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THE LAST PIECE OF THE PUZZLE?

ASSESSING THE PERFORMANCE OF HUNGARY'S
NATIONAL HUMAN RIGHTS INSTITUTION

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Hungary's national human
rights institution



**FRIEDRICH NAUMANN
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General introduction

Author: András Kádár

Gaining a landslide victory in 2010 and using its constitutional supermajority, the Fidesz-KDNP government started to systematically and consciously undermine the system of checks and balances by weakening, eliminating or occupying those institutions and actors that can exercise any form of control over the executive branch of power. During the past 14 years, the ambitious state capture process has virtually completed its cycle, as indicated by the European Parliament's report identifying Hungary as a "hybrid regime of an electoral autocracy".¹

One of the very first stages of this process was the taking over of state institutions vested with the task of protecting fundamental rights, including the institution of the Ombudsperson, who also fulfils the role of Hungary's national human rights institution (hereafter: NHRI). Act CXI of 2011 on the Commissioner for Fundamental Rights (hereafter: ACFR)² reshaped (with effect of 1 January 2012) the institution in a way that it abolished the autonomy of the specialised Ombudspersons (the Ombudsperson responsible for environmental issues and the Ombudsperson responsible for minority protection) and subordinated them to the Commissioner for Fundamental Rights (hereafter: Commissioner, CFR or Ombudsperson) elected by a two-third majority of the Parliament (i.e. practically as a one-party candidate, without any meaningful participation of the opposition parties).

In a procedure that was considered by the Global Alliance of National Human Rights Institutions (hereafter: GANHRI) as not sufficiently broad and transparent, a new Ombudsperson was elected by the ruling majority in 2019. Due to his previous links with the Prime Minister, there were fears in the human rights community that the new appointee would not provide effective protection in politically sensitive cases. Unfortunately, these fears were not refuted by the track record of the new Commissioner, and were later confirmed by GANHRI's decision to downgrade the Hungarian CFR for the lack of its functional independence.

NHRIs are subject to regular review regarding its independence by the Sub-Committee on Accreditation (SCA) of GANHRI, which assesses whether a particular NHRI meets the requirements of the 'Paris Principles'³, which set out the internationally agreed minimum standards that NHRIs must meet to be considered credible. They require NHRIs to be independent in law, membership, operations, policy and control of resources. NHRIs that comply with the Paris Principles are accredited with 'A status', while those that partially comply are accredited with 'B status'.

¹ See at: <https://oeil.secure.europarl.europa.eu/oeil/popups/printficheglobal.pdf?id=733295&l=en>.

² The English translation of Act no. CXI of 2011 on the Commissioner for Fundamental Rights is available at: <https://www.ajbh.hu/en/web/ajbh-en/act-cxi-of-2011>

³ Resolution 48/134 of the UN General Assembly Principles adopted on 20 December 1993 relating to the Status of National Institutions.

In its “Report and Recommendations of the Virtual Session of the Sub-Committee on Accreditation (SCA), 14-24 June 2021”, the SCA expressed the view that “the CFR [Commissioner for Fundamental Rights] has not effectively engaged on and publicly addressed all human rights issues, including in relation to vulnerable groups such as ethnic minorities, LGBTI, refugees and migrants as well as constitutional court cases deemed political and institutional, media pluralism, civic space and judicial independence. The SCA is of the view that the CFR has not spoken out in a manner that promotes protection of all human rights. The failure to do so demonstrates a lack of sufficient independence. Therefore, the SCA is of the view that the CFR is operating in a way that has seriously compromised its compliance with the Paris Principles.”⁴ In the first round of assessment, the SCA only forms a recommendation, providing the concerned NHRI with the possibility to take measures to address the identified shortcomings and present to GAHNRI evidence of these measures.

However, the Hungarian Ombudsperson did not avail himself of this opportunity. According to the report on the SCA’s March 2022 session, the Hungarian Ombudsperson was scheduled for interview by the SCA on 21 March 2022. ‘However, on 19 March it requested for the postponement of its review. [...]he SCA tried to accommodate this request and provided the CFR with three new dates for its interview during its March 2022 session. However, the CFR declined the alternate opportunities to take the interview’,⁵ thus the SCA had to conclude the process on the basis of the available documentation. Finally, in the absence of anything refuting the previously voiced concerns of the SCA, the downgrading became final, and at present, Hungary’s national human rights institution holds a B-status, showing a lack of sufficient independence.⁶

These developments are all the more problematic, because the Ombudsperson also fills the role of specialised human rights protection institutions in Hungary. At the time of the downgrading it had already been designated as the national preventive mechanism (hereafter: NPM) under the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter: OPCAT), and amidst the problematic accreditation process, two further specialised rights protection institutions were merged into the Office of the Commissioner for Fundamental Rights (hereafter: OCFR): as of January 2020, the Independent Police Complaints Board⁷ that had been operational since 2008, was eliminated without any prior public consultation, and its functions were transferred to the OCFR. One year later, Hungary’s equality body under EU law, the Equal Treatment Authority (hereafter: ETAAuth or Authority), was merged into the OCFR via hasty legislation introduced without any meaningful public consultation. The Authority was one of the few remaining rights protection institutions that was willing to hand down important decisions regarding human rights violations in politically particularly sensitive cases and sanction state authorities for violating the rights of vulnerable groups, such as the Roma or the LGBTQ+ community. The merger was criticized by the Venice Commission⁸ and numerous Hungarian civil society organisations⁹ as well.

There has thus been a trend to merge all specialised human right protection institutions into the CFR’s Office, which is highly problematic due to not only the lack of functional independence of the Office, which has led to its downgrading as Hungary’s NHRI, but “also due to the decreased institutional focus

⁴ See: <https://ganhri.org/wp-content/uploads/2021/08/EN-SCA-Report-June-2021.pdf>, p. 13.

⁵ See: https://www.ohchr.org/sites/default/files/2022-04/SCA-Report-March-2022_E.pdf, p. 43.

⁶ See: https://ganhri.org/wp-content/uploads/2022/04/StatusAccreditationChartNHRI_27April2022.pdf.

⁷ The literal translation of the name of the body would be Independent Law Enforcement Complaints Board, but since this is the most frequently used English name for it, we will also refer to it as Independent Police Complaints Board-

⁸ See: [Venice Commission :: Council of Europe \(coe.int\)](https://www.venicecommission.europa.eu).

⁹ See: [Microsoft Word - Equal Treatment Authority Civilization statement_26112020 \(helsinki.hu\)](https://www.mikroszoftar.hu/en/equal-treatment-authority-civilization-statement-26112020).

and resources in an organisation with multiple mandates”,¹⁰ as the Hungarian country chapter of the European Commission’s 2024 Rule of Law Report recalls.

The present report analyses the activities and performance of the Commissioner for Fundamental Right in order to assess how the mergers of independent, specialised human rights protection bodies and the culmination of various mandates in the CFR’s Office have affected the level of human rights protection in the respective areas, and will assess whether the CFR adequately fulfils its human rights protection mandate in those fields. It also strives to uncover the root causes of the identified deficiencies, and formulate recommendations to raise the level of human rights protection in the affected areas.

¹⁰ See on p. 33. The report can be downloaded from: https://commission.europa.eu/publications/2024-rule-law-report-communication-and-country-chapters_en.

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I. Evaluation of the activities of the Commissioner for Fundamental Rights as the national preventive mechanism

Author: Zsófia Moldova

I.1. Introduction

The Parliament adopted Act CXLIII of 2011 on the Promulgation of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter: OPCAT) on 24 October 2011, with the aim to ensure the practical implementation of the prohibition of torture and other cruel, inhuman or degrading treatment or punishment. According to Articles 17 and 18 of the OPCAT, States Parties shall establish national preventive mechanisms, undertake to make available the necessary resources for the functioning of the national preventive mechanisms, and shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights when doing so. Under Article 19, the NPM shall

- regularly examine the treatment of the persons deprived of their liberty;
- 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; and
- submit proposals and observations concerning existing or draft legislation.

As of 1 January 2015, under Chapter III/A of the ACFR, the duties of the NPM are performed by the Commissioner for Fundamental Rights. The present report examines the activities of Dr Ákos Kozma, the current Commissioner for Fundamental Rights from the date of his taking office on 25 September 2019. The report's cut-off date is 30 June 2024.

The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter: SPT) visited the NPM in 2017 and the recommendations contained in their report were used for the present evaluation.

I.2. Budget

Under Article 39/D (3) of the ACFR, the Commissioner for Fundamental Rights shall authorise at least 11 staff members to perform the tasks of the NPM. The authorised staff members shall be experts with a higher education degree and shall have outstanding theoretical knowledge or at least five years of professional experience in the field of the treatment of persons deprived of their liberty. The Commissioner for Fundamental Rights may also authorise, either on an ad hoc basis or permanently, other experts to contribute to performing the tasks of the national preventive mechanism.

In its report, the SPT criticised the NPM's funding and resources. At the time of the SPT's visit, the NPM had nine persons performing its tasks, instead of the statutory minimum of 11. The SPT's report also drew attention to the fact that the NPM's budget was not sufficient to enable it to carry out its tasks properly.

The situation has not changed significantly since then. The actual expenditure the NPM evolved as follows:

- 2016 – HUF 69,760,490
- 2017 – HUF 76,217,024
- 2018 – HUF 82,789,143
- 2019 – HUF 87,469,230
- 2020 – HUF 106,325,094
- 2021 – HUF 86,924,441

This does not represent a significant improvement, especially if we consider the amount spent on personnel costs. In 2021, the NPM had HUF 55,870,441 available to employ the minimum of 11 staff members. This would have meant a maximum average net monthly income of HUF 249,085 per person, which is not sufficient to employ professionals with outstanding theoretical knowledge in their field or at least five years of professional experience. This may suggest that the experts fulfilling the NPM's mandate are compensated from different budget lines within the Ombudsperson's office. This is further supported by the fact that individuals conducting monitoring visits do not necessarily work within the department responsible for OPCAT-related duties.

According to the ACFR,¹¹ the NPM's staff shall include at least two or more lawyers, doctors, or psychologists, respectively. According to the NPM's reports, this requirement is complied with.

In 2022, eight staff members of the OCFR participated in the NPM visits, and six of them participated in the visits in 2023.¹² Given that the NPM's work is mostly focused on monitoring visits, this number is low, it is not clear what tasks the 11 staff members formally employed by the NPM are performing, and serious concerns emerge about the NPM's monitoring capacities.

The interpretation of the law that only lawyers, doctors and psychologists can be members of staff is wrong, since in addition to the 11 staff members they could also employ secretaries and administrators. And that it would be advisable to set up visiting teams and report-writing teams to make more efficient use of resources.

At a professional event, it was said that it would take 11 years for the OCFR to visit all the detention facilities under the NPM's mandate if they were to perform visits every weekday. Given also that the NPM has tasks beyond monitoring, it can be stated that the current capacities are insufficient for the NPM to carry out its statutory tasks.

I.3. Cooperation with other organisations and the Civil Consultative Body

The SPT also pointed out in its report that, given in particular the insufficient resources and capacity to visit an adequate number of detention facilities, the NPM's cooperation with other organisations is of paramount importance. The establishment and operation of the Civil Consultative Body (hereafter: CCB) are therefore a welcome development. The rules of operation of the CCB are laid down in Directive 3/2014. (IX. 11.) of the Commissioner for Fundamental Rights on the establishment and rules

¹¹ ACFR, Article 39/D (4)

¹² The figures pertaining to 2023 are based on the reports published on 31 July 2024.

of procedure of the Civil Consultative Body assisting the national preventive mechanism in carrying out its duties (hereafter: CCB Directive).

The CCB, which operates alongside the NPM, was set up so that its members (organisations registered and operating in Hungary) would assist the NPM's work by providing suggestions and comments based on their outstanding practical and/or high-level theoretical knowledge in the field of the treatment of persons deprived of their liberty. The mandate of the CCB is for three years. The first CCB (2014-2017) held its inaugural meeting on 19 November 2014 and consisted of eight members.¹³ The second CCB (2018-2021) started to operate on 16 May 2018 also with eight members.¹⁴ The third CCB held its inaugural meeting on 22 September 2021 and operated with 15 members.¹⁵

Former CCB members are of the view¹⁶ that that before September 2019, dr. László Székely, the Ombudsperson at the time had allowed sufficient time for the civil society's comments to be discussed at the body's meetings. Several CCB members felt that, although they did not perceive openness to cooperation in a number of significant and sensitive issues, staff members of the OCFR were open to dialogue on several methodological issues in their visible quest for high-level professional work. According to the recollections of CCB members at the time, although there were occasions when he had to rush off to other events, in most cases dr. Székely attended the CCB meetings throughout, listened to criticism and was open to substantive dialogue. Suggestions on the agenda and places of detention to be visited were taken into account, and in some cases, the NPM paid follow-up visit to places of detention that had been visited by civil society monitors beforehand (which was possible in the case of penitentiary institutions and police detention facilities at the time). The NPM also cooperated with civil society organisations outside the CCB meetings, accepting several invitations to participate in their projects, moderating workshops, and participating in research efforts.

Establishing and operating the CCB was a significant step, but after September 2019, CCB members started to experience operational difficulties.

According to the CCB Directive, the CCB's meeting shall be convened as often as necessary, but at least twice a year. In 2020, the Commissioner for Fundamental Rights convened the two meetings per year for 10 and 11 December. The online event provided limited possibilities for feedback or no possibility at all in some parts. There was no opportunity to vote on or comment on the agenda. Several organisations signalled at the meeting that it was not acceptable to schedule both meetings at the end of the year, since the purpose for having two meetings per year is exactly to allow the civil society members of the CCB to have an impact on the work plan and operations of the NPM. Therefore, several members did not attend.

¹³ Hungarian Dietetic Association, Hungarian Medical Chamber, Hungarian Psychiatric Association, Hungarian Bar Association, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Mental Disability Advocacy Centre – MDAC, Menedék – Hungarian Association for Migrants.

¹⁴ Hungarian Dietetic Association, Hungarian Medical Chamber, Hungarian Psychiatric Association, Hungarian Bar Association, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Validity Foundation (formerly MDAC), Cordelia Foundation for the Rehabilitation of Torture Victims

¹⁵ Hungarian Dietetic Association, Hungarian Medical Chamber, Hungarian Psychiatric Association, Hungarian Bar Association, Hungarian Catholic Church, Evangelical Lutheran Church in Hungary, Reformed Church in Hungary, Federation of Hungarian Jewish Communities, Together for Fundamental Rights Foundation, Hungarian Helsinki Committee, Hungarian Civil Liberties Union, Hungarian Association for Persons with Intellectual Disability, Mental Health Interest Forum – Alliance for Human Rights and Reform of the Psychiatric Care System, Pressley Ridge Hungary – NoBadKid Foundation, Streetlawyer Association.

¹⁶ Interview with two members of the CCB operating before 2019.

The OCFR sent the invitation to the 17 December 2021 session of the CCB to the members on 10 December, also in violation of the provisions of the CCB Directive, given that according to Article 8(1) of the CCB Directive, invitations to the meetings of the CCB shall be sent to the members at least eight days before the date of the meeting. The eight-day deadline is not excessive, as this is the minimum time necessary to ensure the participation of members and to allow sufficient time for preparation. The late invitation put some CCB members in a difficult position. There is also a concern about the quorum of the meeting under Article 8(3) of the CCB Directive, as the meeting was not convened and the agenda was not communicated per the respective rules.

There was very little opportunity for real dialogue and professional discussion at the CCB meetings compared to previous years, with the one to two hours long events consisting largely of presenting the NPM's reports. At the same time, at least one good example can be quoted: a workshop organised in September 2022 on systemic problems arising in misdemeanour procedures was an important and forward-looking exercise, providing an opportunity for a gap-filling professional dialogue between the different organisations. The event was followed by a further workshop on the subject, which resulted in the OCFR submitting a legislative proposal that reflected the views of CCB members and contained important practical and professional recommendations.

