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The Role of the Hungarian Ombudsman (Commissioner for Fundamental Rights) in Handling the Coronavirus Crisis in Hungary from 2020-2023

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Abstract: *This study examines the relationship between the coronavirus epidemic and the ombudsman in Hungary. Its main claim is that the COVID-19 epidemic exposed the shortcomings of the Hungarian Ombudsman institution (Commissioner for Fundamental Rights). On the one hand, the constitutional changes in 2011 adversely affected the institution, and therefore, the political environment from which the pandemic erupted was not ideal. We demonstrate through the cases of the Commissioner for Fundamental Rights (ombudsman) that legal protection remained half-hearted and inadequate, thus undermining the active protection of citizens.*

Key words: COVID-19, Coronavirus, Ombudsman, pandemic, human rights

1. INTRODUCTION

The COVID-19 pandemic posed unprecedented challenges globally, prompting governments to implement a range of emergency measures impacting various aspects of public life.

In Hungary, the Commissioner for Fundamental Rights (hereinafter: Ombudsman or Commissioner) in principle plays an important role in safeguarding citizens' rights during this crisis. This paper examines the 2020 and 2021 Annual Reports of the Hungarian Ombudsman, analyzing the institution's responses to the pandemic, the challenges faced, and the standards of human rights protection amid emergency measures.

Statistical data indicates a trend towards an increase in the number of applications to violations of human rights by the authorities and officials during the COVID-19 pandemic, but also, in general, an increase citizens' confidence in this national mechanism for protecting fundamental human rights and freedoms.²

Under crisis certain group of people include, for example, ethnic minorities, people belonging to disadvantaged socio-economic class, women, children, immigrants, and refugees are vulnerable,³ and therefore the role of the Ombudsman to protect these groups has gaining importance under health crisis. The measures taken to combat the situation, may lead to

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² Rakitskaya, Inna, Institute of the Parliamentary Ombudsman for Administration in Norway: novelties in Norwegian legislation in the light of the adoption of the Act relating to the Parliamentary Ombud for Scrutiny of the Public Administration dd. June 18, 2021, October 25, 2022.

³ Pap, András; Lőrincz, Viktor Olivér; Kovács Szitkay, Eszter: Pandémia, közpolitika, jog: diskurzív és szakpolitikai összefüggések. In: Gárdos-Orosz, Fruzsina; Lőrincz, Viktor Olivér (szerk.) Jogi diagnózisok II.: A Covid 19 világjárvány hatásai a jogrendszerre. Budapest, Magyarország: L'Harmattan Kiadó (2022) 491 p. pp. 383-407. 25 p.

impediments regarding access to healthcare and education or a fair distribution of economic resources.⁴

„Another challenge is the maintenance of independence and neutrality, in an environment that is often dominated by loud, forceful and highly emotional voices. It is not easy determining and holding a position on contested issues, whilst being true to our standards of practice. We need to find our own voice; we also need to support and enable those who may have lost their voice in this environment.”⁵

Today, the role of the Hungarian Ombudsman is crucial in a rapidly changing political landscape. The institution needs to be a focal point for addressing grievances related to state actions, especially in light of recent constitutional and political reforms that have raised concerns about the erosion of democratic standards and norms in Hungary. The Ombudsman's ability to act independently and effectively in the face of governmental pressures is vital for upholding the rule of law and protecting fundamental rights.

1. HISTORICAL CONTEXT

The establishment of the Hungarian Ombudsman in 1994 marked a significant milestone in the development of democratic governance and the protection of civil rights in Hungary. Under Act LIX of 1993, this institution was tasked with the crucial responsibility of overseeing the legality of administrative actions and safeguarding individual rights against potential abuses by state authorities. This essay provides an in-depth examination of the Hungarian Ombudsman in COVID-19, with a focus on its original mandate and the broader implications for human rights protection in Hungary.

