

The Hungarian NPM – in the civil view

1. The Hungarian Helsinki Committee

The Hungarian Helsinki Committee which is one of **the most powerful human rights watchdog NGOs** in Hungary. Classically we monitor the enforcement of human rights and **inform** the press, the public and expert networks about violations. We act on the **practical field**: our legal aid service, comprising of several attorneys provide legal advice and representation to victims of state violations. Since the change of the regime – so for almost 25 years –, an important part of our work is the **monitoring of classic detention places**: prisons, police jails, immigration detention.

the HHC

- **leading** non-governmental HR organization in Hungary and Central Europe
- **monitors** the **enforcement of HR** anchored in international human rights instruments
- provides **legal defense** to victims of state authorities' abuses
- **informs the public** about rights violations



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Hungarian Helsinki Committee

4th East European Conference on NPMs
against Tortures and Ill-treatment

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Odessa, Ukraine



The Hungarian **civil sector is quite precisely segmented** among the non-governmental organizations, so there is rarely a conflict of interest.

2. The Hungarian Helsinki Committee's field of activities

Our organization deals with one of **the most vulnerable group of people**, those who are forgotten almost by everyone else: detainees and asylum seekers. In the last years we extended the field of action to the support of **victims of discrimination**: Roma, LGBTQ, people with disabilities. We had the first case in Hungarian legal history in which **ethnic profiling** has been partly substantiated by litigating parties and acknowledged by the police. We also get more and more involved in the **fight against hate crime**.

To understand the Hungarian context it has to be known that since its election in 2010, the governing party having the 2/3 majority of the votes in the Parliament, has **systematically disrupted the system of checks and balances, the rule of law system has fallen apart**, former independent institutions are led by politicians of the governing party or even by their relatives. This is why the HHC started fighting even more powerfully for the **protection of the rule of law** (in the new constitutional, legal and political environment.)

Naturally we are not only active before the Hungarian courts, we bring many cases before **international fora**. We provided successful representation in cases before the European Court of Human Rights (eg.: unlawful detention of asylum seekers, unlawful dismissal of the old judges, police ill-treatment, etc.). We regularly prepare **alternative reports** to the ICCPR, the UPR, to the Fundamental Rights Agency, the Council of Europe and the UN. These "products" are strongly supported by our **research activities**.

3. Ratification of the OPCAT by Hungary

Hungary is a very young OPCAT country we haven't even celebrated our first anniversary in the family. Here is a **short overview on the process of the ratification of the OPCAT and the preparation to the NPM's operation**. Later on I will discuss these steps in detail, underlining the most interesting events or elements, with a special focus on the civil society's role.

1. Hungary gave **oral assurance to ratify the OPCAT** first to CAT in 2006, then a voluntary pledge to the same effect was

the HHC's field of activities

- legal aid for the most marginalized (**asylum seekers & detainees**)
- intervention in **discrimination** cases (e.g. ethnic profiling)
- monitoring **closed institutions**
- strengthening the **rule of law**



ratification of the OPCAT by HU

- **intentions** to do so since 2006
- **ratification** in 2012
- designation of the ombudsman as the **NPM**
- amendment of the ombudsman **law**
- **operation** from 2015
- **preparatory** works not envisaged yet



issued to the Human Rights Council in the same year. The next 5 years **no visible improvements** have been made. In 2011 the ratification of the OPCAT was one of the **express recommendations from the UPR** process which was adopted by Hungary.

2. Then in June 2011, the Government – mainly thanks to the recommendations received in the UPR process – **adopted a Resolution which acknowledged the necessity to ratify OPCAT** and requested preparatory steps to be carried out. The Resolution clearly stated that the **Ombudsman will be appointed** to fulfill the NPM's tasks.

3. + 4. In October 2011 the Parliament **introduced the text of the OPCAT** into the Hungarian legislative framework and also amended the Ombudsman Act in order to provide the Ombudsman with those authorizations that are necessary for it to be the NPM.

5. Hungary availed itself of the possibility to **postpone the implementation** of its obligations in relation to the NPM for three years under Article 24 of the Protocol. However the government **did not send the declaration** to the UN at the same time as the ratification, it supplemented it later in February 2012 almost one month later, but during the period under which the OPCAT enters into force, therefore it is considered that Hungary validly made the declaration under the Article 24 and the **NPM's operation will only start in 2015**. If the government does not further delay the operation of the NPM for one more year...

