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Előadó: Dr. Babos Nikolett
Tárgy: Válasz az emberi jogvédők helyzetével foglalkozó ENSZ különleges jelentéstevő kérdőívére
Dátum: 2012. szeptember 28.

FELJEGYZÉS

Margaret Sekaggya, az emberi jogvédők helyzetével foglalkozó ENSZ különleges jelentéstevő kérdőívben kért tájékoztatást a nemzeti emberi jogvédő intézmények helyzetéről, különös tekintettel az emberi jogvédők védelmére. A jelentéstevő a tagállami intézményektől rövid, tömör válaszokat vár, a vonatkozó nemzeti háttérjogszabályok pontos megjelölésével.

A kérdőívekre adott tagállami válaszok alapján elkészített jelentést a rapporteur 2013 márciusában mutatja be az ENSZ Emberi Jogi Tanácsának ülésén, továbbá a jelentést az ENSZ emberi jogi főbiztosságának honlapján is nyilvánosságra hozzák majd. *(A feljegyzéshez mellékeljük a rapporteur levelét.)*

1. Javasoljuk az alábbi válaszok Biztos úr általi jóváhagyását és a rapporteur részére történő megküldését.
2. A Külügyminisztérium a mellékelt emailben kérte, hogy az AJBH által kiküldött válaszokat részükre is küldjük meg tájékoztatásul. Ezt csak Biztos úr erre vonatkozó kifejezett egyetértése esetén küldjük el.

Budapest, 2012. szeptember 29.

Készítette: dr. Babos Nikolett; az összeállításban közreműködött dr. Csikós Tímea (4. blokk kérdései), Dr. Pajcsicsné Csóré Erika és dr. Hajas Barnabás (5. blokk kérdései)

Látta: dr. László Boglárka

Jóváhagyta: dr. Szabó Máté

1.	<p>a) Q: Please provide a brief overview of the legislative framework adopted to establish a National Human Rights Institution (hereafter the Institution) in your country. Please cite the names of any such laws or regulations in full. A: The Fundamental Law of Hungary entered into force on 1st of January, 2012. Article 30 of this Law created a unified ombudsman system stating that the Commissioner for Fundamental Rights shall undertake activities aimed at protecting fundamental rights. The detailed regulations relating to the Commissioner for Fundamental Rights and to his deputies were laid down in Act CXI of 2011 on the Commissioner for Fundamental Rights (furthermore CFR).</p> <p>b) Q: Please indicate how these laws and regulations comply with international human rights standards and, in particular, the Paris Principles. A: According to Art. 30 of the Fundamental Law of Hungary the CFR shall be elected by a two-thirds majority of all Members of Parliament for a period of six years. The CFR is solely accountable to Parliament. As for the legal status of the Ombudsman, in the course of proceedings he has to be independent and may take measures exclusively on the basis of the Fundamental Law and Acts of Parliament.</p> <p>c) Q: Please indicate the current accreditation status of the Institution with the International Coordination Committee and what measures, if any, have been taken to implement the recommendations highlighted at the most recent ICC Sub Committee on Accreditation meeting with a view to strengthening NHRI's compliance with the Paris Principles. A: In 2011 the institution of the CFR received the United Nations' OHCHR National Human Rights Institution (NHRI) B-status from the International Coordination Committee's Sub-Committee for Accreditation.</p>
2.	<p>a) Q: Please provide details outlining the mandate adopted by the Institutions in relation to the protection and promotion of human rights in accordance with the range of competencies and responsibilities specified in the Paris Principles. A: The main task of the CFR is to inquire into any improprieties relating to constitutional rights he has become aware of and to initiate general or particular measures for their redress. The CFR pays special attention to the protection of the rights of children, the rights of nationalities living in Hungary, the rights of the most vulnerable social groups and the values determined as 'the interests of future generations'. The CFR gives an opinion on the draft rules of law affecting his/her tasks and competences; on long-term development and land management plans and concepts, and on plans and concepts otherwise directly affecting the quality of life of future generations; and he/she may make proposals for the amendment or making of rules of law affecting fundamental rights and/or the recognition of the binding nature of an international treaty. The CFR surveys and analyses the situation of fundamental rights in Hungary, and prepares statistics on those</p>