The 1989 constitutional revolution, the fall of the Communist era and the new constitution of Hungary resulted a strong Scandinavian type ombudsman system in Hungary. Accordingly, the Parliamentary ombudsman was elected with a two third majority. Her deputies are also elected with two third Parliamentary majority in a separate procedure from the ombudsman herself.⁶

⁴ Farzamfar, Mehrnoosh and Janne Salminen, The supervision of legality by the Finnish Parliamentary Ombudsman during the COVID-19 pandemic, *Nordisk Administrativt Tidsskrift*, Vol 99 Nr. 2 (2022): Covid-19 og krisehåndtering i de nordiske forvaltningene. Some countries have similar challenges. See: Halász, Iván, the role of the czech, slovak, and polish ombudsman during the first wave of the covid-19 epidemic; in: željko, mirjanić (szerk.) međunarodni naučni skup „izazovi i perspektive razvoja pravnih sistema u xxi vijeku”: zbornik radova, godina iii, baňa luka, broj 3 (2023), tom i / international scientific conference “challenges and perspectives of the development of legal systems in the xxi century” conference proceedings, year iii, Banja Luka, no. 3 (2023), Banja Luka, 389 p. p. 79 , 87 p.

⁵ Wright, Fred, Reimagining Ombudsing. An Operational Reflection on How the Pandemic has Impacted the Work of Ombuds, *Journal of the International Ombudsman Association*, 2023. https://www.ur.edu.pl/files/user_directory/951/Dokumenty/Wright%20F.%202023%20Reimagining%20Ombudsing.%20An%20Operational%20Reflection%20on%20How%20the%20Pandemic%20has%20Impacted%20the%20Work%20of%20Ombuds.pdf

⁶ Bán-Forgács, Nóra, Az adatvédelmi ombudsman intézményének politikai-jogtörténeti előzményei. *Jog Állam Politika: Jog- És Politikatudományi Folyóirat* 14: 4 pp. 57-80. , 24 p. (2022); Bán-Forgács, Nóra, Ombudsmanok és a hatalommegosztás, In: Chronowski, Nóra; Szentgáli-Tóth, Boldizsár; Szilágyi, Emese (szerk.) *Demokrácia-dilemmák : Alkotmányjogi elemzések a demokráciaelv értelmezéséről az Európai Unióban és Magyarországon*, Budapest, Magyarország : ELTE Eötvös Kiadó (2022) 377 p. pp. 359-375. , 17 p.; Bán-Forgács, Nóra, Az adatvédelmi ombudsman intézménye Magyarországon. A kezdet és a vég 1995–2011; Budapest, Magyarország : LHarmattan Kiadó (2021); Bán-Forgács, Nóra, A rendszerváltás és az adatvédelmi ombudsman Magyarországon. Az adatvédelmi ombudsman alapjog-értelmezése.; Budapest, Magyarország : LHarmattan Kiadó (2022); Bán-Forgács, Nóra, Az adatvédelmi ombudsman intézményének jogtudományi előzményei, *Iustum Aequum Salutare* 17: 4 pp. 163-179. , 17 p. (2021);

According to the political traditions, the Ombudsman was nominated by the government-majority whereas the deputies by the opposition.

As Hungary transitioned towards a democratic system in 1989, there was an urgent need to address the historical issues of state oppression and bureaucratic accountability. The introduction of the Ombudsman was a response to these imperatives, aimed at providing a checks-and-balances system within the government.

The primary role of the Hungarian ombudsman is to investigate complaints from citizens regarding violations of their rights by public authorities. This includes investigating issues related to administrative decisions, government actions, and the conduct of public officials. The ombudsman serves as a mediator between the state and its citizens, providing a platform for individuals to voice grievances and seek redress. In the democratic turn in 1989 this institution was tasked with the crucial responsibility of overseeing the legality of administrative actions and safeguarding individual rights against potential abuses by state authorities. This essay provides an in-depth examination of the Hungarian Ombudsman, with a focus on its original mandate and the broader implications for human rights protection in Hungary.

In the first three mandate from 1995 for the following fifteen years, the Hungarian ombudsman has played an essential role in promoting accountability and transparency in government. The office has addressed numerous issues, including cases of police misconduct, discrimination against minority groups, and violations of privacy rights. By bringing these issues to light, the ombudsman has contributed to a culture of accountability and has encouraged public institutions to operate more transparently.

