectures, and publish articles in professional periodicals.

#### 13.2.1. Publications

- Gergely Fliegauf: *Peace of Mind in Prison*. In: Pannonhalmi Szemle, issue XXVI/1, pp. 49–59.
- Gergely Fliegauf: *On-site experience gained from the OPCAT NPM inquiries, social science methodological issues, assessment of the visits (debriefing)*. In: László Székely – Lóránt Csink (eds.): „Ha majd a jognak asztalánál Mind egyaránt foglal helyet...” (“When all men have an equal station at the table of justice – quotation from a poem of 19<sup>th</sup> century Hungarian poet Sándor Petőfi): Studies for the 70<sup>th</sup> anniversary of the proclamation of the United Nation's Universal Declaration of Human Rights, pp. 25–40.

<sup>277</sup> Népszava.hu, Tamás Lőrincz: Rémes körülmények a Gyorskocsi utcai fogdában (Horrible Conditions at the Gyorskocsi utca Jail), [appearance: February 12, 2018] [https://nepszava.hu/1152561\\_remes-korulmenyek-a-gyorskocsi-utcai-fogdaban](https://nepszava.hu/1152561_remes-korulmenyek-a-gyorskocsi-utcai-fogdaban) [downloaded on: February 26, 2019]

<sup>278</sup> Délmagyar.hu, Erika Kovács: Ombudsmani vizsgálat a kastélyotthonban – Bántalmaztak is a nagymágocsi intézményben, (Ombudsman's Inquiry at the Castle Home – Violence at the Nagymágocs Institute) [appearance: September 12, 2018] [https://www.delmagyar.hu/szentes\\_hirek/ombudsmani\\_vizsgalat\\_a\\_kastelyotthonban\\_-\\_bantalmaztak\\_is\\_a\\_nagymagocsi\\_intezmenyben/2572980/](https://www.delmagyar.hu/szentes_hirek/ombudsmani_vizsgalat_a_kastelyotthonban_-_bantalmaztak_is_a_nagymagocsi_intezmenyben/2572980/) [downloaded on: March 11, 2019]

- Katalin Haraszti: *Preventing suicide in Hungarian places of detention*. In: Perovic, Zdenka–Radović, Mirjana (eds.): *Prevention of suicides and overdoses in detention centres and status of NPM staff in the member states – The second meeting of the South-East Europe NPM Network in 2018*, Podgorica, Montenegro, May 29–30, 2018. Protector of Human Rights and Freedoms of Montenegro, 2018, pp. 31–34.
- Katalin Haraszti: *Prevenција suicida u mađarskim ustanovama detencije*. In: Perovic, Zdenka; Radović, Mirjana (ur.): *Prevenција suicida i predoziranje u ustanovama detencije, status NPM-a u državama članicama – Drugi sastanak NPM Mreže zemalja Jugoistočne Evrope u 2018*. Podgorica, Crna Gora 29. i 30. maj 2018. godine. Institucija Zastitnika Ijudskih prava i sloboda Crne Gore, 2018, pp. 33–36.
- Krisztina Izsó: *Cselekvőképesség és egészségügyi önrendelkezési jog (Capacity and Right to Self-Determination regarding Health Care)*. In: *Jogi tanulmányok 2018 (Legal Studies 2018) (Talks on legal science at the conference of the Doctoral School of the Faculty of Law and Political Science of Eötvös Loránd University of Science, June 7, 2018)*, ISSN 2064–9851, pp. 486–497.
- Krisztina Izsó: *Sándor Gurbai: A gondnokság alá helyezett személyek választójoga a nemzetközi jog, az európai regionális jog és a komparatív közjog tükrében. (Election Rights of Persons under Guardianship in Light of International Law, Regional European Law and Comparative Public Law). (Review)* In: *Állam- és Jogtudomány, Vol. LIX 2018, No. 3*.

### 13.2.2. Educational activities

Subject	Institution
Seminar on Civil Law	Faculty of Law and Political Science of Eötvös Loránd University of Science
Chapters from the Results of Critical Criminology	Graduate School of Law Enforcement, NUPS (National University of Public Service)
Penology and Social Sciences Research in Prison	Graduate School of Law Enforcement, NUPS (National University of Public Service)
Prison Sociology	Master course in Criminology, Faculty of Law and Political Science of Eötvös Loránd University of Science
Criminal Psychology	Master course in Criminology, Faculty of Law and Political Science of Eötvös Loránd University of Science
Macro-level, Multidisciplinary Approach to Social Issues I Violence	Institute of Mental Health, Faculty of Health and Public Services, Semmelweis University
Minors with Special Educational Needs in Hungary	ELTE Institute for Postgraduate Legal Studies, LL. M. programme in children's rights
Professional Skills Development	Faculty of Primary and Pre-School Education, ELTE
Socially Efficient Attitude – Skill Development Training for Foster Parents	Training programme of the Maltese Family House Foster Network and General Directorate of Social Affairs and Child Protection

### 13.2.3. Participation in professional events

Activity	Event	Date
Talk entitled <i>“The brief description of the activities of the OPCAT NPM, the methodological, ethical and organisational issues of the visits”</i>	Workshop discussion for the external experts of the OPCAT NPM,* Office of the Commissioner for Fundamental Rights	11/04/2018
Talk entitled <i>“The brief description of the activities of the OPCAT NPM, legal frameworks”</i>		
Talk entitled <i>“Preventing suicide in Hungarian places of detention”</i> ***	<i>“South-East Europe National Preventive Mechanisms Network Meeting”</i> , Podgorica, Montenegro	29/05/2018
Presentation of the experience gained from the NPM visits	Roundtable discussion organised by the Law Enforcement and Prison Law Subcommittee of the Hungarian Academy of Sciences (MTA) and the Scientific Council of Internal Affairs entitled <i>“Overview of prison affairs in the member states of the European Union and in Hungary”</i>	14/06/2018
Management of a workshop on prison research	Conference entitled <i>“Public service and psychology”</i> , National University of Public Service	19/06/2018
Talk entitled <i>“Experience of the visits of the OPCAT National Preventive Mechanism related to child protection – Is there cyber space behind bars?”</i>	Conference entitled <i>“Protection of children’s rights online and offline”</i> , Office of the Commissioner for Fundamental Rights	15/11/2018
Talk entitled <i>“OPCAT National Preventive Mechanism. The situation of the Hungarian social welfare institutions – Child protection in the light of OPCAT inquiries”</i>	Conference of the child protection signalling system called <i>“Protection with emotions”</i> organised by the Crime Prevention Unit of the Bács-Kiskun County Police Headquarters and the Department of Guardianship and Justice of the Bács-Kiskun County Government Office	20/11/2018
Talk entitled <i>“Alternatives to immigration detention in Hungary”</i>	<i>“South-East Europe National Preventive Mechanisms Network Meeting”</i> **** Podgorica, Montenegro	12/12/2018

\* See Section 2.2.

\*\* See Section 12.2.1.

\*\*\* See Section 12.2.1.

# 14.

## 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 preventing torture and other cruel, inhuman or degrading treatment or punishment, even in lack of petitions or detected improprieties.<sup>279</sup> 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.

The specific rules of performing this task are stipulated in Chapter III/A of the Ombudsman Act. The current legal environment is basically suitable for the performance of my tasks. As proposed by the Subcommittee on Prevention of Torture,<sup>280</sup> in the form of an internal inquiry, I reviewed the effective laws governing the operation of the NPM and I requested help from the Minister of Justice with performing the modifications that I find necessary.<sup>281</sup> The Minister of Justice found only one of my proposals for the amendment of a law concerning the performance of the tasks of the NPM worthy of support.<sup>282</sup>

In performing the tasks of the NPM, I may proceed personally or through authorised public servant members of my Office. In 2018, my Office had to face two major challenges while performing the tasks of the NPM. On the one hand, due to the lack of applicants, I could not fill the two physicians' positions stipulated in Section 39/D(4) of the Ombudsman Act. I employed the physicians participating in the visits on the basis of civil law contracts. On the other hand, staff turnover was rather high among the public servant lawyers participating in the performance of the tasks related to the NPM. One of the six lawyers working at the Department on January 1, 2018 left the Office at the beginning of the year. On average, the Department worked with eight public servant staff members. The vacated position was

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<sup>279</sup> See Section 39/B(1) of the Ombudsman Act.

