



Hungarian Helsinki Committee

**SHADOW REPORT  
TO THE GANHRI  
SUB-COMMITTEE ON ACCREDITATION**

**ON THE ACTIVITIES AND INDEPENDENCE OF THE  
COMMISSIONER FOR FUNDAMENTAL RIGHTS OF  
HUNGARY  
IN LIGHT OF THE REQUIREMENTS SET FOR NATIONAL  
HUMAN RIGHTS INSTITUTIONS**

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[Amnesty International Hungary](#)  
[Eötvös Károly Institute](#)  
[Háttér Society](#)  
[Hungarian Civil Liberties Union](#)

The Hungarian Helsinki Committee bears sole responsibility for the contents of this shadow report.

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## 1. INTRODUCTION

In October 2019, the Sub-Committee on Accreditation (SCA) of the Global Alliance of National Human Rights Institutions (GANHRI) **deferred the review** of the status of Hungary's Commissioner for Fundamental Rights (hereafter referred to as Commissioner or Ombudsperson) as a national human rights institution (NHRI).<sup>1</sup> The reasons for the deferral included that the Commissioner's **selection process was "not sufficiently broad and transparent"**, and that the Commissioner as a national human rights institution **had "not demonstrate[d] adequate efforts in addressing all human rights issues, nor has it spoken out in a manner that promotes and protects all human rights"**. It can be derived from the SCA's 2019 report that deficiencies and lack of action have been detected in following thematic areas:

- the rights of vulnerable ethnic minorities, including the Roma;
- the right of migrants, refugees and asylum-seekers;
- the situation of human rights defenders, with special regard to Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad; and
- the lack of petitions to the Constitutional Court.

These thematic areas coincide with the areas with regard to which the Hungarian Helsinki Committee (HHC) also raised the inadequacy of the Ombudsperson's performance in its assessment paper issued in September 2019, covering the previous Commissioner's activities in the period between 2014 and September 2019.<sup>2</sup> In our assessment paper, we concluded that the previous Commissioner has repeatedly failed to address (or address adequately) pressing human rights issues that are politically sensitive and high-profile. These included laws, measures and policies that were considered problematic by various international human rights stakeholders, but at the same time were pursued eagerly by and were politically important for the Government.

On 26 September 2019, a new Commissioner for Fundamental Rights, Mr. Ákos Kozma, entered into office. However, he has been elected in the same deficient process as his predecessor. Therefore, we warned in our assessment paper that the inadequate performance of the previous Commissioner, taken together with the deficiencies of the selection process, raises serious doubts as to how independent the new Commissioner will be in practice.

Unfortunately, more than a year into the mandate of the new Commissioner, it has to be concluded that his track record leaves much to be desired as well. As we will demonstrate, the new Commissioner **has also repeatedly failed to address (or address adequately) pressing human rights issues that are politically sensitive and high-profile**. Examples where action would have been needed in the reporting period (that is, between 1 October 2019 and 18 February 2021), but the new Commissioner failed to act, or failed to act adequately, include the following:

- The selection process for the Commissioner remained the same, and the sitting Commissioner has not advocated for any change in this regard;
- The number of petitions submitted by the Commissioner to the Constitutional Court remained very low;
- The Commissioner failed to address almost any of the systemic and structural issues that result in the extensive rights violations of the Roma in Hungary. He also failed to take adequate steps when governing party politicians launched a concerted campaign against a court judgment that awarded compensation payments for school segregation to Roma pupils. Furthermore, the

<sup>1</sup> Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 14–18 October 2019, <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20October%202019%20English.pdf>, pp. 23–26.

<sup>2</sup> Hungarian Helsinki Committee, *Assessment of the activities and independence of the Commissioner for Fundamental Rights of Hungary in light of the requirements set for national human rights institutions*, September 2019, [https://www.helsinki.hu/wp-content/uploads/Assessment\\_NHRI\\_Hungary\\_2014-2019\\_HHC.pdf](https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_2014-2019_HHC.pdf)

Commissioner has not stepped up in any way against a clearly unconstitutional new law that excludes pecuniary compensation for segregation, even when 24 NGOs asked him to do so;

- Despite the recurring requests from the HHC, the new Ombudsperson has failed to take any steps with regard to most of the rights violations affecting asylum-seekers and migrants signalled by the HHC, ranging from violent pushbacks and collective expulsion on the Serbian-Hungarian border to deficiencies in the situation of migrant children;
- The Commissioner has failed to step up against the human rights violations affecting LGBTQI people, ranging from laws banning legal gender recognition and blocking adoptions by LGBTQI people and an unfavourable constitutional amendment to homophobic and transphobic statements by governing party representatives, despite repeated calls to act by NGOs;
- The Commissioner has remained completely silent regarding the situation of human rights defenders in Hungary, and has not used any of its powers to tackle the old and new violations of the rights of civil society organisations, even in the face of Hungary failing to abolish Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad after the Court of Justice of the European Union ruled that it violates EU law.

Thus, **the new Commissioner has failed to demonstrate adequate efforts in addressing the human rights issues highlighted as issues of concern by the SCA's 2019 report, and has failed to speak out in a manner that promotes and protects all human rights. Accordingly, the Commissioner failed to take the actions necessary to address the issues of concern raised by the SCA in 2019.**

Furthermore, beyond the thematic areas highlighted by the SCA's 2019 report and beyond the areas where his predecessor was inactive, the new Commissioner remained silent and has not stepped in the defence of LGBTQI people in any way in the reporting period, even though he would have had ample reason to do so, as detailed in Chapter 6 of the present report. This coincided with the issue of the rights of LGBTQI people clearly entering the sphere of politically sensitive, high-profile topics in Hungary. Therefore, **the HHC respectfully asks the SCA to also consider in the course of its upcoming review the Commissioner's activities with regard to addressing the human rights violations affecting LGBTQI people.**

In order to support the conclusions above, in the present shadow report the HHC provides a detailed account of the activities and independence of Hungary's new Commissioner for Fundamental Rights in the period between October 2019 and February 2021. The report only covers the Commissioner's performance in the areas listed by the SCA's 2019 report as the ones giving rise to concerns (with the addition of LGBTQI people). Thus, the present report cannot be considered an exhaustive account of the Commissioner's performance, but serves solely the purpose of the review of the Commissioner's NHRI status to be conducted by the SCA in June 2021.

## **2. LACK OF REFORMING THE SELECTION PROCESS AND CHANGES IN THE NHRI'S POWERS**

In its 2019 report, the SCA expressed its concerns over the fact that **"the selection process [of the Commissioner] currently enshrined in the existing Law is not sufficiently broad and transparent.** In particular, it does not:

- Require the advertisement of vacancies;
- Establish clear and uniform merit criteria on which candidates are assessed; and
- Specify the process for achieving broad consultation and/or participation in the application, screening, selection and appointment process."

Therefore, the SCA encouraged the Commissioner "to continue to advocate for the formalization and application of a process" that includes certain requirements, such as promoting broad consultation in the application, screening, selection and appointment process, and assessing applicants on the basis of pre-determined, objective and publicly-available criteria.

However, the **Commissioner has not put forward any recommendation to change the selection process for his successors to date.** When asked about this issue by opposition MPs on 4 November 2020, in the course of the parliamentary debate on the report about the activities of his office in 2019, the current Commissioner has not shown any inclination to comply with the recommendations of the SCA in this regard.<sup>3</sup> Instead, he referred to the fact that Act CXI of 2011 on the Commissioner for Fundamental Rights sets out that the Commissioner shall seek advice from the national minority self-governments before making a proposal for the person to be elected as Deputy Commissioner for the Rights of National Minorities.<sup>4</sup> (It shall be noted that the Commissioner seemed to equate national minority self-governments to civil society in his response, which are in our view not the same.) However, he has not indicated any willingness in his response to advocate for a similar process when it comes to the selection of the Commissioner himself/herself, even though this was expressly encouraged by the SCA, along with advocating for "other amendments as may be required to address the issues outlined" in the SCA report.

Furthermore, **no such initiative has been put forward by the Government** or any governing party MP either. There is no indication for such a law in the legislative plan<sup>5</sup> for the Parliament's 2021 spring session either.

This is all the more problematic because **since the adoption of the SCA's report, Act CXI of 2011 on the Commissioner for Fundamental Rights has been amended by the Parliament two times, thus, there would have been ample opportunity to supplement and amend the selection rules** as well. Instead, at least one of the amendments to Act CXI of 2011 on the Commissioner for Fundamental Rights may have negative consequences on the protection of fundamental rights in Hungary.

**(1) As of as of 27 February 2020, the Commissioner took over the tasks and responsibilities of the Independent Police Complaints Board.**<sup>6</sup> The abolished Independent Police Complaints Board was responsible for investigating violations and omissions committed by the police, provided that such violations and omissions substantively concerned fundamental rights. In his capacity of the successor of the Independent Police Complaints Board, if the Commissioner establishes on the basis of a complaint that a substantive fundamental rights violation has been committed by the police, he shall submit his respective opinion to the police (as a main rule, to the National Police Chief) who then delivers the decision on the individual complaint. The police may only divert from the Commissioner's opinion on the basis of a detailed reasoning.

**(2) An amendment submitted to the Parliament on 10 November 2020 by the Parliamentary Committee of Justice Affairs and adopted on 1 December 2020 abolished Hungary's equality body, the Equal Treatment Authority, and transferred its tasks and competences to the Ombudsperson as of 1 January 2021.** The amendment was submitted to the Parliament without any prior public consultation, and the amendment was not foreshadowed by any public debate or criticism of the Equal Treatment Authority, which was a well-functioning rights protection body, and was operating to the satisfaction of many civil society organisations defending the right to equal treatment of protected groups. NGOs warned that abolishing the Equal Treatment Authority was not only **unnecessary and unjustified**, but **also threatened with weakening the level of human rights protection** in Hungary, and specifically the effectiveness of enforcing the requirement of equal treatment.<sup>7</sup> Concerns raised by the 18 NGOs signing the statement included that integrating the Equal Treatment Authority's tasks into an office with a much wider mandate would inevitably mean the "downgrading" of the requirement of equal treatment, and it was almost certain that it would result in a decrease in the level of protection. The NGOs warned that the takeover would bring along a range of practical issues as well: it was not clear how adequate human resources at the Ombudsperson's Office would be secured for the

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<sup>3</sup> The verbatim transcript of the Commissioner's statements in this regard is available [here](#).

<sup>4</sup> Article 7(4) of Act CXI of 2011 on the Commissioner for Fundamental Rights

<sup>5</sup> Available at: [https://www.parlament.hu/documents/10181/721095/Tvalk\\_program\\_2021\\_tavasz.pdf/7ec4047e-2a6d-2d18-ea35-ea79fbebfc9e?t=1608102446818](https://www.parlament.hu/documents/10181/721095/Tvalk_program_2021_tavasz.pdf/7ec4047e-2a6d-2d18-ea35-ea79fbebfc9e?t=1608102446818).

<sup>6</sup> Pursuant to Article 145 of Act CIX of 2019, adopted by the Parliament on 10 December 2019.

<sup>7</sup> See the NGO statement here: [https://www.helsinki.hu/wp-content/uploads/Equal-Treatment-Authority\\_Civilizacio-statement\\_26112020.pdf](https://www.helsinki.hu/wp-content/uploads/Equal-Treatment-Authority_Civilizacio-statement_26112020.pdf).

new tasks in such a short timeframe, and pending procedures had to be suspended in January 2021 because of the hasty takeover. Furthermore, the quasi-judicial functions of the Equal Treatment Authority and the Ombudsperson's methods (e.g. issuing non-binding recommendations) differ significantly and are difficult to reconcile.

