

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

**Comprehensive report of the
Commissioner for Fundamental Rights
on the activities of the CRPD
Independent Monitoring Mechanism in
2023**

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Abbreviations

CFR Act (Ombudsman Act)	Act CXI of 2011 on the Commissioner for Fundamental Rights
CRPD	Convention on the Rights of Persons with Disabilities and the related Optional Protocol; promulgated by Act XCII of 2007
UN	United Nations Organisation
Directorate-General	Directorate-General for Disability
Department	Department for Disability Affairs
Office	Office of the Commissioner for Fundamental Rights
Advisory Board	Disability Advisory Board
Independent Mechanism	CRPD Independent Monitoring Mechanism
Committee	Committee on the Rights of Persons with Disabilities

Introduction

With a view to the national-level monitoring of the enforcement of the rights enshrined in the Convention on the Rights of Persons with Disabilities (hereinafter referred to as: “CRPD”) and the commitments undertaken therein by the States Parties, it is stipulated by Article 33(2) of CRPD that States Parties shall establish and operate an independent national mechanism, in compliance with the international requirements regarding independent national mechanisms, which promotes, protects and monitors the implementation of the obligations of the member states and regularly examines the measures taken by the government and the efficiency thereof, in order to ensure the enforcement of the rights of persons with disabilities. The three functions promote the implementation of the requirements of CRPD by supplementing each other.

The Independent Mechanism has a comprehensive role. According to its function, CRPD assumes the performance of tasks that cover all walks of life conditions affecting disability, as well as the existence of appropriate and complex professional knowledge and relevant experience in the field, in such an operational framework that ensures the necessary independence and complex competence.

In order to fulfil this requirement completely, on 1 January 2023, the wide-ranging human rights protection activity of the Commissioner for Fundamental Rights was supplemented by taking up the responsibilities related to the operation of the framework of the CRPD Independent Monitoring Mechanism (hereinafter referred to as: “Independent Mechanism”) under Article 33(2) of CRPD.¹

As part of this new commitment, similarly to the Directorate-General for Equal Treatment and the Directorate-General for Police Complaints, a separate organisational unit called the Directorate-General for Disability was set up² within the Office of the Commissioner for Fundamental Rights of Hungary.

In order to enforce the rights of the persons with disabilities enshrined in CRPD, the Commissioner for Fundamental Rights had paid special attention to this area on the basis of the Act on the Commissioner for Fundamental Rights so far as well, however, the setting up of the Independent Mechanism means a significant change as compared to the earlier fundamental rights protection functions, with regard to the contents thereof. Laying down the statutory regulations that establish the foundations for the framework of the Independent Mechanism now ensures an independent organisation with strong authorisations compliant with the international requirements and more concentrated professional resources for an independent national institution helping and monitoring the implementation of CRPD.

This compliance is guaranteed, among others, by the statutory regulation of institutional operation, the provision of appropriate budgetary resources for the performance of tasks, requiring the staff members to have relevant professional experience in disability-related matters, and declaring that the national-level monitoring and the process of control of the implementation of CRPD are supported by the Disability Advisory Board, which represents a broader civil society and has outstanding experience in the field of the rights of persons with disabilities.

Thus, the focus of the activities of the Commissioner for Fundamental Rights of Hungary in the protection of the rights of persons with disabilities is on the one hand the monitoring of certain activities and circumstances, as well as the decisions of authorities concerning specific, individual complaints, while on the other hand, it encompasses comprehensive investigations of a broader effect, launched ex officio in the context of fulfilling the responsibilities of the Independent Mechanism. This scope of responsibilities, held especially important by the

¹ Sections 1 (3) and 39/N of the CFR Act (established by Sections 127 and 128 of Act L of 2022)

² Section 39/Q (1) of the CFR Act

Commissioner for Fundamental Rights, is strengthened by his new authorisation to investigate into the enforcement of the rights of persons with disabilities in compliance with CRPD even in lack of a petition or an impropriety, furthermore, he may also conduct a procedure ex officio with a view to terminating an impropriety regarding the fundamental right of a natural person if the person with disability is not able to enforce his or her rights, or if it would cause disproportionate difficulties for him or her to submit a petition.³

The Commissioner for Fundamental Rights prepares a comprehensive report on the performance of the tasks of the Independent Mechanism every year, which shall be disclosed on the homepage of the Office.⁴ The first comprehensive report of the Commissioner for Fundamental Rights on the 2023 activities of the Independent Mechanism related to the operation of the latter's framework is a report on a period in which the operational conditions of the Independent Mechanism were created, as well as the target areas and focal points of the performance of the responsibilities were designated.