<sup>280</sup> SPT visit to Hungary between March 21 and 30, 2017: conclusions and recommendations for the National Preventive Mechanism (CAT/OP/HUN/R.2), Section 19.

<sup>281</sup> See document No. AJB-4496/1/2018.

<sup>282</sup> Justice Minister's letter No. XX-AJFO/ID/267/2018/8 dated on February 27, 2019 was put on file under No. AJB-4496/1/2018.

filled through an open call for application, in accordance with the Ombudsman Act's provisions on gender composition.<sup>283</sup>

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

Although I have to perform the tasks of the NPM independently, I received valuable support from the members of the CCB, consisting of organisations registered and operating in Hungary, with outstanding practical and/or high-level theoretical knowledge relative to the treatment of persons deprived of their liberty. More than one-third of the places of detention on the NPM's annual schedule of visits have been chosen on the recommendation of the members of the CCB.<sup>284</sup>

Using the data received from the competent governmental organs, my colleagues updated, as of December 31, 2017, the list of places of detention as defined in Article 4 of the OPCAT. Based on the data at my disposal, on December 31, 2017, there were **146,339 detention units** at the **3,767 places of detention under Hungarian jurisdiction**.

During the fourth year of the NPM, I inspected a total of **753 detention units** at **15 places of detention**. The average utilisation rate of these units of detention stood at 52.3%. Our visiting delegations found the highest utilisation rates (100%) in the foster families of the foster parent network of the Vas County Child Welfare Centre and the Visegrád Assisted Living Centre for the Elderly operated by the Visegrád Aranykor Foundation.

Although there had been no prior notifications, the visiting delegations were given access to almost all the places of detention without delay. 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, complied with their obligation to cooperate in performing the tasks of the NPM.

Reports were prepared on every visit, containing the visiting delegations' "*findings and the conclusions based thereon*". In 2018, I prepared altogether **9 reports** within the frameworks of performing the tasks of the National

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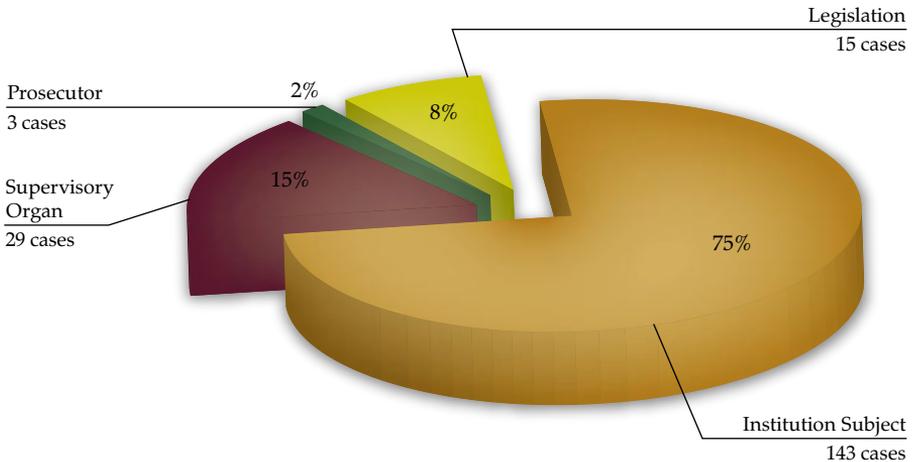
<sup>283</sup> See Section 39/D(4) of the Ombudsman Act.

<sup>284</sup> SPT visit to Hungary between March 21 and 30, 2017: conclusions and recommendations for the National Preventive Mechanism (CAT/OP/HUN/R.2), Section 31.

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.

With regard to the tasks of the NPM, in my reports on the inspections, I recommended taking measures aimed at terminating and preventing the recurrence of the ill-treatment of persons deprived of their liberty. In 2018, I took measures altogether on **190** occasions. Most frequently, in **143** cases, I made recommendations to the heads of the places of detention,<sup>285</sup> in another **29** cases to the heads of the supervisory organ of the institution subject to inquiry,<sup>286</sup> and on **3** occasions, I initiated proceedings for the supervision of legality by the competent prosecutor<sup>287</sup> through the Prosecutor General. In 2018, I made **15** legislative proposals.<sup>288</sup>

*My measures defined in the reports prepared in 2018  
as part of fulfilling the tasks of the NPM, grouped by addressees*



In the fourth 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 did not seem possible within the deadline stipulated in the relevant provision of the Ombudsman Act, the addressees notified me thereof before the deadline and requested its extension.

Maintaining a continuing and constructive dialogue serving the monitoring of the implementation of these measures is a statutory obligation

<sup>285</sup> Section 32(1) of the Ombudsman Act.

<sup>286</sup> Section 31(1) of the Ombudsman Act.

<sup>287</sup> Section 33(1) of the Ombudsman Act.

<sup>288</sup> Section 37 of the Ombudsman Act.

of not only the NPM but also the management of the places of detention, authorities, and other organs concerned. The dialogue between the NPM and the addressees of the recommendations is conducted on the basis of the report used as a platform. The Ombudsman Act regulates in detail the method of monitoring, including the deadlines for responding.<sup>289</sup>

Under these provisions, 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 ask the Parliament to inquire into the matter. If the impropriety is of flagrant gravity or affects a larger group of natural persons, I may 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.

The authorities or their supervisory organs under review gave meaningful responses to the measures that I had defined in the 2018 reports of the NPM and no such grave infringements were uncovered by these visits for remedying which I should have turned to the National Assembly.

I maintain a dialogue with the addressees of my measures mainly in writing, involving, as necessary, the supervisory organs as well. There is no legal obstacle to holding oral consultations within the framework of the dialogue. Acting on my recommendation made in the report on the visit to the Forensic Psychiatric and Mental Institution, the Minister of Justice set up an inter-professional working group, with the participation of my colleagues authorised to perform tasks related to the NPM, for reviewing and redressing the systemic problems of compulsory treatment. The working group had one meeting in 2018, on September 24.<sup>290</sup>

Another form of dialogue is the follow-up visits, in the course of which I try to double-check the recommendations made in the report on the previous visit, as well as to re-examine the most problematic fields. Follow-up visits provide an opportunity to discuss the findings of the previous visit and, in their light, the practical implementation of my measures with the personnel of the places of detention. In 2018, while performing the tasks of the NPM, I made a follow-up visit to the Central Penitentiary Hospital in Tököl.<sup>291</sup>

The civil lawsuit filed for damaging the reputation of the Children's Home related to some of the findings in my report on the visit to Cseppekő Children's Home, which was concluded in 2018, meant a special form of dialogue be-

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<sup>289</sup> Sections 31-38 of the Ombudsman Act.

<sup>290</sup> See Chapter 10.2.

<sup>291</sup> [http://www.ajbh.hu/documents/10180/2806238/OPCAT+NMM+utankövető+látogatás+Tökölön\\_honlap\\_rövífhír.pdf](http://www.ajbh.hu/documents/10180/2806238/OPCAT+NMM+utankövető+látogatás+Tökölön_honlap_rövífhír.pdf)

tween the NPM and the place of detention.<sup>292</sup> The court proceedings, which were in progress on December 31, 2017, were closed with binding effect in 2018. The second-instance court rejected the claim of the Claimant.<sup>293</sup>

The NPM's operational costs in 2018 amounted to **82,789,143** Forints; this amount was allocated by my Office from its budget provided by the Parliament.

