

THE OMBUDSMAN INSTITUTION IN HUNGARY

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Abstract: *The aim of this article is to introduce non-Hungarian readers into the regulation of the Hungarian ombudsman institution, i.e., the Commissioner for Fundamental Rights. In Hungary, the office of the Commissioner for Fundamental Rights was created in order to control the activity of public administration bodies. However, it fulfills its task through the protection of fundamental rights, which means that it combines the functions of legal protection and public administration control. In this way, it can be classified as belonging to the mixed or hybrid model, called by some an ombudsman of human rights. This article tracks the regulation of this institution from its appearance to its current state. It will be made clear that the Commissioner for Fundamental Rights has numerous tasks, which makes it one of the institutions that can be considered as guarantees for the rule of law.*

Keywords: *Commissioner for Fundamental Rights, ombudsman, control of public administration, single ombudsman model, Hungarian regulation*

INTRODUCTION

I. HISTORY OF THE OMBUDSMAN INSTITUTION IN HUNGARY

During the political changes in 1989–1990 for the democratization of Hungary, the country's government system became a parliamentary republic based on the rule of law. New institutions were created, including the ombudsman and the Constitutional Court. Also, the institution of the President of the Republic was restored, replacing the office of the collective head of state. The National Assembly gained real function, and the Cabinet became responsible to the parliament. From this time, the entirety of human rights had to be enforced, and the switch took place from the socialist system of a planned economy to a market economy. A multitude of democratic institutions appeared at this time, built upon the foundations laid down by the decisions of the Constitutional Court setting out the operation of each institution in compliance with the rule of law and legal certainty.

This article presents the Hungarian ombudsman institution, also known as the Commissioner for Fundamental Rights. Ombudsman-type legal protection appeared in Hungary first in the summer of 1995, in the period following the political changes in 1989–1990, without earlier predecessors. Its legal background was provided by Act LIX of 1993 on the Parliamentary Commissioner (Parliamentary Commissioner Act), but it only became operational at a later date. The new legal institution was added to the current constitution by Act XXXI of 1989 on the Amendment of the Constitution. Following the political changes in 1989–1990, a deep transformation of Hungary took place towards the rule of law, which involved the overhaul of the governmental system and the appearance of new constitutional bodies of legal protection. Among many other changes, the creation of the ombudsman and the Constitutional Court was of utmost importance. These institutions

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are fundamental prerequisites of a democratic state governed by the rule of law, even if democratic states without an ombudsman or a constitutional court do exist in the world. It is also worth taking a look at the ombudsman's relationship with other legal protection bodies. Especially regarding the relationship between the Constitutional Court and the courts. As I mentioned in the article, the ombudsman can initiate specific procedures of the Constitutional Court. None of them is a legislative body, but since the decisions of the Constitutional Court are binding on everyone, these decisions are of decisive importance; some authors even place them in the hierarchy of sources of law. As for the relationship between the ombudsman and the courts, both bodies provide for the protection of fundamental rights, even if in different ways. Vissy Beatrix analyzes in his study that we must see the common point in the fact that both the court and the commissioner of fundamental rights remedy individual violations of fundamental rights. She also rightly points out that the rule of law can exist without an ombudsman, but the functioning of the state cannot be imagined without courts. Of course, each body is characterized by different procedural and formal rules.

“Due to the limitations of jurisdiction, it is not possible to use ombudsman-type legal protection either during the court proceedings or after a court decision that does not result in adequate remedies.”¹

In the period following the political changes in 1989-1990, the institution had several names: besides the internationally accepted “ombudsman”, it was also called “Commissioner of Civil Rights” or “Parliamentary Commissioner”. At first, Hungary applied the multiple ombudsman model, but as we will see later, from the third cycle onwards, it switched to the single ombudsman (or monocratic) system. “The Constitutional Court, with the Constitution being in force, took the standpoint with regard to the regulation of the APC that the task of Parliamentary Commissioners is to exert special parliamentary controls on the *executive*, also in connection with civil rights.”²

In the first cycle, more ombudsmen were created. First, a General Ombudsman, i.e., the Parliamentary Commissioner of Civil Rights, and her general deputy. The first cycle also saw the creation of a Commissioner of Data Protection, tasked with handling violations of data protection,³ and a Minority Ombudsman, tasked with the protection of minorities. In the second cycle, there was a staff exchange, but the institution itself remained

¹ VISSY, B. Mikor az ombudsman és mikor a bíróság? Egyéni alapjog-érvényesítési lehetőségek a két alkotmányos fórum előtt. [When is the ombudsman and when is the court? Individual fundamental rights enforcement opportunities before the two constitutional forums]. In: Marianna Nagy (ed.). Ünnepi konferencia az ELTE megalakulásának 375. évfordulója alkalmából: *Jogi Tanulmányok. [Legal studies]*. 2010, Vol. I-III. Budapest, Magyarország: ELTE Állam- és Jogtudományi Kar (2010) 1,249 p. pp. 151–152. p. 154. p. 161. In: *edit.elte.hu* [online]. [2024-10-03]. Available at: <https://edit.elte.hu/xmlui/bitstream/handle/10831/35034/Jogi_tan_2010_1_Vissy_Beatrice_p_150-163.pdf;jsessionid=5EC69BEEA72CAEEED1E0179BBF619E1F?sequence=1>.