Furthermore, **in stark contrast to the Ombudsperson, the Equal Treatment Authority has issued important decisions regarding human rights violations that can be regarded as politically particularly sensitive in Hungary** today, such as rights violations affecting the Roma or the LGBTQI community. For example, the Equal Treatment Authority found the government-party led municipality of Miskolc in breach of anti-discrimination law when it eliminated the town's segregated Roma neighbourhood without taking any measures to protect the residents from homelessness;<sup>8</sup> ruled that the Budapest Mayor's Office had committed discrimination when it blocked its employees' access to LGBTQI-themed webpages;<sup>9</sup> condemned the Ministry of Human Resources for declining to list the Rainbow Families Foundation on a website dedicated to family policy matters; and ruled that the municipality of Pécs discriminated against a news site critical of the municipality's work when they were not informed the news site of press events. **The Ombudsperson's failure to act or act adequately in defence of the rights of certain vulnerable groups of society, such as the Roma or LGBTQI people, is all the more worrying in the face of the hasty abolishment of the Equal Treatment Authority, which managed to step up in the defence of these very groups.**

### 3. OVERVIEW OF THE NHRI'S ACTIVITIES

#### 3.1. Lack of adequate efforts in addressing all human rights issues

In the reporting period, that is, between 1 October 2019 and 18 February 2021, the new Commissioner for Fundamental Rights and his two deputies **published reports in altogether 88 cases**: 4 reports in the last three months of 2019, 83 reports in 2020, and 1 report in 2021.<sup>10</sup> (Issuing a report does not automatically mean that the Commissioner established a human rights violation in the case.) These public reports covered the following thematic areas:<sup>11</sup>

- 17 reports focused on the rights of children to the protection and care necessary for their proper physical, mental and moral development;
- 14 reports were issued by the Commissioner in his capacity as the national preventive mechanism (NPM) for Hungary pursuant to Article 3 of the Optional Protocol of the Convention against Torture and other Inhuman or Degrading Treatment or Punishment (OPCAT), about his monitoring visits to places of detention;
- 13 reports focused on the right to a healthy environment, and were issued jointly with the Deputy Commissioner for the Rights of Future Generations;
- 11 reports focused on the right to have one's affairs handled fairly by the authorities;
- 9 reports focused on the rights of persons with disabilities;
- 6 reports focused on the situation of whistleblowers;
- 5 reports focused on the right to social security;
- 3 reports concerned the rights of ethnic minorities and discrimination based on ethnic origin, and were issued jointly with the Deputy Commissioner for the Rights of National Minorities (*see the details in Chapter 4. below*);
- 2 reports focused on the right to human dignity;
- 2 reports focused on the right to freedom of expression and access to public interest data; and
- the remaining 6 reports covered various issues, such as the right to life, the right to personal liberty, the right to choose one's work, etc.

<sup>8</sup> <https://www.equalitylaw.eu/downloads/3786-hungary-court-upholds-equal-treatment-authority-s-decision-on-failure-to-adequately-plan-and-prepare-the-winding-up-of-segregated-roma-neighbourhood-pdf-66-kb>

<sup>9</sup> <https://www.equalitylaw.eu/downloads/5086-hungary-budapest-mayor-s-office-unblocks-access-to-lgbtqi-websites-79-kb>

<sup>10</sup> See: <http://www.ajbh.hu/en/jelentesek-inditvanyok-allasfoglalasok>.

<sup>11</sup> The cases and reports usually cover multiple fundamental rights and constitutional provisions, but for the sake of this exercise, we grouped the cases based on the fundamental right or issue that was characteristic to them.

The above list shows that when it comes to reports, the Commissioner **has been very active in certain areas, such as the rights of children and environmental rights, which are not necessarily politically sensitive.** At the same time, he **remained inactive and completely silent with regard to the rights of certain groups and certain pressing human rights issues – all of which happen to be politically sensitive and high-profile,** as it will be demonstrated in the following chapters.

From the 88 reports published by the Commissioner in the reporting period, **only three reports covered the rights of ethnic minorities.** However, as we will demonstrate below, these reports failed to address the most pressing human rights issues faced by Hungary's largest ethnic minority, the Roma people. The Commissioner **has not issued any report that dealt with the rights of LGBTIQI persons, and has not covered in any way the situation of human rights defenders** in Hungary either. There was only **one report**, issued in his capacity as the NPM of Hungary, that **addressed the detention of migrants and asylum-seekers** (*see in more detail in Chapter 5. below*). Thus, the Commissioner has failed to launch investigations and to issue reports in most of the areas where the SCA signalled that his predecessor has not demonstrated "adequate efforts".

Naturally, the work of an NHRI cannot be reduced to the numbers of reports. However, as we will show in the following chapters, when it comes to the specific vulnerable groups listed in the previous paragraph, the Commissioner failed to speak out in their defence in general. Thus, just like his predecessor, the current Commissioner has also failed to speak out "in a manner that promotes and protects all human rights", as put by the SCA in its 2019 report.

### 3.2. Low number of petitions to the Constitutional Court

In its 2019 report, the SCA also raised concerns about the lack of petitions submitted by the Commissioner to the Constitutional Court. Being able to ask for the constitutional review of laws (as one form of petition that can be submitted to the Constitutional Court) is a meaningful power of the Commissioner, also because the list of actors entitled to do so without being directly affected by the given law has been rather limited since 2012.<sup>12</sup> Also, as we will demonstrate in the following chapters, the governing majority adopted a rather long list of laws in 2020 regarding which serious constitutional concerns may be raised. However, the current Commissioner has failed to address any of these concerns, and **failed to ask for the constitutional review of any of the politically sensitive or high-profile laws affecting e.g. the rights of Roma people and LGBTIQI persons.**

Furthermore, the Commissioner would have been in the position to ensure that the special emergency government decrees adopted with a reference to the COVID-19 pandemic are reviewed by the Constitutional Court. This would have been especially important because the ruling majority in the Hungarian Parliament adopted an emergency regime that granted **excessive regulatory powers to the Government** and was at odds with international standards: referring to the pandemic, in March 2020 the Government first declared a "state of danger", and then acquired a *carte blanche* mandate without any sunset clause to override any Act of Parliament. Certain government decrees issued using this power raised rule of law and/or human rights concerns, such as a decree limiting freedom of information; and some were in breach of EU law, such as the decree removing the right to suspend the expulsion during an appeal.<sup>13</sup> Despite these circumstances, **the Commissioner has not asked for the constitutional review of any of the emergency government decrees.**

The Commissioner **turned to the Constitutional Court only twice** in the reporting period, submitting two requests for the "interpretation of the Fundamental Law". This request differs from a

<sup>12</sup> The new constitution of Hungary, the Fundamental Law, in force since 1 January 2012, abolished the possibility of *actio popularis* submissions for the abstract constitutional review of laws, and restricted the right to submit such requests to the following stakeholders: the Government, one quarter of the Members of Parliament, the President of the Curia (i.e. the Supreme Court of Hungary, the Chief Prosecutor, and the Commissioner for Fundamental Rights (see Article 24(2)(e) of the Fundamental Law).

<sup>13</sup> For a detailed account of these decrees, see: Hungarian Helsinki Committee, *Information note on certain rule of law developments in Hungary between May-July 2020*, 13 August 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Rule\\_of\\_Law\\_update\\_May-July2020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Rule_of_Law_update_May-July2020.pdf), Chapters 2.1.2. and 2.1.5. on pp. 6 and 7–8.

petition for the constitutional review of a specific law or legal provision: it does not require the Commissioner to argue for the unconstitutionality of a law, instead, it is about asking the Constitutional Court to “provide an interpretation of the provisions of the Fundamental Law regarding a concrete constitutional issue”.<sup>14</sup> Thus, it is far less confrontational than asking for a constitutional review, which might lead the abolition of a given legal norm that has been passed by the legislature. The two requests for the “interpretation of the Fundamental Law”, both submitted by the Commissioner on 31 December 2020, concern the following issues:

- One of the requests asks the Constitutional Court to interpret Article III (1) of the Fundamental Law on the ban of inhuman or degrading treatment or punishment, and asks whether this provision entails the “right to hope for release” for all detainees sentenced to life imprisonment, and so whether this requires the lawmaker to establish the latest possible date when the possibility of a release should be first assessed by the court. Should the Constitutional Court answer the previous question in the affirmative, the Commissioner also inquires whether this would mean that such a legal provision should be applied to all detainees convicted to a life-long imprisonment, irrespective of what the law was at the time of their conviction.<sup>15</sup> (The petition refers to a report issued by the previous Commissioner in 2017 as the basis of the petition.<sup>16</sup>) This is a relevant issue of course, but there would have been an even more relevant question to ask in this regard. **The current legal situation pertaining to whole life sentence in Hungary** (i.e. life sentence where the possibility of parole is excluded by the court in the final judgment in the criminal case) **is in violation of the European Convention on Human Rights**, as it was also confirmed by the European Court of Human Rights in the *T.P. and A.T. v. Hungary* case in 2016.<sup>17</sup> However, Hungary has failed to execute this judgment to date and failed to amend its laws accordingly, something that could have warranted an inquiry by the Commissioner. However, upholding the whole life sentence in its present format is politically important for the current governing majority, and so **the Commissioner’s choice in not addressing the issue of whole life sentence directly in his petition signals again his reluctance to go against the will of the Government.**
- The Commissioner’s second request asks for the interpretation of Article IV (4) of the Fundamental Law, which sets out the following: “Everyone whose liberty has been restricted without a well-founded reason or unlawfully shall have the right to compensation.” In the petition, the Commissioner asks the Constitutional Court whether the term “without a well-founded reason” shall cover instances of deprivation of liberty ordered lawfully, in compliance with the procedural rules, but without a substantive reason, and if yes, would it be necessary to set out the rules of compensation in these cases in law.<sup>18</sup> (The petition refers to a report issued by the previous Commissioner in 2018 as the basis of the petition.<sup>19</sup>)

Without diminishing the relevance of the above petitions, and without suggesting that the performance of the Commissioner can be measured solely on the basis of the number of petitions, **the very low number and the nature of the petitions, coupled with the fact that they are based on old reports and fail to address the human rights violations caused by laws adopted in 2020 shows the serious deficiency of the Commissioner’s performance** in this important area.

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<sup>14</sup> Article 38 of Act CLI of 2011 on the Constitutional Court (available here in English: <http://hunconcourt.hu/act-on-the-cc>).

<sup>15</sup> Petition no. X/02144/2020, available at: <http://public.mkab.hu/dev/dontesek.nsf/0/D11855993D6C5A0FC125865B004BEE71?OpenDocument>.

<sup>16</sup> Report no. AJB-1306/2017, available [here](#).

<sup>17</sup> In 2014, the European Court of Human Rights concluded in the *László Magyar v. Hungary* case (Application no. 73593/10) that by sentencing an applicant to life imprisonment without the possibility of parole, Hungary violated the prohibition of torture and inhuman or degrading treatment or punishment. Hungary introduced a “mandatory clemency procedure” after the above judgment, but the law maintains the President’s discretionary power to decide on pardons and still does not comply with the standards set out by the European Court of Human Rights. (For further information, see the HHC’s communication submitted to the Council of Europe in 2016: [http://hudoc.exec.coe.int/eng?i=DH-DD\(2016\)646E](http://hudoc.exec.coe.int/eng?i=DH-DD(2016)646E).) This was confirmed by the European Court of Human Rights in its judgment issued in the case *T.P. and A.T. v. Hungary* (Application nos. 37871/14 and 73986/14) in 2016, concluding that “in view of the lengthy period [40 years] the applicants are required to wait before the commencement of the mandatory clemency procedure, coupled with the lack of sufficient procedural safeguards” with regard to the procedure of the President, the violation of Article 3 of the European Convention on Human Rights remains.

<sup>18</sup> Petition no. X/02145/2020, available at: <http://public.mkab.hu/dev/dontesek.nsf/0/B3A624F43C1F0989C125865B004BEE5E?OpenDocument>.

<sup>19</sup> Report no. AJB-469/2018., available [here](#).



Several NGOs have been experiencing considerable **delays when they request the Commissioner responding** to petition the Constitutional Court. Many such requests submitted by NGOs in 2020 have remained without any response from the Commissioner to date, as presented in detail in the chapters below. Furthermore, the Hungarian Civil Liberties Union (HCLU) has reported a case where the current Commissioner has failed to remedy to date the delay that occurred in this regard under his predecessor. The respective case concerns a request<sup>20</sup> which was submitted by the HCLU to the previous Commissioner in May 2018 about 61 local government decrees in six counties. These local government decrees set out in one form or another that the “tidiness” and the “orderliness” of homes and courtyards (in several instances also including the insides of homes), are a precondition eligibility for social allowances, and contain provisions such as the requirement to “present” family members with appropriate “hygiene” to local government officials when applying for social allowances. In its request, HCLU argued that the local decrees violate the right to human dignity and the right to private life, and constitute discrimination based on social status, because they require the indigent applicants to comply with requirements they are unable to comply with precisely because of their indigent status. The HCLU asked the Commissioner to request the constitutional review of these decrees from the Constitutional Court, but they have not received a response to their request to date.

## 4. FAILURE TO PROTECT THE RIGHTS OF ROMA PEOPLE

In Hungary, the discrimination of the Roma is widespread in all areas of life, including employment, health care, services, education, or housing. They face extreme poverty, and many of them live in segregated neighbourhoods that lack proper infrastructure.<sup>21</sup> Ethnic profiling of Roma people with regard to ID checks has been demonstrated by research,<sup>22</sup> while individual cases show the same with regard to petty offences.<sup>23</sup> Furthermore, segregation of Roma children in schools has been a serious issue in Hungary for decades.<sup>24</sup> However, the current Commissioner has **failed to address almost any of the systemic and structural issues that result in these extensive rights violations of the Roma in Hungary, and has also failed to address some of the most serious specific rights violations that occurred in the reporting period**, both in terms of public statements and in terms of launching ex officio investigations.