The Subcommittee on Prevention paid an ordinary visit to Hungary between March 21 and 30, 2017. On the first working day of their visit, i.e. on March 22, 2017, the delegation met with the Commissioner for Fundamental Rights performing the tasks of the NPM, the staff members of the Department, and the representatives of the CCB's member organisations at the Office. The report prepared for the NPM by the Subcommittee on Prevention of Torture was received by my Office on December 8, 2017, with the request that I should respond to the conclusions and recommendations of the document by June 7, 2018. I displayed the report and my responses to the conclusions and recommendations of the report<sup>294</sup> on the NPM's homepage.<sup>295</sup>

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<sup>292</sup> See Chapter 10.1.

<sup>293</sup> Ruling N<sup>o</sup> 32.Pf.20.505/2018/7-II of the Budapest Court of Appeal, dated June 13, 2018, was put on file in my Office under N<sup>o</sup> AJB-2354-22/2019.

<sup>294</sup> SPT visit to Hungary between March 21 and 30, 2017: see my responses to the conclusions and recommendations for the National Preventive Mechanism in Annex 1 (CAT/OP/HUN/R.2).

<sup>295</sup> Available at: [www.ajbh.hu/opcat-SPT-jelentes-2017](http://www.ajbh.hu/opcat-SPT-jelentes-2017)

# Annex 1 – The NPM’s response to the conclusions and recommendations of the Subcommittee on Prevention of Torture

Response of the Commissioner for Fundamental Rights as National Preventive Mechanism to the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment concerning the recommendations made following its visit to Hungary from March 21 to 30, 2017

Budapest, June 2018

## A. Recommendations relating to legal, institutional and structural issues Structure and independence

1. In response to the recommendation in **Point 17** of the report on the visit of the Subcommittee on Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter the Subcommittee) to Hungary (CAT/OP/HUN/R.2.), I think that the effective legislative frameworks adequately ensure the basic criteria for the Commissioner for Fundamental Rights reporting to the National Assembly, in his capacity as the National Preventive Mechanism (hereinafter the NPM), to efficiently fulfil his functions<sup>296</sup> defined in the Optional Protocol (hereinafter the OPCAT).
2. In response to the recommendation in **Point 18** of the report of the Subcommittee, the NPM mapped the scope of activities that he should pursue on the basis of the OPCAT, the Paris Principles, the NPM guidelines and the Assessment Tool<sup>297</sup> and he compared this to the NPM’s current structure and scope of activities. This mapping revealed that as part of performing the tasks of the NPM, more attention should be paid and more resources should be allocated to the training on the prohibition of torture and other ill-treatment.

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<sup>296</sup> Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment promulgated in Act CXLIII of 2011.

<sup>297</sup> Analytical assessment tool for national preventive mechanisms (CAT/OP/1/Rev.1.).

3. The provision of training and information on the prevention of torture is not included in the training programme of the persons working in the social and healthcare sector, or those who are involved in depriving persons from their personal liberty. Those members of the police staff who graduated from higher education institutions on law and administration have such knowledge, however, those members of the police staff who have lower qualifications or ranks receive no such training.<sup>298</sup> The NPM detected the above-mentioned deficiencies already during his visits to other places of detention and he proposed that these be eliminated.
4. In the past three years, the NPM has regularly examined whether the staff of the visited places of detention are aware of the information related to the prohibition of torture, however, he has not yet analysed the curricula of the educational institutions.<sup>299</sup> It should be considered in what form and in what framework the NPM can efficiently handle this issue. Prior to elaborating his final position on the issue, the NPM will consult the members and staff of the national preventive mechanisms operating in the region, who have considerable experience in this respect.
5. To date, neither the Commissioner for Fundamental Rights fulfilling the functions of the NPM, nor the staff members authorised to perform his tasks have been exposed to any threats or reprisals.<sup>300</sup> The Commissioner for Fundamental Rights shall report to the National Assembly on his activities, including the performance of the tasks of the NPM.<sup>301</sup> Any potential threats or reprisals concerning the Commissioner for Fundamental Rights or his staff members authorised to perform the NPM’s tasks should be reported to the National Assembly, in addition to making a criminal report or launching another type of official proceeding.
6. The NPM’s structure is based on the notion that the tasks of the NPM shall be performed by the Commissioner for Fundamental Rights as the National Human Rights Institution<sup>302</sup> of the UN. When performing the tasks of the NPM, the Commissioner for Fundamental Rights may proceed, within his discretion, either personally, or through his colleagues authorised by him to carry out tasks related to the NPM. The Commissioner for Fundamental Rights shall authorise at least

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<sup>298</sup> Analytical assessment tool for national preventive mechanisms 1/1.

<sup>299</sup> Analytical assessment tool for the national preventive mechanisms 2/45.

<sup>300</sup> Analytical assessment tool for national preventive mechanisms 4/171.

<sup>301</sup> Article 30 of the Fundamental Law of Hungary; Section 40(2)a) of the Ombudsman Act.

<sup>302</sup> See Article 18, Note 4 of the OPCAT.

eleven staff members to perform the tasks related to the NPM. The authorised public servant staff members shall have outstanding theoretical 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 their academic qualification.<sup>303</sup>

7. The administration and preparation related to the tasks of the Commissioner for Fundamental Rights, including those of the NPM, shall be performed by the Office of the Commissioner for Fundamental Rights (hereinafter the Office).<sup>304</sup> Pursuant to the Organisational and Operational Rules of the Office, established by way of a normative instruction<sup>305</sup> by the Commissioner for Fundamental Rights, who is solely responsible for the performance of the NPM’s tasks, the staff members of the Office authorised on a permanent basis to carry out tasks related to the NPM shall perform their work within the frameworks of a separate organisational unit, the OPCAT National Preventive Mechanism Department.<sup>306</sup>
8. Within the Office, the performance of the NPM’s tasks is separated not only organisationally but also functionally. The recruitment and selection of staff members authorised to perform the tasks related to the NPM are conducted in accordance with the special provisions of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter the Ombudsman Act).<sup>307</sup> To obtain access to classified data necessary for the performance of their tasks, the public official staff members authorised to perform the tasks related to the NPM shall have the personal security clearance certificate of the required level.<sup>308</sup> Data storage media containing confidential information gathered by the NPM are stored in the Office separately, in accordance with special rules of procedure.<sup>309</sup>
9. As a general rule, members of the OPCAT National Preventive Mechanism Department do not conduct inquiries into complaints. However,

<sup>303</sup> Section 39/D, Subsection (3) of Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter the Ombudsman Act).

<sup>304</sup> Section 41(1) of the Ombudsman Act.

<sup>305</sup> See Section 23, Subsection (4), Note f) of Act CXXX of 2010 on Legislation and Section 41(3) of the Ombudsman Act.

<sup>306</sup> By virtue of Section 26(2) of Act CXXX of 2010 on Legislation, the normative instruction on the Organisational and Operational Rules of the Office of the Commissioner for Fundamental Rights, containing my directive on the establishment of the OPCAT National Preventive Mechanism Department, shall be published in the Hungarian Official Gazette.

<sup>307</sup> Section 39/D, Subsections (3) and (4) of the Ombudsman Act.

<sup>308</sup> Section 39/D, Subsection (2) of the Ombudsman Act.

<sup>309</sup> Article 21(2) of the OPCAT

submissions containing data or information on the infringement of the provisions of Article 21, Note 1 of the OPCAT on the prohibition of sanctions are investigated by the staff members of the Department authorised to perform tasks related to the NPM.<sup>310</sup>

10. The NPM conducts its visit based on a schedule of visits adopted during the previous year. When proceeding in person, the Commissioner for Fundamental Rights shall notify the management of the place of detention and the detainees held therein that he is proceeding within the competence of the NPM. In his absence, the commission letter of the multidisciplinary visiting delegation shall clarify that the members thereof are authorised to perform tasks related to the NPM. The commission letter of the visiting delegation also reminds the places of detention and the authorities of the aforementioned prohibition stipulated in Article 21, Note 1 of the OPCAT.<sup>311</sup> It is also indicated on the cover and in the text of the reports on the visits that they are published by the Commissioner for Fundamental Rights proceeding in the capacity of the NPM.
11. The Commissioner for Fundamental Rights has to report to the Parliament on his performance of the tasks of the NPM.<sup>312</sup> The Parliament shall debate the report of the Commissioner for Fundamental Rights within the year of its submission.<sup>313</sup> Information related to the performance of the tasks of the NPM is regularly published on the interface of the homepage of the Office especially dedicated to this topic.<sup>314</sup> The reports on the NPM’s visits and the annual comprehensive report on the NPM’s activities are also published on this interface of the homepage of the Office.
12. Acting on the recommendation made in **Point 19** of the Subcommittee’s report, the NPM has carried out an internal review of the existing legal acts stipulating the functioning of the mechanism in order to have a full overview of all aspects that need to be revised to enable it to carry out its mandate effectively. In close cooperation with the Ministry of Justice, the NPM is going to take steps to participate in preparing statutory amendments aimed at increasing the NPM’S efficiency and independence.