² VARGA ZS., A. Az Országgyűlés független szervei [The Independent Bodies of the National Assembly], III. 3. 'Az alapvető jogok országgyűlési biztosa, Az alapjogi biztos eljárásának feltételei'. [The Parliamentary Commissioner of Fundamental Rights, Prerequisites to the Procedure of the Commissioner of Fundamental Rights]. In: László Trócsányi – Balázs Schanda (eds.). *Bevezetés az alkotmányjogba-Az Alaptörvény és Magyarország alkotmányos intézményei. [Introduction to Constitutional Law: The Fundamental Law and the Constitutional Institutions of Hungary]*. Budapest: HVG-ORAC, 2012, p. 255.

³ At this time, the protection of personal data and the public availability of data of public interest were regulated by Act LXIII of 1992.

largely unchanged. The third cycle, however, brought a great overhaul. The Deputy Ombudsman institution was discontinued, but another ombudsman was invented, so the number of four remained. (The general commissioner also had a general deputy working in the rank of state secretary.) Their designation was parliamentary commissioner; they were general and special commissioners, and there was a deputy to the general commissioner.

Besides the General Ombudsman, the Commissioner of Minorities, and the Commissioner of Data Protection, the Ombudsman of Future Generations (Green Commissioner) was created in 2008, tasked with environmental protection issues. Still, in the third cycle, the legislator discontinued the Data Protection Ombudsman, a decision which had severe repercussions, and the respective task was taken over by the newly created Hungarian National Authority for Data Protection and Freedom of Information (NAIH). The Authority has the right to impose fines from HUF 100,000 to HUF 20,000,000 in case of certain violations, or in other cases, from HUF 100,000 up to HUF 50,000,000. The Authority proved to be efficient and has remained in operation ever since. Finally, the third cycle brought about a reform resulting in a switch from the multiple ombudsman model to the single ombudsman one. From this time, the ombudsman was also called the Commissioner for Fundamental Rights, and the two “remaining” ombudsmen were reduced to deputy positions. This means that one deputy commissioner deals with the protection of the rights of national minorities living in Hungary⁴. At the same time, the other one is tasked with the protection of the interests of future generations. The multiple ombudsman model was criticised for unduly prioritising certain rights as opposed to other rights. There were staff exchanges in the fourth and the current fifth cycles, but the institution remained the same. Besides the Fundamental Law, the activity of the Commissioner for Fundamental Rights is currently regulated by Act CXI of 2011 on the Commissioner for Fundamental Rights (Commissioner for Fundamental Rights Act). The Authority for Data Protection is subject to Act CXII of 2011 on the Right to Informational Self-Determination and on the Freedom of Information (Info Act).⁵ In the period of the political changes in 1989–1990, a fulfilment of human rights can also be observed, with the ombudsman⁶ becoming one of the pre-eminent institutions of legal protection; naturally, however, the courts also played an indispensable role in legal protection. As to the interpretation of rights, the leading role goes to the Constitutional Court. According to the valid formulation of the Fundamental Law, “the Commissioner for Fundamental Rights performs the protection of the fundamental rights; their procedures may be initiated by anyone. The Commissioner for Fundamental Rights investigates any inequities with regard to fundamental rights that come to his knowledge, or has these inequities investigated, and *initiates general or specific measures* to remedy them. The Fundamental Law adds that the Commissioner for Fundamental Rights and his deputies are not allowed to be members of any political party or engage in political activities. The Commissioner for Fundamental Rights submits an annual account

⁴ The rights of national minorities are currently regulated by Act CLXXIX of 2011.

⁵ Act CXII of 2011 on Informational Self-Determination and the Freedom of Information.

⁶ In: *The Office of the Commissioner for Fundamental Rights* [online]. [2024-10-03]. Available at: <<https://www.ajbh.hu/>>.

of their activities to the National Assembly.”⁷ The Hungarian solution clearly incorporates the function of public administration control as well as the protection of fundamental rights,⁸ i.e., being a hybrid or mixed model, it combines the controls of any excess in public administration and the protection of human rights. We can agree with Csaba Cservák’s statement that “unlawful public administration is practically doomed to result in the impairments of human rights.”⁹

“Specific measures are ‘bound to submissions,’ which means that the Commissioner and his deputies only ensure that the specific inequity they had investigated shall be remedied (repressive-reparative initiative). Although an investigated inequity is a necessary prerequisite to the exercise of their right to initiate general measures, their initiative can practically be of unlimited scope, not necessarily restricted to the investigated issue or the cases that already happened.”¹⁰