Moreover, the ombudsman's reports and recommendations have often led to significant legislative and policy changes. For instance, investigations into the treatment of disadvantaged groups have prompted reforms aimed at improving social services and access to education. The ombudsman has also played a pivotal role in shaping public discourse on human rights issues, fostering a more informed and engaged citizenry.

According to the Constitution of 1989, the ombudsman is complemented by three deputies: for the protection of national minorities, for the protection of future generations (environmental protection), and a deputy for data protection. The data protection ombudsman was not enumerated in the constitution, but established by a special act in 1992 (Act LXIII), officially called deputy commissioner for data protection and freedom of information. The three deputy ombudsmen were granted a high degree of freedom in their mandate, organization of their work and their procedures. They were vested with a strong human rights profile with profound commitment for human rights.

2. EVOLVING MANDATE AND STRUCTURAL CHANGES

In 2011, the Hungarian parliamentary system underwent a significant reform that resulted in the merger of the Ombudsman with specialized offices, more precisely with deputy ombudsmen's offices (such as the Ombudsman for Future Generations, Ombudsman for National and Ethnic minorities and Data Protection Ombudsman into a unified structure. This restructuring was aimed to streamline operations and enhance efficiency. However, it raised serious concerns regarding the dilution of focus on specific rights and the potential for diminishing the Ombudsman's independence. Much of these reforms received substantial

criticism claiming that the reforms served only as a façade to cover up the political will aiming to over politicize the Hungarian constitutional legal order.⁷

The new Fundamental Law of Hungary (FL) replacing the Constitution of 1989 provides a unified system of fundamental rights protection. According to the new law on the ombudsman (Act CXI of 2011), the ombudsman has the right to nominate its deputies and he exercises all employers' rights over the deputies (except for dismissal from office and impeachment).

In the coronavirus area the office of the Hungarian ombudsman, along with its deputy ombudsmen, faces several challenges. Political pressures, limited resources, and a sometimes reluctant bureaucracy can hinder the effectiveness of the institution.⁸ Additionally, while the ombudsman and deputy ombudsmen can make recommendations, the lack of enforcement power means that compliance relies heavily on the willingness of public authorities to adhere to these suggestions.

As noted before, recent years have raised concerns regarding the independence of the ombudsman and deputy ombudsmen, particularly in the context of broader political landscape. The election of the ombudsman became highly centralised, the parliamentary ruling party has its political power to select the candidates for ombudsman and then to elect him without further political negotiations. Therefore, the elected ombudsman usually represents the will of the ruling party not the will of the people. Additionally, with the new mandate of the ombudsman, we witness a super concentration of power in the hands of the ombudsman, who is allegedly a "result" of a political appointment procedure (as described above). The unitary of the state is an anti-thesis for the separation of powers doctrine in Hungary, one would argue that the centralised government put a hyper concentration of powers in the hands of a political appointee. The independent oversight of human rights protection is in danger, mainly by

- the lack of political will to exercise control over the Executive in forms of Ombudsman investigations
- Informal pressure on constitutional institutions: self-censorship, chilling effect: even without direct political interference no Ombudsman reports criticizing the government actions during Covid-19
- Unified ombudsman system is very effective in silencing the deputies who are under direct control of a politically appointed ombudsman.

3. FINDINGS OF COVID-19

⁷ Vincze A. Schrödinger's Judiciary—Formality at the Service of Informality in Hungary. *German Law Journal* 2023;24(8):1432-1448. doi:10.1017/glj.2023.71.