### 4.1. General overview of the performance of the Commissioner with regard to ethnic minorities

As mentioned above, the Commissioner issued three case reports in the reporting period that concerned the rights of ethnic/national minorities (or “nationalities”) and discrimination based on ethnic origin. All of these reports were issued jointly with the Deputy Commissioner for the Rights of National Minorities. (We will continue to assess the activities of the Commissioner and the Deputy Commissioner jointly, because the Deputy Commissioner has rather limited powers: she cannot conduct an independent investigation, but shall participate in the investigations of the Commissioner, and may only propose the Commissioner to launch an ex officio investigation or to turn to the Constitutional Court, but cannot do so on her own.<sup>25</sup>) Out of the three cases, **two concerned Roma persons**, but only one of those established discrimination based on ethnic origin.

<sup>20</sup> <https://tasz.hu/cikkek/nem-hagyjuk-abba-a-szegenyeket-vegzalo-rendeletek-megtamadasat>

<sup>21</sup> See e.g.: Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined eighteenth to twenty-fifth periodic reports of Hungary*, CERD/C/HUN/CO/18-25, 6 June 2019, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fHUN%2fCO%2f18-25&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fHUN%2fCO%2f18-25&Lang=en), § 20.

<sup>22</sup> See e.g.: András Kádár – Júlia Körner – Zsófia Moldova – Balázs Tóth, *Control(led) Group – Final Report on the Strategies for Effective Police Stop and Search (STEPSS) Project*. Hungarian Helsinki Committee, 2008. Available at: [http://helsinki.hu/wp-content/uploads/MHB\\_STEPSS\\_US.pdf](http://helsinki.hu/wp-content/uploads/MHB_STEPSS_US.pdf).

<sup>23</sup> For a related Equal Treatment Authority case, see: <http://www.opensocietyfoundations.org/voices/fined-being-roma-while-cycling>.

<sup>24</sup> See in more detail: Hungarian Helsinki Committee, *Assessment of the activities and independence of the Commissioner for Fundamental Rights of Hungary in light of the requirements set for national human rights institutions*, September 2019, [https://www.helsinki.hu/wp-content/uploads/Assessment\\_NHRI\\_Hungary\\_2014-2019\\_HHC.pdf](https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_2014-2019_HHC.pdf), Chapter 4.3.3. on pp. 16–17.

<sup>25</sup> Act CXI of 2011 on the Commissioner for Fundamental Rights, Article 3

- Case no. AJB-1376/2020. originated in a complaint submitted to the Commissioner in 2018, claiming that the local municipality and specifically the local mayor acted in a degrading manner towards a Roma family wanting to bury their relative. This included, among others, the mayor ordering the day before the funeral that the grave already dug up shall be covered, because it is "in the way", and the pit shall be dug at another part of the cemetery. Since the graveyard had no capacity for digging a new grave pit, the family members themselves had to make the digging in order to be able to hold the funeral the next day as planned. The Commissioner and the Deputy Commissioner concluded in their report issued in April 2020 that the way the funeral was prepared by the authorities and the measures of the mayor violated the right to equal treatment and amounted to direct discrimination based on ethnicity, along with the right to a fair procedure and the right to human dignity.<sup>26</sup>
- Case no. AJB-672/2020. originated in the submission of the German National Minority Self-Government of Szekszárd in the autumn of 2019, which complained that the respective state agency had failed to ask for its consent when appointing the head of a local school that fulfilled the functions of a nationality school, and failed to officially inform the national minority self-government and the local municipality about the appointment. In their report issued in May 2020, the Commissioner and the Deputy Commissioner concluded that this had indeed violated the respective legal provisions. Furthermore, they detected deficiencies in the related legal provisions as in force since 1 January 2020, and asked the responsible government representative to consider proposing the amending of the law.
- Case no. AJB-1991/2020. originated in a submission by a Roma person, who complained about the responsible state agency's delays in the administrative procedure concerning the pension the complainant was entitled to as a widow. In their report issued in October 2020, the Commissioner and the Deputy Commissioner established the violation of the right to a fair procedure, but concluded that the requirement of equal treatment had not been violated in the case.<sup>27</sup>

It was also reported that the Commissioner visited the town of Tarnabod and visited a range of facilities, hosted by the Special Envoy of the Prime Minister responsible for the coordination of preparing and executing the so-called diagnosis-based Roma inclusion strategy.<sup>28</sup> However, no conclusions have been issued about this visit to date.

Beyond the reports issued in the three cases above, **the Deputy Commissioner issued six** so-called **general comments** in the reporting period. General comments are "intended to draw the attention of the legislator and the public to the importance of taking steps to safeguard the individual and collective rights of the members of national minority communities, to the situations and practices which threaten to undermine fundamental nationality rights or equal treatment, and to highlight good practices that serve the more efficient enforcement of the nationality rights".<sup>29</sup> While it is to be welcomed that the Deputy Commissioner issues such comments, and the HHC does not wish to diminish the importance of the issues covered by the general comments published in 2020, it still has to be underlined that these general comments failed to address several serious rights violations affecting the Roma.

- General Comment no. 1/2020 concerned the **preservation of the cultural values of the Old Swabian Cemetery in the town of Zsámbék**. The general comment originated in a complaint about the difficulties of maintaining the Old Swabian Cemetery, and specifically that the work on the cemetery might pose a risk of the graves being destroyed and demolished. The petitioner turned to the Deputy Commissioner in order to preserve the historical and ethnographic heritage and the cultural objects of the German nationality in Hungary.<sup>30</sup>

<sup>26</sup> The full report is available [here](#), the related statement is available [here](#).

<sup>27</sup> The full report is available [here](#), the related statement is available [here](#).

<sup>28</sup> See the press release about the visit here: <http://www.ajbh.hu/hirek-esemenyek/-/content/yQP8lh3KKIPo/tarnabodra-latogatott-az-ombudsman-es-helyettese>.

<sup>29</sup> <http://minorityombud.com/en/web/njhb-en/-/summary-of-the-general-comment-no-1-2020-of-the-minority-ombudsman?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fnjhb-en>

<sup>30</sup> For more detail in English, see: <http://minorityombud.com/en/web/njhb-en/-/summary-of-the-general-comment-no-1-2020-of-the-minority-ombudsman?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fnjhb-en>.

- General Comment no. 2/2020., issued on 25 February 2020, concerns **the preparation and implementation of the 2021 census**, and specifically the issues relevant from the perspective of Hungary’s nationalities. The Deputy Commissioner “did not reveal any structural problems in connection with the census practice of the Central Statistical Office and the preparation and planned implementation of the 2021 census. Nevertheless, she examined a number of practical issues that could have a decisive impact on the preparation, implementation and consequences of the 2021 census”, and made a number of related recommendations.<sup>31</sup>
- General Comment no. 3/2020., issued on 2 November 2020, is about **“incorporating the history of the Roma people in the school curricula in a more professional and effective way”**. According to the Deputy Commissioner’s related statement, the “primary purpose of issuing this general comment is to present to the Hungarian professional public Recommendation CM/Rec(2020)2 of the Committee of Ministers of the Council of Europe, which provides guidance and concrete solutions for integrating Roma history and culture into school curricula and materials”. To that end, the general comment “includes the official Hungarian version of the Council of Europe Recommendation in full, as well as a detailed presentation of the Hungarian regulatory environment and practice of teaching Roma history and culture, together with scientific research and findings, and the activities of the [Commissioner] and the [Deputy Commissioner]”.<sup>32</sup>
- General Comment no. 4/2020., dated 11 November 2020 (but uploaded to the Deputy Commissioner’s website on 17 February 2021), concerns **the effects of the COVID-19 pandemic on Hungary’s national minorities**.<sup>33</sup> The general comment includes a separate chapter on the effects of the pandemic on the Roma minority. (*See in more detail below.*)
- General Comment no. 5/2020. concerns the **offensive statements made about the German nationality in Hungary**, and, in relation to that, the need to step up against hate speech and offensive content made available on video sharing platforms. The background for this general comment was that on 19 January 2020, in an online show run jointly by the Petőfi Literary Agency and the Petőfi Literary Museum,

*"generalizations were made [...] which seriously offended members of the German community. Members of the German minority community were deeply shaken by what had happened, especially as the disturbing conversation took place on the Memorial Day of the Deportation of Germans in Hungary, which has been an official Hungarian State Memorial Day [...]. In the show, and then in its second episode on January 23, the speakers schematically generalised and continuously portrayed the members of the German community either as cruel perpetrators or made them ridiculous for other reasons, mashing them up with the crimes of Nazi Germany. Their statements that violated human dignity may also have been suitable to provoke members of the majority society against the members of the German community."<sup>34</sup>*

The above quote is from the Deputy Commissioner’s related statement, which she issued in the case already on 31 January 2020, announcing that she decided to open a full investigation into the matter, and that she already contacted the President of the National Media and Communications Authority. General Comment no. 5/2020., issued in December 2020, is a follow-up to this investigation, and includes suggestions to both the Minister of Justice and the President of the National Media and Communications Authority.<sup>35</sup>

- General Comment no. 6/2020., issued in December 2020, concerns **the vandalizing of the Roma Holocaust Memorial**, and the need to step up against incidents motivated by hate.<sup>36</sup>

<sup>31</sup> See more details in English [here](#).

<sup>32</sup> See the related English statement [here](#).

<sup>33</sup> General Comment no. 4/2020. is available [here](#) in Hungarian.

<sup>34</sup> Quote from the [official English translation](#) of the Deputy Commissioner’s related statement from January 2020.

<sup>35</sup> The full text of General Comment 5/2020. is available [here](#) in Hungarian, while the Deputy Commissioner’s related statement is available [here](#).

<sup>36</sup> The full text of General Comment no. 6/2020. is available [here](#) in Hungarian, while the Deputy Commissioner’s related statement is available [here](#).

Finally, it has to be addressed how the Commissioner and the Deputy Commissioner reacted to the fact that **COVID-19 and its economic consequences had a particularly detrimental effect on the Roma** in Hungary, given that the Roma are overrepresented among those living in deep poverty, many of them do not have adequate living conditions, they are affected by the risk of job loss and unemployment to a significantly greater extent than the majority society, and because digital learning poses a difficulty to Roma children living in poverty, etc.<sup>37</sup>

The Commissioner issued a statement<sup>38</sup> in March 2020 regarding the situation of vulnerable groups in light of the coronavirus pandemic, “particularly of the elderly, the Roma, the sick, persons with disabilities, homeless people, and other financially indigent persons”, and stated that the Ombudsperson’s Office “continuously analyses” the effect the pandemic has on everybody, with special attention to members of vulnerable groups.<sup>39</sup> The Deputy Commissioner also issued a statement separately, drawing attention to the special vulnerability and needs of the Roma population during the pandemic. The statement said, among others, that the Deputy Commissioner and her colleagues “are constantly analysing the impact of the extraordinary challenges on the nationality communities, in particular the Roma population, in the changing circumstance”.<sup>40</sup>

According to General Comment no. 4/2020. referenced above, the Deputy Commissioner has been continuously gathering information about the situation of minorities during the pandemic, with special regard to disadvantaged Roma communities, and e.g. ordered her staff to gather comprehensive data and information about the effects of digital education on Roma and disadvantaged children. In March 2020, she approached a number of state institutions responsible for the social, health and educational circumstances of the Roma population. Based on that, **the Deputy Commissioner also confirmed the highly negative effects the pandemic had on Roma people**, and that the pandemic had further worsened their situation with regard to education, employment, and access to healthcare, especially of those in segregated settlements, while communities also had to face anti-Roma sentiments and recurring instances of hate speech. Most of the recommendations formulated by the Deputy Commissioner in General Comment no. 4/2020. concerned the rights, powers and possibilities of national minority self-governments with a view to the pandemic and the special legal order. Furthermore, the Deputy Commissioner called for more effective communication and cooperation between state and civil society organisations, and stated that the housing, health and social situation of the Roma population in the sub-regions should be assessed with the involvement of the representatives of the National Roma Minority Self-Government. The Deputy Commissioner concluded that in a crisis situation similar to the one in the spring of 2020, the state cannot rely exclusively on the local self-governments, who have differing resources and inclination to act, or on the aid organisations who turn up on an ad hoc basis, and instead, **“it might be necessary” for the Government to take national measures specifically targeted to deal with the situation of the most disadvantaged members of the population, including the Roma**. The fact that the Deputy Commissioner issued a general comment about this issue is to be welcomed. However, the rather **soft wording of some of the recommendations** unfortunately undermines the effectiveness of this exercise.