II. THE LEGAL STATUS OF THE COMMISSIONER FOR FUNDAMENTAL RIGHTS AND THEIR DEPUTIES¹¹

The National Assembly elects the Commissioner for Fundamental Rights from Hungarian citizens who can be elected at parliamentary elections, are either legal practitioners with at least 10 years of professional practice or legal academics, and are 35 years of age or older. The National Assembly elects the Commissioner for Fundamental Rights based on the suggestion of the President of the Republic for 6 years, with a so-called qualified two-thirds vote.¹² The Commissioner for Fundamental Rights can be re-elected once. The deputy of the Commissioner for Fundamental Rights tasked with the protection of the interests of future generations as well as the deputy tasked with the protection of the rights of national minorities living in Hungary are elected by the National Assembly based on the suggestion of the Commissioner for Fundamental Rights. “Today, the requirement of constitutionality that highly respected individuals should be assigned to perform control tasks serving to prevent any abuse in public administration and to ensure the enforcement of human rights is already generally accepted.”¹³ In order for the institution to remain inde-

⁷ Article 30 of the Fundamental Law.

⁸ There are ombudsman-like institutions, similar to the Commissioner for Fundamental Rights but of somewhat different legal status and means of operation, which are incorrectly considered and named “ombudsmen” by the general public. These include the so-called Ombudsman of Education (in fact, the Ministerial Commissioner for Educational Rights) and the Media and Infocommunications Commissioner, who is not an ombudsman, either.

⁹ CSERVÁK, C. Az alapvető jogok biztosa nemzetközi összehasonításban. [The Commissioner for Fundamental Rights in International Comparison]. *Polgári Szemle. [Civil Digest]*. 2017, Vol. 13, No. 4-6, pp. 259–275. In: *Polgári Szemle* [online]. [2024-10-03]. Available at: <<https://polgariszemle.hu/archivum/148-2017-december-13-efolyam-4-6-szam/gazdasag-es-jogtudomany/932-az-alapveto-jogok-biztosa-nemzetkozi-osszevetesben>>.

¹⁰ VARGA ZS., A. *The Procedure of the Commissioner for Fundamental Rights*. p. 257.

¹¹ Sections 4–17 of the Commissioner for Fundamental Rights Act.

¹² The votes of two-thirds of all the members of the parliament.

¹³ TAKÁCS, A. Az alapvető jogok biztosa és a Nemzeti Adatvédelmi és Információszabadság Hatóság. [The Commissioner for Fundamental Rights and the National Authority for Data Protection and Freedom of Information]. 1.1. Az ombudsman típusú jogvédelem kialakulása és elterjedése. [The Development and Spread of Ombudsman-Type Legal Protection]. In: András Téglási (ed.). *Az állam szervezete. [The Organisation of the State]*. Budapest: Dialóg Campus, 2018, p. 214.

pendent, the Commissioner for Fundamental Rights or his deputy cannot be an individual having served during the previous four years as a member of Parliament, an ethnicity spokesperson, a member of the European Parliament, the President of the Republic, a member of the Cabinet, the Political Director of the Prime Minister, a State Secretary, a member of a Municipal Council, a Mayor, a Vice Mayor, a member of a national minority self-government, a notary, a professional member of the Hungarian Defense Forces, a professional member of police authorities or law enforcement agencies, an excise officer employed by the National Tax and Custom Administration, or an official or employee of a political party.¹⁴

The President of the Republic makes a suggestion on the person of the Commissioner for Fundamental Rights within ninety days before the expiry of the term of office of the Commissioner for Fundamental Rights, but not later than the forty-fifth day before the expiry of such term of office. In case of an unexpected termination of the mandate of the Commissioner for Fundamental Rights, the President of the Republic makes a suggestion on the person of the Commissioner for Fundamental Rights within thirty days following the termination of such mandate. Should the suggested person not be elected by the National Assembly, the President of the Republic makes a new suggestion not later than within thirty days. Before making a suggestion on the person of their deputy tasked with the legal protection of national minorities living in Hungary, the Commissioner for Fundamental Rights requests the opinion of the national minority self-governments, which, however, does not have binding force.

The mandate of the Commissioner for Fundamental Rights and their deputy is incompatible with any other state, municipal, social, or political office or mandate; however, they can pursue academic, educational, or art activities, as well as copyright-protected, proofreading, editing activities, and they can serve as foster parents.¹⁵ The Commissioner for Fundamental Rights and his deputies must make a declaration of assets within thirty days following their election, subject to the rules of the declarations of assets made by members of the Parliament. The declaration of assets is public.¹⁶

Following their election, the Commissioner for Fundamental Rights and their deputy take an oath in front of the National Assembly. *The Commissioner for Fundamental Rights is independent in their procedures, is only subject to the law, and may not receive any instructions.* “This legal situation originates from the constitutionally enshrined principles of separation of powers and independence of the judiciary: submitting justice to the control exercised by organs appointed by parliament would lead to an infringement of these principles.”¹⁷ The Commissioner for Fundamental Rights can be questioned in front of the National Assembly but cannot be interpellated.

