



The last piece of the puzzle? Assessing the performance of Hungary's national human rights institution

Research report summary

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Executive summary

As part of undermining the system of checks and balances, the Hungarian governing majority has weakened the independence of institutions vested with the task of protecting fundamental rights, such as the Commissioner for Fundamental Rights (CFR), who also fulfils the role of Hungary's national human rights institution (NHRI). This resulted in the relevant international body concluding that the way the CFR acted compromised its compliance with the relevant UN principles. In parallel, more and more specialised human rights protection institutions were merged into the Office of the Commissioner for Fundamental Rights (OCFR), such as Hungary's equality body and an independent body vested with examining human rights-related complaints against law enforcement, and the CFR remained the national preventive mechanism (NPM) under the OPCAT as well. This level of concentration of mandates is highly problematic due to the lack of the functional independence of the CFR alone, but recent research carried out by Háttér Society and the Hungarian Helsinki Committee also demonstrates that it has resulted in weakened human rights protection in affected areas, namely in deficient monitoring of places of detention, a diminished level of protection against discrimination, and weakened protection against police abuse. The deficiencies identified by the research clearly show that significant institutional, procedural and practical changes would be necessary to enhance or at least restore the previous level of human rights protection.

1. Hungary's NHRI: lack of independence and problematic mergers

Since 2010, the Hungarian governing majority has systematically and consciously undermined 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. This included the taking over of state institutions vested with the task of protecting fundamental rights, such as the institution of the Ombudsperson, i.e. the CFR, who also fulfils the role of Hungary's NHRI.

NHRIs are subject to regular review regarding their independence by the Sub-Committee on Accreditation (SCA) of GANHRI, which assesses whether a particular NHRI meets the requirements of the so-called Paris Principles, which set out the internationally agreed minimum standards that NHRIs must meet to be considered credible. In 2022, following a review carried out by the SCA, the CFR was downgraded from an A to a B status since its inactivity in a number of politically sensitive areas

evidenced a lack of independence. In particular, the SCA found that the CFR has not substantiated that it is “fulfilling its mandate to effectively promote and protect all human rights”, that it is “effectively carrying out its mandate in relation to vulnerable groups such as ethnic minorities, LGBTQI people, human rights defenders, refugees and migrants, or related to important human rights issues such as media pluralism, civic space and judicial independence. [...] Accordingly, the SCA is of the view that the CFR is acting in a way that seriously compromises its compliance with the Paris Principles.” In addition, concerns were raised that the CFR’s selection and appointment process is not sufficiently broad and transparent. However, the rules on selection and appointment have not been amended to date, with a new CFR due to be appointed by the Parliament in 2025.

In parallel, there has been a trend to merge all specialised human rights protection institutions into the OCFR: as of 2021, Hungary’s equality body under EU law, the Equal Treatment Authority, was merged into the OCFR; the same happened to the Independent Police Complaints Board in 2020; and in 2022, the CFR was designated as Hungary’s independent mechanism established under the UN Convention on the Rights of Persons with Disabilities. Moreover, the CFR was designated as Hungary’s national preventive mechanism under the OPCAT as of 2015.

This level of concentration of mandates is highly problematic due to the lack of functional independence of the CFR alone. In addition, as experts point out, the management of different mandates within multi-mandate bodies is always challenging, and can result in a competition for resources. Furthermore, recent research carried out by Háttér Society and the Hungarian Helsinki Committee indeed demonstrates how the mergers resulted in weakened human rights protection in the specific Hungarian context in three affected areas as described below.

2. Deficient monitoring of places of detention

As of January 2015, the CFR carries out the duties of the national preventive mechanism (NPM) under the OPCAT in Hungary. NPMs under the OPCAT shall contribute to improving the treatment and the conditions of persons deprived of their liberty and prevent torture and ill-treatment by regular visits to places of detention, by making recommendations to the authorities, and by proposing or commenting on legislation. However, examining the Hungarian NPM’s activities under the current CFR (who took office in September 2019) showed that its ability to carry out this task effectively is hampered by a variety of factors.

The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) raised concerns regarding the NPM’s funding and resources already in 2017, and warned that the NPM’s budget was not sufficient to enable it to carry out its tasks properly. However, the budgetary situation has not changed significantly since then, and the current capacities remain insufficient for the NPM to carry out its statutory tasks. As a positive step, a Civil Consultative Body was set up in 2014 to assist the NPM, but after the current CFR took office in 2019, members of the Civil Consultative Body started to experience operational difficulties, and opportunities for real dialogue and professional discussion diminished. The OCFR often fails to respond to complaints submitted by civil society organisations related to the NPM’s mandate in time or at all.

