



Hungarian Helsinki Committee

# HUNGARIAN HELSINKI COMMITTEE

H-1054 Budapest, Bajcsy-Zsilinszky út 36-38. I/12.

P.O. box: H-1242 Budapest, Pf. 317.

Tel/fax: + 36 1 321 4323, 321 4141, 321 4327

[helsinki@helsinki.hu](mailto:helsinki@helsinki.hu)

[www.helsinki.hu](http://www.helsinki.hu)

## I. Shortcomings of the Hungarian law ratifying OPCAT

In October 2011 the Parliament **ratified OPCAT** and at the same time **amended the Ombudsman Act** in order to adopt an OPCAT compliant law and provide the Ombudsman with those authorizations that are necessary for it to be the NPM.

The HHC **welcomed the ratification itself and the designation of the ombudsman** as the NPM. However the HHC assessed that the modifications are **unsatisfactory and inadequate to fulfill all the requirements prescribed by OPCAT**. It is also difficult to find out the legislator's intention in regard of some of the (uncertain) provisions given the fact that no **reasoning was enclosed**. The HHC has criticized the process of adoption of the Act, since **no consultations** have been undertaken by the Government.

The provisions of the most serious concerns are the following:

### 1. The law does not cover all types of places of detention

Pursuant to the Ombudsman Act in force, the ombudsman may only conduct inquiries in relation to authorities or public service providers. This provision is not compliant with the OPCAT (since that covers all places of detention irrespective of whether they are run by public or private actors). This problem is not remedied by the amendment of the Ombudsman Act passed in October. Therefore, according to the current amended text of the Ombudsman Act, the ombudsman acting as the NPM will not be authorized to conduct visits to places maintained by other entities than the State e.g. NGOs, churches, individuals. Further, examining the text of the Act it becomes evident that the legislator exclusively took into consideration the "classic" places of detention (e.g. prisons, jails, alien policing jails) and neglected other institutions where people could be deprived of their liberty (e.g. social care homes, psychiatric institutions, etc.).

This misunderstanding is shown by the wording of the Act e.g. in the provision prescribing that exclusively "authorities" are obliged to provide all requested information to the NPM. However, pursuant to the OPCAT, this obligation covers each place of detention therefore churches or NGOs should also be obliged to provide information upon the request of the NPM.

If the Act stays unchanged it will mean that the NPM is not allowed to have access to all places of detention.

### 2. The law does not assure the possibility for the NPM to consult whoever it considers necessary

The Ombudsman Act lists those persons who could be consulted by the NPM. According to the relevant provision the NPM may conduct a private interview with the person deprived of his/her liberty and the "employers of the authority under examination". This is in clear contradiction with the OPCAT which allows the NPM to consult whoever it considers necessary, e.g. a member of a civil society organization or a family member of the detainee, etc.

### 3. NGOs are excluded from the NPM

There are a few Hungarian NGOs which have already acquired significant experience in monitoring places of detention in Hungary. These civil organizations are excluded from the tasks of the NPM. The Ombudsman Act makes it obvious that only the ombudsperson will serve as the NPM. This provision is highly problematic from the point of view that the NGOs have been the only entities which have conducted regular preventive and proactive monitoring visits to places of detention (to penitentiary institutions, alien policing jails and homes for mentally



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

H-1054 Budapest, Bajcsy-Zsilinszky út 36-38. I/12.

P.O. box: H-1242 Budapest, Pf. 317.

Tel/fax: + 36 1 321 4323, 321 4141, 321 4327

[helsinki@helsinki.hu](mailto:helsinki@helsinki.hu)

[www.helsinki.hu](http://www.helsinki.hu)

handicapped people), while the Ombudsman's Office has mostly – although not exclusively – carried out visits if complaints have been received from the concerned institutions.

It is worth noting that the inclusion of the NGOs and the implementation of the "ombudsman plus" model is an adequate and economically beneficial method in order to strengthen the public confidence in the new body and guarantee the necessary expertise.

Furthermore, the ombudsman himself stated clearly several times that he is only willing to undertake the tasks of the NPM if he is assisted by NGOs (and receives the necessary budget for the fulfillment of the task).

#### **4. The composition of the NPM**

##### **Expertise**

The new Ombudsman Act contains a provision that the NPM unit within the Ombudsman's Office will have eleven employees among whom there should be two lawyers, two psychologists and two doctors. However, in the HHC's view not only these experts, but specialists in penitentiaries, police, law enforcement, social work, human rights, etc. should be involved.