<sup>310</sup> E.g., case № AJB-3680/2017 was such.

<sup>311</sup> *“No authority or official shall order, apply, permit or tolerate any sanction against any person or organisation 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.”*

<sup>312</sup> Section 40(2)a) of the Ombudsman Act.

<sup>313</sup> Section 40(3) of the Ombudsman Act.

<sup>314</sup> <http://www.ajbh.hu/opcat>

## Human and financial resources

13. In connection with the recommendation made in **Point 24** of the Subcommittee’s report, it has to be pointed out that, in Hungary, the tasks of the NPM are performed by the Commissioner for Fundamental Rights. The administration and preparation related to the tasks of the NPM shall be performed,<sup>315</sup> and the costs of the performance of those tasks shall be borne by the Office.<sup>316</sup> The budget of the Office is allocated, in an act, by the Parliament electing and hearing the Commissioner for Fundamental Rights. As the Office is not a budgetary organ under the Government’s management and supervision,<sup>317</sup> reducing the total of its revenue and expenditure falls within the exclusive competence of the Parliament.<sup>318</sup> The Office has to prepare annual reports to the Parliament on the utilisation of its budgetary resources.
14. Pursuant to the Act on Public Finances, the method of performing public tasks should be defined in a law and at the same time, provisions should be made on ensuring the financial coverage for performing these tasks.<sup>319</sup> Since the justification in the chapter attached to the bill on the central budget specifically contains the obligation of performing the tasks of the NPM, the central budget covers the costs earmarked by the Office. The budgetary resources available as mentioned above cover the costs of implementing the annual visitation schedule of the NPM, including the hiring of external experts and the regular further training sessions as well.<sup>320</sup>
15. There is no public official physician among the staff members of the Office authorised on a permanent basis to carry out tasks related to the NPM.<sup>321</sup> The Act defining the legal status of public servants,<sup>322</sup> employed in the Office, does not rule out *ab ovo the employment of a physician as a public servant. Should anybody meeting the statutory requirements<sup>323</sup> apply for the position of physician, the NPM could hire them. In Hungary, healthcare activity may be conducted by a person who has the professional qualifications and has undergone the necessary pro-*

<sup>315</sup> Section 41(1) of the Ombudsman Act.

<sup>316</sup> Section 41(4) of the Ombudsman Act.

<sup>317</sup> Section 1(11) of Act CXCV of 2011 on Public Finances.

<sup>318</sup> See Section 18(3a) of Act C of 2017 on the 2018 Central Budget of Hungary.

<sup>319</sup> Section 3/A(3) of Act CXCV of 2011 on Public Finances.

<sup>320</sup> For details, see Paragraph 26 herein.

<sup>321</sup> Section 39/D, Subsection (4) of the Ombudsman Act.

<sup>322</sup> Section 39, Subsections (1) and (6) of Act CXCV of 2011 on Public Servants.

<sup>323</sup> In accordance with Section 39/D(3) of the Ombudsman Act: “*experts with a graduate degree and having an outstanding knowledge in the field of the treatment of persons deprived of their liberty or having at least five years of professional experience*”.

*professional training that authorises for practising said activity, and who is listed in the operations registry of healthcare workers.<sup>324</sup> Should a registered healthcare worker, due to his/her performing a public function specified by the law, including filling the position of a public servant participating, on a permanent basis, in the performance of the tasks related to the NPM, suspend his/her healthcare activities for a period of five years or more, his/her name shall be deleted from the operations registry of healthcare workers.*

16. During the period following the SPT Delegation’s departure, physicians authorised on a case-by-case basis also participated in the NPM’s visits. These physicians authorised on a case-by-case basis carried out their work<sup>325</sup> and were remunerated<sup>326</sup> on the basis of civil law contracts, in accordance with the legal provisions on forensic medical experts. The ad hoc employment of physicians participating in the visits makes it possible to select them, upon the recommendation of the Civil Consultative Body, in accordance with the specifics of a given place of detention (e.g., psychiatrist, paediatric psychiatrist, internist, geriatrician etc.). The aforementioned solution efficiently ensures the diverse professional background<sup>327</sup> advocated in the NPM Guidelines. Against this background, the NPM intends to turn to the Government in connection with the amendment of the legal regulation<sup>328</sup> on the physician positions.
17. In accordance with the recommendations set forth in **Points 25 and 26** of the Subcommittee’s report, the Office maintains a regular, constructive dialogue with the staff of the Ministry for National Economy, which is responsible for public finances, in order to ascertain what is needed by the Commissioner for Fundamental Rights to permit him to properly fulfil his legal mandate, including the performance of the tasks of the NPM, in the form of a budgetary proposal. The result of this dialogue provides the basis for the chapter of the draft budget relative to the Office.<sup>329</sup>

### **Cooperation with the Civil Consultative Body (CCB)**

18. In accordance with the recommendation made in **Point 29** of the Subcommittee’s report, the NPM maintains communication with the CCB not only at the regular meetings but also through other chan-

<sup>324</sup> See Section 110(2) of Act CLIV of 1997 on Healthcare.

<sup>325</sup> See Act XXIX of 2016 on Judicial Experts.

<sup>326</sup> See Minister of Justice decree 3/1986 (II. 21.) on the remuneration of judicial experts.

<sup>327</sup> Note 20 of CAT/OP/12/5.

<sup>328</sup> Section 39/D, Subsection (4) of the Ombudsman Act.

<sup>329</sup> For details, see Paragraph 14 herein.

- nels of communication, e.g., correspondence, ad hoc consultations, conferences, etc. The staff members authorised to perform the tasks related to the NPM also consult the members of this body when preparing the annual schedule of visits and prior to the inspections.
19. The NPM applies unambiguous, transparent methods both when conducting investigations and in its cooperation with the members of the CCB. In preparing and conducting visits, preparing reports, and following up recommendations, the NPM proceeds in accordance with Commissioner for Fundamental Rights Directive 3/2015. (XI. 30.) AJB on the professional rules and methods of his/her inquiries (hereinafter the “CFR Directive”).<sup>330</sup>
  20. The frameworks of cooperation with civil society organisations are regulated by the prevailing legal regulations on the one hand, and by the Rules of Procedure<sup>331</sup> of the CCB on the other. Cooperation with civil society organisations outside the CCB is conducted as required. The CCB may review the NPM’s working methods, reports, info materials, and other publications; discuss the training plan designed for developing the capabilities of the staff members authorised to perform the tasks related to the NPM; participate in conferences, workshops, exhibitions, and other events organized by the NPM.<sup>332</sup> Within the framework of their cooperation, the NPM and the civil society organisations mutually benefit from each other’s knowledge and professional experience.
  21. In accordance with the recommendation made in **Point 30** of the Subcommittee’s report, the experts recommended by the civil society organisations regularly participate in the visits of the NPM. Physicians have participated in 13, and dietitians in 9 of the 17 visits conducted so far (on some occasions both a physician and a dietitian joined the visiting delegation). Experts recommended by the civil society organisations participated in seven of the eight visits conducted in 2017; such experts participated in every visit up to May 31 in 2018. The conclusions, critical remarks, and recommendations contained in the participating experts’ written opinions are incorporated in the NPM’s reports.

