



THE COMMISSIONER FOR FUNDAMENTAL RIGHTS OF HUNGARY
THE NATIONAL HUMAN RIGHTS INSTITUTION OF THE UNITED NATIONS

**REPORT OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS OF
HUNGARY FOR THE 3RD CYCLE OF THE UNIVERSAL PERIODIC REVIEW OF
HUNGARY IN THE HUMAN RIGHTS COUNCIL**

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I. METHODOLOGY

1. This report is submitted by the Commissioner for Fundamental Rights (CFR) of Hungary on the occasion of the 3rd Universal Periodic Review of Hungary in the Human Rights Council. The CFR aims to protect
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and promote fundamental rights with special attention to the most vulnerable groups of society, the rights of the child, persons with disabilities, people belonging to minorities and the interests of the future generations. The report is based on the recommendations of the previous review and others stemming from findings of individual cases and comprehensive investigations launched since the last review.

II. RIGHTS OF MINORITIES

2. The field of nationality law is one of the most complex segments of the Hungarian legal system: it is a very well-elaborated body of law both on textual and dogmatic levels, based on international foundations and possessing well-developed supporting and monitoring mechanisms. It provides a wide range of individual and collective rights for all the thirteen nationalities living in Hungary. The system of nationality self-governments, the provision of representation in the Parliament and the system of State subsidies are unique in Europe. However, some issues have to be mentioned: according to complaints sent to the Deputy Commissioner for Fundamental Rights responsible for the Rights of National Minorities (DCFR-NM), co-operation between local and municipal nationality self-governments in keeping flexible contacts with the authorities, as well as exercising the right to consent are problematic.ⁱ

2.1 Recommendation: Before the next review, the Government should develop and implement a comprehensive plan to revitalize and promote the use of minority languages in the public sphere, with the effective participation of organizations representing persons belonging to national minorities, including measures aimed at encouraging speakers of minority languages to use them in their relations with administrative authorities.

3. Concerning teaching and learning possibilities, higher education does not offer training in an adequate number and quality for professionals who are aware of the special needs of disadvantaged children and who are adequately qualified. In order to facilitate the acquiring of quality and practical knowledge in this field, special measures on equalization of opportunities are necessary during the recruitment and training of students.ⁱⁱ

4. Providing wide-scale and factual information to the members of the young generations as well as sensitizing them are priority duties of public and non-formal educational institutions as well. Although the culture of the nationalities, including that of the Roma people is presented in the National Core Curriculum, schoolbooks, textbooks, digital and other teaching materials require development and modernization as regards their content in order to present a complex knowledge about the history of the Roma communities, their role in Hungarian history and the traumatic events of their history.ⁱⁱⁱ

5. Equal and efficient access to education of Roma children is still a problem in Hungary. In recent years, the improvement of the accessibility, the quality and the efficiency of benefits and services in child-welfare and child-protection has been a successful initiative providing better chance of childhood socialization and education. However, granting equal access to efficient education is still a problem, in particular in some areas of the country where direct and indirect discriminatory practices are strong due to complex sociological and demographic circumstances. Several non-governmental organizations have launched and maintain forward-looking programs, and the support provided to them by the State, both morally and financially, offers additional opportunities.

6. The Roma community is benefiting from special cultural autonomy rights, but has been able to exercise these rights only to a limited extent because of the effects of poverty, vulnerability and discrimination, which affected members of the community more seriously than other groups of the society. The DCFR-NM has experienced some developments, but ensuring equal treatment, stepping up against hate speech and hate crime, and implementing special equal opportunities programs still play a key role today, as means of combating historical disadvantages and frequently experienced institutional discrimination. In General Comment 5/2020 and in General Comment 6/2020, she pointed out that acts of hate and hate speech, which are commonplace, pose extreme threats to social peace, even if they do not reach the level of crime, and that it is in our common social interest to prevent and combat them. However, it takes exemplary, committed and consistent action and proper tools on behalf of the legislators and law enforcers in each case when social peace and cooperation are at risk.