Finally, it has to be mentioned that the Deputy Commissioner made two important symbolic gestures throughout the year. On 24 February 2020, she issued a statement<sup>41</sup> on the occasion of the Tatárszentgyörgy murders, where a Roma man and his small child were shot dead as part of a series of fatal attacks against Roma people in 2008–2009. She also issued a statement on the occasion of the International Roma Day in April 2020,<sup>42</sup> and was the main patron of the central celebrations of the

<sup>37</sup> See e.g.: <https://nyitottakvagyunk.hu/en/2020/06/09/covid-impact-report-2020/>, pp. 12–15; European Roma Rights Centre, *Roma Rights in the Time of COVID*, September 2020, [http://www.errc.org/uploads/upload\\_en/file/5265\\_file1\\_roma-rights-in-the-time-of-covid..pdf](http://www.errc.org/uploads/upload_en/file/5265_file1_roma-rights-in-the-time-of-covid..pdf), pp. 13–17; National Democratic Institute, *The Impact of Covid-19 on Hungary's Roma Communities. Public Opinion Research*, <https://www.ndi.org/sites/default/files/Impact%20of%20Covid-19%20on%20Hungarian%20Roma%20Communities%20-%20Associated%20Narrative%20%281%29%20%281%29.pdf>.

<sup>38</sup> <http://www.ajbh.hu/kozlemenyek/-/content/qzykPkTyQAvM/az-alapveto-joqok-biztosanak-es-helyetteseinek-kozlemen-1>

<sup>39</sup> See: <http://www.ajbh.hu/kozlemenyek/-/content/qzykPkTyQAvM/az-alapveto-joqok-biztosanak-es-helyetteseinek-kozlemen-1>.

<sup>40</sup> See in English [here](#).

<sup>41</sup> See: <http://nemzetisegijogok.hu/hu/web/njbh/kozlemenyek/-/content/j5D9LvQMfNpE/a-nemzetisegi-ombudsmanhelyettes-kozlemenye-a-tatarszentgyorgyi-gyilkossagok-tizenegyedik-evfordulojan>.

<sup>42</sup> See: <http://nemzetisegijogok.hu/hu/web/njbh/kozlemenyek/-/content/j5D9LvQMfNpE/a-nemzetisegi-ombudsmanhelyettes-kozlemenye-a-roma-kultura-vilagnapja-alkalmabol>.

International Roma Day.<sup>43</sup> The Commissioner and his deputies also drew attention to the housing issues faced by Roma persons on the World Sanitation Day in November 2019.<sup>44</sup> However, these symbolic gestures and statements can in no way substitute decisive and concrete action.

To sum it up, the Commissioner and the Deputy Commissioner carried out a number of relevant related activities. However, as the list above and the inactivity with regard to the Gyöngyöspata case as presented below shows, they **failed to demonstrate adequate efforts in addressing some of the most pressing human rights violations affecting Roma persons.**

#### **4.2. Inactivity in relation to the aftermath of a Roma education segregation case and a related law that constitutes discrimination and violates EU law**

In its assessment paper pertaining to the previous Commissioner, the HHC concluded that despite the segregation of Roma children in schools being a pressing human rights issue in Hungary, the Commissioner has not shown sufficient sensitivity to the subject and has not taken the risk of countering government policy in the final years of his mandate. Unfortunately, the same applies to the current Commissioner: just as his predecessor's, **his inadequate performance in relation to the education segregation of Roma children shows a lack of willingness to confront the Government regarding this politically charged, high-profile issue.** This was clearly shown by the reaction of the Commissioner and the Deputy Commissioner for the Rights of National Minorities to the developments around the Gyöngyöspata case.

In September 2019, a second instance court decision was issued in a discrimination lawsuit, which **granted non-pecuniary damages to over 60 Roma victims of educational segregation** going on for over a decade in the elementary school of Gyöngyöspata.<sup>45</sup> The respondents requested an extraordinary review from the Kúria (the Supreme Court). While that review was still pending, **high-ranking government party politicians launched a concerted public campaign against the court judgment, questioning its justness and legitimacy.**<sup>46</sup>

For example, on 4 January 2020, the governing party MP representing the region of Gyöngyöspata stated in a Facebook post that the court decision might be legal, "but it is unfair, one-sided, excessive and destructive. It is unjust because it punishes the whole town."<sup>47</sup> A few days later, the Prime Minister called the judgment unjust, and stated the following:

*"If I lived there, along with other members of the community I would be asking myself how, for some reason, members of an ethnically identifiable group living in my village could receive a significant amount of money without doing any kind of work. Meanwhile, I don't know how many hours, how many days, or years I would have to work for this money [...] And I think these people are right."*

He continued to say that although he does not yet know what to do, it is certain that "we must give justice to the people of Gyöngyöspata"<sup>48</sup> (by which he meant the majority population and not the segregated Roma students). On 17 January 2020, the Prime Minister raised the idea of replacing monetary compensation with a service for the first time, and he also indicated that he saw the Roma and the "Hungarians" as two opposing parties not as members of the same political community.

<sup>43</sup> See: <http://nemzetisegijogok.hu/hu/web/njbh/hirek/-/content/9ppuj7dnoGFq/nemzetkozi-roma-nap-2020>.

<sup>44</sup> See: <http://www.ajbh.hu/kozlemenyek/-/content/qzykPkTyQAVM/az-alapveto-jogok-biztosanak-es-helyetteseinek-kozos-kozlemenye-a-szanitacio-vilagnapja-alkalmabol>.

<sup>45</sup> For more details, see: *Flash report – Second instance court decision on damages for segregation in education*, 30 September 2019, <https://www.equalitylaw.eu/downloads/4957-hungary-second-instance-court-decision-on-damages-for-segregation-in-education-pdf-86-kb>.

<sup>46</sup> See also: *Flash report – Prime Minister calls damages granted to Roma pupils for decade-long segregation "unjust" during pending court case*, 7 February 2020, <https://www.equalitylaw.eu/downloads/5071-hungary-prime-minister-calls-damages-granted-to-roma-pupils-for-decade-long-segregation-unjust-during-pending-court-case-116-kb>; Hungarian Helsinki Committee, *Unfettered Freedom to Interfere – Ruling party politicians exerting undue influence on the judiciary in Hungary 2010–2020*, 29 July 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Hun\\_Gov\\_undue\\_influence\\_judiciary\\_29072020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Hun_Gov_undue_influence_judiciary_29072020.pdf), pp. 5-6.

<sup>47</sup> See e.g.:

[https://index.hu/belfold/2020/01/04/gyongyospata\\_hovath\\_laszlo\\_soros\\_halozat\\_dontes\\_kuria\\_penz\\_millio\\_roma\\_szegregacio](https://index.hu/belfold/2020/01/04/gyongyospata_hovath_laszlo_soros_halozat_dontes_kuria_penz_millio_roma_szegregacio).

<sup>48</sup> See e.g.: [https://index.hu/belfold/2020/01/09/orbaninfo\\_gyongyospata\\_gyori\\_gyerekvilkos\\_birosagi\\_iteletek\\_biralat/](https://index.hu/belfold/2020/01/09/orbaninfo_gyongyospata_gyori_gyerekvilkos_birosagi_iteletek_biralat/).

In the respective radio interview, the Prime Minister stated: "Hungarians are not racists, they do not outright reject Roma," but "there is a limit that Hungarians feel should never be crossed: that we give money for nothing. This will never be accepted by Hungarians." Consequently, there may have been segregation or a "failed attempt to catch up", but "we cannot remedy the problem with money", instead, "we should provide a service and not money in their hands, which Hungarians would never accept". In the same interview, the Prime Minister called the underlying lawsuit a "provocation".<sup>49</sup> In addition, the Ministry of Human Capacities, as well as the ruling party's MP representing the region kept insisting that the respondents of the lawsuit should be allowed to provide educational opportunities to the plaintiffs instead of the compensation payment.<sup>50</sup>

When on 12 May 2020 the Kúria upheld the second instance decision (including the granting of compensation), the governing party MP representing the region stated that a wrong and unjust judgment had been handed down which would upset social peace and punished a whole town indiscriminately and excessively for the – alleged or actual – grievances of a minority.<sup>51</sup> The Prime Minister commented that it was unacceptable that the majority must feel like aliens in their own country:

*"And as long as I'm the Prime Minister, this will not be the case. Because it is still the country of ours, of the indigenous population, and I see that the Soros organisations have launched the action, this matter has not fallen from the sky."*

He stated that as someone with a law degree he must say that the judgment was "unjust as it is", and that the Kúria could not see the justice of Gyöngyöspata from its downtown Budapest offices, but he would find that justice for the town through amending laws to make sure that not another similar judgment can be reached.<sup>52</sup>

Shortly thereafter, on 4 June 2020, the governing party MP for the region submitted an amending proposal to Bill T/10742 on the Amendment of Act CXC on National Public Education, proposing to insert the following paragraph:

*"If the educational institution violates the inherent personal rights<sup>53</sup> of the child or pupil in relation to education, the Civil Code's provisions regarding moral damages shall be applied with the difference that the moral damages shall be granted by the court in the form of educational or training services. The educational or training services granted by the court can be either provided or purchased by the violator."*

The reasoning attached by the MP explicitly referred to the Gyöngyöspata case: "It has been raised in relation to the [second instance court's] judgment in the Gyöngyöspata segregation case [...] that in-kind compensation would be just and reasonable for similar violations. The amendment prescribes in relation to future violations caused by access to substandard education that **the court shall grant the compensation for the damages in the form of educational services instead of pecuniary compensation** to be paid for moral damages." The amendment (the "Lex Gyöngyöspata") was adopted on 3 July and entered into force on 22 July.<sup>54</sup>

The amendment is highly problematic on several levels. Among other problems, the provision covers "violations regarding which the provision of additional educational or training services is completely meaningless" (e.g. harassment), and "oblige[s] the victims [...] to accept educational or training services from the institution that violated their rights in the first place".<sup>55</sup> Furthermore, **the amendment itself is a violation of the requirement of equal treatment as it constitutes indirect discrimination**

<sup>49</sup> See e.g.: [https://index.hu/belfold/2020/01/17/orban\\_engem\\_mar\\_nyolcszor\\_olt\\_meg\\_soros\\_halozata/](https://index.hu/belfold/2020/01/17/orban_engem_mar_nyolcszor_olt_meg_soros_halozata/).

<sup>50</sup> See e.g.: <https://magyarnemzet.hu/belfold/ingyen-tanulhatnanak-gyongyospata-romai-7680440/>.

<sup>51</sup> See e.g.: <https://24.hu/belfold/2020/05/12/gyongyospata-kuria-fidesz-horvath-laszlo/>.

<sup>52</sup> See: <http://www.atv.hu/belfold/20200515-orban-viktor-kokemenyen-nekiment-a-kurianak>.

<sup>53</sup> "Inherent personal rights" are rights that are inalienably attached to the human personality; they are to a great extent equivalent to fundamental rights and freedoms.

<sup>54</sup> Act LXXXVII of 2020

<sup>55</sup> *Flash report – Draft Bill on mandatory in-kind compensation for segregation in education submitted*, 5 August 2020, <https://www.equalitylaw.eu/downloads/5197-hungary-draft-bill-on-mandatory-in-kind-compensation-for-segregation-in-education-submitted-97-kb>, p. 2.

**based on ethnicity with regard to the victims of segregation**, and puts “perpetrators of educational violations in a more advantaged situation than the perpetrators of any other fundamental rights violations, as they would be exempted from the ‘hard’ consequence of having to pay each concerned child pecuniary compensation”.<sup>56</sup> As a result, the amendment will “by all likelihood also reduce the degree of dissuasiveness of the current system of sanctions, thus **breaching the requirement set forth by Articles 6 and 15 of the Racial Equality Directive**”.<sup>57</sup> In addition, the amendment (and the public statements of officials preceding it) is **capable of strengthening and validating the anti-Roma sentiments** of the majority population.

It shall be added that the Gyöngyöspata case is a symptomatic one also from another perspective: it is an example of how high-ranking government officials, breaching the standards on freedom from undue external influence with regard to the courts,<sup>58</sup> repeatedly use public statements and the media to interfere with the competences of the judiciary<sup>59</sup> (as the supreme court’s review was still in progress when the Prime Minister and others questioned the “justness” of the second instance court). These manifestations of criticism erode trust and confidence in the judiciary and the perception of independence, and can indirectly contribute to the chilling effect among judges. Furthermore, the Lex Gyöngyöspata is an example of how the Government and the governing majority use legislation to undermine the respect for court decisions, and further their discriminative agenda affecting the most vulnerable groups of society.