	<p>infringements of rights in Hungary which are related to fundamental rights. Therefore, the Commissioner submits his/her annual report to Parliament, in which he/she gives information on his/her fundamental rights activities and gives recommendations and proposals for regulations or any amendments. Art. 2. (4)-(5) of the Act provides that the CFR shall participate in the preparation of national reports which the government is required to submit in accordance with its obligations under the provisions of international treaties.</p> <p>b) Q: Please indicate whether the Institution is mandated to consider and/or adjudicate individual complaints of human rights violations. A: Art. 18. (1) of Act CXI of 2011 on the CFR states that anyone may turn to the CFR, if in his/her judgment the activity or omission of any authority infringes a fundamental right of the person submitting the petition or if an imminent danger thereof exists.</p> <p>c) Q: If relevant, please indicate whether the mandate is limited to specific rights or whether complaints against the Government, the police/and or the military are permitted and how they are dealt with. A: The Act gives an exhaustive list of authorities whose decisions/activities/omissions can be examined by the CFR: a public administration organ, a local government, a nationality self-government, a public body with mandatory membership, the Hungarian Defense Forces, a law enforcement organ, any other organ acting in its public administration competence, in this competence, an investigation authority or an investigation organ of the Prosecution Service, a notary public, a bailiff at a county court, an independent bailiff or an organ performing public service¹. It is important to note that the CFR cannot inquire into the activities of Parliament, the President of the Republic, the Constitutional Court, the State Audit Office or the Prosecution Service (except for the investigation office of the Prosecution Service). The Ombudsman selects him/herself the course of action that is deemed to be most appropriate including the submission of petitions to the Constitutional Court, initiation of proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General or requesting parliamentary inquiry.</p> <p>d) Q: In this regard, please indicate whether the Institution is empowered to carry out protection related functions including providing remedies to victims of human rights violations, witness protection mechanisms and conducting visits to detention facilities. A: In the course of his/her inquiries, the CFR may conduct on-site inspections. During these inspections he/she may have access to the places and installations of the institution under examination, he/she may</p>
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¹ Regardless of their form of organisation, organs performing public services shall be the following:

- a) organs performing state or local government tasks and/or participating in the performance thereof,
- b) public utility providers,
- c) universal providers,
- d) organisations participating in the granting or intermediation of state or European Union subsidies,
- e) organisations performing activities described in a rule of law as public service, and
- f) organisations performing a public service which is prescribed in a rule of law and to be mandatorily availed of.

	<p>have access to all documents containing relevant information and may conduct private interviews with the persons concerned. The CFR may request a written explanation, declaration, information or opinion from the organization, person or employee of the organization having the obligation to cooperate. The CFR may initiate proceedings for the supervision of legality by the competent prosecutor through the Prosecutor General.</p>
3.	<p>a) Q: Please indicate what mechanisms, if any, are in place within the Institution to ensure that human rights defenders at risk are protected (e.g. through protection programmes, early warning systems or by submitting complaints to regional bodies on specific cases) A: There are no special mechanisms within the Institution for the protection of human rights defenders at risk however, in accordance with the provisions of Art. 2. (5) the CFR shall cooperate with organizations established for the protection of human rights. Under Art 18. (4) of the Act the CFR may conduct ex officio proceedings in order to have improprieties related to fundamental rights terminated and which have come up in the course of the activities of the authorities. Ex-officio proceedings may be aimed at the inquiry of improprieties affecting not precisely identifiable larger groups of natural persons or at a comprehensive inquiry of the enforcement of a fundamental right.</p> <p>b) Q: Please indicate whether any obstacles or challenges exist with regard to the effective protection of human rights defenders through these mechanisms, and how the Institution addresses them. A: The CFR and its Office did not face any challenges or obstacles in this regard.</p>
4.	<p>a) Q: Please describe the working relationship between the Institution and civil society, including human rights defenders, in accordance with the Paris Principles. A: There is an active cooperation with civil society at different levels: In the year 2012 several complaints were submitted to the CFR by NGOs. In 2011, the CFR convened the Civil Advisory Body. This body is not part of the CFR's Office but acts as an advisory board. Its members – appointed by the CFR – possess a specific expertise in the field of fundamental rights. On its sessions the CFR may share his experiences of thematic inquiries and present his proposals for future activities. The members of the advisory body are advising the CFR on different matters regarding fundamental rights protection and calling his attention to the main challenges in the field. After the structural reforms of the Office carried out in 2012, the CFR has appointed one member of its staff to perform her tasks as civil society coordinator.</p> <p>b) Q: Please indicate whether any challenges or obstacles exist that may prevent interaction and cooperation with society and/or human rights defenders and how the Institution seeks to address them. A: The CFR and its Office have not faced any obstacles to interaction or</p>