¹⁴ Section 5 (5) of the Commissioner for Fundamental Rights Act.

¹⁵ Section 8 of the Commissioner for Fundamental Rights Act.

¹⁶ Section 9 of the Commissioner for Fundamental Rights Act.

¹⁷ KUCSKO-STADLMAYER, G. Igazságszolgáltatás 'Judiciary', Chapter IV. 4. Fejezet. In: Gabriele Kucsko-Stadlmayer (ed.). *Európai ombudsman-intézmények. Összehasonlító jogi elemzés az ombudsman-eszme gyakorlatban történő meghonosításának különféle formáiról*. Budapest: ELTE Eötvös Kiadó, 2010. A német kiadás alapján válogatta: [selected based on the German edition]. SZABÓ MÁTÉ-PÉTERFALVI, A., pp. 53–54. Chapter 4.4 In: Gabriele Kucsko-Stadlmayer (ed.). *European Ombudsman-Institutions: Comparative legal analysis of the various forms of implementing the ombudsman idea in practice*.

In Hungary, the Commissioner for Fundamental Rights and his deputies are entitled to the same immunity as members of the parliament have.¹⁸ This consists of two elements: immunity and inviolability. Based on the former, the ombudsman and their deputies cannot be held liable for their opinion, and based on the latter, no criminal or infringement procedure can be initiated against them, nor can they be subjected to criminal coercive measures unless their immunity is suspended by the National Assembly. In case of in flagrante delicto, detention is in order.

The mandate of the Commissioner for Fundamental Rights can be terminated in the following ways:¹⁹ expiry of their term in office, death, resignation, if the conditions of their eligibility no longer exist, by declaration of a conflict of interest, upon their dismissal or disqualification from the function.

If the Commissioner for Fundamental Rights does not resolve the conflict of interest within 30 days from their election, or if a conflict of interests arises in the performance of their duties, the National Assembly shall, at a written motion from any member of the Parliament and after requesting the opinion of the Commission for Conflict of Interest, make a decision on the conflict of interest within 30 days from receipt of the motion. The mandate can be terminated by compulsory retirement if, for reasons beyond their control, the Commissioner for Fundamental Rights is unable to fulfill his obligations stemming from his mandate for more than ninety days. The mandate of the Commissioner for Fundamental Rights can be terminated by disqualification from the function if, for reasons within their control, they fail to fulfill their obligations stemming from their mandate for more than ninety days if they intentionally fail to fulfill their obligation to make a declaration of assets, or if they intentionally falsify any material data or fact in their declaration of assets.

III. BODIES SUBJECT TO INVESTIGATION BY THE COMMISSIONER FOR FUNDAMENTAL RIGHTS, THE PROCEDURE OF THE OMBUDSMAN AND POSSIBLE MEASURES

All around the world as well as in Hungary, the ombudsman's office has been created in order to investigate excesses in public administration; consequently, the ombudsman's scope of activity involves public administration bodies. In this regard, the law provides a clear list, specifying the bodies not subject to investigation. Naturally, the Commissioner for Fundamental Rights in and of themselves would not be enough to control public administration; therefore, public administration decisions can also be challenged by judicial legal protection. "In order to counterbalance the increasing vulnerability of citizens in the face of the increasingly large and complex public administration, further safeguards had to be created."²⁰

¹⁸ Section 14 of the Commissioner for Fundamental Rights Act.

¹⁹ Sections 16–17 of the Commissioner for Fundamental Rights Act.

²⁰ SOMODY, B. Ombudsman. In: András Jakab – Balász Fekete (eds.). *Internetes Jogtudományi Enciklopédia. [The Internet Encyclopaedia of Jurisprudence]. Alkotmányjog. [Constitutional Law]*. Budapest: HVG-ORAC, 2018. In: *Internetes Jogtudományi Enciklopédia* [online]. [2024-10-03]. 1. [3] Available at: <<http://ijoten.hu/szocikk/ombudsman>>.