⁸ Florczak-Wątor, Monika; Fruzsin, Gárdos-Orosz; Malíř, Jan; Steuer, Max States of emergency and fundamental rights in books and in action, In: Monika, Florczak-Wątor; Fruzsin, Gárdos-Orosz; Jan, Malíř; Max, Steuer (szerk.) *States of Emergency and Human Rights Protection : The Theory and Practice of the Visegrad Countries*, Abingdon, Egyesült Királyság / Anglia : Routledge of Taylor and Francis Group (2024) 292 p. pp. 1-14. , 14 p.; Fruzsin, Gárdos-Orosz; Nóra, Bán-Forgács, Introduction - The (non)resilience of the Hungarian Legal System From Populist Constitutionalism to a Permanent State of Danger, In: Fruzsin, Gárdos-Orosz (szerk.) *The Resilience of the Hungarian Legal System since 2010. A Failed Resilience?* Wien, Ausztria : Springer Nature (2024) 190 p.

We argue that if external impacts on the legal system such as the global pandemic are coupled with internal effects (pressures) such as the illiberalization of the political system, government measures appear to be only a façade that enable to degrade the institutional counterbalance of executive power, and as a result constitutionalism, rule of law and the protection of human rights are endangered.⁹

Some of the most pressing human rights problems during Covid-19 were the following in Hungary:

- During the first wave of the epidemic Government ordered the evacuation of half of the capacity of hospital beds for prospective COVID-19 patients. Many of those with chronic diseases leaving the hospital did not survive very long without getting the treatment
- Access to vaccination was unequal, some had choices and options for Western vaccines, others were left by the only choice of Chinese and Russian vaccination
- Right to life of the elderly were at high risk, many of them without real opportunity to survive the pandemics
- Quarantine regulations, especially forced quarantine in hospitals for elderly and other vulnerable groups (for example people with disability in homes) dramatically increased mortality. Hospitals and social care homes were afraid to send inmates home fearing to violate emergency regulations.
- Health care workers were overwhelmed with a high risk to maltreatment and mistakes (both staff and doctors)
- Constant lack of transparency in the fight against Coronavirus. No clear numbers were published about how many life-saving machines the government bought, how much the government paid for Eastern vaccinations, what were the exact capacities of the health institutions. In the first wave of the pandemics there were not even adequate data on the spread of the virus, no data on the death cases and the cause of death.
- Psychological affects were huge, isolation especially on children and elderly
- Increased number of domestic violence was shown
- Lack of doctor-patient meetings due to fears of transmission of the virus occurred.

None of these concerns has been addressed by the Hungarian Ombudsman (Commissioner for Fundamental Rights).

4. JURISPRUDENCE OF THE OMBUDSMAN

The Ombudsman specifically mapped the epidemiological situation in residential care homes in 2020 in the light of the epidemic situation. In total, the Ombudsman targeted five specific visits in 2020 to social care homes for people with disabilities both mental and physical, as well

⁹ Gárdos-Orosz, Fruzsina; Bán-Forgács, Nóra: Introduction - The (non)resilience of the Hungarian Legal System From Populist Constitutionalism to a Permanent State of Danger, In: Fruzsina, Gárdos-Orosz (szerk.) The Resilience of the Hungarian Legal System since 2010. A Failed Resilience? Wien, Austria: Springer Nature (2024) 190 p.

as to children's home, and elderly homes. Five reports were issued by the Ombudsman,¹⁰ in his findings he stated: "during his visits, the Ombudsman confirmed that the institutions are prepared as far as possible to deal with the epidemic situation, to ensure smooth collaboration with service provider and, most importantly, to inform residents and their relatives about the measures being taken." There have been no shortcomings targeted in the Ombudsman's findings. No recommendations for government has been drawn (the Ministry of Interior - Ministry of Health has been abolished in 2010) well accepted the Report of the Ombudsman.

On World Sanitation Day (19 November, 2020), the Ombudsman and its deputies called for the "importance of sanitation in its multi-faceted meaning, with life and human dignity, sustainability and climate change", however evidence from the Annual Report is missing as to what extent the Ombudsman enhanced the situation to ensure adequate hygienic situation and what institution the ombudsman found falling short in meeting those standards.¹¹

The Ombudsman partly targeted children as vulnerable groups (but failed to offer a solution) in cases where several people raised the issue of the hospitalisation and isolation of children during COVID-19, there were also concerns about the organisation of summer camps. The Ombudsman also received complaints about the lack of easy-to-understand information for people with disabilities, restrictions in child protection institutions and obstacles for separated parents to have contact with their children.¹² No effective remedy was taken, according to the Annual Report of 2020, the Ombudsman justified its lack of competencies to the complainants by the extraordinary legal regime,¹³ the exceptional rules in force.¹⁴

In 2021, one (!) complex ex officio investigation (Case AJB-509/2021) was dedicated covering seven elderly homes to the Coronavirus crisis¹⁵.

