

Mr János Áder

President of the Republic
Office of the President of the Republic
1536 Budapest, Pf. 227
Hungary

Dear President of the Republic,

On September 25, 2019, the mandate of László Székely, the Commissioner for Fundamental Rights expires. Under the applicable Hungarian law, the President of the Republic shall make a proposal for the person of the new Commissioner for Fundamental Rights between the ninetieth day and the forty-fifth day preceding the expiry of the mandate of the former Commissioner for Fundamental Rights (hereafter: the Commissioner). We, therefore, would like to draw your attention to **the existing international norms with regard to the proposal for the person of the Commissioner, which emphasize the requirement of broad consultation of civil organizations and professionals concerned in the course of the selection process.**

The Commissioner for Fundamental Rights (the Ombudsperson) is Hungary's national human rights institution as well, which classification also entails the compliance with the *Principles relating to the Status of National Institution (Paris Principles)*, adopted by UN General Assembly resolution 48/134 of 20 December 1993.¹

According to the Paris Principles, the composition of the national institution and the appointment of its members shall be established in accordance with a procedure which affords all necessary guarantees "to ensure the pluralist representation of the social forces (of civilian society) involved in the protection and promotion of human rights," that is based on the effective cooperation of – along with other stakeholders – **representatives of non-governmental organizations responsible for human rights and efforts to combat racial discrimination, trade unions, concerned social and professional organizations** (for example, associations of lawyers, doctors, journalists and eminent scientists).

The above mentioned requirements are further detailed in the *General Observations of the Sub-Committee on Accreditation adopted by the Global Alliance of National Human Rights Institutions - GANHRI* (hereafter: the Observations).² The Observations divide the requirements into the following two categories: *Essential requirements of the Paris Principles*, and *Practices that directly promote Paris Principles compliance*.

The requirements with respect to the appointment and selection process of national human rights institutions belong to the former (Essential requirements of the Paris Principles) GANHRI category. Accordingly, **the Sub-Committee on Accreditation (SCA) states the following** on the appointment and selection process: "It is critically important to ensure the formalisation of a clear, transparent and participatory selection and appointment process of the NHRI's decision-making body in relevant legislation, regulations or binding administrative guidelines, as appropriate. A process that

¹ Principles relating to the status of national institution adopted by the United Nations General Assembly (Resolution 48/134). See: <https://nhri.ohchr.org/EN/AboutUs/Pages/ParisPrinciples.aspx>

² *General Observations of the Sub-Committee on Accreditation*, adopted by the Global Alliance of National Human Rights Institutions (GANHRI) Bureau at its Meeting held in Geneva on 21 February 2018 (Section 1.8.: Selection and appointment of the decision-making body of NHRIs). See: https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/General%20Observations%201/EN_GeneralObservations_Revisions_adopted_21.02.2018_vf.pdf.

promotes merit-based selection and ensures pluralism is necessary to ensure the independence and public confidence [...] of an NHRI. **Such a process should include requirements to:**

- a) publicize vacancies broadly,**
- b) maximize the number of potential candidates from a wide range of societal groups,**
- c) promote broad consultation and/or participation in the application, screening, selection and appointment process,**
- d) assess applicants on the basis of pre-determined, objective and publicly available criteria [...]."**

Furthermore, **the Sub-Committee on Accreditation asserts that in order to comply with the above mentioned criteria, the appointment procedure shall include a consultative role of civil organisations.** Subsequently, the Observation emphasizes that, "it is important that the selection process be characterized by openness and transparency. That is, it should be under the control of an independent and credible body and involve open and fair consultation with NGOs and civil society".

Since the Hungarian law does not prescribe broad and open dialogues, there have been no consultations in the former appointment and selection procedures of the Commissioner for Fundamental Rights in Hungary. In fact, in 2014, the Sub-Committee of Accreditation reflected on the insufficient appointment procedure by stating: "The SCA notes that, according to the legislation, vacancies for the posts of Commissioner and Deputies are neither widely advertised, nor is there broad consultation. The SCA again stresses the importance of a clear, transparent and participatory selection process that promotes merit-based selection, ensures pluralism and promotes the independence, and public confidence [...] in a national human rights institution."³

Nevertheless, there is no legal obstacles for You, as the President of the Republic, who has the legal power as well as obligation as a public dignitary to propose a person for the position of the Commissioner for Fundamental Rights, to follow the international requirements, hence to carry out an appointment procedure in which civil societies responsible for efforts to combat racial discrimination, trade unions, and concerned social and professional organizations all have a decisive role. (An example for a selection process that had been conducted in the absence of a specific Hungarian legal provision prescribing occurred in the fall of 2016, when, due to a Council of Europe notification, the Minister of Justice withdrew the Hungarian proposals for the European Court of Human Rights judge position, and selected the new candidates in a newly construed, special, tender-based procedure.)