7. In Hungary, there are more than 1,000 underdeveloped settlement parts mainly inhabited by Roma people. These locations suffer from severe unemployment, social and health problems, as well as problems of access to services. In recent years, the focus has shifted to providing professional presence, the dynamic

development of human services, and adaptation to the local conditions.

7.1 Recommendation: Before the next review, the Government should enhance its efforts to improve employment rates and conditions for Roma people, notably in the most disadvantaged regions; to specifically design and enhance existing policies aimed at increasing the level of employment of Roma women, with the effective participation of Roma organizations and independent experts; to dedicate sufficient resources to their implementation; and to monitor and evaluate their effects on a regular basis.

III. RIGHTS OF THE CHILD

8. Based on reports, access to health visitor services is still very unequal.

8.1 Recommendation: Before the next review, the Government should change the legal regulations regarding the establishment of health visitor care districts so that it takes into account the municipal infrastructure, the population composition, health status, social situation and a differentiated upper limit when determining the number of persons covered in each district.

9. Vaccination should not be a prerequisite for public education. The principals of schools – as members of the child protection warning system – are entitled to notify the competent government agencies about the lack of the age-based compulsory vaccination and not to reject applications. The local government agencies initiate their procedures in order to vaccinate the children. However, these procedures are long and the outcome is less than certain, as fining is not an appropriate instrument to motivate anti-vaxxers. The influence of the anti-vaccine movement is a constantly growing problem.

9.1 Recommendation: By 2023, the Government should launch a program to study the positions developed and promoted by anti-vaccination organizations, and refute them in a proactive and comprehensible way.

10. Barriers still exist in connection with the family-focused health care services. The conditions of rooming-in are not provided in many hospitals even if the patient is a premature or new-born infant. In many cases, parents are treated as visitors, contrary to the legal regulations. This phenomenon has multiple origins: the absence of proper buildings and the perception and approach of many health care providers are the main problems.

11. Institutional placement of children under the age of 12 due to “special needs” is still enabled by the Child Protection Act. During the Commissioner's visits to children's homes in 2020, experts indicated that the majority of children admitted to the institution come from foster care. Children with special needs are not taken on by foster parents at all, or they are returned to the children's homes primarily for behavioral reasons. During the visits in 2021, heads of institutions have indicated that a child with exceptional, special, and dual needs is practically out of foster care. The fact that parents can almost exclusively meet their children in contact rooms hinders their integration of the children back into their family from foster care under the age of 3.

11.1 Recommendation: By 2022, the Government should launch training programs for foster parents to provide adequate knowledge about caring for children with special needs.

12. In schools, despite the legal prohibition, children do not have sufficient guarantees against abusive supervision, nor for the prevention of peer-on-peer abuse.^{iv}

12.1 Recommendation: Before the next review, the Government should introduce training courses on crisis management for teachers.

13. The provision of school meals for children with special dietary needs remains a problem^v and there are no guarantee arrangements for the provision of services for children's summer camps.^{vi}

13.1 Recommendation: Before the next review, the Government should introduce effective legal measures to ensure the feeding of children with cross-allergies and to solve the respective issues in summer camps.

14. Due to the lack of sufficient preparation time for the change in the conditions of education, the students of vocational grammar school could only prepare for the sectoral vocational examination requirements with difficulty^{vii}, while from applicants to higher education, the legislator expected – which requirement was

later abolished – B2 level language skills without the required conditions being provided^{viii}. The new procedure for determining the school maturity of young children did not take into account the best interests of children^{ix}. The freedom of expression was violated by the procedure issued by the national body performing the tasks related to the management of vocational training institutions, which made the communication of state vocational training institutions subject to prior approval^x.

15. According to the Public Education Act, children and students who need special attention^{xi} - due to their special characteristics and situation – require different activities, attention, special expertise and equipment than the average. The Commissioner revealed an impropriety regarding the lack of development due to the condition of these children and pupils^{xii}, the impossibility of their access to education^{xiii}, due to the inadequate conditions of the internal schools operating in children's homes^{xiv}. The Commissioner also revealed an impropriety regarding the access of chronically ill children to education^{xv}, the report was the initiator of the ongoing legislative amendment.