Another important form of cooperation between the OCFR and civil society would be to handle the complaints and warnings received from civil society organisations. In this regard the OCFR's performance is at best mixed: in many cases, complaints falling under the mandate of the NPM are not responded to or are responded to only after several years,¹⁷ but there are also good examples of the NPM visiting institutions based on signals from civil society or international organisations. For instance in 2020, the NPM visited immigration detention facilities based on a complaint from the Hungarian Helsinki Committee, and civil society warnings also has an impact on the extent of attention the NPM has paid on psychiatric institutions: since 2022, the NPM's staff members have visited five psychiatric institutions (they visited two in 2022, one in 2023, and two in 2024 up to July), while in the previous period, they visited only one place in total.

I.4. Reports

Since September 2019, the NPM has carried out a total of 108 monitoring visits: staff members have visited 48 penitentiary institutions (including 1 penitentiary healthcare institution), 24 police custody suites and police holding facilities, 2 healthcare institutions, 8 child protection institutions, 4 juvenile correctional facilities and 15 other facilities.

To understand the scope of the NPM's work, it is useful to consider the total number of detainees. The table below shows the total number of detention facilities under Hungarian jurisdiction as of 31 December 2021, or the last working day of the year for judicial institutions.

¹⁷ NGOs have compiled unanswered requests on a dedicated website: <https://www.valaszoltekozmaakos.hu/ugyek>.

Table I.1. Number of detainees

Type	Number of venues	Capacity	Number of detainees
social institutions¹⁸	1 179	79 952	72 023
child protection institutions	800 ¹⁹	28 861 ²⁰	21 044 ²¹
juvenile correctional facilities'	5	564	212
unaccompanied minors	1	na	13
total – child protection	806	29 425	21 269
penitentiary institutions	39	18 713 ²²	18 175
healthcare institutions of the penitentiary system	2	505	433
total – prison system	41	19 218	18 608
healthcare²³	108	18 036	8 106
police	618	2 630	232²⁴
asylum detention	1	105	2²⁵
judiciary	149	335	55²⁶
TOTAL	2 901	149 701	120 295

¹⁸ Excluding temporary, day and night shelters for the homeless and other day care only facilities.

¹⁹ Without foster care housing.

²⁰ Excluding accommodation exclusively for aftercare or outside accommodation.

²¹ Number of minors in specialised childcare (excluding aftercare).

²² The increase in the number of places started in the previous year continued during the year, with an additional 1 311 places being created.

²³ Data on hospital wards for child, adolescent or adult psychiatry and addiction; gerontology; infectious diseases (including COVID wards).

²⁴ In 2021, a total of 99 640 persons, including 13 259 women, 5 789 minors and 12 805 foreigners, were detained in police detention facilities.

²⁵ In 2021, 3 asylum seekers and 25 persons under Dublin procedure (Met. 31/A (1a)) stayed in the asylum detention centre for an average of 43 days.

²⁶ In 2021, a total of 4,114 detained persons stayed in detention facilities of courts and tribunals, according to data provided by the Office of the National Judiciary.

1.4.1. Visits to psychiatric wards, institutions for persons with disabilities, children's homes, and old people's homes

Author: Edina Vinnai

Over the almost five years, i.e. 60 months, covered by the present report, a total of 26 visits were made to these types of institutions. 19 reports were issued on visits by the CFR and his staff to psychiatric wards, institutions for persons with disabilities, children's homes, and old people's homes. A further seven visits have also taken place until the report's cut-off date, but the reports on those have not yet been published.

Reports on the visits to psychiatric wards, institutions for persons with disabilities, children's homes, and old people's homes were, with a few exceptions, usually published in the year following the visits, but, for example, a report on a visit in May 2020 was published only in 2023, and there was a visit in August 2021 regarding which still no report was available in August 2024. The low number of visits and the length of time taken to produce the reports on them suggest that the OCFR does not have the necessary human resources to carry out its tasks effectively. As a result, the respective institutions are not subject to regular control that could prevent possible abuses.

In the two years following his election, the current Commissioner for Fundamental Rights attended almost all visits (seven out of nine), while in the subsequent period, he was only rarely present (three times out of 17). However, the Hungarian Civil Liberties Union's analysis of the reports of the first two years²⁷ suggests that the effectiveness of the visits was actually reduced when the Commissioner was present: in such cases, the institutions were often informed in advance of the visit, giving them time to prepare for the inspection. In addition, the NPM talked to very few affected persons during these visits, mainly examined the physical conditions, and made no substantive recommendations in the respective reports.

In the case of visits carried out between 2022 and 2024, it is often not clear whether the visit was announced in advance, although it is obvious that the OCFR can only effectively examine closed institutions if it does not give advance notice of its intention to visit. It is also evident that the more interviews are carried out under confidential conditions with the affected persons living in the institutions, the more worthwhile the investigation is (provided of course that these interviews are conducted by competent experts). In this regard it is important to note that the NPM staff is authorised to bring psychologists, special education teachers, social workers, and doctors with them on such visits, who are trained to communicate effectively with traumatised children, disabled or psychiatrically ill adults and to find out how they are really treated in the given institution. The NPM staff usually avails themselves of this possibility, typically by involving teachers, psychologists, or psychiatrists in the visits.

However, almost every visit lasts for no more than a day, which in most cases precludes a meaningful examination, as it is not possible to thoroughly map the day-to-day running of the institution, the typical problems, and possible abuses in a few hours.

²⁷ [Hungarian Civil Liberties Union | Instead of protecting the most vulnerable, the national preventive mechanism only takes pretend measures](#)

I.4.2. Penitentiary institutions and police holding facilities

Reviewing the reports on visits to penitentiary institutions and police facilities conducted since September 2019, it is important to note that the Commissioner for Fundamental Rights and his staff have visited a large number of such places of detention. It should be emphasised that a large number of institutions were visited during the outbreak of the COVID epidemic, taking the necessary precautions. The purpose or part of the purpose of these 29 visits was “to inspect the measures taken to prevent and control the consequences of the human epidemic causing mass illness which threatens the safety of life and property and to examine” how the rights of detainees were affected by the restrictions imposed because of the state of danger.²⁸

According to the methodological guide²⁹ issued by the Association for the Prevention of Torture (hereafter: APT), it is important to examine the conditions of detention also during COVID, in particular those that may have an impact on the spread of the epidemic. Examples include overcrowding. In some of the reports, this is considered by the observers, but there are some reports issued under COVID³⁰ where it is only stated factually that the occupancy rate of the institution was 108% at the time of the visit without any indication that this is a violation which might have particularly serious consequences during an epidemic. The APT also points out that it is necessary to obtain information from external sources before the visit and during the writing of the report, but this was very rarely done.

The visits conducted during the COVID pandemic were very short: for example, the Commissioner and his staff members made a one day visit on 30 September 2020, to the National Penitentiary Institute in Tiszalök (holding 984 (!) detainees on the day of the visit), although the problems of larger institutions cannot be revealed during one day visits,³¹ even if the purpose of the visit is solely to learn about the situation concerning COVID. The Commissioner and two of his colleagues performed the visit of the Szombathely National Penitentiary Institution holding over 1,400 inmates³² and the Sopronkőhida High and Medium Security Prison holding close to 600 inmates³³ on the same day (13 May 2020), which must be considered in the light of not only the number of detainees, but also the travel time of close to 6 hours (if the visitors started from Budapest and returned on the same day). Based on their own experience of monitoring prisons, the authors are of the view that with three monitors even a full day is insufficient for the assessment of the treatment of prisoners in an institution holding over a thousand inmates even if the scope of the monitoring is limited to an issue like preventive health care measures.

Several reports were produced during COVID in which the monitoring team also described and identified a number of general problems not related to the epidemic. However, in many cases, these

²⁸ The Hungarian Government declared the first state of danger in March 2020. Since then, with only a few exceptions, the Government has maintained a 'rule by decree' system, allowing it to override laws with little notice. For more information, see the HHC report here: https://helsinki.hu/en/wp-content/uploads/sites/2/2024/04/HHC_Hungary_states_of_exception_20240402.pdf.

²⁹ <https://www.apt.ch/knowledge-hub/publications/guidance-monitoring-places-detention-through-covid-19-pandemic>

³⁰ See for example [the report on the visit to the National Penitentiary Institution and mobile outbreak hospital in Kiskunhalas](#).

³¹ <https://www.ajbh.hu/-/a-tiszaloki-orszagos-buntetes-vegrehajtasi-intezetbe-latogatott-az-ombudsman>

³² https://www.ajbh.hu/documents/10180/3418016/OPCAT+jelent%C3%A9s+a+Szombathelyi+Bv.+Int%C3%A9zet+I%C3%A1togat%C3%A1s%C3%A1r%C3%B3l+2728_2020.pdf/691d15d8-e204-525a-9f2e-d2429cb9e220, p. 7.

³³ https://www.ajbh.hu/documents/10180/3656566/AJB_750_2021_jelent%C3%A9s.pdf/6a640a4a-e968-5439-8289-5dce6090e485?t=1645182127919, p. 6.

problems are mentioned in a purely descriptive way, and the observers fail to attempt to identify its causes, or at least this is not indicated in the report that such attempts were made. For example, in the report on the visit to the Nagykanizsa Correctional Facility of the Ministry of Human Resources on 29 April 2020,³⁴ it is stated that *“the fourth young person was a victim of abuse in both pre-trial detention groups at the time of the visit and was placed in the health unit for his protection until his transfer to another facility”*. Later in the report, the following is written: *“In the case of a young person hospitalised as an outpatient for a broken nose [...]”*. The report contains no further information about either of the concerned detainees or what happened to them. The NPM’s main aim is to prevent torture, and during the exploratory visit, how such injuries were caused should be examined, further action should be taken if necessary, and the findings should be included in the report, even if the primary purpose of the visit was to monitor the measures taken to prevent the spreading of the epidemic.

Similarly, it should be closely scrutinised and conclusions/recommendations should be formulated by the NPM when concerns emerge in relation to exercising the fundamental right to defence, e.g. when it is established that *“Defence counsels are appointed electronically through the bar association, which works well, but is a little more difficult when the appointment occurs during the weekend”*,³⁵ however, this is also an issue that is mentioned in passing in one of the reports without further elaboration or recommendations.

It is a common problem that the reports on visits are uploaded on the OCFR’s website much later than the visit or not at all, and some can only be found after a long, targeted search. For example, on the ajbh.hu site (the website of the OCFR), there are 27 visits listed for 2020, while only 14 reports are uploaded under the “2020 reports” tab. This is particularly unfortunate in cases where the report is of such topicality that it ought to be published as soon as possible. For example, the Commissioner for Fundamental Rights visited the Vác High and Medium Security Prison on 7 October 2020, in the course of which the NPM staff examined the measures introduced in the context of COVID and the impact of the epidemic. The report on the visit was published in 2023 when its contents could be utilized only to a limited extent due to the fact that the epidemic had been long over by then. Similarly, the report on the visit to the Állampuszta National Penitentiary Institution on 15 January 2021³⁶ was issued only in 2023.

It is also a problem that many reports do not indicate how many detainees were interviewed during the visit or under what circumstances. It would be expedient to include this information in all reports.

The reports reveal the problems of detainees in the various places of detention from very different perspectives and in very different depths. Some reports show that the monitors interviewed several detainees and the views of the detainees are included in the reports.³⁷ However, there are also reports in which the detainees’ perspective is included only to a limited extent, the report is limited to a description of the rules without delving deeper into their practical implementation. pertaining to the detainees³⁸ or even focuses entirely on the law enforcement aspects. An example of this is the report on the visit to the Aszód Correctional Facility of the Ministry of Human Resources on 21 May 2020. According to the report, *“Among those who were absent without authorisation, there were some who*

³⁴ See the [report on the visit to the Nagykanizsa Correctional Facility on 29 April 2020](#),

³⁵ See the [report on the visit to the Szarvas Police Station on 2 June 2021](#), p11.

³⁶ See the [report on the visit to the Állampuszta National Penitentiary Institution on 15 January 2021](#).

³⁷ An example for this is the report on the visit to the Állampuszta National Penitentiary Institution on 15 January 2021.

³⁸ See for example the [report on the visit to three police stations on 18-19 February 2020](#).

had been on the run for more than two years or almost two years and others who had been gone for 1.5 months. The director explained that it is mostly after short-term leaves that the boys do not come back. In total, there were 47 cases of unauthorised absence in the year of the visit. The director suspected that some of those absent persistently may have occasionally travelled abroad. It can be assumed that the young people who are persistently absent are at a high risk of re-offending, as they cannot legally study or work in Hungary. They are also unlikely to be able to earn a living abroad, given their lack of education and language skills. The issuing of a European Arrest Warrant should be considered in such cases.”

There were also some visits in the course of which it was not possible to explore the problems of the detainees or to conduct full, in-depth interviews for various reasons. During the period of COVID, the NPM made pre-announced visits, which was obviously justified in the context of the epidemic. However, there were several visits where no detainee was present at the investigated sites, e.g. at the Fonyód and Tamási Police Headquarters and the Martonvásár Police Station of the Gárdonyi Police Headquarters. Even though the monitoring team inspected documents, the detainees’ points of view could obviously not be included in the respective reports. During some visits, the composition of the monitoring team did not allow the situation of the detainees to be explored. For instance, in the course of the visits to the immigration detention facilities,³⁹ five detainees were interviewed by the NPM staff without an interpreter. It is not clear from the report what criteria were used to select the interviewees, and it is of concern that in the absence of an interpreter, the staff could interview only those detainees who spoke Hungarian, English, German or French.

While some of the reports include well-thought-out, multi-agency recommendations,⁴⁰ the recommendations in many reports are often very general. For example, sometimes the NPM identifies a systemic problem, but the report makes recommendations only pertaining to the local level. In the report on the visit to the Keszthely Police Headquarters⁴¹ it is stated that *“In connection with the findings of the visit, according to Article 32(1) of the ACFR, I request the head of the Keszthely Police Headquarters to [...] take measures to ensure that the accompanying police officer is out of earshot during the medical examination of the person under short-term arrest, so that they do not hear the confidential dialogue between the doctor and the detainee [...]”* This problem regarding medical examinations is mentioned in almost all the reports on visits to police facilities, showing that it is for the central leadership of the police to address the practice, which violates detainees’ rights in general, however, there is no sign in the reports that the problem is raised with the national headquarters. In this context, the authors stress that it is the NPM’s responsibility to make recommendations regarding the systemic problems identified and to follow up on the responses given to those, as the purpose of the monitoring is to remedy the identified abuses and prevent future violations.

³⁹ See the reports on the visits to the Immigration Detention Facility of the Szabolcs-Szatmár Bereg County Police Headquarters and the Nyírbátor Immigration Detention Facility on 18 September 2020.

⁴⁰ An example for this is the report on the visit to the Rákospalota Correctional Facility and Central Special Children’s Home of the Ministry of Human Resources on 2-3 March 2022.

⁴¹ See the report on the visit to the Keszthely Police Headquarters on 21 January 2021.

I.5. Communication

The national preventive mechanism's visits to penitentiary institutions and police holding facilities have also been analysed from the aspect of how the visits themselves, the findings of the visits, and the recommendations made based on these findings were presented to the public.

We examined the official websites and press materials of the OCFR and the NPM and analysed the content of their official Facebook pages and the visit reports published there. (As the content of the Instagram and Facebook pages was virtually identical for prison visits, and the Instagram page was inactive for a while, we only analysed the contents published on Facebook.)

In our analysis, we looked at how the institutions that were visited, the people detained in them, and the Ombudsperson himself appeared in the press materials, and what message was conveyed by the text, the images, and the videos that formed part of the press materials. To determine this, we posed four questions to which possible answers were given so that we could quantify, objectify, and then compare the website and social media appearances.