The research showed that even though the NPM carried out a significant number of visits e.g. to penitentiary institutions and police facilities, even during the pandemic, the visits and the reports about them suffered from deficiencies. Visits were very short (e.g. two penitentiaries holding 1,400 and 600 inmates respectively were visited by the NPM within one day), it occurred during pre-

announced visits to police facilities that no detainees to interview were present at the facility, and many reports do not indicate how many detainees were interviewed during the visit or under what circumstances. Reports are published with a significant delay. Some reports include the views of the detainees, but there are also reports in which the detainees' perspective is featured only to a limited extent, and the content is limited to a description of the rules without delving deeper into their practical implementation, or even focuses entirely on the law enforcement aspects. While some of the reports contain well-thought-out, multi-agency recommendations, in many reports the recommendations are very general, and are not addressed to national-level authorities in the case of systemic problems.

The public, as well as persons deprived of their liberty and their relatives, form an image of the work of the NPM based on its public communication as well, and, therefore, the research also analysed the materials about the visits appearing on the OCFR's website and social media channels. The analysis showed that these predominantly featured the NPM and its staff, and consultation with the leadership of the institutions visited: e.g. 93% of the press materials on the OCFR's website in the period covered did not feature detainees, which can convey the wrong message to the public. Furthermore, publicity is the NPM's strongest weapon: public communication can and should be used to put pressure on places of detention with a view to improving the situation of persons deprived of their liberty, and not using it for this purpose means giving up on the NPM's main instrument for achieving change.

3. Diminished level of protection against discrimination

Hungary's equality body under EU law, the Equal Treatment Authority (ETAAuth) was set up as an independent body in 2005. Throughout its operation, it followed a very autonomous, principled approach to discrimination and harassment, with its case-law related to sexual orientation and gender identity being particularly remarkable, and took a strong stance in politically sensitive cases too. In late 2020, the governing majority abolished the ETAAuth amidst opposition and criticism by the Venice Commission and civil society, without providing real reasons for it, without consultation with the public, and without notifying the ETAAuth itself beforehand, reinforcing the views that the merger into the OCFR was motivated by the ETAAuth's activities e.g. with respect to the rights of LGBTQI and Roma persons being at odds with the political orientation of the Government.

The functions of ETAAuth were taken over within the OCFR by a new unit, the Equal Treatment Directorate General (ETD), which is now vested with the tasks of investigating cases of discrimination, initiating related lawsuits, commenting on draft legislation, providing information to victims, etc. In theory, a separate directorate could have guaranteed a high level of autonomy within the OCFR with a publicly visible director appointed by the CFR to oversee the work of the ETD, but no director or deputy director has been appointed to date. As the Venice Commission warned, "[w]ithout [a director], it is hard to imagine the promotion and visibility of equality mandate", and the lack of a director results that the ETD currently has no organisational autonomy: it is under the direct control of the OCFR's Secretary-General, and, as put by a former ETAAuth staff member, "it is a department like any other".

Most concerningly, the integration resulted in a drastic drop in the number of complaints: in 2020, the ETAAuth received 994 complaints, which dropped in 2021–2023 to a bit more than one third of the earlier case number, i.e. to 351, 355, and 368 respectively. While a structural change might temporarily result in a decrease of cases, the stagnation suggests that the decrease is likely to remain long-lasting unless the OCFR takes steps to address the issue. Stakeholders interviewed were of the view that

reasons for the decrease included the dismantling of the nationwide network of equal treatment officers who assisted complainants, the lack of active communication, and unclear information on the OCFR's webpage. Awareness-raising activities have decreased, guidance materials published by the ETAAuth earlier are no longer available online, and from among the over 300 news articles published since the merger on the OCFR's website, not a single one deals with the activities of the ETD or with the topic of equal treatment. As noted by the European Commission against Racism and Intolerance (ECRI), the "sudden institutional change has left victims in confusion as to where, when and how they should come forward". Cooperation and consultation with civil society have decreased as well.

It is an issue that some complaints are not investigated under the Equal Treatment Act but under the much softer CFR procedure, which, in contrast to the former, has no clear deadlines, offers no possibility for imposing fines and other sanctions, and offers no possibility to seek judicial review. As opposed to the practice of the ETAAuth, the ETD does not hold hearings.

Case summaries are not published in a structured and filterable way as the ETAAuth used to do, which makes the work of the ETD less transparent, almost completely prevents a thorough analysis of its operation, and indirectly creates false impressions about the prevalence of various types of discrimination in the Hungarian society. Finally, the hierarchisation of protected characteristics can be observed in all aspects of the work of the ETD, with sexual orientation, gender identity, race/ethnicity, and political opinion being sidelined.

These findings show that the absorption of ETAAuth by the OCFR "downgraded" the issue of equal treatment, and raises serious concerns about the enforcement of the principle of equal treatment in Hungary.

4. Weakened protection against police abuses

The Independent Police Complaints Board (IPCB) was established in 2007 as a body outside the police hierarchy, with its members elected by the Parliament. It was abolished in December 2019, without prior public consultation and without no explanation given in the explanatory memorandum of the respective law, and its functions and powers were transferred to the OCFR.