6. The HHC **welcomed the designation of the Ombudsman as the NPM**, since the present Ombudsman is very much devoted to carrying out monitoring tasks and proved to be diligent and critical towards state actions. However it has to be noted that the **Ombudsman's mandate ends** in September 2013, a new person will be elected. Based on the experience of the government in appointing leaders to "independent" institutions it cannot be trusted that someone without political interests or motivations will be nominated... Therefore the independent functioning of the Ombudsman and so the NPM's is at risk. Since the present Ombudsman is fully aware that he won't be reelected, there is no incentive for him to carry out preparatory tasks even though it falls under his remit.

4. The role of the civil society

In 2011 the HHC has been advocated that Hungary ratifies the OPCAT, but the **intentions and the aim of the advocacy have changed** during one week-end. When all of a sudden the Parliament adopted the law on the OPCAT and amended the Ombudsman Act making the Ombudsman's office authorized to act as the NPM, naturally the HHC **started advocating for the modification of the law** since it was not compliant with the requirements of the OPCAT.

The third type of activity has been parallel carried out with the previous one: **advocacy for the proper and effective operation of the future NPM**. This lobby work has mainly been focusing on the adoption of the necessary internal regulations, the conclusion of a memorandum of understanding with external bodies (NGOs) and the preparation of the Ombudsman Office itself and other stakeholders for their obligations under the OPCAT.

5. Advocacy for the OPCAT's ratification

The HHC organized the first **roundtable** related to OPCAT in 2008 together with the Ombudsman. The principal question was: whether the **Ombudsman or the Prosecutor's Office will be designated as the future NPM**. At the time it was not obvious for certain stakeholders that the Prosecutor's Office is not independent from the criminal justice system: it has powers of a public authority related to investigation which is not compliant with the OPCAT.

Nevertheless in 2011 a study carried out by the Ministry of Justice examining the possible NPM options **took into consideration the Prosecutor's Office** and some high level officers have been

role of the civil society

1. promotion of the **accession to the OPCAT**
2. lobbying for the proper **implementation of the OPCAT**
3. advocating for the **appropriate operation of the NPM**



University of BRISTOL
Report on the ratification by Hungary of the Optional Protocol to the United Nations Convention against Torture and designation of the National Preventive Mechanism.
By Dr. Anna Stubbins
Human Rights International Centre
University of Bristol

1. ADVOCACY for the OPCAT's ratification

- **1st roundtable** in 2008 with the ombudsman's office and stakeholders
→ principal Q: ombudsman or prosecutors
- **external expert's study** from the Bristol University in 2011
→ recommendations for the government, the ombudsman's office and the civil society

still convinced that there was no interference being a prosecutor and the NPM. It has to noted however that a in the Prosecutor's office there is a **department responsible for the supervision of the lawfulness** of the penitentiary institutions, of the implementation of penalties and coercive measures. This department has access to all information concerning the number of people who are deprived of liberty, to every place of detention and have the power to examine the treatment of the detainees and the circumstances of the detention as well as carry out interviews in private. Finally the debate ended well and the government recognized that the **prosecutor is not an option** for the NPM.

In 2011 the HHC invited Elina Steinerte, researcher-fellow of the Human Rights Implementation Center at the Bristol University. The expert's task was to **provide an independent overview of the actual Hungarian situation** concerning the implementation of the NPM and to formulate clear, firm recommendations regarding the necessary future steps in a study report. Ms Steinerte carried out an outstandingly high quality report and made **well-usable, expressive recommendations for the government, the Ombudsman's office and the civil society.**

The external expert prepared to her trip to Hungary with desk research and literature review. She passed a few days in Hungary having **numerous meetings with all the relevant stakeholders**: the Ombudsman, the Ministry of Justice and Foreign Affairs, prosecutors supervising the execution of punishments, officers from the ministry responsible for social and health care institutions (closed psychiatric institutions, closed hospital wards, etc.) and representatives of the civil society.

The **main issues of the interviews** focused on:

- the reasons of **Hungary's reluctance to ratify the OPCAT**
- which **institution the interviewees find appropriate** for the NPM
- whether the interviewees would be **satisfied if the Ombudsperson is designed** to be the NPM in accordance with the initial plans
- how the interviewees find **their own role** in the operation of the NPM.