Table I.2: Analysis of the NPM's communication activities

Question	Response options	Results regarding the website (number; %)	Results regarding social media (number; %) * Press materials regarding 17 visits were examined
What is the main message of the press material?	the NPM monitors the institution	24 (57.1%)	4 (25%)
	highlighting problems related to detention	0 (0 %)	0 (0%)
	proposal for future improvement and development	0 (0%)	0 (0%)
	recognition of the NPM's work	1 (2%)	0 (0%)
	the fact that the visit took place	16 (38.1%)	12 (75%)
	other	1 (2.0%)	0 (0%)
Who appeared in the press material?	<ul style="list-style-type: none"> – the detainees – the staff of the institution visited – the staff of the NPM – other <p>When replying to this question, multiple response options could be chosen. Thus, if a press material covered both the situation</p>	In 36 out of the 42 press materials (85.7%), the staff of the institution visited and the staff of the NPM were mentioned only. There were a further three press materials (9.0%) in which other professionals and other actors were also mentioned.	Out of the 16 appearances, 13 (81.2%) featured the staff of the NPM and the institution visited. Three (18.7%) of the press materials featured detainees in addition to professionals. The conclusion is similar to the one reached concerning the official website: detainees were

	of detainees and the work of the staff, both types of appearances were indicated.	Of the 36 press materials examined, three (8.5%) mentioned not only professionals but also detainees. There was no press material in which only detainees were featured (as opposed to press materials featuring only NPM staff). This means that 93% of the press materials did not feature the detainees whose conditions and treatment the NPM is supposed to examine.	featured in less than one fifth of the press materials, and there were no materials that would only feature members of the group to be protected. In one case, we found no material about the visit on social media.
Who is in the photos?	<ul style="list-style-type: none"> – the detainees – the staff of the institution visited – the staff of the NPM – the institution visited – other <p>When replying to this question, multiple response options could be chosen. Thus, if a press material covered both the situation of detainees and the work of staff, both types of appearances were indicated.</p>	Of the 41 photos included in the press releases issued by the NPM, 32 (78.0%) feature both the staff of the institution visited and the staff of the NPM. There were a further eight photos in which another person was present (but not a detainee). So, combined with the previous category, 100% of the photos show professionals but no detainees at all. (It is to be noted that there is a video that also shows detainees.) No picture was attached to one of the press materials.	Press materials were published on 16 visits on the official social media pages. The images are taken from among those used on the official website, so our findings and conclusions are essentially the same as with regard to the photos on the website.
What is the subject of the photo?	<ul style="list-style-type: none"> – the NPM is monitoring the institution – the (head of the) NPM is consulting with the leadership of the institution 	Photos were published in 41 press materials on the 42 visits carried out. In 22 of the 41 photos (53.6%), the (head of the) NPM can be seen in consultation with the	The classification of photos published on the official social media pages is different from the classification of the photos published on the website because although the

	<ul style="list-style-type: none"> – the fact of the visit – other 	<p>head of the institution visited.</p> <p>In 5 cases (12.1%), the photo documents that the NPM visited the institution, and in 13 cases (31.7%), the photo shows the process of monitoring and examination, which is the core of the work. In one case, the photo was classified as falling under the category “other”. No picture was attached to one of the press materials.</p>	<p>photos published on social media are from among those published on the website, not all of them were published on the social media pages. Photos were published about 16 visits. In half of these, the photo shows that the (head of the) NPM is consulting with the leadership of the institution visited. In six photos, the fact of the visit itself is emphasised (37.5%), while two (12.5%) present the process of examining the conditions of the detainees.</p>
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The analysis of the NPM’s press materials leads to the conclusion that the NPM itself and its staff are prominently featured in these materials. The purpose of monitoring the institutions is obviously to examine the conditions and treatment of detainees, but this is rarely mentioned in the press materials. The published press materials themselves do not necessarily overlap with the focus of the NPM’s professional work, but it cannot be doubted that the professional and the lay public, as well as the detainees and their relatives, form an image of the work of the NPM based on its written and visual materials published as well. Presumably, the NPM also aims to ensure that this image overlaps with reality so that potential victims can turn to it with confidence in the event of a violation of their rights. The press materials mostly present the frequent visits and the consultations with the leadership of the institutions visited, which are obviously essential for the effectiveness of the NPM’s work, but in our view, the fact that this is main element appearing in the NPM’s communication, conveys the image that getting to know the situation of the detainees directly and listening to them does not constitute the focus of the NPM’s work. Furthermore, since the NPM is not authorised to oblige authorities to address the violations it discovers, publicity is its strongest weapons: public communication can and should be used to put pressure on the places of detention with a view to improving the situation of persons deprived of their liberty. Not using it for this purpose means giving up on the NPM’s main instrument for achieving change.

I.6. Recommendations

- It is essential to increase the capacity of the NPM, which cannot fulfil its tasks under the current conditions. One way to increase capacity could be to involve civil society and additional professionals in the work to a greater degree (which is already allowed by the law).
- During the visits, concrete recommendations should be made, systemic problems should be signalled to the detaining authorities, the legislator and other decision makers, and the

implementation of the recommendations should be followed up and shared with the public.

- Detainees and the detainees' points of view should be featured more strongly both in the reports and in the NPM's communication.
- Efforts should be made to publish the reports as soon as possible after the visits on the website in a transparent manner.
- Complaints falling under the NPM's mandate should be investigated within a reasonable time and the parties concerned should be informed about the outcome.
- It is recommended to maintain contact and engage in meaningful dialogue with civil society organisations and other organisations working with detainees.

II. THE EQUAL TREATMENT DIRECTORATE-GENERAL⁴²

Authors: Tamás Dombos and Eszter Polgári

II.1. Introduction

Information contained in this chapter is based on the analysis of relevant legislation, especially Act no. CXXVII of 2020 on the amendment of certain acts to support the effectiveness of the principle of equal treatment; as well as annual reports of the Equal Treatment Authority (ETAAuth) and of the Commissioner for Fundamental Rights (CFR); the former website of ETAAuth and the current website of CFR; responses to freedom of information requests submitted by Háttér Society to CFR in August 2021, January 2023, and July-August 2024;⁴³ interviews carried out in August-September 2021 with former staff members of the ETAAuth some of whom also continued to work at the Office of the Commissioner for Fundamental Rights (OCFR) after the merger;⁴⁴ and an online survey with the participation of 28 civil society organizations active in the field of equal treatment carried out in August 2024.⁴⁵

II.2. The former Equal Treatment Authority

The Equal Treatment Authority (ETAAuth) was an independent public body set up in 2005 to investigate cases of discrimination and harassment on all grounds of discrimination prohibited Section 8 a)-t) by Act no. CXXV of 2003 on equal treatment and the promotion of equal opportunities (ETA or Equal Treatment Act).⁴⁶ Even though the status of ETAAuth had been subject to changes prior to the 2020-reform, none of these had significantly impacted its independence. In 2012, it was reclassified as an “autonomous public administration body”, which “shall be independent, subject only to the law, may not be instructed in its functions, and shall perform its functions separately from other bodies and free from influence. The authority may be assigned tasks only by law.” Its budget – just as prior to 2012 – was a separate line in the budget of the responsible minister; only the Parliament was entitled to decrease it.⁴⁷ At the time of ETAAuth’s integration into the Office of the Commissioner for Fundamental

⁴² The current report is based on two previous reports prepared by Háttér Society on the abolishment of the Equal Treatment Authority prepared in September 2021 and January 2023. The preparation of the 2023 report was made possible by the generous support of the Ministry of Foreign Affairs of the Federal Republic of Germany.

⁴³ OCFR letters no. AJB-4945-2/2021 dated September 10, 2021; AJB-812-2/2023 dated February 10, 2023; AJB-812-6/2023 dated June 30, 2023; AJB-2762-3/2024 dated August 26, 2024; and AJB-2762-5/2024 dated September 11, 2024. All letters on file with the authors.

⁴⁴ Interviews were conducted with 3 former staff members of ETAAuth by Háttér Society between August 31, 2021 and September 12, 2021. Notes about the interviews on file with the authors.

⁴⁵ The questionnaire was sent out to all members of the Human Rights Roundtable (a consultation platform set up by the government) active in thematic working groups related to equal treatment, all Hungarian umbrella organizations active in the field of equal treatment, all Hungarian members of European-level umbrella organizations who are members of the Social Platform (<https://www.socialplatform.org>) and active in the field of equal treatment, as well as all civil society organizations who voiced public concerns about the merger of ETAAuth with OCFR. The questionnaire was sent to the central email address of 123 organizations, of whom 28 filled out the questionnaire. 22 participating organizations agreed to have their name published in the report, they are: Védegylet Egyesület, Társaság a Szabadságjogokért (TASZ), Menedék - Migránsokat Segítő Egyesület, Autonómia Alapítvány, Német Kör, Emberség Erejével Alapítvány, Magyar Nők Szövetsége, ÉTA Országos Szövetség, Emma Egyesület, Három Királyfi, Három Királynő Alapítvány, Budapest Pride (Szivárvány Misszió Alapítvány), Autisták Országos Szövetsége, Szubjektív Értékek Alapítvány, Magyar Női Unió Egyesület, Utcáról Lakásba! Egyesület, Amnesty International Magyarország, Prizma Közösség, Magyar Helsinki Bizottság, Pedagógusok Szakszervezete, Rosa Parks Alapítvány, Család, gyermek, ifjúság Közhasznú Egyesület, Élményakadémia KHE).

⁴⁶ The English translation of ETA as in force on March 1, 2021 is available here: <https://njt.hu/jogszabaly/en/2003-125-00-00>.

⁴⁷ Section 33-34 of the Act on equal treatment as amended by Act no. CLXXIV of 2011, in force between January 1, 2012 and December 31, 2020.

Rights (OCFR), ETAAuth had a budget of 459,6 million HUF, its core mandate under ETA was fulfilled by 9 staff members.⁴⁸

ETAAuth followed a very autonomous, principled approach to discrimination and harassment. It very actively set standards and fought discrimination on the basis of national and ethnic belonging, age, sex, political opinion, disability or sexual orientation and gender identity, just to name a few: In 2015, ETAAuth fined the city of Miskolc for discriminating Roma living in the so-called numbered streets when designing a program to eliminate ghettos it failed to provide them adequate living conditions.⁴⁹ ETAAuth concluded that a public hospital created a hostile and threatening environment around a Roma woman when its personnel made denigrating remarks, and this constituted a violation of her human dignity and right to non-discrimination.⁵⁰ It also found that the mayor who called on the inhabitants of his settlement not to sell their property to Roma coming from other places, violated the principle of equal treatment.⁵¹ ETAAuth consistently condemned the face control practices of bars and other catering establishments.⁵² It also imposed sanctions on a bank that refused pensioners to apply for a credit card, or the tax authority for posting a job advertisement for an administrative position seeking applications from people under 40 only.⁵³ ETAAuth took a strong stance in politically sensitive cases too. For instance, it fined the University of Debrecen for discriminating on the basis of political opinion: the university banned from its Facebook page the student who protested against President Putin receiving an honorable degree.⁵⁴ Finally, its case-law on discrimination and harassment based on sexual orientation and gender identity was particularly remarkable: it offered a remedy to victims not only in cases of discrimination committed by employers, educational institutions, healthcare and other service providers, but also public bodies including ministries and local governments.⁵⁵

II.3. The 2021-reform: ‘Integration’

II.3.1. Legislation

Provisions abolishing ETAAuth were incorporated in Act no. CXXVII of 2020 on the amendment of certain laws to ensure better enforcement of the requirement of equal treatment passed by the Parliament on December 1, 2020.⁵⁶ Despite the fact that the integration of ETAAuth into OCFR involved a major

⁴⁸ See the response of OCFR to the freedom of information request submitted by Háttér Society dated on February 10, 2023 (case no. AJB-812-2/2023); on file with the authors.

⁴⁹ The decisions of ETAAuth are only selectively available on OCFR’s website, thus where the authors are not in possession of the decision, only secondary sources may be referenced. See: https://index.hu/belfold/2015/07/24/miskolc_fideszes_vezetese_magasrol_tesz_az_egyenlo_banasmod_hatosag_velemen_yere/.

⁵⁰ See: https://index.hu/belfold/2017/02/04/ti_ciganyok_ugyis_csak_a_penzert_szultok/

⁵¹ See: https://index.hu/belfold/2016/11/16/nem_akart_cigany_lakokat_a_polgarmester_birsagot_kapott/

⁵² See for instance: https://index.hu/belfold/2013/08/15/morrison_s_2_elkuldtek_a_ciganyokat/

⁵³ See: https://index.hu/gazdasag/bankesbiztositas/2016/02/23/nyugdijas_volt_ugyhogy_nem_kapott hitelkartyat/ and https://index.hu/gazdasag/2015/12/11/csak_40_ev_alatti_adminisztrator_kellett_a_nav-nak/

⁵⁴ See: <https://tasz.hu/cikkek/dizskriminalt-a-debreceni-egyetem-amikor-kitiltotta-oldalarol-a-putyint-kritizalo-kommentelot/>

⁵⁵ For example: case no. EBH/322/2017 (restricting discussion of LGBTQI topics on campus); case no. EBH/456/2017 (registered partners not mentioned in government-issued informational materials); case no. EBH/157/2019 (censoring LGBTQI content on the network of Budapest Mayor’s Office); case no. EBH/203/2017. (refusing to rent a lane to an LGBTQI sport association in a swimming pool); or case no. EBH/168/2016. (refusing to hire a trans woman in a clothing store, which only looked for women – multiple discrimination).

⁵⁶ Act no. CXXVIII of 2020 entered into force on January 1, 2021.

structural change, including physical move of offices, no sufficient transitional period was left to implement the necessary steps, the amendments to ETA came into force on January 1, 2021.

The reform left the mandate and procedures of ETAAuth untouched, but abolished ETAAuth, and its functions were taken over by the Office of the Commissioner for Fundamental Rights. The Equal Treatment Directorate-General (ETD) shall – among others – investigate cases of discrimination primarily upon complaint by the victims or *ex officio* in certain cases; initiate lawsuits protecting the rights of persons and groups who had been victims of rights violations; review and comment on draft legislation concerning equal treatment; make proposals concerning governmental decisions and legislation pertaining to equal treatment; and provide information to the public and victims of discrimination about equal treatment.⁵⁷

II.3.2. Adoption

The 2020-reform took place without any public consultation in an accelerated – and in principle, exceptional – parliamentary procedure based on a bill put forward by the Justice Committee of the Parliament. The fact that the bill had not been tabled by the Government or its members, allowed the Government to circumvent their legal duty of organizing a public consultation as required by Act CXXXI of 2010 on public participation in the preparation of legislation, as the law applies only to bills prepared by ministers (*HHC-HCLU-Mérték, 2013*).

Not only the public was not informed of the governing parties' intention to merge ETAAuth into OCFR, but the authority itself was not consulted either. Former staff members of ETAAuth interviewed all confirmed that they only learned about the proposal from the media or the website of the Parliament; the plans of the merger had not been shared with ETAAuth before the submission of the bill.⁵⁸ Prior to the adoption of the law 18 civil society organizations, among them several that actively work in the field of equal treatment, and ILGA-Europe expressed their opposition to the reform, but their concerns were disregarded.⁵⁹

II.3.3 Justification of the reform

The amendment mandating the abolishment of the independent ETAAuth contained no substantive reasoning how the merger of the two bodies (ETAAuth and OCFR) would improve the enforcement of equal treatment. The law's explanatory memorandum made vague references to other "successful" similar initiatives when rights protection mechanisms had been absorbed by OCFR (*e.g.* subordinating the formerly self-standing parliamentary commissioners to CFR). The reasoning of the law specifically mentioned as a good example the integration of the Independent Police Complaint Board into OCFR. Apparent at the time and unequivocally proven in hindsight, portraying these mergers as "success stories" is highly distorted: as demonstrated by the current research, all of these mergers resulted in

⁵⁷ The powers of ETD are detailed in Section 14 of ETA.

⁵⁸ Interviews conducted with 3 staff members of ETAAuth by Háttér Society between August 31, 2021 and September 12, 2021. On file with the authors.