	cooperation with civil society.
5.	<p>a) Q: Please indicate whether any member of the Institution's staff has ever been the victim of threats, or other kind of harassment, as a result of work carried out on behalf of the organisation. A: No.</p> <p>b) Please specify what mechanisms, if any, are in place to protect Institution members investigating rights violations. If applicable, please specify what mechanisms at the institutional, national, regional and international level have been employed to protect Institution members. A: There are no such mechanisms, however, if necessary and required by the staff member investigating a case, the name of the said staff member is kept confidential.</p> <p>c) Q: Please indicate whether the Institution has ever been subjected to an unannounced visit by representatives from the police or state authorities, or if it has otherwise been subject to interference or threat that may jeopardize its independence as a national human rights institution under the Paris Principles. A: Political independence of the CFR in Hungary is ensured, although there remains some room for improvement. From time to time criticized organizations affected by the investigation intend to target the CFR and his colleagues and exercise negative discrimination against them. Some members of the CFR Office's staff have encountered certain reprisals taking form of an administrative action (e.g. inspection by tax authorities, order of freezing salaries etc.). This have arisen in instances when, shortly (1-2 months) following the disclosure of a specific declaration of the CFR as a result of an investigation, the authority under investigation took a legal and more or less justifiable, yet suspiciously targeted measure related to one of the staff members undertaking the investigation. Such a measure might be legally well founded, however, in these cases, the authorities might have taken the same measure earlier, and no similar decision had been taken against anyone else to date. On another occasion, referring to the declarations made following an inspection, a business enterprise – that wasn't directly affected by the inspection and not even named in it – had started a 100 million HUF lawsuit against the CFR, primarily as ombudsman and secondarily as private individual.</p>
6.	<p>a) Q: Please indicate the main sources of funding for the Institution. A: The Fundamental Law of Hungary provides that the Parliament approves the state budget and its implementation, including the annual budget of the Office of the CFR. Art. 2 k) of Act CXCV of 2011 on general government states that the Office of the CFR is a budgetary authority which is not subject to the supervision of the Government. In accordance with Act CXI of 2011 on the CFR the Office of the CFR provides administrative and logistical services to the CFR.</p> <p>b) Q: In this regard, please indicate whether any challenges exist, particularly</p>

	<p>in relation to the functional autonomy of the organization and how this impacts on the work of the Institution.</p> <p>A: Under the provisions of Chapter IV. of Act CLXXXVIII of 2011 on the general budget of Hungary for 2012 the Office of the CFR is a separate budget authority allocated by the national budget under a single budget line-item and managed by the Secretary General of the Office. The Office's budget is estimated by the CFR and approved by the Parliament. However the Government might have some influence on each item since the final version of the act on general budget is submitted for approval to the Parliament by the minister for national economy.</p>
7.	<p>a) Q: Please describe the procedures in place relating to the selection and appointment of members of the governing body.</p> <p>A: Since the Parliament elects only one ombudsman, this person is assigned to choose his/her own deputies whom are also elected by the Hungarian Parliament. There is one Deputy-Commissioner who is responsible for the protection of the interests of future generations and there is one other Deputy-Commissioner who is responsible for the protection of the interests of nationalities living in Hungary. The Office of the CFR provides administrative and logistical services to the CFR and his deputies. The Office is directed by the Commissioner for Fundamental Rights and managed by the Secretary General appointed by the CFR.</p> <p>b) Q: Please indicate what mechanisms are in place to ensure independent scrutiny of candidates and security of tenure for members of the governing body.</p> <p>A: The organisational and functional structure – including scrutiny of candidates for vacant posts in the Office – is established in accordance with the Internal Regulation of the CFR.</p>