In their procedures, the Commissioner for Fundamental Rights can investigate the following bodies: public administration body, municipal self-government, national minority self-government, public body with mandatory membership (in practice, this means professional chambers, e.g., only members of the Bar Association are allowed to pursue legal practice), the Hungarian Defense Forces, police authorities, other bodies acting in the capacity of public administration (in such capacity), investigating authority or investigating body of the Prosecutor's Office, notary public, independent bailiff, bodies performing public service.²¹ It is another prerequisite that the complainant has exhausted all administrative remedies at his disposal, not including administrative litigation, or has no access to such remedies. If a final *administrative* decision has been made in the case, the complainant can have recourse to the Commissioner for Fundamental Rights within one year from the notification of such decision. The Commissioner for Fundamental Rights may *not investigate*²² the activities of the National Assembly, the President of the Republic, the Constitutional Court, the State Audit Office, the court, and the Prosecutor's Office²³ (except for its investigating body). The procedure can be initiated either on an ex-officio basis or at request. The ombudsman can investigate procedures launched after 23 October 1989,²⁴ the iconic date of the political changes in 1989–1990, serving as a baseline in time. The Commissioner for Fundamental Rights cannot act in cases where administrative litigation has been initiated to contest the decision or where a final court decision has been made. To sum up, anyone can turn to the Commissioner for Fundamental Rights “if they consider that the activity or default of an authority violates or directly threatens to violate a fundamental right of the submitter (inequity), provided that the submitter has exhausted all administrative remedies at their disposal, not including administrative litigation, or has no access to such remedies.”²⁵ As Albert Takács points out in his article, “*inequity* is a special and very rarely used concept in the Hungarian legal system, and its interpretation is far from uniform. The concept of inequity clearly includes any infringement or violation relating to fundamental rights, but its scope is broader than that of infringements and violations... It also includes cases where public administration is ‘poor’ or works ‘poorly.’ Symptoms of poor public administration usually include partiality, negligence, inattention, delays, lack of preparedness, incompetence, or even corruption and malevolence.”²⁶

The Commissioner for Fundamental Rights does not reveal the name of the submitter, if the submitter so requests. Nobody may suffer any disadvantage due to his turning to the Commissioner for Fundamental Rights. The procedures of the Commissioner for Fundamental Rights are very popular, one of the reasons probably being that they are free of charge. The Commissioner for Fundamental Rights can reject the submission in case the inequity is insignificant;²⁷ However, this is not regulated by an official definition, but the

²¹ Section 18 (1) of the Commissioner for Fundamental Rights Act.

²² Section 18 (3) of the Commissioner for Fundamental Rights Act.

²³ This means that they can investigate investigative prosecution offices.

²⁴ Section 18 (6) of the Commissioner for Fundamental Rights Act.

²⁵ Section 18 (1) of the Commissioner for Fundamental Rights Act.

²⁶ TAKÁCS, A. *Az alapvető jogok biztosa és a Nemzeti Adatvédelmi és Információszabadság Hatóság. [The Commissioner for Fundamental Rights and the National Authority for Data Protection and Freedom of Information]*, pp. 219–220.

²⁷ Section 20 (4) of the Commissioner for Fundamental Rights Act.

Commissioner for Fundamental Rights makes their decision on a case-by-case basis. As Csaba Cservák remarks: “An issue that might seem ‘insignificant’ from an outside perspective may well make the affected person’s life miserable. Therefore, as mentioned above, the ombudsman’s social sensitivity is of utmost importance.”²⁸ However, it is improbable that the ombudsman would fail to assess the seriousness of the problem. The rejection of a submission must be properly justified in each case. During their investigation, the Commissioner for Fundamental Rights can perform on-site inspections and public hearings as well. Any question asked by the Commissioner for Fundamental Rights must be answered within fifteen days. There are certain documents listed by the law that the Commissioner for Fundamental Rights is not allowed to view. These include “classified” documents in possession of the Hungarian Defense Forces, the police, the National Tax and Custom Administration, the national security services or the investigative prosecution office. Apart from these, the Commissioner for Fundamental Rights is entitled to access even classified (confidential) documents, albeit under a non-disclosure obligation.²⁹

The Commissioner for Fundamental Rights makes a public report on the investigation they have carried out. The published report may not contain personal data, classified data, legally protected secrets or professional secrets. As per the law, the decision and report of the ombudsman on the rejection of any submission is no longer subject to a remedy.

*For reasons of clarity, the measures available for the ombudsman are listed below*³⁰

1. If the Commissioner for Fundamental Rights identifies an inequity, he can make a recommendation to the supervisory body of the investigated authority. Within thirty days, the supervisory body notifies the Commissioner for Fundamental Rights of its standpoint and the measures it has taken. Suppose the supervisory body indicates that it disagrees with the contents of the recommendation. In that case, the Commissioner for Fundamental Rights notifies the supervisory body within 15 days on whether they maintain or waive their recommendation.
2. If the investigated authority has no supervisory body, or if the issue can be solved more efficiently within its own scope, the Commissioner for Fundamental Rights offers an *initiative* to the investigated authority. Within thirty days, the authority in default notifies the Commissioner for Fundamental Rights of its standpoint and the measures it has taken. If the authority disagrees with the initiative, it is obliged to escalate it to its supervisory body. Within thirty days, the supervisory body is obliged to notify the Commissioner for Fundamental Rights of its standpoint and the measures it has taken.
3. In order to remedy an inequity, the Commissioner for Fundamental Rights can initiate the intervention of the prosecutor. Within sixty days, the prosecutor notifies the Commissioner for Fundamental Rights of their standpoint.
4. The Commissioner for Fundamental Rights can also turn to the Constitutional Court. He can initiate an ex-post review of constitutionality, request an interpretation of the

²⁸ CSERVÁK, C., *ibid.*

²⁹ Sections 22–23 of the Commissioner for Fundamental Rights Act.