<sup>330</sup> See Chapter X (Tasks related to the OPCAT National Preventive Mechanism) of CFR Directive.

<sup>331</sup> Normative Instruction 3/2014 (IX. 11.) of the Commissioner for Fundamental Rights on the establishment and the rules of procedure of the Civil Consultative Body as the organ supporting the performance of the tasks of the national preventive mechanism.

<sup>332</sup> See Section 6 of Normative Instruction 3/2014 (IX. 11.) of the Commissioner for Fundamental Rights on the establishment and the rules of procedure of the Civil Consultative Body as the organ supporting the performance of the tasks of the national preventive mechanism.

*External experts participating in the NPM’s visits in 2017*<sup>333</sup>

Serial number	Name of the visited institution	Time of visit	External expert
1.	Central Holding Facility of the Metropolitan Police Headquarters of Budapest	February 08, 2017	0
2.	Márianosztra Strict and Medium Regime Prison	March 13-14, 2017	One psychiatrist one dietitian
3.	Budapest Remand Prison Unit I	March 28, 2017	One psychiatrist one dietitian
4.	Platán Integrated Social Institution of Bács-Kiskun County	May 16-17, 2016	One psychiatrist one dietitian
5.	Psychiatric Ward of the Balassa János Hospital of Tolna County	May 31 and June 1, 2017	One psychiatrist one dietitian
6.	Nagyágocs Castle Home of the Aranysziget Integrated Retirement Home of Csongrád County	September 12-14, 2017	One physician (geriatrician) one dietitian
7.	Holding facility of the Fejér County Police Headquarters	October 19, 2017	One psychiatrist one dietitian
8.	Szabolcs-Szatmár-Bereg County Remand Prison	November 28-30, 2017	One psychiatrist one dietitian
Total: In 2017, external experts participated in 7 visits, i.e., in 87.5% of all visits.			Seven physicians and seven dietitians

22. On April 11, 2018, within the frameworks of a workshop held in the Office, the NPM met with non-lawyer experts who participated in previous visits, with prospective expert participants, and the representatives of the members of the CCB. In order to increase the efficiency of cooperation, the participants of the workshop discussed the lessons of the visits conducted so far.
23. The recommendation made in **Point 31** of the Subcommittee’s report was implemented during the meeting of the CCB held on September 5, 2017. The participants of the meeting discussed the recommendations of the representatives of civil society organisations presented on March 22, 2017, during the joint meeting of the NPM, the Subcommittee, and the CCB. As regards the number of visits, it was mentioned that the fundamental-rights-related analyses contained in the NPM’s reports serve as an example for the

<sup>333</sup> The psychologists participating in the visits were all public servants of the Office authorised to perform the tasks related to the NPM under Section 39/D, Subsections (1) and (4) of the Ombudsman Act.

entire profession; therefore, their significance goes far beyond the places of detention concerned. It should also be recalled that, on an annual basis, the reports published in the capacity of the NPM contain nearly one-third of the legislative proposals put forward by the Commissioner for Fundamental Rights, requiring thorough theoretical preparations.

24. So far, more than one-third of the places of detention on the NPM’s schedule of visits have been chosen on the recommendation of the members of the CCB as well. As far as the follow-up visits are concerned, the NPM and the member organisations of the CCB de facto follow up one another’s visits. The participants also discussed the possibility of holding the CCB’s meetings outside the Office.
25. The NPM conducts its visits following pre-defined, standard operational and procedural rules, in accordance with the recommendation made in **Point 32** of the Subcommittee’s report.<sup>334</sup> During the meeting on April 11, 2018, in order to solidify and further develop uniform rules of procedure, the NPM also discussed its working methods with the participants.
26. In accordance with the recommendation made in **Point 33** of the Subcommittee’s report, the more experienced members of the NPM team hold regular training sessions on interviewing techniques to the new colleagues. The NPM’s colleagues regularly participate in domestic and international training sessions discussing technical issues related to certain types of institutions. On March 12-13, 2018, one of them attended a training session on monitoring homes for the elderly, organised by the Council of Europe, held with the cooperation of the German and the Austrian NPMs; the program also included practical issues related to interviewing techniques. The NPM will do everything possible, in the future as well, to use the most efficient interviewing techniques in the course of its investigations ensuring the detection of signs of ill-treatment

## **B. Recommendations on visit methodology**

### **Work schedule, reporting and follow-up**

27. A preventive monitoring visit by the NPM, by necessity, also means a practice-oriented review of the legal regulations relevant to the operation of a given place of detention. In accordance with the recom-

<sup>334</sup> See the relevant provisions of the Ombudsman Act, and Chapter X (Tasks related to the OPCAT National Preventive Mechanism) of Commissioner for Fundamental Rights Directive 3/2015. (XI. 30.) AJB on the professional rules and methods of his/her inquiries.

mentation in **Point 35** of the Subcommittee’s report, when planning a visit, the NPM, in addition to the type and geographical location of the place of detention, the categories of detainees held there, and the thematic objectives of the visit, automatically identifies and reviews the legal regulations determining the operation of the suggested site. The NPM “*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.*”<sup>335</sup> Through publishing its conclusions and impressions regarding the visits, and making legislative recommendations based on the critical assessment thereof, the NPM facilitates domestic legislation.<sup>336</sup>

28. The NPM has no legislative powers; however, it shall give an opinion on the draft legal rules and legal concepts affecting its tasks and competences.<sup>337</sup> When reviewing a draft legal regulation, the NPM pays special attention to determining if the text suggested as a result of its legislative recommendation is suitable for remedying and preventing the problematic treatment. In the case of legislative concepts and draft bills relative to the application of which it has no investigative experience, the NPM draws the attention of those responsible for the codification to the risks of ill-treatment and to the measures required for the prevention thereof.<sup>338</sup> When reviewing draft legislation, the NPM, depending on its future visits and the conclusions of its future investigations, reserves the right to initiate the amendment or annulment of regulations which will have in the meantime entered into force.
29. The critical analysis of the NPM’s activities, using the assessment tool mentioned in **Point 36** of the Subcommittee’s report, has been completed. The areas that are not properly covered are detailed in Points 2 through 4.
30. In accordance with Article 23 of the OPCAT and the recommendation made in **Point 40** of the Subcommittee’s report, it is a constitutional obligation of the Commissioner for Fundamental Rights to annually submit a report to the Parliament on his activities, including the performance of the tasks of the NPM.<sup>339</sup> The Parliament shall debate the report of the Commissioner for Fundamental Rights, also

<sup>335</sup> Section 2(2) of the Ombudsman Act.

<sup>336</sup> In its reports published in 2017, the NPM made altogether 17 legislative recommendations.

<sup>337</sup> Section 2(2) of the Ombudsman Act.

<sup>338</sup> In his capacity as NPM, the Commissioner for Fundamental Rights reviewed 212 draft bills in 2016, and 219 in 2017.

<sup>339</sup> Section 30(4) of the Fundamental Law of Hungary.

covering his performance of the tasks of the NPM, within the year of its submission.<sup>340</sup> The report of the Commissioner for Fundamental Rights, also covering his performance of the tasks of the NPM, is first debated in the competent committees, then at the plenary session of the Parliament. *“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.”*<sup>341</sup>

31. Engaging in a continuous and constructive dialogue aimed at following up the implementation of recommendations, as suggested in **Point 41** of the Subcommittee’s report, is a statutory obligation of not only the NPM but also the heads of places of detention, authorities and other organs concerned. The dialogue between the NPM and the addressees of the recommendations is conducted on the basis of the report used as a platform. The ways of following up recommendations, including the time limit for responding, are regulated in detail by the law.<sup>342</sup>
32. In accordance with Article 22 of the OPCAT and the recommendation made in **Point 42** of the Subcommittee’s report, in order to discuss the implementation of its recommendations, the NPM conducts a constructive dialogue with the competent authorities not only in writing but also by holding direct meetings and in the form of follow-up visits.
33. It is the statutory obligation of the Commissioner for Fundamental Rights to publish his annual report on his activities,<sup>343</sup> as well as the comprehensive annual report on the performance of the tasks of the NPM<sup>344</sup> on the Office’s website after the Parliament has passed a resolution thereon. The NPM shall notify, in writing, the major detention authorities, the heads of the visited places of detention, the members of the CCB, the Subcommittee, and the media of the publication of the report on the Office’s website.
34. After sending the NPM’s comprehensive annual report to the members of the CCB, and its English translation to the Subcommittee, the Commissioner for Fundamental Rights also publishes the report in the OPCAT NPM section of the Office’s homepage. The comprehensive reports on the performance of the tasks of the

<sup>340</sup> Section 40(3) of the Ombudsman Act.