In spite of the serious concerns the above situation raised, the Commissioner has failed to take adequate steps in relation to the Gyöngyöspata case. It was announced on 23 January 2020 that the Deputy Commissioner would launch an investigation into the matter:

*"In recent days, I have followed with concern the events in Gyöngyöspata, the intensified debates over compensation for educational segregation, and the growing social tension. I am convinced that this situation may inadvertently reinforce the anti-Roma stereotypes in the majority society and also contribute to the intensification of the anger.*

*For these reasons, I consider it my duty to closely monitor and investigate in detail the events in Gyöngyöspata. In addition to the current situation, I also consider it important to review the follow-up to the Gyöngyöspata report issued in connection with the previous Ombudsman's inquiry and the implementation of the decisions made in the report. Following the exploration of the facts, I intend to present my position on the matter in the near future [...].<sup>60</sup>*

However, although more than a year has passed, **the conclusions of this investigation have not been published to date**, and the Commissioner or the Deputy Commissioner have failed to make any further public statements in this regard, in spite of the case being discussed widely, and the governing party politicians’ concerted campaign against the judgment. **This inexplicable delay of over one year in issuing a report or a general comment in the case seriously undermines the effectiveness of any kind of action.**

It shall also be recalled in this regard that the offensive, generalizing statements about the members of the German minority in Hungary in an online show were made around the same time as the statements questioning the justness and legitimacy of the Gyöngyöspata judgment by high-ranking politicians, and the Deputy Commissioner issued a statement that she would launch an investigation into these cases around the same time (on 31 and 23 January, respectively). However, the Deputy Commissioner has managed to issue a general comment only with regard to the statements attacking the German minority to date (and even that only in December 2020, almost 11 months after the statements made).

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<sup>56</sup> *Ibid.*, p. 3.

<sup>57</sup> *Ibid.*

<sup>58</sup> Cf. Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states “*Judges: independence, efficiency and responsibilities*”; Sections 18 and 60; UN Basic Principles on the Independence of the Judiciary, Sections 2 and 4.

<sup>59</sup> For more details and examples, see: Hungarian Helsinki Committee, *Unfettered Freedom to Interfere – Ruling party politicians exerting undue influence on the judiciary in Hungary 2010–2020*, 29 July 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Hun\\_Gov\\_undue\\_influence\\_judiciary\\_29072020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Hun_Gov_undue_influence_judiciary_29072020.pdf).

<sup>60</sup> See the full statement in English [here](#).

The Commissioner and the Deputy Commissioner **have not made any public statements when the Lex Gyöngyöspata was submitted and adopted** either. In June 2020, **21 NGOs asked the Commissioner to object** to the Lex Gyöngyöspata in the course of the bill's parliamentary debate, and challenge the law before the Constitutional Court once it is adopted. The NGO petition provided detailed argumentation as to why the proposed law violates the right to equal treatment under both the Hungarian Fundamental Law and European Union law.<sup>61</sup> However, the Ombudsperson has **failed to object to the law in any way, nor has he responded to the NGO's letter** to date. Even though the Lex Gyöngyöspata is clearly unconstitutional (since it constitutes indirect discrimination itself), the Ombudsperson **has not petitioned the Constitutional Court** for a constitutional review.

## 5. FAILURE TO PROTECT THE RIGHTS OF MIGRANTS AND ASYLUM-SEEKERS

In its assessment of the activities of the previous Commissioner, the HHC highlighted that since the spring of 2015 **the issue of migration has risen to the top of the Hungarian Government's agenda**. The Government spent more than 100 million USD on xenophobic public-funded hate campaigns,<sup>62</sup> while destroying the Hungarian asylum system step-by-step<sup>63</sup> and attacking and threatening those individuals and organisations that step up for the rights of migrants (*see Chapter 7.1. of the present paper*). These steps have led to the drastic deterioration of the situation of asylum-seekers and beneficiaries of international protection in Hungary, and migrants face **particularly serious systemic human rights violations**. Over the years of destruction and rampant human rights violations, **both the previous and the serving Commissioners have mostly remained silent and passive**. The HHC called on the current Commissioner several times to carry out his duties by launching investigations, referring laws to the Constitutional Court, or by conducting monitoring visits. Only one such request was followed by action of the Commissioner; in all remaining issues the Commissioner did not even issue a response.

On 7 April 2020 the HHC sent a letter<sup>64</sup> to the Commissioner outlining serious, systemic human rights violations in six areas and provided detailed recommendations on how to address each. Some of these concerns have been raised with the previous Commissioner on several occasions in the past already. The HHC's letter not only included detailed legal arguments and evidence regarding the rights violations but recommended actionable steps and legislative changes the Commissioner shall propose. The issues raised in the letter concerned the following:

- *Arbitrary detention of third country nationals in the so-called "transit zones" at the Hungarian-Serbian border*: Since the setting up of the transit zones in September 2015, the HHC has been warning that the relevant legal framework results in unlawful, *de facto* detention of asylum-seekers. That placement in the transit zones qualifies as detention has also been the clear position of the office of the UN High Commissioner for Refugees (UNHCR)<sup>65</sup> as well as the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).<sup>66</sup> Despite the well-known and well-documented systemic human rights violations and repeated calls by the HHC to conduct a visit in the facility, the Commissioner did not address the concerns and did not carry out a visit to any of the facilities. By the time the

<sup>61</sup> The English translation of the NGO petition submitted to the Commissioner is available here: [https://www.helsinki.hu/wp-content/uploads/NGO\\_submission\\_to\\_CFR\\_Gyonygyospata\\_25062020.pdf](https://www.helsinki.hu/wp-content/uploads/NGO_submission_to_CFR_Gyonygyospata_25062020.pdf).

<sup>62</sup> See details of these campaigns in the HHC's submission to the UN Committee on the Elimination of Racial Discrimination regarding the eighteenth to twenty-fifth periodic reports of Hungary, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolNo=INT%2fCERD%2fNGO%2fHUN%2f34524&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolNo=INT%2fCERD%2fNGO%2fHUN%2f34524&Lang=en).

<sup>63</sup> See details of the destruction in the HHC's compilation of relevant information notes: <https://www.helsinki.hu/en/all-you-ever-wanted-to-know-about-what-happened-to-refugee-protection-in-hungary-since-2015-in-one-place/>.

<sup>64</sup> The English translation of the letter is available here: [https://www.helsinki.hu/wp-content/uploads/HHC\\_submission\\_CFR\\_Asyllum\\_07042020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_submission_CFR_Asyllum_07042020.pdf).

<sup>65</sup> UNHCR, *On visit to Hungary, UNHCR Chief calls for end to detention and greater solidarity with refugees*, 12 September 2017, available at: <https://www.unhcr.org/news/latest/2017/9/59b7fb324/visit-hungary-unhcr-chief-calls-end-detention-greater-solidarity-refugees.html>.

<sup>66</sup> *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) from 20 to 26 October 2017*, CPT/Inf (2018) 42, pp. 24–30, available at: <https://rm.coe.int/16808d6f12>.



transit zones were closed at the end of May 2020 following a preliminary ruling of the Court of Justice of the European Union (CJEU),<sup>67</sup> some of the unlawfully detained have been confined to the facilities for over 500 days.<sup>68</sup>

- *Starvation of detainees in the transit zones:* Beginning in August 2018, the Hungarian authorities started denying food to rejected asylum-seekers while detaining them in the transit zones. In each individual case interim measures had to be sought from the European Court of Human Rights in order to ensure that food is provided to those detained. Between 8 August 2018 and 3 April 2020, a total of 34 individuals were starved in detention.<sup>69</sup> This practice was heavily criticized by a wide range of actors, including the UN High Commissioner for Human Rights,<sup>70</sup> the UN Special Rapporteur on the Rights of Migrants,<sup>71</sup> the Council of Europe Commissioner for Human Rights,<sup>72</sup> and the UN Committee on the Elimination of Racial Discrimination.<sup>73</sup> After the new Commissioner took office in October 2019, 7 individuals were starved in detention.<sup>74</sup> Neither the individual cases (widely reported in the media), nor the HHC's specific request managed to trigger the Commissioner to act.
- *Collective expulsions at the Hungarian-Serbian border:* As of 28 March 2017, unlawfully staying third-country nationals are to be summarily removed to the Serbian side of the border fence, unless they are suspected of having committed an offence.<sup>75</sup> These removals (push-backs) take place without individual documentation or identification, those subject to this measure are explicitly denied having the opportunity to seek asylum. Despite that some of these collective expulsions are carried out violently,<sup>76</sup> the authorities fail to properly investigate the allegations and complaints or to put in place effective preventive mechanisms.<sup>77</sup> The HHC noted in its letter to the Commissioner that since the legalisation of collective expulsions, according to official statistics of the police, at least 37,994 such measures have been carried out.
- *Access of non-governmental organisations to detainees held in asylum detention, immigration detention facilities, and the transit zones:* Contrary to EU law requirements, non-governmental organisations have been unable to carry out human rights monitoring visits to or conduct group legal counselling in detention facilities and the transit zones since 2017. The Commissioner as the NPM has not carried out a single visit to any of these facilities between 2017 and HHC's letter to the Commissioner in April 2020. The HHC requested that the Commissioner intervenes with the relevant authorities to allow the carrying out of human rights monitoring visits and

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<sup>67</sup> The HHC provided legal representation in these cases. See the HHC's summary of the judgment here: <https://www.helsinki.hu/en/hungary-unlawfully-detains-people-in-the-transit-zone/>. The full judgment in the joint cases of C-924/19 PPU and C-925/19 PPU is available [here](#).

<sup>68</sup> See detailed statistics on the length of detention here: <https://www.helsinki.hu/wp-content/uploads/Average-length-of-stay-in-transit-asylum-3-Feb-2020.pdf>.

<sup>69</sup> For a list of cases see the continuously updated list here: [https://docs.google.com/spreadsheets/d/10V84xAVREKSScFwz4ME\\_2kfpBRV\\_CPqCr7SUKitE2o8/edit#gid=0](https://docs.google.com/spreadsheets/d/10V84xAVREKSScFwz4ME_2kfpBRV_CPqCr7SUKitE2o8/edit#gid=0).

<sup>70</sup> Press briefing notes of the Office of the UN High Commissioner for Human Rights of 3 May 2019, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24551&LangID=E>

<sup>71</sup> End of visit statement of the UN Special Rapporteur on the human rights of migrants (Hungary, 10-17 July 2019) of 17 July 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24830&LangID=E>

<sup>72</sup> Council of Europe Commissioner for Human Rights, *Report Following Her Visit to Hungary from 4 to 8 February*, 21 May 2019, <https://rm.coe.int/report-on-the-visit-to-hungary-from-4-to-8-february-2019-by-dunja-mija/1680942f0d>

<sup>73</sup> UN Committee on the Elimination of Racial Discrimination, *Concluding Observations on the combined eighteenth to the twenty-fifth periodic reports of Hungary*, CERD/C/HUN/CO/18-25, 6 June 2019, [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fHUN%2fCO%2f18-25&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CERD%2fC%2fHUN%2fCO%2f18-25&Lang=en)

<sup>74</sup> A summary of the cases is available here: [https://docs.google.com/spreadsheets/d/10V84xAVREKSScFwz4ME\\_2kfpBRV\\_CPqCr7SUKitE2o8/edit#gid=0](https://docs.google.com/spreadsheets/d/10V84xAVREKSScFwz4ME_2kfpBRV_CPqCr7SUKitE2o8/edit#gid=0).

<sup>75</sup> See the analysis of these amendments here: <https://www.helsinki.hu/wp-content/uploads/HHC-Info-Update-New-Asylum-Bill-15.02.2017.pdf>.

<sup>76</sup> The first media report on violence from the summer of 2016: <https://abcug.hu/kinyitottak-kaput-es-kuldttek-kutyakat/>. See also Human Rights Watch, *Hungary: Migrants abused at the border*, 13 July 2016, available at: <https://www.hrw.org/news/2016/07/13/hungary-migrants-abused-border>.

<sup>77</sup> See the CPT's assessment on the inadequacy of investigative and preventive measures in *Report to the Hungarian Government on the visit to Hungary carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment of Punishment (CPT) from 20 to 26 October 2017*, CPT/Inf (2018) 42, pp. 10-19., available at: <https://rm.coe.int/16808d6f12>; and the *Report to the Hungarian Government on the visit to Hungary carried out by the CPT from 20 to 29 November 2018*, CPT/Inf 2020 (8), p. 4, available at: <https://rm.coe.int/16809ce9ec>.

group counselling in these facilities, and that the NPM conduct monitoring visits to such facilities, potentially involving external experts.

- *The planned closure of the only facility where unaccompanied children are accommodated:* The Government has been planning to close the Károlyi István Children's Home in Fót for years. While no consultation on either the closure of the facility or on the potential new sites where children would be accommodated has taken place, children began to be slowly transferred to a number of other facilities scattered around the country. The HHC requested the Commissioner to launch an investigation into the closure of the facility with a view to ensure that the best interest of the child is duly taken into account during the decision on whether to close the facility and on the potential future placement of its current inhabitants.
- *Avoiding statelessness at birth:* As domestic legislation is not in line with Hungary's international obligations to avoid statelessness at birth, the HHC recommended that the Commissioner initiate modifications to the relevant legislation. We also recommended the drafting of a protocol to ensure that the nationality of no children born in Hungary remains unknown after their fifth birthday. We suggested that the Commissioner make use of the expertise of the UNHCR and the HHC in the drafting of these.

