



Hungarian Helsinki Committee



EÖTVÖS KÁROLY
POLICY INSTITUTE



HUNGARIAN CIVIL LIBERTIES UNION

HUNGARY FACT SHEET 5
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THE INDEPENDENCE OF THE HUNGARIAN DATA PROTECTION AUTHORITY

I. Legal changes

The Fundamental Law abolished the position of the **Parliamentary Commissioner for Data Protection and Freedom of Information** (hereinafter: Commissioner) and replaced it with the newly established **National Authority for Data Protection and Freedom of Information** (hereinafter: Authority).

In parallel with the creation of the Authority, **the governing majority had at the same time ended prematurely the fixed six-year term of office of the former Commissioner**, whose term of office **would have expired in September 2014**. Since the protection against removal from position during the term of office is a crucial component of the requirement of personal independence of national data protection authorities under EU law, **the European Commission has launched a legal action against Hungary before the European Court of Justice**.

The new Authority is an administrative body. An administrative body is **by definition part of the executive branch**, notwithstanding the fact that its independence is declared by law and protected by certain guarantees of autonomy. The Authority does not enjoy the same independent status as the Commissioner, who had the status of an Ombudsperson. The greatest difference between the safeguards of independence of the two institutions is manifested in the manner of formation of their mandates: **the Ombudsperson was elected by the Parliament for a six-year period, while the Head of the new Authority is appointed exclusively by the Prime Minister for a nine-year period**.

II. The practise of the Authority

Since the Authority began operation, it has not issued any decision against the **government** that has come into the media spotlight.

Among the first measures taken by **the Head of the new Authority was to prevent the implementation of the decision of the former Commissioner that found the conduction of the governmental public opinion survey named “Social Consultation 2011” to be non-compliant with individuals’ right to informational self-determination**, and thus released an order to destroy all of the data the government gathered through the survey. The Central Office of Public Administration and Electronic Public Services challenged the decision of the Commissioner in court. After taking office, **the Head of the new Authority released a formal opinion indicating that the Authority did not intend to defend the position of the former Commissioner regarding the Social Consultation**. As regards the judicial review of the Commissioner’s decision, after the removal of the Commissioner, **the respondent’s position**

was taken up by the Head of the Authority. The Authority did not want the court to decide on the lawfulness of the Commissioner's decision, and jointly with the plaintiff, requested that the court dismiss the case.

The Authority was also reluctant to file an administrative proceeding against the government in the case of a second political public poll, "Economic Consultation 2012". In June 2012 the Eötvös Károly Institute, including its Chairman who was the first Parliamentary Commissioner for Data Protection and Freedom of Information, asked the Authority to find that the Central Office of Public Administration and Electronic Public Services had no legal basis to send the consultation letters to citizens. The initiators stated that the government did not act in accordance with the law because, inter alia, the questionnaires reached people, who had officially declined to receive political or commercial direct marketing. The Authority's response letter informed the complainants that the Authority did not observe any contradiction to the law in the data processing, therefore finding that even opening an investigation (was unnecessary in the given case.