⁵⁹ Statement by Civilizáció in relation to abolishing the Equal Treatment Authority: https://helsinki.hu/wp-content/uploads/Equal-Treatment-Authority_Civilizacio-statement_26112020.pdf. ILGA-Europe's statement: <https://www.ilga-europe.org/news/ilga-europe-alarmed-hungarian-parliaments-abolish-equal-treatment-authority/>.

lower levels of protection, and have been strongly criticized by civil society organizations working in these fields.⁶⁰

OCFR – on distinct occasions – cited a different rationale for the merger. In August 2021, a news item was published on the website of OCFR stating that the restructuring of EAuth was needed for the efficient spending of public money. In support, they quoted a report by the State Audit Office (SAO). However, the audit by SAO only found minor deviations from rules and the whole investigation was launched only in March 2021 and concluded in August 2021, months after EAuth was abolished, hence the findings of the report could not have served as conclusive reason for the reform, only as *ex post facto* justification. SAO’s report explicitly notes that the findings of the report on compliance were sent to OCFR, and CFR “who took measures to reduce the risks inherent in the financial management”, thus the use of public funds “improved significantly”.⁶¹ Even if we accept that the use of public funds have become more reasonable and efficient due to the integration of EAuth into OCFR, no explanation was provided as to how this contributes to enhancing the protection against discrimination.⁶²

A factor that might have also played a role in the abolishment of EAuth and especially its timing was that the nine-year mandate of its director was to expire on January 1, 2021. The integration of EAuth allowed the government to avoid renewing the mandate of the earlier president or having to find a new one. The government has already followed a similar approach with the Equal Treatment Advisory Board: the six-year mandate of the members of the Advisory Board was to end in June 2011, instead of appointing new members, the Advisory Board was abolished in May 2011. The fact that no director for the Equal Treatment Directorate-General has been appointed for over 3.5 years (see details in section IV) makes it more likely that the current situation fits the expectation of the political players behind the merger: CFR is a loyal servant of the government agenda, and there is no risk of ETD becoming an independent actor defending minority groups at the target of the scapegoating attempts of the ruling majority.

Furthermore, without tangible and clear evidence at the time or ever since in support of the allegation that the abolishment of EAuth was necessary to strengthen the level of legal protection against discrimination, or the reform was truly driven by the desire to use public funds more effectively, no other reason may be found but the Government’s motivation to dispose of one of the last autonomous, well-functioning public bodies that was not willing to subject itself to political pressures and acted independently even in cases where its opinions were not in line with the political expectations. The interviews with former staff members also confirmed this: they all opined that the activities of EAuth especially in the field of LGBTQI rights and Roma school segregation cases were at odds with the political orientation of the Government, and the Government was no longer willing to support the existence of such an independent body.⁶³

⁶⁰ See for instance: <https://helsinki.hu/nagyon-rossz-lepes-az-egyenlo-banasmod-hatosag-beolvasztasa-az-alapveto-jogok-biztosanak-hivatalaba/>.

⁶¹ SAO’s report on the financial management of EAuth in the period of 2017-2019 is available here: https://www.asz.hu/dokumentumok/21075_ismet.pdf.

⁶² OCFR’s response to the freedom of information request submitted by Háttér Society dated on February 10, 2023 (case no. AJB-812-2/2023); on file with the authors.

⁶³ Interviews conducted with 3 staff members of EAuth by Háttér Society between August 31, 2021 and September 12, 2021. On file with the authors.

Interviewees also corroborate that actively protecting the rights of communities against which the Government mounted large-scale hate and fear mongering campaigns⁶⁴ played a major role in the abolishment of EAuth: “The Government does not want independent bodies to exist. LGBT and Roma segregation cases were directly going against the direction of recent government action.” One of them also described how – after her transfer from EAuth to OCFR as part of the merger – CFR specifically asked her questions on the number of pending sexual orientation and gender identity cases, while not going into details about any other ground showing that LGBTQI issues were a major concern during the merger.⁶⁵ The abolishment of EAuth thus may be viewed as forming part of the Government’s political strategy to polarize Hungarian society, divert public attention from everyday pressing issues, such as rule of law concerns, systemic corruption, or financial difficulties, just to name a few. Having a public body that stands up for the rights of Roma, or LGBTQI people posed significant political risks for the governing parties.

II.4. Organization and status of the Equal Treatment Directorate-General

Act CXXVII of 2020 envisaged that the equal opportunity related tasks of CFR would be carried out by a separate directorate-general – ETD – within OCFR. This would have guaranteed a high level of autonomy within OCFR with a publicly visible director appointed by CFR to oversee the work of ETD. However, no director or deputy director has been appointed ever since (as of October 6, 2024), even though the positions appear on the organogram of the OCFR.⁶⁶ This deviates from earlier practice: when the independent commissioners of national and ethnic minorities and of future generations, or when the Independent Police Complaint Board was integrated, the respective deputy commissioners and director were appointed without delay. As one of Hättér Society’s interviewees said in 2021: “There is no Director. There is not even information on the search for one. This whole ‘director-general’ idea was put in place to pretend that there would be more autonomy, and to sell the integration better. But there is no organizational autonomy, it is a department like any other.” Another interviewee also confirmed that there was never a will to have a director: “They stated it clearly. There will be no director, this is only a possibility in the law” [*i.e.* not a requirement].⁶⁷ In January 2023, Hättér Society specifically asked OCFR whether a call had been issued to fill the position of director and deputy-director, and if yes, why was the search unsuccessful. If the answer was no, the freedom of information request inquired about when OCFR plans to fill the positions. In its reply dated February 10, 2023, OCFR provided no information to these questions.⁶⁸ Upon a follow-up freedom of information request repeatedly seeking clarification on the same issue, OCFR informed Hättér Society that decisions on recruitment are the prerogative of CFR: “as the head and manager of the Office, it is for the Commissioner to decide how to ensure the continuous and professional fulfillment of tasks

⁶⁴ A hate-mongering campaign was orchestrated against the Roma community in 2019-2020 when court judgments awarded significant non-pecuniary damages for plaintiffs who had been educated in segregated schools; the issue was included into the national consultation, which was eventually not implemented due to the COVID-19 pandemic. Government politicians and pro-government media has maintained a concerted political attack against LGBTQI people since 2020: banning legal gender recognition, restricting adoption by non-married persons, restricting access to content “portraying or promoting” homosexuality and transgender identities to minors.

⁶⁵ Interviews conducted with 3 staff members of EAuth by Hättér Society between August 31, 2021 and September 12, 2021. On file with the authors.

⁶⁶ Available at: <https://www.ajbh.hu/en/a-hivatal-szervezete>.

⁶⁷ Interviews conducted with 3 staff members of EAuth by Hättér Society between August 31, 2021 and September 12, 2021. On file with the authors.

⁶⁸ OCFR’s response no. AJB-812-2/2023, February 10, 2023. On file with the authors.

within OCFR,” and they reassured Háttér that “the work to protect human rights and equal treatment in the Directorate-General is uninterrupted.”⁶⁹

The lack of a director and deputy-director seriously undermines internal autonomy and independence of ETD: it is under the direct control of CFR – in practice, the Secretary-General of OCFR – who can set the agenda, interfere with the everyday operation of the specialized body, and the mere possibility of the former two creates chilling effect and weakens the public trust in ETD. The Venice Commission in its opinion further emphasized: “Without [a director for ETD], it is hard to imagine the promotion and visibility of equality mandate (...)” and for this reason it encouraged “the Hungarian authorities to ensure a timely appointment of [the director] and his/her Deputy in accordance with clear and transparent criteria defined by law” (Venice Commission, 2021, par. 44).

Furthermore, due to the merger ETD lost its financial independence that was previously safeguarded by provisions in ETA. Prior to the 2020-reform, ETAAuth had its own budget under the heading of the Parliament within the national budget adopted by the Parliament, and only the Parliament could decrease its funding, which offered relative financial security.⁷⁰ The budget of ETD is fully integrated in the OCFR budget, without its separate sub-heading, CFR has full control over the allocation of resources within its Office, thus there are no safeguards guaranteeing the financial stability of ETD.⁷¹ The Venice Commission also reminded the Hungarian authorities that without adequate budget allocated to ensure the effective operation, the independent and efficient exercise of ETD’s mandate may be at risk, and for this reason, it could only hope that ETD’s functioning is not under any threat (Venice Commission, 2021, par. 48-49).

ETAAuth devoted significant efforts to making its procedures against discrimination accessible to everyone; one major means for that was the nationwide network of equal treatment officers (*egyenlő bánásmód referensek*). The equal treatment officers working across the country provided assistance to the complainants in formulating their discrimination complaints and forwarding them to the Authority. The officers were practicing lawyers contracted by the Authority to work for approximately 16 hours per month in this capacity. Their mandate was limited to providing assistance in formulating complaints addressed to the Authority, but they also gave basic legal advice to complainants whose cases did not fall under the scope of ETAAuth. After the merger with OCFR, this network was dismantled: while the question of whether to maintain the network was open during the discussions on the integration, since no final decision was made, ETAAuth withdrew from the contracts with lawyers after the law was adopted, and no new contracts have been established since the merger. In 2022, OCFR – “as a unique initiative in Europe” – opened regional offices in 6 cities in Hungary. As compared to the previous network of equal treatment officers, these regional offices are located in bigger cities, they are not only specialized in non-discrimination, but cover the entire range of activities that are within the competence of OCFR. For a detailed analysis of the national network, see section IX.1.

⁶⁹ Response no. AJB-812-6/2023., June 30, 2023. On file with the authors.

⁷⁰ Section 34 of ETA in force on December 31, 2020. For the last national budget with ETAAuth, see: <https://njt.hu/jogszabaly/2020-90-00-00> I.I.21

⁷¹ For the current budget of CFR, see: https://njt.hu/document/6d/6de7EJR_3885486-3X05394.pdf Annex 1, I.IV

II.5. ETD staff

The ability of OCFR and ETD to carry out their tasks in a way that meets the professional standards is largely dependent on the employment of competent and motivated staff.

According to information received from OCFR in 2021, at the time of the merger (*i.e.* January 1, 2021) 24 people were working for ETAAuth, there were 4 vacant posts. 6 people lost their jobs during the merger due duplication of tasks at OCFR, 2 posts were completely abolished and 4 persons did not accept the positions offered to them. Prior to the merger, 9 people handled cases in procedures under ETA; 6 out of them continued working at ETD. Freedom of information requests confirmed that the overall number of staff members dealing with cases has not decreased, however, an interviewee recalled that recruiting new staff was not without difficulties.⁷²

The most recent information received on the number of staff of ETD confirms that no changes have taken place since the merger of ETAAuth into OCFR: ETD continues to work with 9 staff members handling cases, and no director / deputy-director has been appointed.⁷³

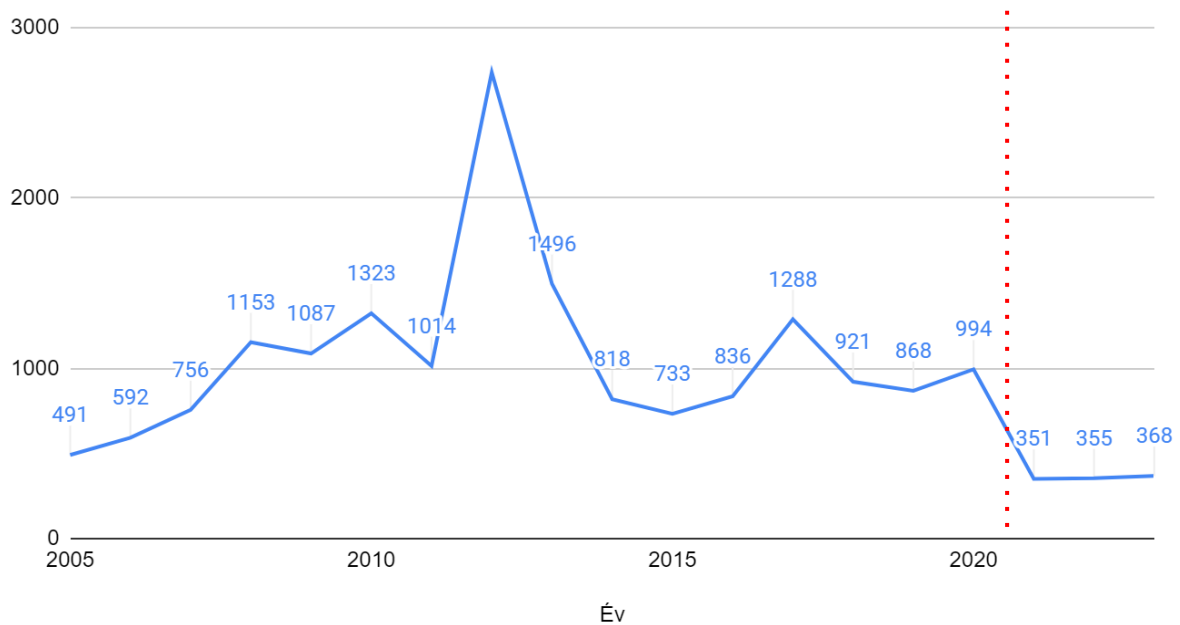
II.6. Number of cases reported

The integration resulted in a drastic drop in the number of complaints. In 2020, ETAAuth received 994 cases; in 2021-2023 this dropped to a bit more than one third of the earlier case number, *i.e.* to 351, 355, and 368 respectively. Table 1 shows the number of reports received by ETAAuth / ETD from the establishment of ETAAuth in 2005.

⁷² Interviews conducted with 3 staff members of ETAAuth by Háttér Society between August 31, 2021 and September 12, 2021. On file with the authors.

⁷³ OCFR's response no. 2664-3/2024, August 13, 2024. On file with the authors.

Table II.1: Number of cases received by ETAAuth / ETD 2005-2023⁷⁴



Any structural change – such as the integration under study here – might temporarily result in a decrease of cases reported as potential victims of discrimination need to get accustomed to the new institutional framework. However, the fact that the number of cases reported has not significantly increased after the initial transitional period, but rather stagnated in the past three years suggests that the decrease is likely to remain long-lasting unless OCFR adopts a more proactive communication strategy. Furthermore, in the first half of 2024 the number of cases further decreased: only 144 cases were reported, which is a 22% drop compared to the number of cases reported in 2023 proportionately.⁷⁵

The radical decrease in the number of cases handled by ETD was felt by a former staff member shortly after the merger. They recalled that they used to have 15-20 cases being investigated at the same time, while they only had 2-3 when they left ETD in 2021. Interviewees listed the following reasons for such a drastic drop in the number of complaints:

- the termination of the equal treatment officers' network,
- lack of active communication,
- unclear information on the webpage, which provides “no information on what complainants should do, and how to submit a complaint”.⁷⁶

It is important to note that with the integration of ETAAuth, OCFR changed the methodology of reporting – as compared to previous years – on the annual number of cases. Up until the report about 2020, the case-load report contained the number of cases received in the given year, while from 2021 the case-load numbers cover the cases dealt with in the given year, which means that cases received, but not closed in previous years are also included. While both numbers are meaningful and informative in describing the volume of work carried out by ETAAuth / ETD, switching the methodology exactly when

⁷⁴ Source of data for 2005-2017: Kiss, 2019, p. 222; , for 2017-2020: ETAAuth / ETD annual reports, for 2021-2024: OCFR's response no. AJB-2762-3/2024, August 26, 2024. On file with the authors.

⁷⁵ OCFR's response no. AJB-2762-3/2024, August 26, 2024. On file with the authors.

⁷⁶ Interviews conducted with 3 staff members of ETAAuth by Hättér Society between August 31, 2021 and September 12, 2021. On file with the authors.

the institutional change (and the significant drop in the number of cases) happened allowed OCFR to “cover up” in part the above shown decrease. To make comparison possible for the purposes of the present research, for years 2021-2023 the number of cases received are not based on the annual report, but on OCFR’s response to a freedom of information request by the authors.⁷⁷

The number of cases reported to ETD is not equal to the number of legal procedures launched: ETD carries out a preliminary screening of the complaints, and if there is not enough information to assess whether the principle of equal treatment has been violated or not, they either issue a call for further information, or send out an information letter (*tájékoztató levél*) that informs the complainant that the case does not fall within the mandate of ETD. This practice has already been in place under ETAAuth and has been widely criticized by both NGOs and academics (Kiss, 2019, p. 166). Information letters are not administrative decisions, they do not follow the formal requirements of such decisions, there is no clause on remedies included, they might not even contain any justification of the decision not to launch a legal procedure. Unlike administrative decisions, such information letters are not accessible to the public, case summaries are not published about such cases, and – to our knowledge – there has been no research carried out to assess whether ETAAuth / ETD is not dismissing cases prematurely.