<sup>341</sup> Section 40(4) of the Ombudsman Act.

<sup>342</sup> Sections 31-38 of the Ombudsman Act.

<sup>343</sup> Section 40(4) of the Ombudsman Act. The reports of the Commissioner for Fundamental Rights may be found at: [www.ajbh.hu/eves-beszamolok](http://www.ajbh.hu/eves-beszamolok)

<sup>344</sup> Section 39/C of the Ombudsman Act. The comprehensive annual reports of the NPM may be found at: [www.ajbh.hu/opcat-eves-jelentesek](http://www.ajbh.hu/opcat-eves-jelentesek)

NPM for the years 2015 and 2016 have already been submitted to the Subcommittee. Those reports may be accessed on the Subcommittee’s website as well.<sup>345</sup> The Parliament has not yet debated the 2017 Annual Report of the Commissioner for Fundamental Rights. The 2017 Comprehensive Annual Report on the performance of the tasks of the NPM will be published on the Office’s website after the Parliament has passed a resolution thereon, and its English translation, following the practice of recent years, will be submitted to the Subcommittee.

35. During the visits, the colleagues of the NPM introduce themselves to the interviewees in accordance with the recommendations in **Point 46** of the Subcommittee’s report.
36. The NPM performs its tasks deriving from Article 19 of the OPCAT in accordance with the recommendations in **Points 50 and 51** of the Subcommittee’s report. The NPM’s activities related to the legislative process are described in detail in Points 27 and 28.

#### **Final recommendations**

37. Regarding the recommendations made in **Point 52** of the Subcommittee’s report, the NPM considers that the Commissioner for Fundamental Rights, due to his and his colleagues’ professional knowledge, the practical experience gathered during their visits to various places of detention, the assistance received from the external experts participating in the visits, and the adequate budgetary resources is capable of efficiently performing the tasks of the NPM.
38. The planning of the financial resources covering the NPM’s activities and the ways of making budgetary proposals are described in detail in Points 13-14 and 17, respectively.
39. In accordance with the recommendation made in **Point 53** of the Subcommittee’s report, the NPM has been participating in the activities of the South-East Europe NPM Network since 2014 as an observer, and since 2016 as a full member. Furthermore, in order to strengthen their capacities and develop their working methods necessary for the performance of their tasks, the NPM and its staff members have regular bilateral meetings with the Czech, Austrian, and Slovenian national preventive mechanisms, during which they exchange information and experience.
40. In the spirit of the recommendation made in **Point 54** of the Subcommittee’s report, in order to improve its operability, the NPM intends to continue cooperation with the Subcommittee, the South-

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<sup>345</sup> [www.ohchr.org/EN/HRBodies/OPCAT/Pages/AnnualreportsreceivedfromNPM.aspx](http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/AnnualreportsreceivedfromNPM.aspx)

East Europe NPM Network, and the national preventive mechanisms of other countries.

41. In order to benefit from the Subcommittee’s mandates under Article 11(b) and the advantages provided by Article 26 of the OPCAT, the NPM intends to avail itself of the opportunity to request and receive technical assistance and practical advice from the Office of the UN High Commissioner for Human Rights on how to strengthen its activities aimed at preventing torture and ill-treatment and how to efficiently implement the common objective of prevention in practice.
42. Having implemented the recommendation made in **Point 58** of the Subcommittee’s report, the Commissioner for Fundamental Rights has published the Subcommittee’s report, both in the English and Hungarian, on the OPCAT NPM section of the Office’s website, and, on April 3, 2018, informed the Chairperson of the Subcommittee thereof.<sup>346</sup>

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<sup>346</sup> The letter has been filed by the Office under No. AJB-791/2018/13.

# Annex 2 – The Ombudsman Act Act CXI of 2011 on the Commissioner for Fundamental Rights

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*

1. § (1)<sup>347</sup> 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)<sup>348</sup> 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.

<sup>347</sup> Shall enter into force with the text specified in Section 6, Subsection (1) of Act CXLIII of 2011.

<sup>348</sup> Shall enter into force with the text specified in Section 6, Subsection (2) of Act CXLIII of 2011.

2. § (1)<sup>349</sup> The Commissioner for Fundamental Rights shall survey and analyse 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)<sup>350</sup> 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.
- 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)<sup>351</sup> 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 organisations and national institutions aiming at the promotion of the protection of fundamental rights.
- (6)<sup>352</sup> 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 Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011.

<sup>349</sup> Amended by: Section 1 of Act CLXXXVI of 2012. Section 22(6) of Act LXXXIII of 2013.

<sup>350</sup> Established by: Section 1 of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

<sup>351</sup> Established by: Section 2 of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

<sup>352</sup> Enacted by: Section 8 of Act CXLIII of 2011. Effective: as of 1 January 2015.

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)<sup>353</sup> 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)<sup>354</sup> 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)<sup>355</sup> shall monitor the implementation of the sustainable development strategy adopted by the Parliament,
  - g)<sup>356</sup> may propose the adoption, amendment of legislation on the rights of future generations, and
  - h)<sup>357</sup> 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 rights of nationalities living in Hungary, and
- a)<sup>358</sup> 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 nationalities living in Hungary,
  - b)<sup>359</sup> shall draw the attention of the Commissioner for Fundamental Rights, the institutions concerned and the public to the danger of infringement of rights affecting the nationalities living in Hungary,
  - c) may propose that the Commissioner for Fundamental Rights institute proceedings ex officio,

<sup>353</sup> Established by: Section 3 (1) of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

<sup>354</sup> Established by: Section 3(1) of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

<sup>355</sup> Enacted by: Section 3(2) of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

<sup>356</sup> Enacted by: Section 3(2) of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

<sup>357</sup> Enacted by: Section 3(2) of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

<sup>358</sup> Established by: Section 4(1) of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

<sup>359</sup> Established by: Section 4 (1) of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

- 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)<sup>360</sup> shall review the Government's social inclusion strategy and monitor the implementation of its objectives concerning nationalities living in Hungary,
  - g)<sup>361</sup> may propose the adoption, amendment of legislation on the rights of nationalities living in Hungary, and
  - h)<sup>362</sup> shall promote, through his/her international activities, the presentation of the merits of domestic institutions related to the interests of the nationalities living in Hungary.
- (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)<sup>363</sup> 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. The election of the Commissioner for Fundamental Rights and of his/her Deputies*

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 Fundamental Rights responsible for the protection of the rights of nationalities living in Hungary at the proposal of the Commissioner for Fundamental Rights.

<sup>360</sup> Enacted by: Section 4(2) of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

<sup>361</sup> Enacted by: Section 4 (2) of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

<sup>362</sup> Enacted by: Section 4(2) of Act CCXXIII. of 2013. Effective: as of 19 December, 2013.

<sup>363</sup> Enacted by: Section 5 of Act CCXXIII. of 2013. Effective: as of 19 December, 2013.

- (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.
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)<sup>364</sup> 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, member of a local government body, mayor, deputy mayor, member of a nationality self-government, notary, professional member of the Hungarian Defence Forces, professional member of the law-enforcement organs or of organs performing law-enforcement tasks, or the officer or employee of a political party.

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<sup>364</sup> Shall enter into force with the text specified in Section 410, Subsection (1) of Act CCI of 2011. Amended by: Section 158 (28) of Act XXXVI of 2012.