The HHC has not received any answer to date to its letter above, and with one symbolic exception, **none of the matters raised were addressed by the Commissioner.**

On 27 May 2020 the Hungarian Government introduced a new asylum system that practically makes it impossible for those in need of protection to seek asylum in Hungary.<sup>78</sup> The new system was heavily criticised by civil society as well as UNHCR.<sup>79</sup> The European Commission launched an infringement procedure against Hungary on 30 October 2020 arguing that it is incompatible with the European asylum acquis and is in breach of Article 18 of the Charter of Fundamental Rights.<sup>80</sup> The Commissioner did not make any steps and did not comment on the developments.

On 12 August 2020 the HHC sent a letter<sup>81</sup> to the Commissioner informing him of the complaints the HHC received from detainees in the Nyírbátor Immigration Detention Facility. Most of the complaints concerned the lack of information on the reasons for their detention and the violent treatment of detainees by armed guards. As a result of the situation, further exacerbated by the fact that the majority of the detainees have been residing lawfully in Hungary for a long time and have families, including some with children, detainees went on hunger strike. The detention facility is notorious for the treatment of detainees, nonetheless, the last time the Commissioner visited the facility was in September 2012. On 18 September 2020, the Commissioner visited the facility. On the same day, according to his official statements, he visited two other sites located several hours away from Nyírbátor. The report of the visit was published on 7 December. While detainees at the facility, per definition, are not Hungarian citizens, no interpreter participated at the visit. Nonetheless, the report states, among others, that detainees with medical complaints were not examined by a doctor and that the contradictory decisions and information provided to the detainees in their aliens policing procedure and immigration detention by the authorities raised potential violations of fundamental rights. The report does not mention whether any follow-up was attempted on the issues identified during the last visit of the Commissioner in the facility, 8 years prior to this.

On 17 December 2020, the CJEU delivered its judgment in the case C-808/18, that, among others, found that the Hungarian legislation (and practice) regarding push-backs violate the Return Directive and the Charter of Fundamental Rights thus breaching EU law.<sup>82</sup> Collective expulsions continue to take

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<sup>78</sup> See in detail: <https://www.helsinki.hu/wp-content/uploads/new-Hungarian-asylum-system-HHC-Aug-2020.pdf>.

<sup>79</sup> See UNHCR's position: <https://www.refworld.org/docid/5ef5c0614.html>.

<sup>80</sup> See the statement of the European Commission: [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_20\\_1687](https://ec.europa.eu/commission/presscorner/detail/en/inf_20_1687).

<sup>81</sup> The English translation of the letter is available here: [https://www.helsinki.hu/wp-content/uploads/HHC\\_submission\\_to\\_CFR\\_Nyirbator\\_12082020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_submission_to_CFR_Nyirbator_12082020.pdf).

<sup>82</sup> See the HHC's summary of the judgment: <https://www.helsinki.hu/en/hungarys-legislation-of-push-backs-in-breach-of-eu-law-according-to-the-court-of-justice-of-the-european-union/>. The full judgment is available at: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=235703&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=1288827>, see esp. §§ 227–266.

place even after the judgment was delivered.<sup>83</sup> Due to Hungary's non-compliance with the judgment, the EU's Border and Coast Guard Agency, Frontex, moved to suspend its operations in Hungary, the first time in the Agency's history.<sup>84</sup> The Ombudsperson has not issued a statement on these measures, neither did he respond to HHC's respective letter and recommendations, nor launched an investigation. Since the legalisation of collective expulsions, over 60,000 such measures have been carried out by law enforcement agencies, and close to 7,410 since the judgment was delivered.<sup>85</sup>

## 6. FAILURE TO PROTECT THE RIGHTS OF LGBTQI PEOPLE

When assessing the previous Commissioner's performance with regard to LGBTQI people, civil society organisations reported that the Commissioner "has become a crucial ally to LGBTI people in the country",<sup>86</sup> and "has become quite active in recent years on LGBTI issues".<sup>87</sup> Thus, even though the previous Commissioner failed to take a stance against the growing number of anti-LGBTQI statements of high-level public officials for instance, his overall performance was considered positive in relation to defending the rights of LGBTQI people. However, this has **changed drastically with the current Commissioner taking over the office. The current Commissioner has remained totally silent and has not stepped up in the defence of LGBTQI people in any way in the reporting period, even though he would have had ample reason to do so.**

In ILGA-Europe's annual ranking assessing the human rights situation of LGBTQI people, Hungary sank to the 27<sup>th</sup> place from the 19<sup>th</sup> from one year to another already on the basis of the developments between January and December 2019.<sup>88</sup> However, in the reporting period, homophobic and transphobic political statements by governing party politicians, including by the Prime Minister, have escalated further, and LGBTQI people in Hungary have quickly found themselves to be the newest target of the Hungarian Government's hate propaganda. Furthermore, a series of measures and laws were adopted in the reporting period that seriously violate the rights of LGBTQI people. This was also detected by international human right stakeholders, for example with the Commissioner for Human Rights of the Council of Europe stating in November 2020 that she is "alarmed by the apparent escalation of the stigmatisation of LGBTI people and the manipulation of their dignity and rights for political gain".<sup>89</sup> Thus, **the change in the person and, consequently, in the approach of the Commissioner coincided with the issue of the rights of LGBTQI people entering the sphere of politically sensitive, high-profile topics important for the Hungarian Government.**

The change in the Ombudsperson's approach is indeed drastic: in the reporting period, he has not issued any public statements or reports, has not launched any investigations (or at least there is no public information available about it), and has not submitted any related petitions to the Constitutional Court. He also broke with the symbolic tradition of issuing a statement on the occasion of the International Day Against Homophobia and Transphobia, even though his predecessors issued such a statement every year starting in 2014, and even though the current Commissioner and his deputies issued around 25 statements on the occasion of various international days and anniversaries in the reporting period. In fact, when one looks at the website of the Commissioner, it has no mention at all of LGBTQI people since the new Commissioner took office.

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<sup>83</sup> Between 17 December 2020 and 7 January 2021, over 2,500 collective expulsions have been carried out by the police according to official data. See HHC's letter to the Executive Director of Frontex: [https://www.helsinki.hu/wp-content/uploads/HHC\\_Frontex\\_07012021.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Frontex_07012021.pdf).

<sup>84</sup> <https://www.euronews.com/2021/01/28/eu-migration-chief-welcomes-frontex-suspension-of-operations-in-hungary>

<sup>85</sup> See the daily breakdown of the statistical data provided by the Police here: <https://www.euronews.com/2021/01/28/eu-migration-chief-welcomes-frontex-suspension-of-operations-in-hungary>.

<sup>86</sup> Hátér Society – Hungarian LGBT Alliance – Transvanilla Transgender Association, *Report about the Implementation of the Council of Europe Recommendation to member states on measures to combat discrimination on grounds of sexual orientation or gender identity (CM/Rec(2010)5) in Hungary*, 31 July 2018, <http://hatter.hu/kiadvanyaink/report-about-the-implementation-of-the-council-of-europe-recommendation-to-member-0>, p. 31.

<sup>87</sup> *Ibid.*, p. 141.

<sup>88</sup> See: <https://hatter.hu/hirek/ilga-jelentosen-romlott-az-lmbti-kozosseg-helyzete-magyarorszagon>.

<sup>89</sup> See: <https://www.coe.int/en/web/commissioner/-/commissioner-urges-hungary-s-parliament-to-postpone-the-vote-on-draft-bills-that-if-adopted-will-have-far-reaching-adverse-effects-on-human-rights-in->

Due to this highly worrying change in the Commissioner's approach, **the HHC respectfully asks the SCA to also consider in the course of its review the Commissioner's activities with regard to addressing the human rights violations affecting LGBTQI people as a group with increased vulnerability whose situation has recently become one of the politically most sensitive issues in Hungary.** Concrete examples of the Commissioner's complete inaction in this regard are detailed below.

### 6.1. Failure to step up against the prohibition of legal gender recognition

In a law adopted on 19 May 2020,<sup>90</sup> the Parliament prohibited legal gender recognition, in **violation of the rights of transgender people.** The new law prescribes that individuals' "sex at birth" (defined as "biological sex based on primary sex characteristics and chromosomes") shall be recorded in the national registry of births, marriages and deaths, and this cannot be changed later.<sup>91</sup> The respective bill was submitted without any prior public consultation, even though such a consultation would have been mandatory.<sup>92</sup> The prohibition of legal gender recognition **"violates international human rights norms,** and the consistent case law of the European Court of Human Rights. It also **contradicts the consistent practice of the Hungarian Constitutional Court,** that ruled in 2005, 2007 and 2018 (in 2018 unanimously) that the legal gender and name change for transgender people are a fundamental human right."<sup>93</sup>

Beyond Hungarian NGOs, several international human rights stakeholders<sup>94</sup> expressed their objection to the law as well, including the Council of Europe's Commissioner for Human Rights,<sup>95</sup> the UN Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity,<sup>96</sup> the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, the Special Rapporteur on the right to privacy and the Special Rapporteur on violence against women, its causes and consequences,<sup>97</sup> but to no avail: the law entered into force.

In contrast to the international stakeholders, the Commissioner has remained entirely silent and inactive: he has **failed to speak out publicly against the law and has failed to submit a request for constitutional review to the Constitutional Court, even when approached directly by various Hungarian NGOs and Hungarian citizens** regarding the issue:

- In May 2020, the Government initiated a consultation in writing about the bill among members of the Working Group on the Rights of LGBT People of the Human Rights Roundtable. NGOs and the Equal Treatment Authority criticized the bill, the Commissioner (who is a permanent invitee to the sessions of the Human Rights Roundtable) submitted no opinion.
- In May 2020, Amnesty International Hungary launched a campaign asking the Commissioner to challenge the law before the Constitutional Court,<sup>98</sup> which was joined by over 104,000 signatories worldwide, including over 13,000 signatories from Hungary. Amnesty International Hungary's initiative was also joined by four other Hungarian human rights NGOs and groups, namely by Budapest Pride, Háttér Society, the Hungarian LGBT Alliance, and the Prizma trans community. The petition and the signatures were handed over to the Ombudsperson's Office on 2 July 2020.<sup>99</sup>

<sup>90</sup> Act XXX of 2020 on the Amendment of Certain Laws Related to Public Administration and on Donating Property

<sup>91</sup> For more details, see: <https://en.hatter.hu/news/president-signs>; *Flash report – Amendment of the provisions on legal recognition of gender*, 30 June 2020, <https://www.equalitylaw.eu/downloads/5168-hungary-amendment-of-the-provisions-on-legal-recognition-of-gender-137-kb>.

<sup>92</sup> Act CXXXI of 2010 on Public Participation in Preparing Laws, Articles 1 and 8(1)-(2)

<sup>93</sup> <https://en.hatter.hu/news/bill-ban-lgr>

<sup>94</sup> For a detailed list, see: <https://en.hatter.hu/news/bill-ban-lgr>.

<sup>95</sup> <https://www.facebook.com/CommissionerHR/posts/1512688642240374>

<sup>96</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25844>

<sup>97</sup> <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=25172>

<sup>98</sup> See: <https://www.amnesty.hu/itt-az-ido-az-ombudsmannak-az-ab-hoz-kell-fordulnia/>.

<sup>99</sup> See: <https://www.amnesty.hu/mar-tobb-mint-100-ezren-kerik-kozma-akost-hogy-vegezze-a-munkajat/>, <https://www.amnesty.hu/mar-tobb-mint-10-ezren-kerik-az-ombudsmantol-hogy-vegezze-a-munkajat/>.

- Transvanilla Transgender Association requested the Commissioner twice in April 2020 to step up against the law so that it is not adopted by the Parliament, and to petition the Constitutional Court, should the Parliament adopt the law.<sup>100</sup>
- In September 2020, the HHC submitted a reasoned request to the Commissioner, asking him to petition the Constitutional Court and ask for the constitutional review of the law.<sup>101</sup>
- In December 2020, a trans individual represented by Háttér Society requested that the Commissioner petition the Constitutional Court and ask for the constitutional review of the law based on which she is no longer able to request legal gender recognition.<sup>102</sup>

**The Ombudsperson has not responded to any of these NGO requests and submissions to date, and has not taken any of the actions requested.**

When he was asked about this issue before the Parliamentary Committee for Justice Affairs on 22 June 2020, in the framework of the discussion of his office's activities in 2019, the Commissioner stated that he would formulate an opinion after an investigation into the matter, and "if necessary", would take measures in accordance with their standpoint.<sup>103</sup> On 17 June 2020 he gave a similar response to a written question submitted by a Member of Parliament.<sup>104</sup> On 4 November 2020, he replied to a similar question in front of the Parliament's plenary that there was an investigation underway regarding the issue.<sup>105</sup> However, no further information is available publicly about this investigation and its progress.