According to the current system, 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 (i) lodge a complaint with the police body which took the action or may (ii) request that the head of the body concerned (typically the National Chief of Police) adjudicates the complaint after the CFR has examined the case. The CFR's opinion is not binding on the National Chief of Police, but if their decision differs from the CFR's conclusion, the reasons for this must be expressly stated in the decision. If the complaint is rejected, the complainant can request a judicial review of the decision.

The IPCB's merger into the OCFR was accompanied by certain procedural changes, some of which should in principle put complainants in a better position. Firstly, the deadline for lodging complaints with the CFR is 1 year, as compared to the 30 days that was applicable in the case of the IPCB. Secondly, geographical accessibility was enhanced, since victims can lodge complaints against the police in the CFR's six regional offices as well. Thirdly, the CFR has wider powers of investigation than the IPCB could rely on: in addition to the powers that were available to the IPCB, the CFR has the right to hear the police officer or any member of the staff of the authority under investigation when investigating a

complaint, to request written explanations, etc. from them, and to intervene in any proceedings for the judicial review of a police decision (a right the IPCB was asking for years in vain). However, since it took over the IPCB's mandate, the OCFR has never applied these additional powers provided to it. Other procedural changes may undermine the effectiveness of the procedure, such as that the 90-day time limit to investigate and decide on complaints that the IPCB was bound by was abolished.

Within the OCFR, the IPCB's tasks and powers were taken over by a new department, the Directorate General for Law Enforcement, which should cover the respective tasks with half of the personnel the IPCB used to have. The radical decrease in the number of staff members has inevitable negative consequences in a number of ways. All the interviewed lawyers and CSO employees mentioned the unreasonable lengths of the proceedings as a severe problem, one interviewee giving account of a procedure that has been going on for close to four years – this issue can obviously be exacerbated by the elimination of the procedural deadline mentioned above. The information provided on the website to potential complainants is far from accessible, again a step back as compared to the IPCB.

The lack of adequate resources and organisational attention to police complaints also manifests itself in insufficient public visibility: the issue of police complaints is almost never featured in the CFR's press materials. Individual reports on complaints are not published in a filterable format; the CFR's data collection efforts in the area are very limited, especially as compared to the IPCB; and at present, it 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 CFR itself to determine necessary points of intervention. In contrast to the IPCB's annual reports, the CFR's annual reports lack a systematic approach as regard police complaints, and include no general conclusions regarding recurring issues, detailed statistics, or legislative proposals in this area. The reduced visibility of the OCFR as a police complaints mechanism seems to have had a tangible impact on the number of complaints it receives: numbers dropped to less than half after the merger, and seem to stabilise on a level which is significantly lower than the number of complaints in the "worst" years of the IPCB.

Several actors warned about the risks of abolishing the IPCB and transferring its tasks and powers to the multi-mandate CFR when the plans to do so became public. Five years later, it seems that the concerns were well-grounded, with the above variety of factors all contributing to a weaker than before system of protection against police abuses.

5. Recommendations to the Hungarian government and the CFR

General recommendation:

- Establish, ahead of the 2025 process, a transparent selection and appointment process for the CFR that promotes merit-based selection and ensures pluralism, in line with the Paris Principles and GANHRI's recommendations.

Recommendations related to the CFR's role as national preventive mechanism:

- Increase the capacity of the NPM, for example by involving civil society and additional professionals in its work to a greater degree, which is already allowed by the law.
- During the visits, make concrete recommendations, signal systemic problems to the detaining authorities, the legislator and other decision-makers, and follow up and share with the public the implementation of the recommendations.

- Feature detainees and the detainees' points of view more strongly both in the reports and in the NPM's communication.
- Make efforts to publish the reports as soon as possible after the visits on the CFR's website in a transparent manner.
- Investigate complaints falling under the NPM's mandate within a reasonable time and inform the parties concerned about the outcome.
- Maintain contact and engage in meaningful dialogue with civil society organisations and other organisations working with detainees.

Recommendations related to the CFR's role as equality body:

- Re-establish the Equal Treatment Authority as an autonomous public body.

In the alternative, as a minimum:

- Appoint a director and a deputy-director for the Equal Treatment Directorate General in a clear and transparent procedure, preferably in an open competition, with the participation of civil society organisations 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 the OCFR's website, including case summaries for the period 2005–2012 which are currently missing.
- Publish updated guidance to victims of discrimination and duty-bearers on the OCFR's website, or at least re-publish such information materials created by the Equal Treatment Authority.
- Hold regular consultations with civil society organisations to gather input from actors directly involved with victims of discrimination.

Recommendations related to the CFR's role as police complaints body:

- Set a strict procedural deadline for the handling of police complaints submitted under Article 92 of the Police Act.
- 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 CFR was vested with in this area.

The full research report is available here:

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