15.1 Recommendation: Before the next review, the Government should provide the material and personal conditions necessary for the development of children and pupils entitled to special treatment.

16. According to the new regulations of the Public Education Act based on complaints lodged by parents, the CFR inquired into the procedure regarding the assessment of school readiness and requested to postpone children's school starting date, and he also inquired into the fundamental-rights-related questions of the practical implementation thereof. In his report^{xvi}, the CFR requested that the Ministry responsible for Public Education review the regulation and the system of prerequisites regarding the procedure, and comprehensively examine the educational findings concerning the first graders of the academic year 2020/2021.

IV. PERSONS WITH DISABILITIES

17. Adequate care for children with autism and with other severe associated disabilities is not solved – appropriate services are not available for them and for their families, in many cases not even within residential institutional settings. Several ongoing proceedings^{xvii} show the non-recent but increasing nature of the problem.

17.1 Recommendation: Before the next review, the Government should create services that support the independent conduct and community life of children with autism and other severe associated disabilities.

17.2 Recommendation: Before the next review, the Government shall take steps to finalize the process of deinstitutionalization with regard to children's homes and social care institutions for persons with disabilities.

V. PERSONS WITH REDUCED WORKING CAPACITY

18. The earning limit regarding persons with reduced working capacity was abolished by 1 January 2021. Before the amendment, persons with reduced working capacity who have been employed and who did not wish to stop receiving their financial support based on their condition, could only earn an income for three consecutive months not exceeding the minimum wage for the year in question

VI. FREEDOM OF THE MEDIA

19. Media regulation falls outside the Commissioner's competence. In Hungary, it belongs to the National Media and Telecommunications Authority, which is an autonomous regulatory body reporting to the National Assembly on an annual basis. The CFR is a member of the Digital Freedom Committee set up by the Ministry of Justice, which aims to make the operation of transnational technological companies transparent. Building on the experience of public bodies, the Committee examines the wide-ranging challenges and regulation of the online space by subject areas in order to attain the possibility of personal freedom in the digital space with the help of transparency.

VII. OPCAT NATIONAL PREVENTIVE MECHANISM

20. The National Preventive Mechanism (NPM) conducted visits to a wide range of places of detention. The NPM pays special attention to some groups with particular vulnerability, such as women, children, members of minority groups, foreign nationals, or persons with disabilities. In order to facilitate the harmonization of national legislation with international standards in the field of human rights, the NPM made 67 legislative initiatives in its reports.^{xviii}

21. The NPM regularly organized the meetings of the Civil Consultative Body, where the members could comment on the reports and working methods of the NPM and make recommendations relative to the places of detention and concerning inspection priorities, which the NPM considered during the designation of its annual schedules of visits.

22. The NPM pursued its activity during the COVID-19 pandemic in line with the principles stated in international and European documents. Due to the risks of the pandemic, the visits, in contrast to the general practice of the NPM, were announced to the institutions in advance. The primary aim of these visits was to investigate the measures taken to prevent the spread of COVID-19 and to cope with the challenges of the pandemic, and to inspect the impact of the restrictions imposed due to the COVID-19 outbreak on the everyday lives of the persons deprived of their liberty.

VIII. PERSONS DEPRIVED OF THEIR LIBERTY

23. In the course of its visits carried out in prisons, the NPM detected overcrowding in several occasions.^{xix} The NPM made initiatives to the Hungarian Prison Service to take the appropriate measures in order to provide a living area for the detainees as required by the domestic laws and international standards. In July 2020, as a result of a nationwide capacity expansion project, 10 new buildings with a total capacity of 2750 started operating; hence the utilization rate of the Hungarian prison system is expected to fall below 100%. The NPM will continue to pay close attention to this issue.^{xx} It is appreciated that new detention facilities have been established and the overcrowding of penitentiary institutions has decreased.