Since the SCA has already warned Hungary about the insufficiency of the appointment procedure of the Commissioner for Fundamental Rights, and since the re-accreditation with regard to Hungary will take place in October 2019,⁴ it is of particular importance that the selection of the candidate for the Commissioner position takes place according to the above-mentioned criteria. That is to say, the appointment procedure shall be a transparent, competition-based mechanism that also involves consultations with organisations that are involved in the protection and promotion of human rights, and the candidates for the Commissioner position shall be assessed on the basis of predetermined, objective, and publicly available criteria.

³ International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, Geneva, 27-31 October 2014, p. 10. See: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20OCTOBER%202014%20FINAL%20REPORT%20-%20ENGLISH.pdf>.

⁴ For information on the re-accreditation, see: <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/nextsession.aspx>.

In order to develop the necessary assessment criteria, besides considering the Hungarian and international legal rules, relevant jurisprudential studies may give a valuable point of reference concerning the inevitable roles and qualities of an Ombudsperson. According to the analysis of legal scholars, the office of the Ombudsperson shall be widely known and easily accessible, and the Ombudsperson him- or herself shall utilize publicity and any possible forms of press for the advancement of the institution's objectives. An Ombudsperson also needs to be present and available for the citizens and actively look for connections with the country's population. Furthermore, the office of the Ombudsperson shall be completely independent from the political power and free from the influence of political parties,⁵ and shall display activism when it comes to the methods of its human rights investigations.⁶

In sum, it is not difficult to define what kind of professional background is essential for the position of the Commissioner for Fundamental Rights. **The suitable candidate shall be a jurist with a high level of theoretical knowledge and practical experience in the field of human rights who**

- **is independent of party politics;**
- has demonstrated before his or her nomination that he or she **is capable of representing human dignity and human rights, irrespective of the political affiliation of the government, and who is willing to undertake conflicts, even if it involves opposing the executive power;**
- **is able to represent these values on a high professional level in public;** and
- **is well informed about environmental rights, minority rights, freedom of information and privacy rights,** with a view to the unfortunate abolishment of the respective independent, specialized Ombudsperson positions.

Dear President of the Republic,

In light of the above described concerns, **we would like to ask you to take action** – using the available time frame – **to establish a procedure for selecting the candidate for the position of the Commissioner for Fundamental Rights that is based on predetermined, objective, and publicly available criteria. Such a mechanism shall not only enhance the transparency of the process of selecting the candidate for Commissioner for Fundamental Rights, but shall also ensure a consultation with the widest possible involvement of the concerned organisations, in conformity with the relevant international norms.**

Budapest, May 22, 2019

Yours sincerely,

On behalf of the signatory organizations: András Kádár,
co-chair, Hungarian Helsinki Committee

⁵ D. C. Rowat, *The Ombudsman: Citizen's Defender*. London, Allen & Unwin, 1968, p. 24.

⁶ Gerald E. Caiden, Niall MacDermot, Ake Sandler, *The Institution of Ombudsman*, International Handbook of the Ombudsman: Evolution and Present Function, Westport, CT, Greenwood Press, 1983, p. 9.

Signatory organizations:

- Amnesty International Hungary
- Association of European Freelance Artists
- Association of Hungarian History Teachers
- Association of Hungarian Sex Workers
- Autonomia Foundation
- Chances for Children Association
- Civil College Foundation
- Civilization
- Clean Air Action Group
- Community-based Research for Sustainability Association (CRS)
- Energiaklub
- Eötvös Károly Policy Institute (EKINT)
- Greenpeace Hungary
- Gyógyítás Művészete Alapítvány
- Haver Foundation
- Háttér Society
- Hívatlanul Hálózat
- Hungarian Civil Liberties Union (HCLU)
- Hungarian Europe Society
- Hungarian Helsinki Committee (HHC)
- Hungarian LGBT Alliance
- K-Monitor
- Menedék
- NIOK Foundation
- Ökotárs Foundation
- Padtársak Civil Közösség
- Pedagógusok Demokratikus Szakszervezete
- Rezső Hilscher Association of Social Policy
- Rights Reporter Foundation
- School of Public Life
- Tanítanék Mozgalom
- Transparency International Hungary
- Üres Tér Színházi Egyesület
- Védegylet Egyesület
- With the Power of Humanity Foundation

Signatory previous Ombudspersons:

-Jenő Kaltenbach, Parliamentary Commissioner for the Rights of National and Ethnic Minorities (1995–2007)

-László Majtényi, Parliamentary Commissioner for Data Protection and Freedom of Information (1995–2001)