1. ADVOCACY for the OPCAT's ratification

recommendations of the external study:

- **clear date** of the accession
- **no declaration** under art. 24
- transparent **consultations** with all stakeholders
- **explanatory work** with detention places
- appropriate **NPM legislation**
- **NPM plus model**
- involvement of an **SPT member**



Elina Steinerte wrote a **20-page report** of her experience and **formulated recommendations** addressing all stakeholders in three directions: ratification of the OPCAT, designation of the NPM and preparation for its operation.

For the government the study recommended to make it clear **when Hungary intended to ratify** the OPCAT **without postponing** the fulfillment of obligations under Article 24. If the government did the declaration, than a **detailed action plan** was needed specifying the preparatory steps – requested the study. As a matter of urgency the expert suggested for the state to involve all relevant institutions in **transparent consultations**. If the government failed to fulfill this, the Ombudsman, or eventually the civil society should have initiated the negotiations. The expert suggested **involving a member of the SPT** to all consultations.

The external expert found that institutions affected by the OPCAT **are not at all aware of its scope and meaning**, therefore she considered **explanatory work** for places of detention and supervision authorities was crucial.

The study clearly stated as well that the **designation of the Ombudsman's office together with NGOs** as the NPM would **assure the necessary financial means** for its operation. It was clear from the study as well that a **new legislative framework** should have been elaborated.

The report laid responsibilities on the Ombudsman by **requesting the government** to satisfy the recommendations addressed to it. The study suggested the Ombudsperson **acting if the government failed to do so**. According to the study the Ombudsman had to **critically analyze the office's capacities** whether it would be able to carry out the NPM's tasks alone or would need to be assisted by experienced NGOs. The Ombudsperson was also bound by the recommendation to take part in **preparatory works** to explain the raison d'être of the OPCAT and engage in **consultations with NGOs** concerning their future cooperation. The Ombudsman was also advised to **set up a list of all places of deprivation of liberty** and clearly **request the necessary funding** from the government.

Naturally the civil society received recommendations as well. NGOs were recommended to be **vigilant and take over the tasks** (initiation of consultations, preparatory works, modification of the law, etc.) of the government and the Ombudsman's Office if these would be reluctant to act. First of all civil organizations were very severely advised to carry out consultations among each other and **clarify their views on their role in the operation of the NPM**. Their responsibility would be to **involve survivors of torture, service users, ex-detainees** in the decision-making process.

The main problem in Hungary was that **no consultations took place**, and there were not even extensive or transparent consultations within the government agencies. As mentioned before the first sign after the 5-year silence related to OPCAT: the government – before the accession to the OPCAT – adopted a **resolution** in which it stated that the Ombudsman would be designated as NPM. The civil society was not even informed about the adoption of such a legal document.

The second event related to the ratification was the **implementation of the OPCAT's text into the Hungarian legal framework and the amendment of the Ombudsman Act**. It all happened in an extreme hurry: only 4 days of commenting without waiting the deadline to expire. The hasty process is inexplicable and even ridiculous taking into consideration the 3-year postponement of the NPM's operation. So without any consultation with civil society and with only four days allowed for commenting on the draft but not even waiting for this deadline to expire, the **Parliament ratified OPCAT** and at the same time **amended the Ombudsman Act** in order to provide the Ombudsman with those authorizations that are necessary for it to be the NPM.

6. Advocacy for the appropriate implementation of the OPCAT

The HHC **welcomed** the ratification itself and the designation of the Ombudsman as the NPM. However the HHC assessed that – not independently from the hasty pace of the legislative process – the **modifications are unsatisfactory and inadequate** to fulfill all the requirements prescribed by OPCAT:

1. the law does not cover all types of places of detention and does not assure the possibility for the NPM to consult whoever it considers necessary;

The scope of visits may be limited to the places already listed in the Act and the Ombudsman may **fail to decide independently** whether for example a child care home ran by the church **falls under its NPM mandate**. The wording of the new provisions referring persons who the NPM may talk to could be **interpreted that the NPM can only interview the employees of the monitored institution** and not everyone who the NPM considers necessary.

2. NGOs which have already acquired significant experience in monitoring places of detention are excluded from the NPM;

In line with the lack of consultations with the civil society, **NGOs were left out** from the NPM. Authorities argued that the **exclusion is not expressly written** in the text of the Act, therefore no provision eliminates the civil society's participation and the Ombudsman will have the power to involve NGOs in the operation of the NPM. It was also argued that the provisional **budget of the NPM includes a line** reserved for the financing of external expertise (like NGOs, translators, etc.). This argumentation has not convinced us of getting the possibility to take part in the NPM.