The decrease in the number of cases reported might have been offset by having “better quality” reports, *i.e.* by decreasing the number of cases that are closed by an information letter. That, however, has not been the case: the proportion of cases closed with an information letter has remained relatively high, a legal procedure is launched in about half of the cases. Table 2 shows the number of cases reported, the number of legal procedures launched, and how the procedures were closed.

Table II 2: Number of cases received and their handling 2020-2024

Year	Cases received	Legal procedures	Violation	Settlement	No violation	Case closed without a decision
2021	351	173	13	6	46	18
2022	355	188	8	4	31	35
2023	368	151	14	7	40	34
H1 2024	144	76	2	4	12	11

II.7. Handling of complaints

Within OCFR currently two types of procedures exist; these are very different from each other. Under ETA complaints are investigated by ETD as part of an administrative procedure with clear deadlines, power to impose fines and other sanctions, and the possibility to seek judicial review if the complainant is not content with the outcome of the procedure. In case of the procedures under the Act on the Commissioner for Fundamental Rights,⁷⁸ CFR only issues recommendations and not binding decisions, and there are no deadlines set for the procedures. The Venice Commission eloquently noted: the possible collision of the competences of CFR “is a clear demonstration of a risk that may undermine the effectiveness of the work in the field of promoting equality and combatting discrimination.”

⁷⁷ OCFR’s response no. AJB-2762-3/2024, August 26, 2024. On file with the authors.

⁷⁸ The English translation of Act no. CXI of 2011 on the Commissioner for Fundamental Rights is available at: <https://www.ajbh.hu/en/web/ajbh-en/act-cxi-of-2011>.

(Venice Commission, 2021, par. 59).⁷⁹ Internal disputes about which procedure to launch also do arise in practice – interviewed staff members recalled cases where the complaint clearly fell within the competence of ETD, “but they opted for an ombudsman’s office procedure, thus there will be no enforceable decision, and the procedure can be lengthy.”⁸⁰ The European Commission against Racism and Intolerance (ECRI) further noted that the “sudden institutional change has left victims in confusion as to where, when and how they should come forward, thereby making their access to justice less effective”. (ECRI, 2023, p. 7-8).

The interviewees also reported other incidents illustrating that CFR is less likely to take all measures possible to enforce equal treatment. For example, if a judicial review finds a decision of ETD unlawful, ETD can turn to the Curia (highest court) for a judicial review. At least in one case concerning a Roma discrimination case launched *ex officio* by EAuth, CFR decided not to pursue the case at the Curia: “we would have surely appealed that case in front of the Curia in the previous era, but now it was not appealed.”⁸¹

These concerns were largely shared by civil society respondents to the survey as well: as shown in Table 3, while most respondents said that they are not in the position to assess the activities of ETD (they are the respondents who had no direct experience past or present with handling individual cases), but it is remarkable that only one respondent mentioned any improvements, while several respondents reported difficulties in starting procedures, the lengthening of procedures, decrease in the number of hearings, increase in the costs of procedures and decrease in the quality of decisions.

Table II.3: Civil society opinions on the operation of ETD (survey results)

	Greatly improved	Somewhat improved	Did not change	Somewhat deteriorated	Greatly deteriorated	Don't know
Ease of starting a procedure	1	0	4	0	3	19
Length of procedures	0	1	1	3	3	19
Frequency of hearings	0	0	0	0	5	22
Costs of procedures	0	0	1	0	1	25
Quality of decisions	0	0	2	1	4	20
Publicity of decisions	0	1	3	0	8	15
Awareness raising (duty bearers)	0	1	2	0	8	16
Awareness raising (potential victims)	0	1	2	1	8	15

The only positive change mentioned was the more common reference to CRPD. With regards to the ease of starting a procedure some respondents mentioned that ETD issues calls for missing documents

⁷⁹ Venice Commission, Opinion no. 1051/2021 On the amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as adopted by the Hungarian Parliament in December 2020, par. 59. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)034-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)034-e).

⁸⁰ Interviews conducted with 3 staff members of EAuth by Háttér Society between August 31, 2021 and September 12, 2021. On file with the authors.

⁸¹ Interviews conducted with 3 staff members of EAuth by Háttér Society between August 31, 2021 and September 12, 2021. On file with the authors.

as a prerequisite to launching the procedure that might discourage victims from pursuing the case. Several respondents mentioned that while ETAuth held hearings in nearly all cases, this has changed and there are no hearings held even in cases with a potential for settlement, which would be much easier to draft in the presence of all affected parties. To concerns regarding the length of procedures OCFR reported that they do not collect data on the frequency of missing the 75 day deadline prescribed by law (HCLU, 2024).

II.8. Transparency of cases and decisions

On the website of ETAuth, anonymized summaries of all cases where ETAuth had found a violation were published as well as all cases where a settlement had been reached. For cases where ETAuth found no violation, a decision on the publication of the case summary was made collectively depending on whether the decision contained legal argumentation that could be relevant for other cases as well. The database maintained by ETAuth was filterable by year, protected characteristic, type of discrimination and area of discrimination. The website of ETAuth is no longer available, not even in an archived form, which deviates from the earlier practice of mergers: for instance, the earlier website of the Parliamentary Commissioner for Future Generations and the Parliamentary Commissioner for the National and Ethnic Minority Rights is still accessible in archived versions from the footer of the OCFR website.

The OCFR website also contains summaries of cases, including cases decided by ETAuth prior to the merger, but only for the period of 2012 and 2024, cases decided between 2005 and 2011, even though that earlier period was crucial in setting precedents in the application of ETA. Furthermore, the cases are not in a filterable database, but a simple list of files organized in folders by year. File names contain the protected characteristic and the area of discrimination, which does allow for manual search, but this solution is far less user-friendly than the earlier filterable database. For the period of 2012-2020 the ETAuth website contained 430 case summaries, the OCFR website currently has only 349 case summaries for the same period. Furthermore, while OCFR claims that summaries for all cases where a ETAuth / ETD had found a violation and – in case of judicial review – courts upheld the decision, or where settlement has been reached are published, this in fact is not true: there are 87 cases that fit these criteria, but are not uploaded to the OCFR website.⁸² Table 4 contains the breakdown of decisions that were once published on the ETAuth website indicating their publication status on the OCFR website broken down by protected characteristics. The proportion of non-published decisions is particularly high for sexual orientation and gender identity.

Table II.4: 2012-2020 ETAuth cases on the OCFR website

Protected characteristic ⁸³	Published	Published, even if not planned ⁸⁴	Not published, but planned	Not published, not planned	Proportion of not published, but planned
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⁸² The actual number of missing cases could be lower, as there might have been cases where the courts overturned the ETAuth decision, but the case was still kept on the ETAuth website.

⁸³ For readability purposes several protected characteristics were combined (e.g. race, ethnicity, nationality and skin color; or sexual orientation and gender identity). Furthermore, for cases where multiple protected characteristics were relevant, they were assigned to only one category (either the ‘classic’ protected characteristic, i.e. disregarding ‘other status’ or the most dominant protected characteristic in the case).

⁸⁴ In AJB-2762-3/2024 the OCFR claims that summaries are published on the website of OCFR for all cases ending in a settlement or a finding of a violation.

Race, ethnicity	43	1	11	0	20%
Sex	16	1	2	2	10%
Age	19	6	2	0	7%
Disability	126	5	26	0	17%
Sexual orientation, gender identity	11	1	16	0	57%
Religions or belief	4	1	0	0	0%
Political or other opinion	11	1	4	0	25%
Health status	37	2	8	0	17%
Motherhood (pregnancy), fatherhood	36	1	8	0	18%
Other	30	1	10	2	23%
No protected characteristic	7	6	0	0	0%
Total	340	26	87	4	19%

Table 5 contains the case summaries published on the OCFR website about cases that had already been investigated and decided by the ETD. The table shows that disability and motherhood cases are disproportionately more likely to be published than to be received, while race, ethnicity, sex and age cases are less likely to be published than received.

Table II.5: 2021-2024 cases on the CFR website

Protected characteristic⁸⁵	2021	2022	2023	2024	Proportion of cases published	Proportion of cases received
Race, ethnicity	1	2	2		5%	18%
Sex	1				1%	4%
Age	1	1	1		3%	6%

⁸⁵ See fn. 42.

Disability	18	24	23	9	69%	36%
Religion or belief						2%
Political or other opinion						4%
Sexual orientation, gender identity	2	1			3%	4%
Health status	2	1	2		5%	9%
Motherhood (pregnancy), fatherhood	5	7	2	1	14%	9%
Other	1				1%	7%
No protected characteristic	1				1%	1%
Total	32	36	30	10	100%	100%

The lack of publicity for the decisions and the difficulty of finding statistics and case summaries on the OCFR website was one of the most often raised concerns by civil society respondents to our survey (see Table 3).

Not publishing case summaries in a structured way makes the work of ETD less transparent, and almost completely prevents a thorough analysis of its operation. Not having a principled and transparent approach to publishing case summaries creates false impressions about the types of cases handled by ETD, and indirectly about the prevalence of various types of discrimination in society, especially because the case summaries are the only source of such information when researching ETD's work: the annual reports do not contain a breakdown of cases by protected characteristic.

Besides the case summaries, ETAAuth also communicated about particularly remarkable cases via news articles on the opening page of ETAAuth's website and on its social media page. The opening page of the OCFR website has four different blocks for news items: one is devoted to events, one to statements, one to case reports and one to general news stories.⁸⁶ The case reports section is limited to reports produced as part of procedures under the Act on the Commissioner for Fundamental Rights and does not feature cases investigated on the basis of ETA. Of the 339 news articles published since the merger of ETAAuth, not a single one deals with the activities of the ETD or with the topic of equal treatment more broadly. Of the 77 statements published, there is only one which deals with the ETD: a statement published on January 1, 2021 that the OCFR has taken over the functions of ETAAuth. The OCFR thus does not invest any visible efforts in disseminating information about the cases it handles. Communicating about cases – especially cases where ETD found a violation – can encourage people in similar situations to submit complaints as they learn about successful cases. This can have an important trust building impact towards the institution, an opportunity OCFR largely misses – which is reflected in the decrease of the complaints submitted.

⁸⁶ In Hungarian: <https://www.ajbh.hu/en/kezdolap>. The English version of the website does not contain the case reports: <https://www.ajbh.hu/en/web/ajbh-en/>.

II.9. Outreach

II.9.1. National network

An immediate impact of the merger was the closure of the network of equal treatment officers, so if a victim of discrimination wanted to report a case of discrimination or harassment in person, they had to travel to Budapest as OCFR had no similar national network. A year after the merger, in 2022 OCFR started to rebuild a similar national network; there are currently 6 field offices outside of Budapest in Győr, Szeged, Debrecen, Székesfehérvár, Miskolc és Pécs.⁸⁷ While the field offices offer longer opening hours than the equal treatment officers had, the new network only has six offices, instead of the former network with officers in each of the 19 counties. The cost efficiency of having to maintain only one national network of field offices instead of maintaining the existing network of equal treatment officers and building a parallel network of field offices for the CFR might have served as a legitimate justification for the merger, however, such joint field offices could have been operated without the merger of the head offices themselves.

According to information received from OCFR, the Budapest office in 2021 received 300 visits, while in 2022 clients requested information, submitted complaints or additional materials in 271 cases (the response failed to specify whether all these cases fell within the scope of ETA, or some were handled in other procedures). In 2022, the regional offices administered 151 cases under ETA, thus on average a regional office dealt with 25 equal treatment cases per year.⁸⁸

II.9.2. Guidance to victims and duty bearers

The mandate of ETD specifically includes that it offer information and guidance to those concerned on how to tackle equal treatment violations (ETA, Section 14:1g). ETAuth issued valuable, easy-to-understand general guidance on the procedure before ETAuth, discrimination in access to services, at work and in education, thematic overviews of the case-law along protected grounds (*e.g.* discrimination against women, people with disabilities, or Roma),⁸⁹ and guidance on how to comply with the law with regard to school and workplace harassment, educational, health and multiple discrimination.⁹⁰ As part of a major project funded by the European Union between 2008-2014 ETAuth conducted 80 multi-day training sessions on the implementation of the Equal Treatment Act reaching over 2000 people, in 2011-2012 commissioned multiple representative surveys on rights awareness

⁸⁷ <https://www.ajbh.hu/en/teruleti-irodak>

⁸⁸ OCFR's response no. AJB-812-2/2023, February 10, 2023. On file with the authors.

⁸⁹ List of publications as archived by Internet Archive on April 10, 2021:

<https://web.archive.org/web/20210410142853/http://www.egyenlobanasmod.hu/hu/kiadvanyok>. Currently only the booklet titled *A többszörös diszkrimináció megjelenése az Egyenlő Bánásmód Hatóság joggyakorlatában (Multiple discrimination in the Practice of the Equal Treatment Authority)* may be accessed in full length in the web archive: https://web.archive.org/web/20200601145042/https://www.egyenlobanasmod.hu/sites/default/files/kiadvany/5_teljes_HU.pdf.

⁹⁰ List of guidances as archived by the Internet Archive on March 6, 2021:

<https://web.archive.org/web/20210306170843/https://www.egyenlobanasmod.hu/hu/ebh-fuzetek>

and social attitudes towards various minority groups.⁹¹ In 2014 ETAAuth ran a campaign consisting of billboards, radio and TV broadcasts to raise awareness on ETA.⁹²

OCFR in a response to a freedom of information request argued that they assist those seeking justice in their case “beyond what is required by law” by publishing information materials on ETA and the operation of ETD on the OCFR website.⁹³ In reality, only the statements issued by the former Equal Treatment Advisory Board are accessible, no other materials are available on the website indicated by OCFR, not even the ones already published by ETAAuth. The low number of cases reaching ETD may be explained by the fact that victims simply do not know of their rights, or find the procedure as described on the website (largely citing the legislative provisions) overly complicated. Several civil society respondents to our survey also noted the decrease in the awareness raising activities of ETD, and its detrimental impact on the number of cases reported (see Table 3). In its response to a freedom of information request in February 2023, OCFR acknowledged that the case-law of ETAAuth / ETD is not searchable in the same way as the database of ETAAuth was (e.g. on the basis of protected grounds), and pledged to create an interface that allows for complex searches in the near future.⁹⁴

II.9.3.Cooperation with civil society organizations

The mandate of ETD specifically includes that it cooperates with civil society organizations in carrying out its functions [ETA, Section 14 (1) f)]. In response to a FoI request on the meetings with CSOs between January 1, 2021 and June 31, 2024, the OCFR provided no concrete information to questions posed on consultations with civil society; the answer reiterates their commitment to maintain close relationships with civil society actors. They only mention meetings with CSOs in the framework of the Human Rights Roundtable operated by the Government, and one concrete meeting in 2024: a consultation was organized for the civil society members of the Disability Advisory Board on procedures and remedies under ETA, specifically how people with disabilities can benefit from those.⁹⁵ The decrease in the cooperation with civil society is noticeable in the survey results as well. While cooperation was not very intensive with the ETAAuth either (7 respondents reported no cooperation with ETAAuth, not even in the form of referrals), this grew to 13 respondents in the direction of ETD. Consultations were particularly affected: only one respondent reported frequent or regular consultations, while 23 of the 27 respondents reported to consultations at all.

Table II.6: Civil society cooperation with ETAAuth / ETD (survey results)

Forms of cooperation	Frequently	Regularly	Sometimes	Rarely	Never
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⁹¹ For more information on the activities implemented in project no. TÁMOP-5.5.5/08/1 see: https://web.archive.org/web/20160406024641if_/http://www.egyenlobanasmod.hu/app/webroot/files/img/articles/8cbae26bdcff0cbfb3837d34dc68ef0a/EBH_besz%C3%A1mol%C3%B3_2014_magyar.pdf, p. 52.