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.
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 17, 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)<sup>365</sup> 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.
- (5) The person proposed for Deputy Commissioner for Fundamental Rights shall be given a hearing by the committee of Parliament com-

<sup>365</sup> Enacted by: Section 6 of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

petent according to the tasks of the Deputy Commissioner for Fundamental Rights.

- (6) The Deputy Commissioner for Fundamental Rights may be re-elected once.

### ***3. Conflict of interests***

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)<sup>366</sup> 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, proof-reading or editing activities, or having a foster parent's employment relationship.
- (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***

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—with the exception of the personal data of family members—shall be

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<sup>366</sup> Established by: Section 78 of Act CI of 2014. Effective: as of 1 January, 2015.

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***

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.
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.
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.
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***

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. Deputising for the Commissioner for Fundamental Rights***

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**

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.

17. (1) The mandate of the Deputy 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 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 the 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 Com-

missioner 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*

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 Defence 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)<sup>367</sup> 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 "impropriety"), provided that this person has exhausted the available administrative legal remedies, not including the judicial review

<sup>367</sup> Shall enter into force with the text amended by Section 409 of Act CCI of 2011.

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) organisations participating in the granting or intermediation of state or European Union subsidies,
  - e) organisations performing activities described in a legal rule as public service, and
  - f) organisations 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) – 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)<sup>368</sup> 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.
- (6) The Commissioner for Fundamental Rights may only inquire into proceedings that started after October 23, 1989.

<sup>368</sup> Amended by: Section 365 of Act L of 2017.

- (7)<sup>369</sup> 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.
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.
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 shall 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.

<sup>369</sup> Amended by: Section 365 of Act L of 2017.

## 10. *Inquiries of the Commissioner for Fundamental Rights*

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 authorised 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.
22. (1) In the course of an on-site inspection the Commissioner for Fundamental Rights or members of his/her staff authorised to conduct the inquiry
- a) may enter the premises of the authority subject to inquiry, unless provided otherwise by a legal regulation,
  - b)<sup>370</sup> 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)<sup>371</sup> In the course of an on-site inspection of the Commissioner for Fundamental Rights or of members of his/her staff authorised to conduct the inquiry, the rules of entry into, stay in and exit from the zones serving the operation of the Hungarian Defence 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 defence, the Minister responsible for directing the law-enforcement organ or the Minister supervising the National Tax and Customs Administration.
- (3) No legal rule regulating entry into the premises of the authority subject to inquiry may obstruct on-site inspection in substance.

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<sup>370</sup> Shall enter into force with the text amended by Section 7(a) of Act CXLIII of 2011.

<sup>371</sup> Amended by: Section 5(2) of Act CLXXI of 2011, Sections 53(a)(b) of Act CXCI of 2015, Section 290(a) of Act CXCVII of 2017.

- (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.
23. (1) In the course of his/her inquiry affecting the Hungarian Defence Forces, the Commissioner for Fundamental Rights may not inspect
  - a) documents related to inventions, products or defence investments of outstanding importance for the national defence of Hungary, or documents on the development of national defence capabilities, that contain essential information thereon,
  - b) documents containing a battle order extract of the Hungarian Defence 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 Defence 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 Defence Forces, compiled documents on mobilisation readiness and the level of combat readiness of the Hungarian Defence Forces, aggregate military preparedness plans of the military districts and of military organisations of the same or of a higher level or related documents on the whole organization,
  - f) aggregate plans of the organisation of communications of the Ministry directed by the Minister responsible for national defence and of the Hungarian Defence 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 Defence 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
  - i) documents relating to devices of strategic reconnaissance and to the functioning thereof, or documents containing aggregate

data on the protection of the Hungarian Defence Forces against reconnaissance.

- (2) In the course of his/her inquiry affecting the national security services, the Commissioner for Fundamental Rights may not inspect
  - a) registers for the identification of individuals cooperating with the national security services,
  - b) documents containing the technical data of devices and methods used by the national security services for intelligence information gathering, or documents making it possible to identify the persons using them,
  - c) documents relating to encryption activities and encoding,
  - d) security documents relating to the installations and staff of the national security services,
  - e) documents related to document security and technological control,
  - f) documents access to which would make possible the identification of the source of information, or
  - g) documents access to which would infringe the obligations undertaken by the national security services towards foreign partner services.
- (3) In the course of his/her inquiry affecting the police, the Commissioner for Fundamental Rights may not inspect
  - a) international cooperation agreements and plans concluded with police organs of other countries or with international organisations, joint measures taken in the course of international cooperation, or data and information originating from the cooperation and put at the disposal of an organ of the police, 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 organised 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 police,
  - d) safeguarding plans of installations and persons protected by the police, documents and descriptions pertaining to security equipment, guards and posts,
  - 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,

- f)<sup>372</sup> 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)<sup>373</sup> 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 Defence 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 organisations, 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 organised 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 Cus-

<sup>372</sup> Amended by: Section 290 (b) of Act CXCVII of 2017.

<sup>373</sup> Amended by: Section 290(c) and Section 291(a) of Act CXCVII of 2017.

- toms Administration, except when that person has suffered the infringement of rights and he himself or she herself requests the inquiry thereof,
- g)<sup>374</sup> 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)<sup>375</sup> 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)<sup>376</sup> 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)<sup>377</sup> any document specified in subsection (2) to (4), in relation to organs gathering intelligence information or applying covert operative means, 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 in-

<sup>374</sup> Amended by: Section 290 (b) of Act CXCVII of 2017.

<sup>375</sup> Established by: Section 166 of Act LXVIII of 2016. Effective: as of 1 July, 2017.

<sup>376</sup> Amended by: Section 290 (c) and Section 291(a) of Act CXCVII of 2017.

<sup>377</sup> Established by: Section 289(1) of Act CXCVII of 2013. Effective: as of 1 July, 2018.

spect documents relating to the professional direction, authorisation 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.
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 authorisation 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)<sup>378</sup> 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.
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 authorised 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.
26. (1) In the inquiries conducted by the Commissioner for Fundamental Rights, the persons or organisations not qualifying as authority pursu-

<sup>378</sup> Amended by: Section 290(d) of Act CXCVII of 2017.

ant 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 organisation, person or employee of the organization having the obligation to cooperate.
  - (3) If the organisation 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.
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)<sup>379</sup>
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)<sup>380</sup> The report of the Commissioner for Fundamental Rights relating to the activities of organs authorised to use covert operative means and methods may not contain any data from which one could draw conclusions on intelligence information gathering activities or the use of covert operative means 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.

<sup>379</sup> Enacted by: Section 69 (3) of Act CXXI of 2016. Effective: as of 1 January, 2017.

<sup>380</sup> Established by: Section 289(2) of Act CXCVII of 2017. Effective: as of 1 July, 2018.

29. The Commissioner for Fundamental Rights shall inform the petitioner about the outcome of the inquiry and about any measure taken.
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***

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.
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.
- 33. § (1)**<sup>381</sup> 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)<sup>382</sup> 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)<sup>383</sup> 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.
- 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.
- 34./A §**<sup>384</sup> – (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,

<sup>381</sup> Shall enter into force with the text specified in Section 408 of Act CCI of 2011.

<sup>382</sup> Amended by: Section 291(b) of Act CXCVII of 2017.

<sup>383</sup> Amended by: Section 365 (d) of Act I of 2017.

<sup>384</sup> Enacted by: Section 72 (1) of Act CCXI of 2012. Effective: as of 1 January, 2013.

- 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.
- 35.<sup>385</sup> (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 with the organ authorised 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 authorised 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.
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.
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 organisations, 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 authorised to make law or to issue a public law instrument for the regulation of organisations modify, repeal or issue the legal rule or the public law instrument for the regulation of organisations, 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.
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

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<sup>385</sup> Amended by: Section 290 (e) of Act CXCVII of 2017.

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.**<sup>386</sup> *Inquiries into public interest disclosures*

**38/A.**<sup>387</sup> 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.

- 38/B.**<sup>388</sup> (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.