The ombudsman will obviously face problems in recruiting experts from all kinds of professional fields (e.g. anthropologists, social workers, psychiatrists, etc.) or the recruitment of these experts will bring along serious budgetary constraints.

Furthermore international guidelines suggest involving persons representing the concerned target groups or vulnerable groups into the NPM (e.g. survivors of torture, previously detained persons, etc.). This element is completely missing from the Hungarian legal framework.

##### **Minority groups**

It will not be possible to represent the minority groups among the members of the NPM according to the present Act which only stipulates that "the deputy ombudsman responsible for the defense of the rights of the national minorities living in Hungary appoints one member of the NPM".

The actual regulation would also cause further problems: the ombudsman is not allowed to gather data on the nationality or ethnicity of his employees.

Furthermore the requirement of including representatives of minorities does not certainly refer exclusively to the inclusion of national minorities but to the inclusion of representatives of other types of minorities living in Hungary e.g. migrants, refugees, asylum-seekers, etc.

In the view of the HHC, both problems could be addressed – in accordance with the Paris Principles – if domestic NGOs could be involved in the work of the NPM. This solution was proposed by the ombudsman itself.

#### **5. The NPM will start its operation only in 2015**

The amendments of the Ombudsman Act relating to the NPM will enter into force in 2015. The Government availed itself of the possibility to postpone the implementation of its obligations under OPCAT in relation to the NPM for three years. The HHC estimates this period exaggerated based on the fact that Hungary had 5 years to prepare itself for the implementation of the OPCAT since it made its first public pledges in 2006.



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

H-1054 Budapest, Bajcsy-Zsilinszky út 36-38. I/12.

P.O. box: H-1242 Budapest, Pf. 317.

Tel/fax: + 36 1 321 4323, 321 4141, 321 4327

[helsinki@helsinki.hu](mailto:helsinki@helsinki.hu)

[www.helsinki.hu](http://www.helsinki.hu)

### 6. The budget allocated to the operation of the NPM is highly insufficient

The reasoning of the draft law ratifying OPCAT and modifying the Ombudsman Act states that the operation of the NPM would necessitate the provision of 172 million HUF (0.55 million EUR) in 2015. This amount is presumably far from the sum that would in reality be sufficient to cover the cost of the NPM's operation. The ombudsman's office has also estimated the budget requirements including various logistical costs, like office equipment, vehicles, etc. The office's total financial estimate was approximately 272 million HUF (0.84 million EUR) for a year. According to this latter estimation the NPM would employ 25 new staff and 3 additional car drivers. If we take into consideration the estimate of the Ombudsman's Office but we only calculate with 11 employees – in accordance with the number envisaged by the adopted amendment – the operation would still necessitate 260 million HUF (0.82 million EUR) to fulfill the NPM's tasks which is 1,5 times more than the amount indicated in the reasoning of the draft law. Therefore it is hard to imagine how the NPM will be able to accomplish its task in 2015 with such funding.

Moreover the above amounts were presumably counted on the basis of the prices applicable in 2011. It is also worth noting that the budget estimate of the Ombudsman's Office counted with the inclusion of NGOs in the operation of the NPM, which means that without the NGOs the required amount would be even higher.

As a consequence of the fact that the law modifying the Ombudsman Act does not contain any reasoning – besides the raw basis for the budget estimation –, the number and places of planned visits, the system of choosing the venues are unknown, furthermore it is unclear whether the legislator took into consideration e.g. the elevated costs of interpretation at the alien policing jails.

### 7. Other problematic provisions

Moreover the modified Ombudsman Act contains some additional provisions which prevent the Act from being OPCAT compliant or makes the compliance uncertain:

- it is not clear how the NPM will be informed about draft regulations which are within its scope of operation in order that the NPM may comment these;
- there is no express obligation prescribed for the Government relating to the accessibility and widespread dissemination of the annual report prepared by the NPM;
- the draft law does not provide for the impunity of the NPM members and persons providing information for the NPM;
- the protection of those persons who provide the NPM with information is not fully secured;
- privileges and immunities are only accorded to the ombudsman but not to all members of the NPM;
- the structure of the body is not definite, so it is uncertain if the NPM office will be a separate body with separate budget with clearly distinct tasks within the ombudsman office.

In brief, the HHC concluded that due to the above listed shortcomings the prevention of torture in closed institutions will not be assured effectively and in compliance with the OPCAT if the Ombudsman Act is not **further amended**.

It is obvious as well that the process through which the Government ratified the OPCAT is not in line with the standards of the Subcommittee on the Prevention of Torture (SPT).