³⁰ Sections 31–39/Q of the Commissioner for Fundamental Rights Act.

- Fundamental Law, or initiate the procedure named “examination of conflicts with international treaties.”
5. The Commissioner for Fundamental Rights can involve the National Authority for Data Protection and Freedom of Information.
 6. The Commissioner for Fundamental Rights can initiate criminal, infringement, or disciplinary proceedings.
 7. If the Commissioner for Fundamental Rights considers that the inequity can be traced back to a lack of legal regulation in legislation or any organizational control instrument of the public law, they can suggest amending, repealing, or issuing a law or an organizational control instrument of the public law. The legislative body notifies the Commissioner for Fundamental Rights of its resolution within sixty days. “The Commissioner’s legislative tasks make sense because a part of the inequities related to fundamental rights stem from insufficient legal regulations, and, for this reason, they can be remedied via legislation.”³¹
 8. The Commissioner for Fundamental Rights submits an annual account to the National Assembly until 31 March.
 9. If the Commissioner determines that the inequity is of egregious severity or affects a larger group of natural persons, they can submit an extraordinary account, proposing that the National Assembly should include the discussion of the issue in its agenda before the date of the annual account. The National Assembly decides on the inclusion of the issue in the agenda.³²
 10. If, during the investigation, the Commissioner for Fundamental Rights notices that a municipal regulation conflicts with another law, he can initiate a review of the harmony between the municipal regulation and the other law.
 11. As of 1 January 2021, the Equal Treatment Authority (EBH), tasked with receipt of discrimination-related complaints, was discontinued. After the termination of the Authority’s operation, such cases were redirected to the ombudsman, who became an authority in this competence. For this type of case, the Directorate-General for Equal Treatment was created within the office of the Commissioner for Fundamental Rights.³³ In case of discrimination, this authority is entitled to impose fines of HUF 50,000 to HUF 6,000,000, and in case of any violation of equal treatment, it takes action within the framework of administrative proceedings. Naturally, in discrimination cases, there is an option to reach a settlement between the parties. In this type of case, the legislator sets an administrative time limit of 75 days, which is shortened to 45 days if a minor is affected. Complaints of discrimination can be submitted to the Commissioner for Fundamental Rights within 3 years from the act of discrimination or within 1 year from the discovery of such act.³⁴

³¹ TAKÁCS, A. *Az alapvető jogok biztosa és a Nemzeti Adatvédelmi és Információszabadság Hatóság*. [The Commissioner for Fundamental Rights and the National Authority for Data Protection and Freedom of Information]. pp. 217.

³² Section 38 (1) of the Commissioner for Fundamental Rights Act.

³³ In: *The Office of the Commissioner for Fundamental Rights* [online]. [2024-10-03]. Available at: <<https://www.ajbh.hu/ebff>>.

³⁴ Sections 14 (4)–(5) and Section 17 of Act CXXV of 2003 on Equal Treatment and the Promotion of Equal Opportunities.

12. Investigation of complaints against the police also fell into the scope of the ombudsman. Previously, the police law specified a separate body for that purpose, the Independent Police Complaints Body (FRP), which was discontinued in 2020. Some called it mistakenly an ombudsman, although it never fell within the scope of the ombudsman law. Since its termination, complaints against police officers are also handled by the Commissioner for Fundamental Rights, which was not unusual before, either. Complaints can be submitted to the Commissioner for Fundamental Rights within one year from the date of the police operation. The Office of the Commissioner for Fundamental Rights has a separate organizational unit for this scope, the Police Directorate.³⁵
13. In case the violation affects a larger group of people, the Commissioner can perform an exceptional investigation. In such special cases, they can investigate anybody except for the six bodies excluded by law.
14. The right to petition, today called whistleblowing, is a right with a very long history. Complaints about the activity or default of state or municipal bodies can already be lodged electronically, too (e-petition). The Electronic System of Whistleblowing (KBER)³⁶, maintained by the ombudsman, allows whistleblowers to lodge their report on the ombudsman's website via the central system. If a whistleblower believes that his report has not been investigated, he can submit a request to the Commissioner for Fundamental Rights in order to have the alleged inequity remedied.
15. The ombudsman can suggest issuing, amending or repealing an instruction for the National Chief of Police, the director of the body performing internal crime prevention and detection tasks, the director of the body responsible for the prevention of terrorism, the director of the immigration body and the leader of the body tasked with implementation of the given measure.
16. The Commissioner for Fundamental Rights considers the rights of people with disabilities as a top priority. Within this scope, they give an opinion on drafts of disability legislation, formulate suggestions, and make recommendations for the members of the Cabinet on governmental decisions affecting people with disabilities. (It should be noted that the ombudsman has “projects” as well, i.e., prioritized fields that have their attention in a given year. In this way, child protection, older adults, the situation of law enforcement and patients' rights are among their prioritized topics.)
17. The Commissioner for Fundamental Rights takes part in the preparation of the national reports that are meant to provide international organizations with information on the situation of human rights.