3. the NPM would start its operation only in 2015;

Based on the interviews of Elina Steinerte and on our precedent knowledge, it was crystal clear that the reason of the postponement of the NPM's operation was **merely money**. The government was not willing to spend money on the protection of human rights... This argumentation is not acceptable.

1. ADVOCACY for the OPCAT's ratification

complete lack of consultations, transparency:

- gov. resolution on the **designation of the ombudsman** as the NPM

WITHOUT any consultation with the civil society

- implementation of the OPCAT rules in the HU system (**OPCAT law**)

BUT only 4 days of commenting and NOT waiting for the deadline to expire

2. ADVOCACY

for the implementation of the OPCAT

the HHC's comments of the OPCAT law:

- not necessarily all types of **places of detention** are covered
- the NPM is not assured to **consult whoever** it wants
- **NGOs are excluded** from the NPM
- the NPM starts its operation **only in 2015**
- the **budget** allocated is highly **insufficient**



4. the budget allocated to the operation of the NPM is highly insufficient;

The HHC has been provided with preliminary budget calculations by the Ombudsman. It amounted approximately to an annual 1 million euros. The **sum has been significantly cut** later: it has been reduced to 60% of the initial. The **number of employees was more than halved**: instead of 25 NPM members the law only guarantees 11 persons.

Due to these characteristics the prevention of torture in closed institutions will **not be assured effectively if the Ombudsman Act is not further amended** - stated the HHC.

In compliance with the recommendations of the study prepared by the external expert, the HHC **convened a high level international conference** in Budapest May 2012. We were very much honored by the participation of the SPT chair, *Malcolm Evans*, the Slovenian NPM, *Ivan Selih*, *Matthew Pringle* from APT and *Rachel Murray*, the director of the Bristol University's Human Rights Implementation Centre and the Hungarian Ombudsman. The conference was co-organized with the INGO: Mental Disability Advocacy Center and chaired by *Thomas Hammarberg*.

All stakeholders: ministries, police, penitentiary, Ombudsman, service users, ex-prisoners, MPs accepted our invitation. We only failed to explain the ministry responsible for health and social care why they are affected by the OPCAT's obligations, so they did not participate.

At the conference participants discussed the **meaning of the OPCAT and the duties of the NPM and their own institutions**. The aim was to raise knowledge and make participants aware of their own duties.

7. Advocacy for the operation of the NPM

Next day exclusively with the international experts and the representatives of the Ombudsman's Office and the Ministry of Justice a **confidential meeting was organized** to discuss the more technical details, mostly the problems detected in the law, especially focusing on the most important parts: limitation of the scope of the NPM's mandate. The aim was to find **legislative solutions** in order to make the Hungarian law OPCAT compliant. One additional point was raised: the **involvement of former detainees, psychiatric patients, survivors of ill-treatment in the NPM body** and amend the law accordingly.

Open and fruitful discussions developed. Participants managed to achieve commonly formulated **recommendations**. The representative of the Ministry of Justice undertook to draft modifications to the Ombudsman Act in order to ensure that the **NPM can talk to whoever it wants and to erase the requirement of a university diploma** for the members of the NPM body. The Ombudsman was open to set up an internal list of all places of detention serving as a guideline in the future use, he did not reject the cooperation with the civil society.

The very positive long-term outcome of the meeting is that the Ministry of Justice – according to its promise – initiated the

3. ADVOCACY for the operation of the NPM

- **amendment of the OPCAT law** in compliance with the confidential meeting
 - persons to be interviewed
 - required qualifications
- ombudsman-NGO **cooperation limited**
 - small chance of MoU
 - separate lists of closed institutions
 - MoJ does not intervene

2. ADVOCACY for the implementation of the OPCAT

international seminar:

- CoE, SPT chair, APT, Bristol Univ., Slovene NPM
- 50 HU participants (MoJ, ombudsman, police, penitentiary, ministries, service users, NGOs)
- **core Qs of the OPCAT & NPM** as preparatory works



3. ADVOCACY for the operation of the NPM

confidential meeting :