¹⁰ AJB-6904/2020. Annual Report of the Ombudsman 2020. p 69. See: <https://www.ajbh.hu/documents/10180/3812363/AJBH+besz%C3%A1mol%C3%B3+2020.pdf/a629d00d-5057-b867-afef-aadcf10cf8ea?version=1.0&t=1617187816142>; Hoffmann, Tamás ; Gárdos-Orosz, Fruzsina: Populism and Law in Hungary – Introduction to the Special Issue. Review Of Central And East European Law 47 : 1 pp. 1-11. , 11 p. (2022)

¹¹ Annual Report of the Ombudsman 2020. p 11. <https://www.ajbh.hu/documents/10180/3812363/AJBH+besz%C3%A1mol%C3%B3+2020.pdf/a629d00d-5057-b867-afef-aadcf10cf8ea?version=1.0&t=1617187816142>

¹² Annual Report of the Ombudsman 2020. p 12. <https://www.ajbh.hu/documents/10180/3812363/AJBH+besz%C3%A1mol%C3%B3+2020.pdf/a629d00d-5057-b867-afef-aadcf10cf8ea?version=1.0&t=1617187816142>

¹³ About extraordinary legal regime: Gárdos-Orosz, Fruzsina, Poszt-COVID: ami velünk maradt, a különleges jogrend, In: Bán-Forgács, Nóra; Lőrincz, Viktor Olivér; Mezei, Kitti; Szentgáli-Tóth, Boldizsár (szerk.) Poszt-COVID: A Covid-19 hatásai a jogrendszerre, Budapest, Magyarország: Akadémiai Kiadó (2024). Gárdos-Orosz, Fruzsina, The normative standards of human rights protection in normalcy and in emergency in Hungary, In: Monika, Florczak-Wątor; Fruzsina, Gárdos-Orosz; Jan, Malír; Max, Steuer (szerk.) States of Emergency and Human Rights Protection: The Theory and Practice of the Visegrad Countries, Abingdon, Egyesült Királyság: Routledge of Taylor and Francis Group (2024) 292 p. pp. 124-144. 21 p.; Hungler, S; Gárdos-Orosz, F; Rác, L, Legal Response to Covid-19: V-VI, In: King, J; Ferraz, O (szerk.) The Oxford Compendium of National Legal Responses to Covid-19, Oxford, Egyesült Királyság: Oxford University Press (2021) 113 p. p. on-line Paper: e40 , 62 p.;

¹⁴ Annual Report of the Ombudsman 2020. p 12. <https://www.ajbh.hu/documents/10180/3812363/AJBH+besz%C3%A1mol%C3%B3+2020.pdf/a629d00d-5057-b867-afef-aadcf10cf8ea?version=1.0&t=1617187816142>.

¹⁵ Annual Report of the Ombudsman 2021. p 68, 69. <https://www.ajbh.hu/documents/10180/7431400/AJBH+besz%C3%A1mol%C3%B3+2021.pdf/bf73947f-a224-3e34-ca23-32efe207423b?version=1.0&t=1667998470775>.

The ombudsman noted that the outbreak hit older people particularly hard, and the workload on residential social care providers has been considerable. The Ombudsman has learned from press reports that during the first wave of the epidemic, in the country's largest elderly home at Pesti út in Budapest critical sanitary and mortality conditions arose. Therefore, the Ombudsman took special focus in this institution.