⁹² The campaign was titled “Equal Treatment – Everyone deserves it”, and it ran between February and April, 2014. The aim of the campaign was to raise awareness on legal remedies against discrimination and harassment, and sought to encourage victims to report their cases to the local equal treatment officers or ETAAuth. (<https://hirado.hu/2013/02/18/kampanyt-indtott-a-tarsadalom-jogtudatosaganak-no/>).

⁹³ OCFR’s response no. AJB-812-2/2023, February 10, 2023. On file with the authors.

⁹⁴ OCFR’s response no. AJB-812-2/2023, February 10, 2023. On file with the authors.

⁹⁵ OCFR’s response no. AJB-2762-3/2024, August 26, 2024. On file with the authors.

Equal Treatment Authority	Referral	1	3	5	5	13
	Representing victims	0	2	3	2	20
	Actio popularis	0	1	4	5	17
	Consultation	2	1	3	5	16
	Other	1	0	0	3	18
Equal Treatment Directorate General	Referral	1	2	2	3	19
	Representing victims	0	1	0	3	23
	Actio popularis	0	0	2	4	21
	Consultation	1	0	1	2	23
	Other	0	0	0	1	22

The lack of consultations is not the result of reluctance from the side of civil society. For example, when in February 2023, OCFR wrote in response to a freedom of information request that “CFR is open to all inquiries and dialogue with civil society organizations, including those related to their operation and situation,”⁹⁶ Háttér Society followed up with a request for an official meeting with the CFR on August 20, 2023. To date no response was provided, not even after a reminder was sent on October 26, 2023.

II.10 Reviewing draft legislation

Both the Act on the Commissioner for Fundamental Rights and ETA provide a mandate for CFR to review draft legislation and formulate proposals if he considers that there is a need for legislation in the respective fields. Based on Section 2 (2) of the Act on the Commissioner for Fundamental Rights, CFR “gives opinions on draft legislation affecting his or her tasks and powers, (...) and may propose amendments to or the creation of legislation affecting fundamental rights or the recognition of the binding force of an international treaty.” Section 39/O (5) a) of the same act empowers CFR to review draft legislation related to disability. ETA’s Section 14 (1) c) contains the same prerogative with respect to legislation concerning equal treatment. The yearly reports published by OCFR contain a brief overview of the number of requests for review, the number of reviews prepared and the number of legislative proposals made by the OCFR (without further breaking down by units that would indicate the subject-matter of the fulfilled reviews). There has been a significant decrease in the number of requests received by OCFR since 2019 (from 108 the number fell to 30-33-65 for each consecutive year) – this may be explained by the fact that there has been an extraordinary regime (state of danger) ever since due to COVID-19, mass migration or the war in Ukraine.

In response to a freedom of information request, OCFR confirmed in February 2023 that ETD made symbolic contributions on two pieces of draft legislation. With regard to amendments to Government decrees related to public education, he welcomed “from an equal opportunities perspective” the changes allowing students with disability to replace the practical part of exams with an oral part. ETD made no comments on the amendments on the operation of sign language interpreters.⁹⁷

⁹⁶ OCFR’s response no. AJB-812-2/2023, February 10, 2023. On file with the authors.

⁹⁷ OCFR’s response no. AJB-812-2/2023, February 10, 2023. On file with the authors.

OCFR is also entitled to make legislative proposals: between 2019 and 2023, 19, 27, 26, 24 and 17 such proposals were submitted. OCFR's report only contains very general and largely overlapping descriptions of these proposals – in each year they concerned the rights of children, child support services, and the rights of national minorities.⁹⁸

II.11. Overall assessment

Civil society organizations were highly critical of the abolishment of the Equal Treatment Authority when the bill was introduced in the Parliament. Reviewing ETD's work confirmed that their fears and concerns have proven to be valid. The merger of ETD to OCFR 'downgraded' the issue of equal treatment rather than improved the effectiveness of its enforcement as the title of the law suggests. The fact that no director or deputy director has been appointed, that several staff members have left ETD, that complaints are not investigated under the Equal Treatment Act, but under the much softer CFR procedure, and most importantly the drastic drop in the number of cases shows that the merger raises serious concerns about the enforcement of the principle of equal treatment in Hungary. In all aspects of the work of ETD, the hierarchization of protected characteristics can be observed, disability and motherhood are given higher priority, while sexual orientation, gender identity, race / ethnicity, and political opinion are sidelined.

This assessment is widely shared among civil society organizations: of the 28 organizations participating in our survey not even one opined that the merger of ETD into OCFR improved the level of legal protection against discrimination. Two organizations found the change had no impact, two that there was some decrease in the level of protection, while 12 found that the merger significantly decreased the level of protection.

II.12. Recommendations

In line with UPR and ECRI recommendations, re-establish the Equal Treatment Authority as an autonomous public body.

Appoint a director and deputy-director for ETD in a clear and transparent procedure, preferably in an open competition with the participation of civil society organizations as external evaluators.

Publish a searchable database of case summaries filterable by protected characteristic, type of discrimination, field of discrimination, and outcome of the procedure on OCFR's website, including case summaries for the period 2005-2012.

Publish updated guidance to duty-bearers and victims of discrimination on OCFR's website, or at least re-publish such information materials created by ETD.

Hold regular consultations with civil society organizations to gather input from actors directly involved with victims of discrimination.

⁹⁸ The yearly reports of OCFR are available at: <https://www.ajbh.hu/en/eves-beszamolok>. The report for 2023 is only available on the website of the Parliament at <https://www.parlament.hu/irom42/07848/07848.pdf>; it has not been passed yet.

Bibliography:

ECRI (2023): European Commission against Racism and Intolerance. (2023). ECRI report on Hungary (Sixth monitoring cycle). <https://rm.coe.int/ecri-6th-report-on-hungary-translation-in-hungarian-/1680aa6>

HCLU (2024): Hungarian Civil Liberties Union (2024). Az egyenlő bánásmód védelmére hivatott hatóság működésének kritikája <https://tasz.hu/cikkek/az-egyenlo-banasmod-vedelmere-hivatott-hatosag-mukodesenek-kritikaja/> 87b

HHC-HCLU-Mérték (2013): Hungarian Helsinki Committee, Hungarian Civil Liberties Union, & Mérték Media Monitor. (2013). Comments of Hungarian NGOs on the Draft Report on the situation of fundamental rights: standards and practices in Hungary and on the Position of the Hungarian Government. https://helsinki.hu/wp-content/uploads/HUN_Draft-report_Gov_NGOs_comments_20130523.pdf

Kiss, 2019: Kiss, V. (2019). Az egyenlő bánásmód követelményének érvényesülése Magyarországon, különös tekintettel az árukhoz és szolgáltatásokhoz való hozzáférésre [PhD dissertation]. https://edit.elte.hu/xmlui/bitstream/handle/10831/44468/1b_Kiss%20Val%C3%A9ria_disszert%C3%A1ci%C3%B3.pdf

Venice Commission (2021): Venice Commission. (2021). Opinion no. 1051/2021 On the amendments to the Act on Equal Treatment and Promotion of Equal Opportunities and to the Act on the Commissioner for Fundamental Rights as adopted by the Hungarian Parliament in December 2020 [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2021\)034-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2021)034-e)

Abbreviations:

ETAuth: Equal Treatment Authority

ETA: Act no. CXXV of 2003 on equal treatment and the promotion of equal opportunities

ETD: Equal Treatment Directorate-General

OCFR: Office of the Commissioner for Fundamental Rights

CFR: Commissioner for Fundamental Rights

SAO: State Audit Office

III. Evaluation of the activities of the Directorate General for Law Enforcement as the successor of the Independent Police Complaints Board

Authors: Dominika Berta and András Kádár

III.1. Sources of information

This study draws on the following sources: the pertaining Hungarian legislation, in particular, Act XXXIV of 1994 on the Police (hereinafter: Police Act) and the ACFR; the annual reports and the opinions of the Independent Police Complaints Board; the website, the annual reports and the reports of the Commissioner for Fundamental Rights; the Commissioner's replies to the Hungarian Helsinki Committee's (hereinafter: HHC) requests for public interest information (Reply No. AJB-2664-3/2024 dated 13 August 2024 and Reply No. AJB-2690-3/2024 dated 16 August 2024); the responses of the National Police Headquarters (hereinafter: NPH), the National Directorate-General for Alien Policing, the National Protective Service and the Counter-Terrorism Centre to the HHC's public interest information; and interviews with lawyers and employees of NGOs providing legal representation in police complaints procedures.

III.2. The establishment and abolition of the Independent Police Complaints Board

The establishment of the Independent Police Complaints Board (hereinafter: IPCB or Board) was motivated by political and professional reasons. In the summer of 2007, the Parliament made comprehensive amendments to the Police Act. As the constitutional rules in force at the time required a two-thirds majority of the members of parliament present for this, the amendment necessitated several political compromises in addition to considering professional criteria. During the negotiations, the idea of creating an independent body to monitor the constitutional functioning of the police was raised and got eventually included in the bill. The concept was not without precedent. As the study summarising the experience of the first one and a half years of the Board's operation states, "The idea of setting up a similar Board [...] was raised in the past, among others in the proposals and recommendations of various NGOs (including the Hungarian Helsinki Committee), in the investigative report of the so-called Gönczöl Commission, and [...] in the recommendations of the Parliamentary Commissioner for National and Ethnic Minority Rights. The fact that the Board did not remain a »fleeting idea« in the end was due in large part to the street demonstrations and riots in Budapest in the autumn of 2006, and the grave police violations and excesses that occurred during the handling of these. As a result of these events, the prestige of the police [...] was undermined in an unprecedented way, making it clear to the legislator that intervention is needed to prevent further disturbances and restore public confidence in the police. It became necessary to make the police organisation more efficient [...]; however, this had to be achieved in such a way that the rule of law, the constitutional requirements of legal certainty, and greater respect for fundamental rights could be guaranteed in police actions to a greater degree. It was this latter aspect that provided the impetus for the establishment of the Board during the 2007 reform of the Police Act"⁹⁹

Act XC of 2007 amending the Police Act established the IPCB as "a five-member body similar to those in other EU Member States, including in particular the Independent Police Complaints Commission [...]"

⁹⁹ Krisztina Fodor-Lukács Krisztina, András Kristóf Kádár, Judit Kovács, Zsolt Körtvélyesi and Gusztáv Nagy: *Másfél év mérlegben – A Független Rendészeti Panasztestület gyakorlatának elemzése*, Hungarian Helsinki Committee, Budapest, 2010, pp. 7-8.

in the UK, which does not form part of the police hierarchy"¹⁰⁰, with its members selected by qualified majority of the Parliament for a term of six years (initially without the possibility of re-election, which the explanatory memorandum of the Act considered as an essential guarantee of "organisational and personal independence"). The President of the Parliament and the Minister of Finance were responsible for providing the resources for the functioning of the IPCB, which had its secretariat in the Office of the Parliament.

Starting with 2008, the IPCB received a total of 4351 complaints in its 12 years of operation. In 1351 of these cases (31%) the Board found that a fundamental right had been violated, of which 877 (20.2%) were serious. In 28.2% of the cases, the NPH partially or fully agreed with the Board's finding of a serious breach of fundamental rights. Mention must also be made of the IPCB's annual reports (90-page long on average), in which the body gave a detailed account of the previous year's cases, the lessons learnt from them and the trends in the police forces' respect for fundamental rights. The IPCB's annual reports also contained recommendations to the legislator regarding how systemic problems (concerning the operation of both the police and the Board) could be addressed through legislative amendments.

However, in December 2019, the Parliament adopted – without prior public consultation – Act CIX of 2019 amending Act CXXV of 2018 on Government Administration and certain Acts related to Act CXXV of 2018 on Government Administration, which transformed the police complaints procedure, and in this context transferred the functions and powers of the IPCB to the Office of the Commissioner for Fundamental Rights, and at the same time abolished the Board. No explanation is given in the explanatory memorandum of the law¹⁰¹ as to what made the change necessary, or what benefits the legislator hoped to derive from such a restructuring of police complaints procedures. In his opening speech, the Deputy State Secretary of the Prime Minister's Office only said that the Commissioner for Fundamental Rights "[...] is responsible under the Fundamental Law for investigating and taking measures in connection with any irregularities that come to his attention concerning fundamental rights. So this solution is not incompatible at all with the existing [institutional] infrastructure. We think that this explicitly increases the level of protection of fundamental rights"¹⁰² (to what extent or in what way it increases this level was not mentioned by the Deputy State Secretary).

III.3. Change in the rules of procedure

The merger led to procedural changes, some of which should in principle put complainants in a better position, while others may undermine the effectiveness of the procedure.

The rules and possible outcomes of the current procedure can be summarised as follows. The complainant has two options. The complainant may lodge a complaint directly with the police unit that took the impugned (coercive) measure, or failed to take a measure that would have been necessary,

¹⁰⁰ Explanatory memorandum to Act XC of 2007 amending Act XXXIV of 1994 on the Police

¹⁰¹ https://www.parlament.hu/web/guest/iromanyok-elozo-ciklusbeli-adatai?p_p_id=hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=l4wlnzLH&_hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_irom.irom_adat%3Fp_ckl%3D41%26p_izon%3D8019

¹⁰² https://www.parlament.hu/web/guest/iromanyok-elozo-ciklusbeli-adatai?p_p_id=hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=l4wlnzLH&_hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_naplo.naplo_fadat%3Fp_ckl%3D41%26p_uln%3D96%26p_felsz%3D22%26p_szoveg%3D%26p_felszig%3D26

within 30 days of the measure or omission, or may lodge a complaint with the Commissioner for Fundamental Rights, within 1 year.

Complaints lodged with the police are investigated by the head of the police service concerned, under an administrative procedure. If the complaint is rejected, an appeal may be lodged within 15 days and will be considered by superior of the head of the police service concerned. A judicial review of the decision can be requested within 30 days. If the complainant refers the matter to the Ombudsperson, the complaint is dealt with by the head of the body concerned (the National Chief of Police in the case of the police, or the respective Director-Generals of the other law enforcement bodies that fall under the scope of the Police Act) after the Ombudsperson's inquiry. The opinion expressed in the Ombudsperson's report is not binding on the National Chief of Police or the Directors-General, but if the decision on the complaint differs from the Ombudsperson's conclusion, the reasons for this must be expressly stated in the decision. There is no right of appeal against the decision of the respective heads of the concerned law enforcement bodies, but if the complaint is rejected, the complainant can request a judicial review of the decision.

The main procedural changes related to the abolition of the Board are as follows.

III.3.1. Favourable changes

Deadline for lodging a complaint: The deadline for lodging a complaint with the Board was 30 days (after a legislative amendment raising the initial 8-day, and later 20-day deadline), and no complaint could be lodged after one year even if the complainant had been prevented from lodging the complaint. Since the merger, the rules for procedure of the Commissioner for Fundamental Rights have been applicable for dealing with police complaints. These allow complaints to be lodged within one year of the police action, a welcome change, especially as the 30-day time limit does not necessarily allow indigent complainants to obtain state-funded legal assistance to draft their complaint, while one year is a sufficiently long period for accessing state legal aid to lodge a complaint (it is a different matter that the problems of the legal aid system – the very strict eligibility threshold, low legal fees and consequently very few lawyers involved – may make it difficult for potential complainants who cannot afford to hire a lawyer to actually take advantage of this possibility).

Investigative powers: The Ombudsperson has wider powers of investigation than the IPCB could rely on. During the investigation of the complaint, the Board was able to request (written) information from the police, to inspect or request copies of all documents, to obtain data, circumstances, facts and procedures that could be related to the measure under investigation.

In addition to the powers available to the Board, the Ombudsperson has the right to hear the police officer or any member of the staff of the authority under investigation when investigating a complaint, and to request written explanations, statements, clarifications or opinions from them, and to intervene in any proceedings for the judicial review of a police decision. The right to intervene in court cases is a power that the IPCB indicated the need for in a number of its annual reports to Parliament¹⁰³, but the legislator did not comply with this request until the Board was actually abolished.