³⁵ In: *The Office of the Commissioner for Fundamental Rights* [online]. [2024-10-03]. Available at: <<https://www.ajbh.hu/rendezeti-foigazgatosag>>.

³⁶ In: *The Office of the Commissioner for Fundamental Rights* [online]. [2024-10-03]. Available at: <<https://www.ajbh.hu/kozerdeku-bejelentes-publikus-kivonat>>.

IV. ABOUT THE NAIH

In Hungary, data can be classified into four types. There are personal data, special data, data of public interest, and data accessible on public interest grounds. The first two types have to do with individual freedoms; therefore, the protection of personal data is also called informational self-determination. The latter two are considered political rights, i.e., a democratic state is expected to ensure access to data of public interest, which is called freedom of information. A person can suffer several types of injury with regard to their data. For instance, the affected person might not get access to data of public interest, or the affected person's special data might be disclosed to unauthorized parties. Naturally, sometimes, the classification of data can be wrong as well. In such cases, anyone can turn to the NAIH.³⁷ The NAIH is also entitled to issue recommendations; ultimately, it can refer cases to the court. Let us review the types of data³⁸ below:

Personal data: as the law puts it, any information concerning the data subject, e.g., the name, the address, the mother's name, etc. Personal data can basically be processed based on the provisions of the law or a municipal regulation, based on the explicit consent of the data subject, or in order to relieve imminent danger, or if such data have been explicitly published by the data subject.

Special data: personal data concerning racial or ethnic origin, political opinion, religious or philosophical beliefs, trade union membership, as well as genetic data, biometric data for the unique identification of natural persons, data concerning health, sexual life or sexual orientation, as well as criminal offence personal data.³⁹ Special personal data can be processed based on the provisions of the law or in order to relieve imminent danger or if such personal data have been explicitly published by the data subject.⁴⁰

Data of public interest is, however, publicly available: this is “information not included in the definition of personal data, managed by a body or person fulfilling a state or municipal or public-service mission, concerning their activity or generated within the context of such public-service mission. In particular, data concerning responsibility, competence, organizational structure, professional activity, evaluation of such activity including its efficiency, types of data possessed and laws regulating operation, as well as data concerning management and concluded contracts belong here.” Today, the dominant approach is clearly the principle of a *transparent state, non-transparent citizen*, the exact opposite of the approach before the political changes in 1989–1990.

The concept of data accessible on public interest grounds has appeared several years later. This includes any piece of data not classified as data of public interest, the disclosure, accessibility, and availability of which is ordered by law on public interest grounds, such as the declarations of assets made by members of the Parliament.

³⁷ In: *naih.hu* [online]. [2024-10-03]. Available at: <<https://www.naih.hu/>>.

³⁸ Section 3 (2)–(6) of the Info Act.

³⁹ Criminal offence personal data: personal data generated during or before the criminal proceedings in relation to the crime or the criminal proceedings at the bodies entitled to prosecution or detection of criminal offences as well as at the law enforcement organisation related to the affected person; also, personal data related to criminal record. Section 3 (4) of the Info Act.

⁴⁰ Section 5 (1)–(2) of the Info Act.

The NAIH is considered an autonomous government body within the category of public administration bodies. It is an independent authority rather than an ombudsman, as the office of the data protection ombudsman was discontinued without successor. The Authority is led by a chairperson. The Chairperson of the Authority is appointed by the President of the Republic based on the suggestion of the Prime Minister. They can be elected from graduated lawyers who are Hungarian citizens who can be elected at the election of members of the Parliament and who have either at least ten years of professional experience or an academic degree in the field of data protection. The Chairperson of the Authority is appointed by the President of the Republic for nine years, which can be repeated once. The Chairperson of the Authority cannot be a member of a political party, cannot exert political activity, and his mandate is incompatible with any other state or municipal office or mandate. The work of the Chairperson of the Authority is supported by two deputies appointed for an indefinite term by the Chairperson.

The principles of data processing⁴¹ in Hungary include the principle of purpose limitation, which means that personal data may only be processed for lawful purposes in order to exercise rights or fulfill obligations. Data processing must comply with its purpose at each stage, and personal data can only be processed to an extent and for a period necessary to achieve this purpose. In the course of data processing, the accuracy and safety of data must be ensured. The processing of personal data must be fair, legitimate, and free from discrimination. These principles of data processing correspond to the requirements of Regulation (EU) 2016/679 of the European Parliament and of the Council, also known as the General Data Protection Regulation (GDPR).