- with the main stakeholders: international experts, MoJ, ombudsman, HHC, MDAC
- agenda as defined by the HHC in its comments on the OPCAT law



3. ADVOCACY for the operation of the NPM

confidential meeting's **recommendations:**

- **modification of the OPCAT law**
 - ensured that the NPM interviews whoever it wants
 - required qualification of experts to be changed
- set up an **internal list of places** depriving of liberty
- ombudsman-NGO **cooperation**



amendment of the Ombudsman Act and willing to entirely review the Hungarian law in the light of the OPCAT requirements, especially concerning the persons to be interviewed and the qualification requirements of NPM members. Therefore the NPM will face no obstacles as regards its interviewees, he will be in a position **to talk to everyone** and **experts by experience** (so for example ex-prisoners not having a university diploma) will have the possibility to join the NPM crew.

The **cooperation between the NGOs and the Ombudsman faces some limitations**. On the one hand the Ombudsman agreed that the law has to be changed, some structural developments were also envisaged within the office. On the other hand the HHC could not start negotiations with the office concerning the methods of a future cooperation within the NPM. The obstacle may arise from the fact that when the NPM starts operating a new Ombudsman will be in charge and the present one do not want to frame his successor between bars.

In the meantime the HHC continues its advocacy work on a little different field. With the involvement of well-experienced economists an **economic study is under preparation**. The aim is to **assess whether the amount dedicated to the NPM will be enough to cover the necessary expenses in 2015**.

The economists will present a short international comparison of NPMs (including surface of the foreign countries, the population incarceration rates, structure of the NPM, no. of experts working for the NPM, frequency and places of visits). They will use **bottom-up calculations** which are quite alien from the Hungarian practice. (For example the penitentiary system is not funded based on the number of detainees – which is highly increasing each year – but the system receives that amount of money which the national budget can afford irrespectively to the needs.) **The economic study will focus on the average, but the economists will include a best case and a worst case scenario.**

The economic study will serve as a **very good advocacy tool**. The HHC hopes to get support from the Ombudsman's Office and request the necessary funding from the government together. Maybe the economic study will clearly show that the **involvement of the civil sector** in the NPM's work is beneficial budget-wise.

8. Future plans

The HHC won't give up the fight for the involvement of NGOs in the NPM. Besides the economic study the HHC will **draft a memorandum of understanding on the civil participation on its own** and will try to negotiate it afterwards with the Ombudsman. It will keep on **informing the SPT and the APT** on the latest developments searching for their advice and support. In September next year the HHC will **contact the next Ombudsperson** to continue the work with him or her. The **economic study will be translated into English** in order to share it with the interested experts, operating NPMs or candidates in foreign countries. Surely in 2014 an NGO coalition will lobby for a **good candidate at the election of SPT members**.

9. Recommendations

NGOs are good partners in NPMs, they **are dedicated** to share their experience of monitoring with the NPM body and happy and motivated to **take part** in the operation of the NPM. It is beneficial for state agencies to use their expertise and rely on their experience.

NGOs need to be prepared to take the lead with advocacy if no one else does. **International organizations are also very much keen**

3. ADVOCACY for the operation of the NPM

- **economic study**
by the Budapest Institute think tank
- international **comparison**
- **bottom-up** calculations
- **methodology** how to calculate the necessary budget in order to be "average"
- + 2 scenarios:
 1. the **minimum** to survive
 2. the proper one to **flourish**



plans

- fight for the **NGO inclusion**
→ results of the economic study
→ MoU with the ombudsman's office
→ search for the SPT's / APT's support
- **dissemination** of the economic study
- lobby for **HU candidates** at the election of SPT members



recommendations

- **confidential meeting** with the main stakeholders
- involvement of **international experts** (esp. SPT)
- **state allies** for the inclusion of NGOs in the NPM
- background materials and academic **studies** or fact sheets
- adequate international **comparisons**
- **unusual** means
- **international** advocacy



on supporting you if you face obstacles in your country. Continuous discussions are very important, however **confidential meetings – as strong points of reference – are probably even more useful.** The participation of **international experts truly has an added value.** It is the duty of the SPT to help state parties operating the OPCAT well, so nobody should be afraid to approach it. Data, comparisons, factual findings, fact sheets are always well usable – as in general in advocacy work. **Non classical** actions, events, tools can well serve NGO goals.

Дякую вам за увагу

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Odessa, November 2012