¹⁰³The Independent Police Complaints Board's report on its experiences in 2008, Chapter III, point (n); The Independent Police Complaints Board's report on its experiences in 2012, Chapter IV, point 6, The Independent Police Complaints Board's report on its experiences in 2013, Chapter IV, point 6, The Independent Police Complaints Board's report on its experiences in 2014, Chapter IV, point 6, The Independent Police Complaints Board's report on its experiences in 2015, Chapter IV, point

Geographical accessibility: The Board was based in Budapest, and complaints could be made by post, fax, e-mail, on the website, or in person, following a request for an appointment by telephone. The Office of the Commissioner for Fundamental Rights is also located in Budapest, but since 2022 it has been possible to lodge a complaint against a police action or a failure to comply with police obligations in the six regional offices in the central cities of the region: in Szeged, Debrecen, Győr, Székesfehérvár, Miskolc and Pécs. The possibility to lodge complaints in person in rural offices facilitates the administration of the procedure, allows wider access to the procedure and promotes enforcement and awareness of rights, as after a telephone appointment, those with a lower awareness of their right or a limited capacity to enforce those rights can also request information or present their complaints verbally in offices that can be visited in person. In 2022, there were a total of 107 personal visits to the regional offices for the purposes of having police complaints recorded, submitting such complaints, inspecting related documents, requesting an appointment or information.¹⁰⁴ In 2023, the number of personal visits to regional offices in relation to police complaints was 99.¹⁰⁵

III.3.2. Problematic changes

The difference between the concepts of “violation of fundamental rights” and “maladministration related to fundamental rights”: Pursuant to Article 92 of the Police Act, a person whose fundamental rights have been violated by a breach of the obligations laid down by law, by police action or failure to take such action, or by the use of coercive measures, may lodge a complaint with the police body which took the action or may request that the head of the body concerned adjudicate the complaint after the Commissioner for Fundamental Rights has examined the case. Thus, the Police Act provides for recourse to the Ombudsperson if the fundamental right of the person concerned has been violated by a police act or omission. However, the ACFR operates with the concept of "maladministration related to fundamental rights" (see Article 39/J (3) of the ACFR¹⁰⁶), which, according to the definition in Article 18 of the ACFR, includes not only the violation of a fundamental right, but also the imminent threat of a violation of a fundamental right.¹⁰⁷ This raises the problem that the Ombudsperson's investigation may stop and conclude at a point (at the risk of a violation of a fundamental right), which is not sufficient for the National Chief of Police to uphold the complaint, since according to the Police Act, a complaint is well-founded if the police measure, omission, or the use of a coercive measure actually

8, The Independent Police Complaints Board's report on its experiences in 2016, Chapter IV, point 8, The Independent Police Complaints Board's report on its experiences in 2017, Chapter IV, point 8, The Independent Police Complaints Board's report on its experiences in 2018, Chapter IV, point 8, Available here: https://www.ajbh.hu/en/rendeszeti-foigazgatosag-beszamolok?p_p_id=1_WAR_ajbhdocumentlibrarydisplayportlet&p_p_lifecycle=0&p_p_state=normal&p_p_mode=view&_1_WAR_ajbhdocumentlibrarydisplayportlet_fileOrderByType=asc&_1_WAR_ajbhdocumentlibrarydisplayportlet_folderOrderByName=&_1_WAR_ajbhdocumentlibrarydisplayportlet_currentFolderId=3905681&_1_WAR_ajbhdocumentlibrarydisplayportlet_folderOrderType=desc&_1_WAR_ajbhdocumentlibrarydisplayportlet_fileOrderByCol=NAME

¹⁰⁴ The 2022 annual report of the Commissioner for Fundamental Rights and his Deputies, available at:

<https://www.ajbh.hu/documents/10180/7828043/AJBH+besz%C3%A1mol%C3%B3+2022.pdf/0c966d1b-378d-901c-6faa-63eca7cea564?version=1.2&t=1704189862674>, p. 30.

¹⁰⁵ The 2023 annual report of the Commissioner for Fundamental Rights and his Deputies, available at:

<https://www.parlament.hu/irom42/07848/07848.pdf>, p. 28.

¹⁰⁶ "If the investigation does not reveal any maladministration related to fundamental rights or does not concern a matter that is relevant from the point of view of fundamental rights, the Commissioner for Fundamental Rights may reject the police complaint without preparing a report."

¹⁰⁷ Anyone may apply to the Commissioner for Fundamental Rights if they consider that "an act or omission by a public authority violates or threatens to violate a fundamental right of the person making the application (together referred to as a "maladministration related to fundamental rights")".

violates a fundamental right: thus, according to the Police Act, the mere risk of a violation of fundamental rights cannot lead to a conclusion that the complaint is well-founded.

Lack of a procedural time limit: The IPCB's procedural time limits were set by law: the Board had 90 days to investigate and decide on complaints. In contrast, the Ombudsperson's procedure has no time limit. The lack of a time limit is concerning for several reasons. It can cause delays in the resolution of complaints, undermine confidence in the actual availability of a legal remedy, and the backlog of complaints may impact the quality of work and make the evidentiary process more difficult or even impossible. According to Article XXIV of the Fundamental Law, everyone has the right to have their cases handled impartially, fairly and within a reasonable time by the authorities. Although the Ombudsperson does not act in the complaints procedure as an authority, his investigation is an essential element of the official handling of the complaint, since according to Article 39/K of the ACFR, the head of the law enforcement body concerned shall decide on the complaint within thirty-five days, taking into account the Ombudsperson's report, which shall start on the day following the receipt of the Ombudsperson's report. The delay in the Ombudsperson's inquiry therefore also results in a significant delay in the administration of public affairs and thus in a breach of the requirement of fundamental rights.

III.4. Organizational assessment of the change

In principle, there could be no objection to the Ombudsperson's role in the fundamental rights investigation of police measures, since the Ombudsperson is theoretically independent of other state bodies, cannot be instructed in his activities, answers only to the Parliament that elected him, and, as it has been shown above, the changes to the procedural rules at the time of reforming the system of police complaints were not all negative (and those that are problematic could be resolved by legislative amendments relatively simply). The integration of the IPCB is more problematic from an organisational sociological point of view and because of the political context in Hungary.

In relation to the latter, it is important to note that when the legislative decision on the abolition of the IPCB and the integration of its functions into the mandate of the Ombudsperson was taken in December 2019, international doubts had already been expressed about the independence of the Commissioner for Fundamental Rights as the Hungarian "national human rights institution". National human rights institutions are categorised by the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions (GANHRI) and classified as "A" or "B" depending on their compliance with the UN resolution known as the Paris Principles, which sets out requirements for the independence of national human rights institutions. A "B" status means that the institution is not sufficiently independent, and it has the consequence that the given human rights institution cannot vote or hold office in GANHRI, can only attend the alliance's meetings as an observer, and cannot actively participate in the work of the UN Human Rights Council. In October 2019, the GANHRI postponed its review of the Hungarian Ombudsperson's status as a national human rights institution because, after reviewing the previous Ombudsperson's activities, it considered that the Ombudsperson had not made sufficient efforts and had not spoken out on certain fundamental rights issues, including violations of the rights of certain vulnerable minorities and attacks on independent NGOs.¹⁰⁸ The fact that the Hungarian legislature decided to abolish the IPCB despite this pending situation, and to transfer the important task of monitoring the fundamental rights performance of the police to the Ombudsperson, whose assessment was uncertain at the time, is in itself a cause for

¹⁰⁸ <https://ganhri.org/wp-content/uploads/2021/03/SCA-Report-October-2019-English.pdf>

concern, however, the fact that the accreditation process ended with the downgrading of the Ombudsperson in March 2022¹⁰⁹ – because the Ombudsperson's three years of activity had not convinced his colleagues in the GANHRI that he was sufficiently independent of the government – makes the problems raised by the move particularly acute.

Another organizational sociological problem caused by the reorganization (which is independent of the political context), is that within an organization whose sole task is to guard the lawful functioning of the police, complaints about police violations are inevitably treated with more prominence than in an organization that has a number of other tasks, from the protection of national minorities to children's rights and environmental protection. The issue of the fundamental rights control of the police is much more easily disregarded by the Ombudsperson – simply because of the number of issues that the Ombudsperson must deal with. Departments with different thematic areas of focus within a large organisation have to compete for resources and attention, which understandably limits their ability to perform their tasks with maximum efficiency. This is not a Hungarian peculiarity. According to a study that conducted a comparative analysis of bodies responsible for enforcing equal treatment in Europe, "The management of different mandates within multi-mandate bodies is challenging [...]. There are tensions between the traditions associated with each mandate and the strategies pursued and priorities established by the body as a result. There can be competition for resources between the different mandates."¹¹⁰

A good example for the competition for resources is the fact that there are only two persons in the Ombudsperson's Office of the Ombudsperson dealing with press communication,¹¹¹ and these two persons should ensure adequate visibility for all the Ombudsperson's activities, including investigations carried out as the successor to the IPCB and the Equal Treatment Authority, visits under the national preventive mechanism and the activities of the Ombudsperson and his deputies under the traditional Ombudsperson mandate. Obviously, with such resources, this wide-ranging task cannot be carried out with sufficient effectiveness, although publicity has a key role in the Ombudsperson's work. For instance, the explanatory memorandum to the Act establishing the IPCB specifically prescribed the publication of the Board's resolutions on the internet "in order to facilitate the public scrutiny" of police work.

In this sense, the abolition of the "single-focus" IPCB and its incorporation into the Ombudsperson structure clearly sent the message that for the government, tackling police abuse was moved significantly further down in the list of priorities.

The lack of adequate resources and organisational attention to police complaints can be measured by a number of factors, ranging from the number of staff dealing with such issues and the way in which potential clients are informed, to the lack of adequate press coverage, the number of complaints received and the number of cases handled. These are summarised below.

III.5. Assessment of the handling of police complaints by the Office of the Commissioner for Fundamental Rights

¹⁰⁹ <https://www.ohchr.org/sites/default/files/Documents/Countries/NHRI/StatusAccreditationChartNHRIs.pdf>, p. 13.

¹¹⁰ Niall Crowley: Equality bodies making a difference, European Commission, Brussels, 2018, p. 66.

¹¹¹ Response No AJB-812-2/2023 of the Office of the Commissioner for Fundamental Rights to the public interest data request of the Hättér Society.

III.5.1. Organisational position and staffing of the Directorate General for Law Enforcement

According to the website of the Office of the Commissioner for Fundamental Rights,¹¹² special emphasis is given to the handling of complaints against police measures, for which – due to the significance of these complaints – a separate department has been created within the Office. This new department, the Directorate General for Law Enforcement, has taken over the tasks and powers of the IPCB. The Directorate General is a separate unit, consisting of two departments, headed by the Director General for Law Enforcement. The Department for Law Enforcement No. I investigates complaints under Article 92 of the Police Act, while the Department of Law Enforcement No. II investigates those complaints relating to law enforcement, criminal procedures, and the enforcement of sentences that had fallen within the Ombudsperson's remit before the merger with the IPCB.

The tasks of the IPCB that were performed by 16 persons, including the five members of the Board (who also participated in the examination of the complaints and the formulation of the opinions) and eight additional employees engaged in case work. These tasks are currently covered by eight persons (five of them also holding managerial positions and three case officers), i.e. the number of persons investigating complaints under Article 92 of the Police Act has decreased radically (especially if one takes into account the fact that all the publicly available decisions which have on them the name of the case officer to whom the case was assigned, indicate the same single case officer as the person who has worked on the case). This decrease in human resources has inevitable negative consequences regarding a number of issues, including (i) the length of the proceedings; (ii) the depth of information provided to the decision makers and the public; and (iii) the use of the Ombudsperson's special investigative and other statutory powers. These are outlined and assessed below.

III.5.2. The length of the proceedings

Although the HHC expressly asked the Ombudsperson's Office about the average length of the complaints procedures (as well as about the longest and shortest durations), the Office has failed to provide this information. However, all the interviewed lawyers and NGO employees mentioned the unreasonable lengths of the proceedings as a severe problem to be remedied, one interviewee giving account of a procedure that has been going on for close to four years. One interviewee also mentioned that it made more sense to file the complaint with the concerned police unit in the framework of an administrative procedure, because there are strict procedural deadlines for such proceedings, and remedies are also available if those deadlines are not complied with, whereas when the Ombudsperson fails to conduct the investigation in a timely manner, there is no way to redress the problem.

If one analyses the reports available on the Ombudsperson's website, it can be seen that the average time that passed between the filing of the complaint and the uploading of the Ombudsperson's related report to the website in the period 2020-2023 was 594 days, the longest such period was 959 days, and even the shortest was 296 days, i.e. over 9 months (although it must be added that there were long periods where no cases were uploaded onto the Ombudsperson's website at all – see below).

¹¹² <https://www.ajbh.hu/rendeszeti-foigazgatosag>.

In this context, the unfavourable legislative change of eliminating the procedural deadline that existed for the IPCB but is not in place regarding the Ombudsperson obviously exacerbates the problem of the protraction of the proceedings. This observation is substantiated by the fact that the Ombudsperson's response No. AJB-2690-3/2024 to HHC's public interest information request makes an express reference to the fact that "no [procedural] deadline is set" for Ombudsperson's examination into police complaints filed under Article 92 of the Police Act.

III.5.3. Information provided to the public and decision makers

The provision of information to the public and the decision makers is a particularly important task and tool for a rights protection institution. Our examination suggests that the lack of resources caused by the elimination of the IPCB and the integration of its mandate into the Ombudsperson's Office has had a tangibly negative impact on this aspect of the handling of police complaints as well.

Information provided to prospective complainants

The information leaflet drafted by the IPCB to prospective complainants (which was also put on display on posters in police premises and municipalities) provided guidance regarding procedural options, deadlines and remedial routes in accessible language and a user-friendly manner. As opposed to this, the information provided on the subpage of the Directorate General for Law Enforcement¹¹³ within the Ombudsperson's website is far from accessible, it is a poorly structured running text containing multiple references to laws and only few practical examples. For instance, it says that in the course of investigating police complaints, "the Commissioner for Fundamental Rights has the same investigative possibilities that are in place in the general procedure of the Ombudsperson [ACFR, Chapters III. and III/B.]". A potential complainant (often with low levels of education) would therefore have to find the Act on the Ombudsperson and read through the highly legalistic texts of Chapters III and III/B. of that law to be able to know how their case will be examined by the Ombudsperson, whereas the information note could simply give a structured and accessible list of the actions the Ombudsperson may take when investigating a complaint.

The absence of an accessible information note is all the more difficult to understand, because the information note describing the general mandate of the Ombudsperson is formulated in a much more accessible manner, structured into easy to read bullet-pointed lists and without legal references. What is more, the note contains a link pointing to a special "easy-to-understand" information note, which presents most of the guidance in an even more accessible form.¹¹⁴ Similarly, an accessible information note is in place with regard to the Ombudsperson's disability mandate.¹¹⁵ We are of the view that a similar information note should be provided regarding the police complaints procedure as well.

¹¹³ <https://www.ajbh.hu/en/rendeszeti-foigazgatosag-tajekoztatasa>

¹¹⁴ <https://www.ajbh.hu/en/panasz-benyujtasa>

¹¹⁵

<https://www.ajbh.hu/documents/10180/125038/Fogyat%C3%A9koss%C3%A1g%C3%BCgy+Jogtudatos%C3%ADt%C3%B3+2022.pdf>

Under the menu headings “Projektfüzetek”¹¹⁶ (project leaflets) and “Egyéb kiadványok”¹¹⁷ (other publications), there is no information leaflet or guide that would expressly cover complaints filed regarding police measures.

Annual reports

The IPCB’s website has been made unavailable after the merger, but its annual reports and opinions were uploaded to the Ombudsperson’s website¹¹⁸ over a year after the Ombudsperson had taken over the mandate.

As mentioned above, the annual reports of the IPCB were highly detailed (with an average length of 90 pages) and applied a very systematic approach to the human rights performance of law enforcement bodies. By way of example, the Board’s annual report on the year 2018¹¹⁹ describes in over 40 pages the general lessons learnt from the IPCB’s cases grouped by the type of concerned police measure, and contains 25 pages with reasoned recommendations regarding 23 separate legislative proposals aimed at improving the scrutiny of police actions with implications on fundamental rights. The report is followed by a highly detailed statistical annex, providing information on, among others, the demographic characteristics of the complainants; the distribution of the complaints according to the date of submission, the place of the impugned measure and the concerned police unit; as well as the data regarding the types of police measures complained about; the concerned fundamental rights; and the outcome of the cases. These statistics allow the reader to identify trends in police activities and recurring problems that may require interventions from the leadership of the police, legislators and/or rights protection institutions.