CONCLUSION

The ombudsman institution plays an important role in strengthening democracy and the rule of law worldwide. Its role in the control of public administration and the protection of human rights makes it a vanguard of strengthening the rule of law. Independent and impartial, ombudsmen ensure by supervision that state institutions and bodies respect the law and fundamental rights, thereby contributing to the maintenance of the rule of law and the protection of democratic values. “Authorization to an extensive control of the lawfulness of administration persists irrespectively of whether, and to what extent, the administration in a particular state is subject to judicial control. The danger of a possible conflict between these two control mechanisms is commonly averted by regulations of subsidiarity. By this means, proceedings before the administrative court are generally provided with priority over proceedings before the ombudsman. Hence, as a rule, the final decision of the administrative court is not submitted to observation by the ombudsman.”⁴²

This article wanted to deal with the legal and non-political aspects of the ombudsman. Therefore, we only want to point out that the domestic ombudsman institution also re-

⁴¹ Section 4 of the Info Act.

⁴² KKUCSKO-STADLMAYER, G. *Rules of Control. Chapter 5.2* In: Gabriele Kucsko-Stadlmayer (ed.). *Európai ombudsman-intézmények. Összehasonlító jogi elemzés az ombudsman-eszme gyakorlatban történő meghonosításának különféle formáiról.* p. 62.

ceived criticism in addition to the recognitions, for example from the Helsinki Committee or the Venice Committee. The concern of the Hungarian Helsinki Committee was that it did not deal sufficiently with certain issues, such as migration, refugees, or minorities. The Venice Commission partially criticized some planned changes in the establishment of the ombudsman institution in Hungary based on the position of the Global Alliance of National Human Rights Institutions (from now on, GANHRI) (see in particular opinion No. 1051/2021. (October 1, 2021) The Commission objected. He criticized the abolition of the well-functioning Equal Treatment Authority and the criticism that the domestic ombudsman does not protect all human rights equally.⁴³

The institution of the ombudsman did not remain outside the scope of international organizations, either. It is known that the European Union has its own ombudsman, and the Council of Europe regularly emphasizes the importance of this institution of legal protection. In 2019, with reference to the report “*Ombudsman Institutions in Europe – the Need for a Set of Common Standards*” (2019), the Parliamentary Assembly of the Council of Europe suggested that the Committee of Ministers⁴⁴ should take any possible measures for the protection of the ombudsman institution and promote the implementation of the principles concerning it. Also, it condemned any attack or threat directed against the ombudsman institutions by the authorities of any member state of the Council of Europe. It stressed that collaboration with other international organizations, such as the European Union and the United Nations, as well as with the international associations of ombudsman institutions and the International Ombudsman Institute, must be continued. It suggested that every member state should have an ombudsman. Also emphasizing the importance of the ombudsman, the Venice Commission,⁴⁵ “following the various threats to Ombudsman institutions in recent years, has decided to codify a set of constitutional and legal principles specifically devoted to the institution of the Ombudsman (known as the Venice Principles). The International Ombudsman Institute, a global association of ombudsmen from more than 100 countries, and the Office of the United Nations High Commissioner for Human Rights are among the associations of ombudsmen and international partner organizations involved in the preparation of this text. The draft text was adopted by the Venice Commission in March 2019. On the 16th of December 2020, the United Nations General Assembly adopted Resolution A/RES/75/186 on “*The Role of Ombudsman and Mediator Institutions in the Promotion and Protection of Human Rights, Good Governance and the Rule of Law*”.⁴⁶ It should also be noted that the European Union has its

⁴³ European Commission For Democracy Through Law, (Venice Commission), Hungary, Draft Opinion On The Amendments To The Act On Equal Treatment And Promotion Of Equal Opportunities And To The Act On The Commissioner For Fundamental Rights As Adopted By The Hungarian Parliament in December, 2020. On the basis of comments by Mr. Richard BARRETT (Member, Ireland), Mr. Philip DIMITROV (Member, Bulgaria), Mr. Cesare PINELLI (Substitute Member, Italy), Mr. Jorgen-Steen SØRENSEN (Member, Denmark). In: *venice.coe.int* [online]. 1. 10. 2021 [2024-10-03]. Available at: <[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2021\)033-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2021)033-e)>.

⁴⁴ Report | Doc. 14953 | 20 August 2019, Ombudsman institutions in Europe - the need for a set of common standards, Rapporteur: Lord Richard BALFE, United Kingdom, EC. In: *assembly.coe.int* [online]. 13. 10. 2017 [2024-10-03]. Available at: <<https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=28089&lang=en>>.

⁴⁵ In: *venice.coe.int* [online]. [2024-10-03]. Available at: <https://www.venice.coe.int/WebForms/pages/?p=02_Obudsmen&lang=EN>.

⁴⁶ Ibid.

own ombudsman, which means that not only have international institutions recognized the need for national ombudsmen, but international organizations themselves, too, strive to eliminate violations committed by their institutions.

In summary, the ombudsman institution serves to protect people's rights and interests in front of state measures or decisions, by which it contributes to the transparency, lawful operation, and efficiency of public administration. The ombudsman's activity promotes respect for and protection of human rights within society. Following the political changes in 1989-1990 in Hungary, the creation of this institution was part of the transformation into a democratic state governed by the rule of law. Overhauled innumerable times, it has worked with excellent efficiency, currently in a monocratic form. Its main goal is the pursuit of justice and fairness.