According to the Ombudsman's findings, in the home in Pesti út, where almost all patients were critically ill or they have died, "efforts were made to control infections", the frequency of sterilization was increased and the necessary equipment, sterilizers and cleaning supplies were available. No irregularities were found. The Ombudsman noted however, that health authorities have identified shortcomings, moreover, the institution was fined by relevant health authorities, but the Ombudsman found the remedy and effort made by the institution sufficient response. No irregularities were found in three more elderly homes where patients were heavily affected by the Coronavirus.¹⁶ The Follow up investigation of the elderly homes found that the heads of the institutions have taken further action to ensure that the rights of the patients are fully guaranteed in each institution.

By 2022, the Ombudsman finally realized that besides sanitary concerns, state of emergency involved serious fundamental rights restrictions. He issued recommendation for digitalization for children at schools,¹⁷ recommendations on parental guidance and liaison,¹⁸ recommendation in a case where the guardianship was unlawfully prolonged,¹⁹ issued concerns about hearing-impaired petitioners who claimed that the mandatory wearing of masks in an epidemic situation is discriminative, as masks hindered them in their daily activities and communication,²⁰ the ombudsman carried out a number of investigations on right to health (focusing on on-line prescription of drugs, waiting lists, etc.).²¹ These investigation were partly delayed partly lacked efficiency.

5. CONCLUSION

As Hungary navigates contemporary political challenges, the Ombudsman should serve as an essential guardian of democratic principles and human rights. The continuance and adaptation of the Ombudsman's role will be crucial in fostering trust between the state and its citizens,

¹⁶ Annual Report of the Ombudsman 2021. p. 69. <https://www.ajbh.hu/documents/10180/7431400/AJBH+besz%C3%A1mol%C3%B3+2021.pdf/bf73947f-a224-3e34-ca23-32efe207423b?version=1.0&t=1667998470775>.

¹⁷ Annual Report of the Ombudsman 2022. p. 48. <https://www.ajbh.hu/documents/10180/7828043/AJBH+besz%C3%A1mol%C3%B3+2022.pdf/0c966d1b-378d-901c-6faa-63eca7cea564?version=1.2&t=1704189862674>.

¹⁸ Annual Report of the Ombudsman 2022. p. 50. <https://www.ajbh.hu/documents/10180/7828043/AJBH+besz%C3%A1mol%C3%B3+2022.pdf/0c966d1b-378d-901c-6faa-63eca7cea564?version=1.2&t=1704189862674>.

¹⁹ Annual Report of the Ombudsman 2022. p. 61. <https://www.ajbh.hu/documents/10180/7828043/AJBH+besz%C3%A1mol%C3%B3+2022.pdf/0c966d1b-378d-901c-6faa-63eca7cea564?version=1.2&t=1704189862674>.

²⁰ Annual Report of the Ombudsman 2022. p. 72. <https://www.ajbh.hu/documents/10180/7828043/AJBH+besz%C3%A1mol%C3%B3+2022.pdf/0c966d1b-378d-901c-6faa-63eca7cea564?version=1.2&t=1704189862674>.

²¹ Annual Report of the Ombudsman 2022. p. 81. <https://www.ajbh.hu/documents/10180/7828043/AJBH+besz%C3%A1mol%C3%B3+2022.pdf/0c966d1b-378d-901c-6faa-63eca7cea564?version=1.2&t=1704189862674>.

ensuring the protection of rights, and fulfilling the promise of democracy in Hungary's ongoing journey.

Political pressures and resource limitations as well as external factors such as world pandemics can hinder the work of deputy ombudsmen, particularly in sensitive areas where governmental interests may conflict with human rights advocacy. Ensuring that deputy ombudsmen operate free from political influence is crucial to maintaining the integrity of the institution.

Moreover, the reports and recommendations from both the ombudsman and deputy ombudsmen have often proven to be insufficient to halt the human rights consequences of the pandemics.

Investigations remained ineffective amid health crisis in the protection of vulnerable populations.

The Ombudsman (Commissioner for Fundamental Rights) did not fulfil its role to scrutinize, criticise and improve the human rights legislation and generally the human rights situation in Hungary during Coronavirus crisis.

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