As opposed to this, the annual report of the Ombudsperson deals with police complaints in a much more summary manner. In the period between 2020 and 2022, the average length of the annual reports’ chapter regarding the activities of the Directorate General for Law Enforcement (which contains other areas as well, such as individual complaints concerning the penitentiary system) was 14 pages, in the most recent, 2023 annual report, the length of the chapter was 21 pages.¹²⁰ While the length in itself obviously does not determine the quality of the report, the difference is rather telling, and if one looks at the contents, it can also be concluded that the Ombudsperson’s report lacks a systematic approach. For example, in the 2023 report, the summaries of the cases are provided in a chronological order, and not according to the type of police measure concerned. Accordingly, there are no more general conclusions regarding the recurring issues around certain types of measures, nor are there legislative proposals in the report. The report also does not provide detailed statistics that would enable the reader to identify trends and recurring issues.

From the Ombudsperson’s response to the HHC’s request for public interest information, it has also become clear that at present the Ombudsperson’s Office is not capable of producing statistics with the

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https://www.ajbh.hu/projektfuzetek?p_p_id=1_WAR_ajbhdocumentlibrarydisplayportlet&p_p_lifecycle=0&_1_WAR_ajbhdocumentlibrarydisplayportlet_currentFolderId=124832&_1_WAR_ajbhdocumentlibrarydisplayportlet_folderOrderByCol=NAME&_1_WAR_ajbhdocumentlibrarydisplayportlet_folderOrderByType=asc&_1_WAR_ajbhdocumentlibrarydisplayportlet_fileOrderByCol=NAME&_1_WAR_ajbhdocumentlibrarydisplayportlet_fileOrderByType=asc

¹¹⁷ <https://www.ajbh.hu/egyeb-kiadvanyok>

¹¹⁸ <https://www.ajbh.hu/en/rendeszeti-foigazgatosag-beszamolok>

¹¹⁹ Available at: <https://www.ajbh.hu/documents/10180/3905702/FRP+tajekoztato+es+statisztika+2018.pdf/640cc0cc-8d5f-34df-711e-2abe675c9ed2?version=1.0&t=1617901904190>

¹²⁰ See: [07848.pdf \(parlament.hu\)](https://www.parlament.hu/07848.pdf).

degree of detail provided by the IPCB before its abolishment. For the sake of comparability, in its request, the HHC asked the Ombudsperson to provide data regarding the distribution of the outcome of the cases in the same format as the IPCB did, and also asked for the statistics regarding the distribution of complaints according to the concerned fundamental right and the type of police measure. The Ombudsperson's Office response to this was that "the law does not oblige the Ombudsperson to collect data in accordance with the statistical methodology of the Complaints Board", and that "the case processing system enables us to acquire indicators and aggregated statistical data to the extent that is necessary for drafting the annual report. The processing of specific features and case indicators beyond the criteria prescribed by the laws would require the enhancement of the existing functions, which is dependent on the availability of budgetary resources."¹²¹

In practical terms, this means that the Ombudsperson's Office at present lacks the resources to establish a case processing system that would allow it to create statistics from which the most important trends regarding the police's human rights performance could be identified and monitored, reducing the ability of the police leadership, legislators and the Ombudsperson himself to determine necessary points of intervention. This is a direct – and absolutely foreseeable – consequence of integrating a specific topic into a multi-mandate body and the competition for resources that comes with it (see above).

A case processing system that does not allow for grouping cases according to certain specific features (such as the type of police measure complained of) may also make it more difficult for the staff of the Ombudsperson to find past cases with similar problems, which can have a negative impact regarding the consistency of the jurisprudence.

Finally, it must be mentioned that while in spite of its above mentioned shortcomings it is still the annual report of the Ombudsperson that gives the most comprehensive picture of the trends in police complaints, the enormous delay in the publication of the annual reports reduces the informative value of the report. By way of example, while the Ombudsperson did submit his report regarding the year 2023 to the Parliament, and it is available on the Parliament's website,¹²² at the time of writing this report (i.e. October 2024) it is still not accessible from the Ombudsperson's own home page under the 'annual reports' heading, although most people, including prospective complainants would obviously look for the report there. This significant delay is due to the fact that the Parliament still has not approved of the report (the 2022 annual report was approved by the Parliament on 14 December 2023 only¹²³), however, some version of the information in the annual report (e.g. an overview of the trends in police complaints, and also in other human rights areas of specific interest) could still be published on the Ombudsperson's website during the year to make sure that the information is not completely outdated by the time it can be made public in the form of the annual report.

Information about individual cases

The individual reports of the Directorate General for Law Enforcement are available on the Ombudsperson's website, but they are not searchable on the basis of the type of police measure or the concerned fundamental right (or on the basis of any other criterion), which makes it extremely difficult for prospective complainants, lawyer or human rights activists to use the data base for

¹²¹ The Ombudsperson's Reply No. AJB-2690-3/2024 dated 16 August 2024, p. 1.

¹²² See: <https://www.parlament.hu/irom42/07848/07848.pdf>.

¹²³ See: <https://magyarkozlony.hu/dokumentumok/e7f59a2f1d69403f98627395c1ffd048976c5d75/megtekintes>.

preparing cases. At present, there are over 300 entries, all of these must be opened and read if one wishes to see whether there has been a case similar to theirs and what approach the Ombudsperson has taken with regard to that specific issue.

Furthermore, the cases are not uploaded on an ongoing basis, but in larger blocks. The date and time of uploading is logged on the website, and based on this it can be seen that there were a number of long periods of inactivity that passed without uploading new material. For instance, the decisions delivered in police complaints cases were not uploaded at all between February 2022 and January 2024. This also prevents potential complainants and their representatives from getting an up to date picture about the jurisprudence of the Ombudsperson regarding police complaints.

Press communications

An analysis of the Ombudsperson's press activities seems to suggest that police complaints are not a priority of the Office as a whole, which once again substantiates the point regarding the competition for resources within multi-mandate bodies, and why the reform of the complaints system was in a way a "downgrading" of the issue.

Between 2020 and 2023, the Ombudsperson published 36 press releases through the National Press Service of the Hungarian News Agency, out of which only one mentioned the issue of police complaints (listing it among the powers of Ombudsperson).¹²⁴

On the Ombudsperson's website, under the heading "*Sajtószoba*" (press room), 136 press releases ("*Közlemények*") were published between 2020 and 2023,¹²⁵ out of which only one¹²⁶ concerned police complaints (filed by a Roma complainant regarding police measures that were taken against him in the framework of a general police check). Under the subheading of "*Hírek*" (news),¹²⁷ out of 433 news items, 25 make a reference to police complaints, but only one¹²⁸ (the news item reporting about the abolishment of the IPCB) deals with the issue in more detail, while the others only mention the subject in passing.

III.5.4. The use of special powers

As it was explained above, the transferring the IPCB's mandate to the Ombudsperson resulted in some improvements of the procedural and investigative powers of the body adjudicating police complaints – partly because the Ombudsperson had had powers that the IPCB was not provided with (orally hearing police officers), and partly because the amending law vested the Ombudsperson with powers that the IPCB had been asking for years in vain (the right to intervene in the judicial review of the decisions handed down by the National Chief of Police regarding the complaints).

¹²⁴ http://os.mti.hu/hirek/169009/az_alapveto_jogok_biztosanak_hivatala_kozlemenye-3_resz

¹²⁵ <https://www.ajbh.hu/en/hirek-esemenyek>.

¹²⁶ See: <https://www.ajbh.hu/en/-/fokozott-ellenorzes-kereteben-fogantositott-rendori-intezkedesekkel-osszefuggesben-foglalt-allast-az-Ombudsperson-es-a-nemzetisegi-Ombudspersonhelyettes>

¹²⁷ <https://www.ajbh.hu/en/hirek-esemenyek>

¹²⁸ See: https://www.ajbh.hu/en/-/februar-27-en-megszunik-a-fuggetlen-rendeszeti-panasztestulet-feladatait-az-alapveto-jogok-biztosa-veszi-at?p_i_back_url=%2Fen%2Fkeres%25C3%25A9s%3Fq%3Dpanasz%26category%3D11374%26modifiedFrom%3D2020-01-01%26modifiedTo%3D2023-12-31

However, these extra powers are only useful if they are actually applied, and the Ombudsperson's response to HHC's freedom of information request reveals that this is not the case. Since it took over the IPCB's mandate in 2020, the Ombudsperson's Office has never orally questioned any of the police officers involved in the measure complained of, nor have they intervened in any court case regarding the judicial review of the National Police Chief's decision.

The Ombudsperson's Office claims that oral hearings have not been necessary, as the Directorate General for Law Enforcement "primarily asks that the observations and stance of the concerned persons to be described and sent in writing", and "the [police] body approached [this way] usually provides this information in the form of a detailed report".¹²⁹ This means that the Ombudsperson routinely entrusts the police unit concerned with the complain with gathering the necessary information from its personnel against whom the complaint is submitted, which obviously allows the concerned officers to consult with each other, align their version of the events and put it down in writing, making it very difficult to establish the facts of the case, and impossible to resolve any possible contradictions between the versions of the complainant and the officer concerned with the complaint. This is why the IPCB repeatedly requested in its annual report that it would be provided with the possibility of hearing the police officers, and this is why some of the interviewed lawyers and NGO employees prefer the administrative procedure launched with the concerned police unit, where the possibility of an oral hearing is given. The Ombudsperson Office's reluctance to apply this very important procedural possibility is probably related to the lack of sufficient resources, as organising and holding hearings are obviously much more resource intensive than asking for written explanations and then deciding on the basis of the case documents.

As far as the power to intervene in court cases is concerned, the Ombudsperson's Office gave an explanation in conditional mode, claiming that the reason for the failure to ever apply this power "*may be* [emphasis added] that the addressed bodies usually comply with the majority of the Ombudsperson's recommendations, initiatives and proposals, and terminate or take measures to terminate the fundamental law breach revealed by the Ombudsperson's report".¹³⁰ This explanation is problematic, because it seems to refer to the general mandate of the Ombudsperson, with regard to which no authorisation to intervene exists. This power is only provided to the Ombudsperson when the National Chief of Police rejects a police complaint after the Ombudsperson's examination, and the complainant decides to challenge the Police Chief's formal administrative decision in court. Therefore, the fact that no intervention has ever been made may only be explained by the fact that either no such judicial remedy has been asked by any of the complainants in any of the cases since 2020 (regarding which the Ombudsperson's Office has not provided the HHC with any numbers of statistics) or in those cases where judicial review was actually requested, the Ombudsperson did not find it necessary or justified to make an intervention (e.g. because the case was not strong enough, it did not raise a significant question, or the Ombudsperson's Office did not have the necessary human resources to do so).

III.6. Case processing data

The main figures regarding the Directorate General's caseload coming from police complaints filed under Article 92 of the Police Act are shown in the table below, which, for the sake of some comparability, also contains the numbers for the last two years of the IPCB's operation.

¹²⁹ Response no. AJB-2690-3/2024 of the Ombudsperson's Office to the HHC's freedom of information request, p. 3.

¹³⁰ Response no. AJB-2690-3/2024 of the Ombudsperson's Office to the HHC's freedom of information request, p. 4.

Table 6: Case processing statistics of the IPCB (last two years) and the OCFR

Year	Number of complaints	Number of decisions on the merit of the case	Refusals based on procedural reasons	Decisions concluding that a violation has taken place	Referred to the National Chief of Police or concerned body (severe violation)	Accepted by the National Chief of Police (fully or partly)	Rejected by the National Chief of Police
2018 (IPCB)	295	166 (56%)	129 (44%)	44 (15%)	35 (12%)	N/A**	N/A**
2019 (IPCB)	307	199 (65%)	108 (35%)	38 (12%)	28 (9%)	N/A**	N/A**
2020	246	19 (8%)	42 (17%)	7 (3%)	7 (3%)	5	2
2021	163	21 (13%)	60 (37%)	8 (5%)	8 (5%)	6	2
2022	124	32 (26%)*	48 (39%)	8 (6%)	8 (6%)	4***	1***
2023	130	33 (25%)*	29 (22%)	15 (12%)	15 (12%)	13	2

* The number includes the cases where the complaint was refused for not concerning a fundamental right or being manifestly ill-founded (which are reasons that pertain to the merit of the case).

** Due to the fact that cases referred to the National Chief of Police around the end of the year are often adjudicated during the next year, it is not possible to make a clear connection between the referred cases and their adjudication on an annual basis.

*** No data regarding the follow up of some of the cases referred to the National Chief of Police, as the Ombudsman's Office did not provide this information despite a specific question in the freedom of information request, and the data cannot be accurately derived from the annual reports either.

While a detailed analysis of the cases and how they are decided is beyond the framework of the present study, the data allow for some conclusions to be drawn. First and foremost, it must be pointed out that the reduced visibility of the Ombudsperson's Office as a police complaints mechanism (described in detail above) seems to have had a tangible impact on the number of complaints it receives. In the last years of its existence, the IPCB was less active in its communications than at the beginning of its operation and this showed in the number of complaints filed with it (e.g. in 2010, it received over 500 complaints¹³¹). However, even before its abolition, around 300 complaints were submitted to the Board annually. This number dropped to less than half after the merger. In 2020, the Ombudsperson received 246 complaints, but this number also contains those that had been submitted to the IPCB before it was merged into the Ombudsperson's Office. In 2021, the number of complaints was significantly lower, and it seems to stabilise around 120-130, which is significantly less than the worst years of the IPCB. Taking into account the lack of the Ombudsperson's active communication on the issue of police complaints (which may be due to the insufficient human resources and the fact that there is no press officer designated to work solely for the Directorate General for Law Enforcement), this shall come as no surprise. While it may be raised that the drop in the number of complaints may be due to a sudden improvement of the human rights performance of the police, the temporal coincidence between the merger and the decrease suggests otherwise, as does the experience of rights protection NGOs, including the HHC.

Similarly, it is most probably due to shortages in human resources that only a small portion of the incoming complaints seems to be adjudicated in the year of their arrival. In 2022, 64% of the complaints seem to have been dealt with in the same year, whereas in 2023, only 47%. In the long run, this may

¹³¹ https://www.ajbh.hu/documents/10180/3906279/2010_tajekoztato.pdf/7dacbcb9-69f4-ac10-ffd0-be710f9d874d?version=1.0&t=1617902929985

create a backlog that is very difficult to handle (and may be the reason why one of the interviewed lawyers gave account of a case that has not been decided for over four years), which in turn may undermine the potential complainants' trust in the Ombudsperson as a trustworthy complaints mechanism and further reduce the number of complaints filed with the Office.

III.7. Overall assessment and recommendations

Several actors, including the HHC warned about the risks of abolishing the IPCB and transferring its tasks and powers to the multi-mandate Ombudsperson when the plans to do so became public. We warned that this was a 'downgrading' of the human rights monitoring of police work and may result in a situation whereby complaints regarding fundamental rights violation committed by the police get lost in the system.

Five years later, it seems that the concerns were well-grounded. The Ombudsperson's Office does not provide the issue with sufficient public visibility, its data collection efforts are very limited, its additional powers are not applied at all, the proceedings have become much longer, and the number of complaints has significantly dropped – factors that all contribute to a weaker than before system of protection against police abuses.

Remedying these problems would require measures at the levels of both legislation and practice. The most important legislative step would be to set a strict procedural deadline for the handling of police complaints submitted under Article 92 of the Police Act (similar to how discrimination complaints are processed). At the level of the practice, it would be important to review the investigation practices and the communication efforts of the Directorate General for Law Enforcement with a view of enhancing the publicity around police complaints as well as the use of the special powers the Ombudsperson was vested with in this area. Depending on the results of the review, further measures might become necessary, including the provision of additional human resources for both communication and case work.