<sup>386</sup> Enacted by: Section 21(1) of Act CLXV of 2013. Effective: as of 1 January, 2014.

<sup>387</sup> Enacted by: Section 21(1) of Act CLXV of 2013. Effective: as of 1 January, 2014.

<sup>388</sup> Enacted by: Section 21(1) of Act CLXV of 2013. Effective: as of 1 January, 2014.

- 38/C.**<sup>389</sup> 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 authorised to proceed under the Act on complaints and public interest disclosures (hereinafter referred to as the “organ authorised to proceed),
  - b) the whistle-blower does not agree with the conclusions of the investigation,
  - c) according to the whistle-blower, the organ authorised to proceed has failed to conduct a comprehensive inquiry into a public interest disclosure.
- 38/D.**<sup>390</sup> 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.

**11/B.**<sup>391</sup> *nquiry into the review process of national security checks*

- 38/E.**<sup>392</sup> (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.
  - (3) 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**

- 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 organisation 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’).

<sup>389</sup> Enacted by: Section 21(1) of Act CLXV of 2013. Effective: as of 1 January, 2014.

<sup>390</sup> Enacted by: Section 21(1) of Act CLXV of 2013. Effective: as of 1 January, 2014.

<sup>391</sup> Enacted by: Section 46 of Act CIX of 2014. Effective: as of 1 February, 2015.

<sup>392</sup> Enacted by: Section 46 of Act CIX of 2014. Effective: as of 1 February, 2015.

- (2)<sup>393</sup> To exceptional inquiries subsections (5) to (8) of Section 18, Section 19, Section 20, subsections (1) and (3) of Section 27, Sections 28 to 30 and Sections 34 to 37 shall be applied.
- (3) For the conduct of exceptional inquiries the organisations not qualifying as authority shall be obliged to cooperate.
- (4) In order to conduct an exceptional inquiry, the Commissioner for Fundamental Rights may request a written explanation, declaration, information or opinion from the organisation 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/A**<sup>394</sup>

#### **The proceedings and measures of the commissioner for fundamental rights within the framework of the national preventive mechanism**<sup>395</sup>

- 39/A.**<sup>396</sup> 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.
- 39/B.** (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 (hereinafter referred to as ‘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

<sup>393</sup> Amended by: Section 69(2) of Act CXXI of 2016.

<sup>394</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January, 2015.

<sup>395</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January, 2015.

<sup>396</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January, 2015.

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
- 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)<sup>397</sup> numberhear any person present on the site, including the personnel of the authority under inspection and any person deprived of his/her liberty.
  - d)<sup>398</sup>
- (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 authorised his/her participation.

**39/C.**<sup>399</sup> 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.

**39/D.**<sup>400</sup> **(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 authorised by him/her to perform the tasks related to the national preventive mechanism.** Staff members of the Commissioner for Fundamental Rights authorised 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 authorised by him/her to perform the tasks related to the national preventive

<sup>397</sup> Shall become effective with the text amended by Section 9(2) of Act CCXXIII of 2013.

<sup>398</sup> Shall not enter into force by virtue of Section 9, Subsection (1) of Act CCXXIII of 2013.

<sup>399</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January, 2015.

<sup>400</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January, 2015.

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)<sup>401</sup> The Commissioner for Fundamental Rights shall authorise, from among the public servants of the Office of the Commissioner for Fundamental Rights, on a permanent basis, at least eleven staff members to perform the tasks related to the national preventive mechanism. The authorised 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 authorise, either permanently or on an ad hoc basis, other experts to contribute to performing the tasks related to the national preventive mechanism.

(4)<sup>402</sup> Among the public servant staff members authorised 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 authorised public servant staff members, the number of the representatives of either sex may exceed that of the other by one at the most.

39/E.<sup>403</sup> No one shall suffer any disadvantage for providing information to the Commissioner for Fundamental Rights or to his/her staff members authorised to perform the tasks related to the national preventive mechanism.

## CHAPTER IV

### The annual report of the Commissioner for Fundamental Rights

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)<sup>404</sup> 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

<sup>401</sup> Shall become effective with the text amended by Section 9 of Act CCXXIII of 2013.

<sup>402</sup> Shall become effective with the text amended by Section 9(4) of Act CCXXIII of 2013.

<sup>403</sup> Enacted by: Section 9 of Act CXLIII of 2011. Effective: as of 1 January, 2015.

<sup>404</sup> Established by: Section 10 of Act CXLIII of 2011. Effective: as of 1 January, 2015.

- 2, Subsection (6), respectively, and his/her activities conducted in connection with inquiring into public interest disclosures.
- 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

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 organisational 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 organisational 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.
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)<sup>405</sup> 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.

<sup>405</sup> Established by: Section 7 of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

The Office of the Commissioner for Fundamental Rights shall endeavour to give due representation to women, ethnic, minority and disadvantaged groups in the personnel of the Office.

- (4) The authorised number of posts of public servants placed under the direction of the Deputy Commissioners for Fundamental Rights shall be determined in the organisational and operational rules.

## CHAPTER VI Final provisions

### 13. *Authorising provisions*

- 43.<sup>406</sup> (1) The Minister responsible for national defence shall be authorised 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 Defence Forces and of the military national security services.
- (2) The Minister responsible for directing the law-enforcement organ shall be authorised 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.<sup>407</sup>
- (3)<sup>408</sup> The Minister supervising the National Tax and Customs Administration shall be authorised 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*

44. The present Act shall enter into force on 1 January, 2012.

### 15. *Transitional provisions*

45. (1) The Commissioner for Fundamental Rights shall be the legal successor of the Parliamentary Commissioner for Civil Rights, the Parliamentary

<sup>406</sup> Amended by: Section 5(2) of Act CLXXI of 2011.

<sup>407</sup> See: BM (Ministry of the Interior) decree No. 62/2012. (11 December) BM (Ministry of the Interior) decree No. 18/2018 (15 December) HM (Ministry of Defence) decree.

<sup>408</sup> Amended by: Section 53(b) of Act CXCI of 2015.

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.
- 45/A.**<sup>409</sup> 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 1 January, 2013.
- 45/B.**<sup>410</sup> If the Commissioner for Fundamental Rights had not taken on to manage affairs electronically pursuant to Section 108 (2) of Act CCXXII

<sup>409</sup> Enacted by: Section 72(2) of Act CCXI of 2012. Effective: as of 1 January, 2013.

<sup>410</sup> Enacted by: Section 69(1) of Act CXXI of 2016. Effective: as of 1 January, 2017.

of 2015 on the General Rules for Electronic Administration and Trust Services before January 1, 2018, it is Section 39(2) and Section 27(4) of this act, effective until December 31, 2016, that shall be applicable, with regard to electronic communication, until December 31, 2017.

**16. *Compliance with the requirement of the Fundamental Law on cardinality***

46.<sup>411</sup> Section 2, Subsection (3) of this Act shall qualify as cardinal pursuant to Article 24, Paragraph (2) g) of the Fundamental Law.

**17. *Amending provisions***

47. §<sup>412</sup>

48. Sections (1)-(3)<sup>413</sup>

(4)<sup>414</sup>

Sections (5)-(16)<sup>415</sup>

**18. *Repealing provisions***

49.-50. §<sup>416</sup>

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<sup>411</sup> Established by: Section 8 of Act CCXXIII of 2013. Effective: as of 19 December, 2013.

<sup>412</sup> Repealed by: Section 12 of Act CXXX of 2010. Ineffective: as of 2 January, 2012.

<sup>413</sup> Repealed by: Section 12 of Act CXXX of 2010. Ineffective: as of 2 January, 2012.

<sup>414</sup> Shall not enter into force by virtue of Section 410, Subsection (2) of Act CCI of 2011.

<sup>415</sup> Repealed by: Section 12 of Act CXXX of 2010. Ineffective: as of 2 January, 2012.

<sup>416</sup> Repealed by: Section 12 of Act CXXX of 2010. Ineffective: as of 2 January, 2012.