IX. ASYLUM SEEKERS AND REFUGEES

24. The Ombudsman regularly inspected the southern borders of Hungary affected by migration, monitored the performance of duties and gathered information from police officers on duty there. In relation to the changes introduced in the legislative framework concerning the asylum procedure in Hungary, the CFR constantly monitored draft legislation, and shared his concerns with the legislator. The CFR reminded the Legislation Committee of the Parliament of the national and international human rights standards, pointing out that Hungary has constitutional and moral obligations, and responsibility shown towards refugees is one of those obligations. Every human being shall have the right to life and human dignity, the right to freedom and personal security, the right to equal treatment and the right to a fair procedure. Obviously, the above principles also apply to children who, due to their vulnerability relating to their age, need enhanced protection and care from the state and its stakeholders.

X. ACTIVITIES IN RELATION TO COVID-19

25. In Hungary, the first cases of the COVID-19 pandemic were reported on 4 March 2020. On 11 March, the Government declared a state of danger. According to the Fundamental Law of Hungary, under a special legal order, such as the state of danger, the exercise of fundamental rights – with the exception of the universal right to human life and dignity, the prohibition of torture, inhuman or degrading treatment, and the guarantees concerning fair trial – may be suspended or restricted, and may be exempt from the test of necessity and proportionality.

26. During the state of danger, the Commissioner continuously monitored the situation and informed the public about his considerations and actions, as well as launched inquiries concerning specific topics. It focused on its on-site presence and paid special attention to the most vulnerable groups of society.

27. The CFR has conducted numerous on-site inspections during the first and second waves of the COVID-19 pandemic to date. Unlike the current international practice of ombudsmen, which puts more emphasis on holding events online, he paid personal visits in order to inspect the measures taken for the prevention of the COVID-19 pandemic and the enforcement of the fundamental rights by fully observing pandemic-related rules and taking all precautions. The CFR visited children's homes, special homes for the

disabled, reformatories, home quarantines, border crossing points, places of detention and police headquarters during this period.

28. The CFR and his Deputies issued a statement in which they called attention to the needs of vulnerable persons.^{xxi}

29. The CFR has inquired into each of these cases, or the relevant inquiry is still in progress. At the beginning, it was evident that complainants lacked information on the topic or were inadequately informed. Even in the cases where he had no competence to launch an inquiry, the CFR made efforts to inform the complainants about the legal background, as well as about the organs they could turn to.

Endnotes

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ⁱ Cases AJB-209/2016, AJB-3090/2016, AJB-727/2017, AJB-558/2018, AJB-3540/2018, 672/2020

ⁱⁱ AJB-710/2017

ⁱⁱⁱ General Comment 3/2020

^{iv} AJB-363/2017, AJB-1005/2017, AJB-1486/2018, AJB-545/2020, AJB-844/2019, AJB-690/2019

^v AJB-3378/2017

^{vi} AJB-689/2018

^{vii} AJB-1848/2018

^{viii} AJB-360/2017

^{ix} AJB-694/2021

^x AJB-539/2020

^{xi} This includes children and students with special needs who have musculoskeletal, sensory, intellectual or

speech impairments, – in the case of a co-occurrence of multiple disabilities – a cumulative disability, autism spectrum disorder, and other mental developmental disorders (severe learning, attention, or behavioural disorders).

^{xii} AJB-550/2020, AJB-494/2017

^{xiii} AJB-745/2020

^{xiv} AJB-1201/2016

^{xv} AJB-79/2019

^{xvi} AJB-694/2021

^{xvii} AJB-1572/2021

^{xviii} See Recommendation 128.26-28.

^{xix} See e.g. Reports No. AJB-3865/2016, AJB-679/2017, AJB-474/2018, AJB-501/2018.

^{xx} See Recommendation 128.127

^{xxi} <http://www.ajbh.hu/en/web/ajbh-en/-/communication-from-the-commissioner-for-fundamental-rights-of-hungary-and-his-deputies?inheritRedirect=true>