## 6.2. Failure to step up against banning advertisements featuring same-sex couples

In October 2019, the Hungarian branch of **Coca-Cola was fined for two ads featuring same-sex couples, displayed in the framework of their #loveislove campaign.** One of the ads featured two smiling men hugging each other, while the other featured two women looking at each other while drinking from the same Coca-Cola bottle with straws. Beyond imposing the fine, the state agency issuing the decision obliged Coca-Cola not to use any ad in the future that "may harm the physical, mental, emotional and moral development of children and juveniles". (The ads were also attacked by a governing party politician and a government-friendly website.<sup>106</sup>)

To challenge the decision of the state agency issuing the fine, **Háttér Society submitted a reasoned request to the Commissioner** in May 2020, demonstrating why **the fine amounted to the violation of the right to equal treatment based on sexual orientation**, the violation of the right to freedom of expression, and the violation of the right of children to information aimed at the promotion of their social, spiritual and moral well-being and physical and mental health under Article 17 of the UN Convention on the Rights of the Child. The Commissioner **has not responded to the request** to date.

## 6.3. Failure to step up against homophobic and transphobic reactions to a children's book

*Wonderland is for Everyone*, a children's book with fairy tales featuring various vulnerable groups (LGBTQI, Roma, persons with disabilities) prompted a large number of homophobic and transphobic political statements and attacks. After the book was published in September 2020, the **publisher was quickly attacked verbally by various extreme right-wing decision-makers and public figures**, and an extreme right-wing MP shredded a copy of the book at a press conference. Soon, **the governing party followed course**, heavily contributing to the hate campaign against the book. For example, on 4 October 2020, **the Prime Minister made a distinction between "Hungarians" and "homosexuals" in a radio interview**, and stated:

<sup>100</sup> See: <https://transvanilla.hu/alapveto-jogok-biztosa-transz-torvenyjavaslat>.

<sup>101</sup> The English translation of the reasoned request is available here: [https://www.helsinki.hu/wp-content/uploads/HHC\\_submission\\_to\\_CFR\\_legal\\_gender\\_recognition\\_14092020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_submission_to_CFR_legal_gender_recognition_14092020.pdf).

<sup>102</sup> See: <https://hatter.hu/tevekenysegunk/jogsegelyszolgalat/jelentosebb-ugyeink/33-paragrafus>.

<sup>103</sup> The transcript of the session of the Parliamentary Committee of Justice Affairs is available here: <https://www.parlament.hu/documents/static/biz41/bizjvk41/IUB/2006221.pdf> (see p. 21).

<sup>104</sup> The response is available here: <https://www.parlament.hu/irom41/10857/10857-0001.pdf>.

<sup>105</sup> The verbatim transcript of the Commissioner's statements in this regard is available [here](#).

<sup>106</sup> See e.g.: <https://hungarytoday.hu/coca-cola-ad-promoting-acceptance-of-same-sex-couples-fuels-public-debate/>.

*"in essence I'd like to confirm that in Hungary there are laws relating to homosexuality. They are based on an extremely tolerant and patient approach. Hungarians are very tolerant in relation to this phenomenon. In fact Hungarians are so patient that we even accept provocations of this kind with patience – although not without comment. So we can safely say that as regards homosexuality Hungary is a patient, tolerant country. But there is a red line that must not be crossed, and this is how I would sum up my opinion: 'Leave our children alone.'"<sup>107</sup>*

On the same day, a public reading for children and their parents from the book was to take place in Átrium Theatre.<sup>108</sup> However, the extreme right-wing Mi Hazánk Movement and other extremists organized a homophobic demonstration at the time of the matinee and in front of its venue. Although the demonstration was restricted to some extent by the police's decision specifying the conditions of the assembly, only the assurance of unimpeded motor and pedestrian traffic was required.<sup>109</sup> The police let the extreme right-wing gathering to be held right next to the building hosting the matinee and, despite the repeated requests of the public reading's organizer, they let the hateful rioting make the reading impossible.<sup>110</sup> All of this happened after the organizer, due to the news that a homophobic demonstration would be held, had decided to hold the reading as a closed online event in order to protect the children.<sup>111</sup>

Next week, on 8 October 2020, the mayor of Csepel, a district of Budapest, issued an **instruction prohibiting the use of the book** in the course of educational work in all the preschools of the district.<sup>112</sup> The mayor of the city of Mezőkövesd issued a similar instruction on the same day, prohibiting the use of the book or its abstract in all preschools and day-cares of the city.<sup>113</sup> (The Mezőkövesd decision was later found illegal by the government country office.<sup>114</sup>)

**The Commissioner has not reacted in any way to the developments above.** On 22 October 2020, eight **Hungarian human rights organisations submitted a reasoned request**<sup>115</sup> to the Commissioner, asking him (i) to raise his voice against the Prime Minister's homophobic statements, and make it clear that in a state governed by the rule of law there is no place for hate propaganda carried out by the Government; (ii) to investigate the inaction by the police with regard to the event held in the Átrium Theatre, and their failure to protect the rights of children and their parents; and (iii) to investigate the actions of the mayors banning the children's book, given that this measures are without any legal basis and violate fundamental rights.<sup>116</sup> The Commissioner has started to investigate the omissions of the police (in his special capacity as the successor of the Independent Police Complaints Board), but **has not responded** to the other parts of the NGO submission, and has not taken any of the steps requested.

#### **6.4. Failure to step up against the inclusion of anti-LGBTQI statements in the constitution and the blocking of adoptions by LGBTQI people**

On 10 November 2020, in the midst of the second wave of the pandemic and only days after the Government declared a state of danger due to the pandemic for the second time, it also submitted a proposal for the 9<sup>th</sup> Amendment to the Fundamental Law. The respective bill was submitted without any prior public consultation, even though the latter would have been mandatory.<sup>117</sup> The 9<sup>th</sup> Amendment,

<sup>107</sup> For the full interview in English, see: <http://www.miniszterelnok.hu/prime-minister-viktor-orban-on-the-kossuth-radio-programme-sunday-news/>.

<sup>108</sup> <https://www.facebook.com/events/1052403188528402>.

<sup>109</sup> The decision of the police specifying the conditions of the assembly is available at: <http://www.police.hu/sites/default/files/EI%C5%91%C3%ADr%C3%B3%20hat%C3%A1rozat.pdf>.

<sup>110</sup> The post of the organizer and a video about the demonstration are available at: <https://www.facebook.com/anemaznem/posts/1452971864904795>.

<sup>111</sup> The decision and its reasoning are available at: <https://www.facebook.com/anemaznem/posts/10224091727909794>.

<sup>112</sup> The mayor's communication is available here: <https://www.facebook.com/borbely.lenard.csepel/posts/3899792726700956>.

<sup>113</sup> The mayor's instruction is available here:

<https://www.facebook.com/mezokovesdkepekben/photos/pcb.1711428922353334/1711427619020131/>.

<sup>114</sup> [http://os.mti.hu/hirek/157567/a\\_tarsasag\\_a\\_szabadsagjogokert\\_kozlemeny](http://os.mti.hu/hirek/157567/a_tarsasag_a_szabadsagjogokert_kozlemeny)

<sup>115</sup> The English translation of the reasoned request is available here: [https://www.helsinki.hu/wp-content/uploads/NGO\\_submission\\_to\\_CFR\\_Wonderland\\_21102020.pdf](https://www.helsinki.hu/wp-content/uploads/NGO_submission_to_CFR_Wonderland_21102020.pdf).

<sup>116</sup> See: <https://tasz.hu/cikkek/orban-gyuloletkelto-szavai-miatt-ombudsmanhoz-fordult-nyolc-szervezet>.

<sup>117</sup> Act CXXXI of 2010 on Public Participation in Preparing Laws, Articles 1 and 8(1)-(2)

containing a number of highly problematic provisions, was adopted on 15 December 2020, and its provisions discussed below entered into force on 23 December 2020.<sup>118</sup>

Beyond restricting the notion of public funds and so undermining the state's transparency and the freedom of information, the 9<sup>th</sup> Amendment also humiliates and curtails the rights of the LGBTQI community, with the help of accompanying legislation, and building on recent anti-LGBTQI political statements and earlier legislative steps. Articles 1 and 3 of the 9<sup>th</sup> Amendment to the Fundamental Law **make the Fundamental Law the conveyor of the governing majority's homophobic and transphobic propaganda**, while clearly tying into the attacks described in the previous sections.

First, Article 1 of the 9<sup>th</sup> Amendment added the following to Article L) of the Fundamental Law, which already excluded the marriage of same-sex couples and restricted the notion of family: "The mother is female, the father is male."<sup>119</sup> In itself, this new declaration would have little legal consequence. However, **another bill**, submitted also on 10 November and adopted on 15 December 2020,<sup>120</sup> **establishes that, as a main rule, only married couples will be allowed to adopt children**. Any exceptions can only be granted on a case-by-case basis by the Minister responsible for family policies.<sup>121</sup> Thus, **same-sex couples, single persons and non-married opposite-sex couples will be practically excluded from adoption** from March 2021 unless a political appointee specifically exempts them from the general restriction of the law. This development followed a ministerial decree from October 2020, which already made it excessively hard for single persons or non-married couples to adopt. The decree stipulates that they can only adopt a child if no married couple in the whole country wants to adopt the said child<sup>122</sup> (whereas previously single persons became eligible to adopt a child if no married couple wished to adopt that child within the same county<sup>123</sup>) These new provisions clearly run against the opinion of the previous Commissioner for Fundamental Rights, who stated that the best interest of the child is best served by local adoptions, and any other preference (such as preference for adoption by married couples) should only be enforced if there are no suitable local applicants.<sup>124</sup>

Second, Article 3 of the 9<sup>th</sup> Amendment added the following to Article XVI (1) of the Fundamental Law:

*"Hungary shall protect the **right of children to their identity in line with their sex by birth**, and shall ensure an **upbringing in accordance with the values based on our homeland's constitutional identity and Christian culture**."*

This new provision stigmatises transgender people. For example, it can make it difficult to hold LGBTQI sensitisation sessions in schools or, for that matter, to provide any kind of education that is not in line with what the authorities regard as "Christian culture" – a severely problematic situation in a secular country.<sup>125</sup>

In spite of the above bills raising serious human rights concerns, **the Commissioner has failed to address them in any way**. On 2 December 2020, he was **petitioned** once again **by 10 Hungarian human rights NGOs** in a reasoned request,<sup>126</sup> who asked the Commissioner to step up and defend the rights of those affected negatively by the proposed laws, such as children and LGBTQI people, to raise the attention of the public to the human rights risks the proposed bills entail, and to recommend

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<sup>118</sup> For more details, see: Hungarian Helsinki Committee, *Flash report: What happened in the last 48 hours in Hungary and how it affects the rule of law and human rights*, 12 November 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_RoL\\_flash\\_report\\_Hungary\\_12112020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_RoL_flash_report_Hungary_12112020.pdf).

<sup>119</sup> The current text of Article L) (1) reads as follows: "Hungary shall protect the institution of marriage as the union of a man and a woman established by voluntary decision, and the family as the basis of the survival of the nation. Family ties shall be based on marriage or the relationship between parents and children."

<sup>120</sup> Act CLXV of 2020

<sup>121</sup> Articles 99–103 of Bill T/13648

<sup>122</sup> Decree 35/2020. (X. 5.) EMMI of the Minister of Human Capacities, Article 4(5)

<sup>123</sup> Hungary consists of 19 counties and the capital.

<sup>124</sup> See the previous Commissioner's respective report in Case no. AJB-485/2017. here:

[https://www.ajbh.hu/documents/10180/2602747/Jelent%C3%A9s+egy+%C3%B6r%C3%B6kbefogad%C3%A1si+k%C3%A9relem+elutas%C3%ADt%C3%A1s%C3%A1r%C3%B3l+485\\_2017](https://www.ajbh.hu/documents/10180/2602747/Jelent%C3%A9s+egy+%C3%B6r%C3%B6kbefogad%C3%A1si+k%C3%A9relem+elutas%C3%ADt%C3%A1s%C3%A1r%C3%B3l+485_2017).

<sup>125</sup> See also: <https://hatter.hu/hirek/jarvanykezeles-helyett-hadjarat-az-lmbtqi-emberek-ellen>.

<sup>126</sup> The English translation of the reasoned request is available here: [https://www.helsinki.hu/wp-content/uploads/NGO\\_submission\\_to\\_CFR\\_T13467\\_and\\_T13468\\_02122020.pdf](https://www.helsinki.hu/wp-content/uploads/NGO_submission_to_CFR_T13467_and_T13468_02122020.pdf).

to the Parliament to postpone the adoption of the laws.<sup>127</sup> The Commissioner **has not responded to the NGOs' letter, and has not taken any steps in relation to the laws to date.**

## 7. FAILURE TO ADDRESS THE SITUATION OF HUMAN RIGHTS DEFENDERS

Similar to his predecessor, the current Commissioner has **remained completely silent** regarding the situation of human rights defenders in Hungary, and **has not used any of its powers** to tackle the violation of the rights of civil society organisations. It is emblematic of his approach that when the European Network of National Human Rights Institutions (ENNHRI) asked its members to provide input for ENNHRI's contribution to the European Commission's 2020 Rule of Law, the Ombudsperson simply omitted to include any information on "human rights defenders and civil society space", even though this was one of the thematic areas explicitly listed by ENNHRI for NHRIs to report about.<sup>128</sup> Even though Hungary is by far not the only country where this thematic heading is missing in the report, in the face of developments described below the Commissioner's silence is inexplicable.

### 7.1. Inaction in the face of Hungary's failure to abolish the Lex NGO

The HHC raised the issue of Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (hereafter: Lex NGO) already in its first letter addressed to the new Commissioner, sent on 2 December 2020, before meeting the new Commissioner for the first time. The HHC **asked the Commissioner to submit an *amicus curiae* in the constitutional review procedure pending before the Constitutional Court regarding the Lex NGO**, or to make his opinion about the Lex NGO public in any other way, **but to no avail.**<sup>129</sup>

On 18 June 2020, the **CJEU** issued a **judgment**<sup>130</sup> in the infringement procedure launched about the law, and found that by adopting the provisions of the Lex NGO, "which impose obligations of registration, declaration and publication on certain categories of civil society organisations directly or indirectly receiving support from abroad exceeding a certain threshold and which provide for the possibility of applying penalties to organisations that do not comply with those obligations, **Hungary has introduced discriminatory and unjustified restrictions on foreign donations to civil society organisations**, in breach of its obligations under Article 63 TFEU and Articles 7, 8 and 12 of the Charter of Fundamental Rights of the European Union". Thus, the CJEU confirmed that the Lex NGO amounts to **unjustified interference with the respect for private life, protection of personal data and freedom of association**. The CJEU also held that the restrictive measures introduced by Hungary were "**likely to create a general climate of mistrust and stigmatisation** of the associations and foundations concerned in Hungary".

After the judgment, the Minister of Justice stated<sup>131</sup> that the Lex NGO's objective was to ensure the transparency of NGOs, and the CJEU's decision "has confirmed the legitimacy of that objective". The Minister also stated that "[t]he government's position remains that the obligations of registration and publication required under the Hungarian legislation have not made the funding or operation of organisations any more cumbersome", and that the CJEU's decision "does not cite a single specific item of data or evidence that would prove the contrary". In a radio interview<sup>132</sup> on 19 June 2020, the Prime Minister said in relation to the judgment that there was "liberal imperialism" in Western Europe, international courts "are often undoubtedly part of this network", and that "after seeing the identities

<sup>127</sup> See: <https://www.amnesty.hu/orokbefogadas/>.

<sup>128</sup> *The rule of law in the European Union. Reports from National Human Rights Institutions*, 11 May 2020, [http://ennhri.org/wp-content/uploads/2020/06/11-May-2020\\_The-rule-of-law-in-the-European-Union-Reports-from-NHRIs.pdf](http://ennhri.org/wp-content/uploads/2020/06/11-May-2020_The-rule-of-law-in-the-European-Union-Reports-from-NHRIs.pdf), pp. 118–127.

<sup>129</sup> The letter is available here in Hungarian: [https://www.helsinki.hu/wp-content/uploads/MHB\\_level\\_ombudsmannak\\_2019\\_12\\_02.pdf](https://www.helsinki.hu/wp-content/uploads/MHB_level_ombudsmannak_2019_12_02.pdf) (see pp. 1–2).

<sup>130</sup> *European Commission v. Hungary*, Case C-78/18, JUDGMENT OF THE COURT (Grand Chamber), 18 June 2020, ECLI identifier: ECLI:EU:C:2020:476

<sup>131</sup> See: <https://www.kormany.hu/en/ministry-of-justice/news/we-are-committed-to-transparency-of-non-governmental-organisations>.

<sup>132</sup> For a full text of the interview in English, see: <http://www.miniszterelnok.hu/prime-minister-viktor-orban-on-the-kossuth-radio-programme-good-morning-hungary-19/>.



of the Hungarians who are also involved in such international rulings, especially those on human rights issues, we can very easily find a link with Soros's international network". The Prime Minister stated that the CJEU

*"didn't dare to say that the transparency of NGOs isn't a high priority; they simply said that fewer restrictions should be placed on them when ensuring this transparency. This can be done. So it won't be difficult to comply with this judgment. [...] [E]very Hungarian person will know about every forint that has come here from abroad and has been sent here for political purposes [...]."*

At the time of writing, the **Lex NGO remains in effect**. In fact, after the CJEU judgment was handed down, a government-established public foundation **rejected an NGO's EU grant application over non-compliance with the Lex NGO in August**.<sup>133</sup> What is more, in September 2020, signing a statement that the applicant complies with the provisions of the NGO law became an expressly stipulated precondition to making an application to the public foundation, at least for a few months – at the time of writing it is not listed any more on the respective agency website.<sup>134</sup> When asked by the press about this practice, the Government stated that it approved of the application of the Lex NGO, even if it was found to be in breach of EU law, since as long as the law was not amended it remained in force and to be applicable in Hungary.<sup>135</sup> On 18 January 2021, the European Commission announced that it was sending a letter of formal notice to Hungary for failing to comply with the ruling of the CJEU, asking Hungary to take and implement all required measures to remedy the situation.<sup>136</sup>

In the face of all the developments above, **the Commissioner remained completely silent, and has not addressed the issue in any way.**

## 7.2. Failure to speak out for human rights defenders in the face of political statements

The judgment in the **Roma education segregation case in Gyöngyöspata was used by governing party politicians** not only for fuelling anti-Roma sentiments (*see Chapter 4.2. of the present report*), but also **to attack a human rights NGO once again**, this time the Chance for Children Foundation that assisted plaintiffs in the lawsuit. Examples in this regard include the following:

- On 4 January 2020, the Fidesz MP representing the region of Gyöngyöspata stated the following in a Facebook post: "With the new found millions now thrown among the Roma families, the continuous, predictable development and the hard-won tranquillity in Gyöngyöspata gained over recent years may disappear. Gyöngyöspata does not want to become a battlefield again; it does not want any part in the money-seeking activities of the Soros network."<sup>137</sup>
- On 15 January 2020, another MP of the Fidesz said at a press conference that local Roma had been "incited" by an organisation funded by George Soros. According to the MP, the Gyöngyöspata case is actually about another political and financial manipulation by the Soros network, "because for money and power they are even capable of completely upsetting the life of a settlement and creating terrible tensions".<sup>138</sup>
- On 17 January 2020, in the course of a radio interview, the Prime Minister also sought to undermine the credibility of the NGO supporting the plaintiffs – and through this, the entire lawsuit – when he said the following: "An unfortunate judicial verdict has been handed down, and if we look at who is behind it, it will be seen that the Soros network is behind it. I see this as a provocation."<sup>139</sup>

<sup>133</sup> See e.g.: <https://autocracyanalyst.net/hungarian-ngo-foreign-agent-law/>, and all related correspondence between the affected organisation, the public foundation, and the European Commission at: <https://www.emberseg.hu/en/advocacy-issues/>.

<sup>134</sup> See the dedicated [website](#) of the public foundation.

<sup>135</sup> See the statement of the ministry in charge of supervising the public foundation: [https://nepszava.hu/3097050\\_lex-soros-a-kormany-tesz-a-tiltasra](https://nepszava.hu/3097050_lex-soros-a-kormany-tesz-a-tiltasra).

<sup>136</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_21\\_441](https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441).

<sup>137</sup>

[https://index.hu/belfold/2020/01/04/gyongyospata\\_hovath\\_laszlo\\_soros\\_halozat\\_dontes\\_kuria\\_penz\\_millio\\_roma\\_szegregacio](https://index.hu/belfold/2020/01/04/gyongyospata_hovath_laszlo_soros_halozat_dontes_kuria_penz_millio_roma_szegregacio)

<sup>138</sup> <https://www.origo.hu/itthon/20200115-fidesz-gyongyospatai-romak-ugye-soroshalozat.html>

<sup>139</sup> [https://index.hu/belfold/2020/01/17/orban\\_engem\\_mar\\_nyolcszor\\_olt\\_meg\\_soros\\_halozata/](https://index.hu/belfold/2020/01/17/orban_engem_mar_nyolcszor_olt_meg_soros_halozata/)

- In another interview in May 2020, given after the Kúria handed down the final judgment in the case, the Prime Minister commented that it was unacceptable that the majority must feel like aliens in their own country, adding the following: "And as long as I'm the Prime Minister, this will not be the case. Because it is still the country of ours, of the indigenous population, and I see that the Soros organisations have launched the action, this matter has not fallen from the sky."<sup>140</sup>

In addition to the Gyöngyöspata case, another issue was also used for trying to discredit human rights defenders. In early 2020, the governing party launched a political campaign against compensations for prison overcrowding, aimed at **discrediting** (e.g. through the use of the term "prison business") **detainees launching compensation procedures for inadequate detention conditions, their legal counsels, and detainees' rights advocates**, including the HHC.<sup>141</sup> Examples include the following:

- On 17 January 2020, the Prime Minister stated that the payments already made to detainees for inadequate detention conditions amount to over 10 billion HUF, which he considers an "abuse of rights", and, therefore, the Government will "suspend" compensation payments to inmates, and the Government will initiate in the Parliament "immediately" that the respective rules are amended. In the same interview, the Prime Minister said that the European rules on torture are so lax and absurd that they provide room for "making a business" out of the detention conditions, and used the term "prison business". He added that "the attorneys [involved in the matter] should be dealt with as well, because, after all, they took several billion forints from the state's pocket". He also added that he expects the above-mentioned attorneys to turn to European courts if the rules are amended, and he expects that European judges will also find it problematic that "the sun does not shine into the cell sufficiently" (i.e. these bodies are likely to find detention conditions in Hungarian prisons inadequate), but he finds it better to point out the absurdity of a legal framework than to "pay as a fool".<sup>142</sup>
- On 15 May 2020, the Secretary of State of the Justice Ministry gave an interview to one of the pro-government news outlets. The interview, in which the Secretary of State criticized, among others, a submission of the HHC to the Committee of Ministers of the Council of Europe, included the following:
 

*"In a submission [...] the Hungarian Helsinki Committee was heaving because prison compensations cannot be directly transferred to the lawyers' depository accounts, so the lawyers cannot access this money, and they will not undertake such cases. This has made it clear what the government has been saying, namely that the prison business is the business of the pseudo-civil rights defenders and lawyers most of whom can be clearly linked to the political left and the Soros-organizations [...]. This [...] submission was obviously written so that their master [reference to George Soros] would stroke their little heads, like in the transit zone cases."<sup>143</sup>*
- On 8 June 2020, an MP of the Fidesz said that "ruthless lawyers affiliated with the political left and the Soros [organizations] are earning hundreds of millions out of the prison business. Representing convicted criminals, they sue the Hungarian state for billions [of Hungarian forints]."<sup>144</sup>

Even though the above and further similar statements by government and governing party representatives were capable of creating a hostile environment towards detainees, attacked attorneys simply for applying the law, and targeted a human rights NGO once again, **the Commissioner**

<sup>140</sup> <http://www.atv.hu/belfold/20200515-orban-viktor-kokemenyen-nekiment-a-kurianak>

<sup>141</sup> See e.g.: Csaba Györy, *Fighting Prison Overcrowding with Penal Populism – First Victim: the Rule of Law. New Hungarian Law "Suspends" the Execution of Final Court Rulings*, 12 March 2020, <https://verfassungsblog.de/fighting-prison-overcrowding-with-penal-populism-first-victim-the-rule-of-law/>; communication of 29 June 2020 by the HHC to the Committee of Ministers of the Council of Europe: [https://www.helsinki.hu/wp-content/uploads/HHC\\_Rule\\_9\\_Istvan\\_Gabor\\_Kovacs\\_and\\_Varga\\_2020\\_06\\_29.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Rule_9_Istvan_Gabor_Kovacs_and_Varga_2020_06_29.pdf).

<sup>142</sup> For the full interview in Hungarian, see: <http://www.miniszterelnok.hu/orban-viktor-a-kossuth-radio-jo-reggelt-magyarorszag-cimu-musoraban-8/>.

<sup>143</sup> See: <https://www.origo.hu/itthon/20200514-volner-a-bortonbiznisz-az-alcivilek-es-a-soroshoz-kotheto-ugyvedek-uzlete.html>.

<sup>144</sup> See: <https://magyarnemzet.hu/belfold/immar-egyvertelmuve-valt-a-baloldal-segiti-a-bortonbizniszt-8216792/>.

**remained silent** regarding the issue. This is especially problematic due to the fact that the Commissioner also functions as the national preventive mechanism under the Optional Protocol of the UN Convention against torture, so the elimination of inhuman prison conditions should be especially high on his agenda.

These two instances clearly signal the Commissioner's continued unwillingness to step up or speak out for the protection of human rights defenders in Hungary.

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