In Hungary, there is consensus about the need to take continuous efforts to fully promote, protect and uphold the rights of persons living with disabilities, as well as to respect their inherent dignity. Amidst the deeply unsettling conditions of the present, it is especially important to protect the rights of disadvantaged persons, to ensure the universal rights that everyone is entitled to, and to make sure that the dignity of each person is respected.

I am hoping that the reports on the activities and the experience of the Independent Mechanism and the initiatives that generate changes will contribute, even if only step by step, to the ever broadening enforcement of the rights of the persons with disabilities, a positive change in the social attitudes to disability and the promotion of inclusion.

Budapest, 2024

Dr. Ákos Kozma

³ Sections 39/Q (1)-(2) of the CFR Act

⁴ Section 39/Q (6) of the CFR Act

1. The legal background of the operation of the Independent Mechanism

1. 1. The Fundamental Law of Hungary

Pursuant to Article XV(2) of the Fundamental Law of Hungary, *“Hungary shall guarantee the fundamental rights to everyone without discrimination and in particular without discrimination on grounds of race, colour, sex, disability, language, religion, political or other opinion, national or social origin, property, birth or any other status.”*

Pursuant to Article XV(5) of the Fundamental Law of Hungary, *“By means of separate measures, Hungary shall protect families, children, women, the elderly and persons living with disabilities.”*

1. 2. International treaties

According to the Fundamental Law, in Hungary, the *“rules for fundamental rights and obligations shall be laid down in an Act”*.⁵ Acts shall be adopted by the Parliament.⁶ International treaties containing rules pertaining to fundamental rights and obligations shall be promulgated by an act.⁷

1.2.1. UN instruments

Pursuant to Article 2(1) of the **International Covenant on Civil and Political Rights**⁸:
“Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 26 stipulates that:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 2(1) of the **Convention on the Rights of the Child**⁹ signed in New York on 20 November 1989 provides the following:

“States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

⁵ Article I (3) of the Fundamental Law

⁶ Article 1(2) b) of the Fundamental Law

⁷ Section 9(1) of Act L of 2005 on Procedures relating to International Agreements. Before January 1988, in the field of legislation, the Presidium of the People's Republic (hereinafter referred to as: the “PPP”) had the power of substitution as regards the Parliament, with the exceptions that it could not amend the Constitution or adopt any source of law named “act”. Statutory-level legal sources adopted by the PPP were called law-decrees. No law-decree may be adopted since the abolishment of the PPP. Prevailing law-decrees may be amended or repealed only by an act [Clause IV/2 of Constitutional Court Decision No. 20/1994 (IV. 16.)].

⁸ International Covenant on Civil and Political Rights, adopted by the 21st Session of the UN General Assembly on 16 December 1966, promulgated in Hungary by Law-decree 8 of 1976

⁹ Promulgated by Act LXIV of 1991

Pursuant to Article 23,

“1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development.

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.”

Article 1 of the **Convention on the Rights of Persons with Disabilities**¹⁰ stipulates that

“Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”

Notes a)-e) of Article 4(1) stipulate the following as general obligations:

“1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:

a) to adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;

b) to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;

c) to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;

d) to refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

e) to take all appropriate measures to eliminate discrimination on the basis of disability by any person, organization or private enterprise.”

¹⁰ Promulgated by Act XCII of 2007

Pursuant to Article 5,

- “1. States Parties recognize that all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law.*
- 2. States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.*
- 3. In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided.*
- 4. Specific measures which are necessary to accelerate or achieve de facto equality of persons with disabilities shall not be considered discrimination under the terms of the present Convention.”*

Based on Article 33 on national implementation and monitoring,

- “1. States Parties, in accordance with their system of organization, shall designate one or more focal points within government for matters relating to the implementation of the present Convention, and shall give due consideration to the establishment or designation of a coordination mechanism within government to facilitate related action in different sectors and at different levels.*
- 2. States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.*
- 3. Civil society, in particular persons with disabilities and their representative organizations, shall be involved and participate fully in the monitoring process.”*

It is the competence of the Committee on the Rights of Persons with Disabilities (hereinafter referred to as: the “Committee”)¹¹, among others, to monitor the implementation of the Convention, as well as, on the basis of the related **Optional Protocol**, to accept petitions from, or in the name of all those persons or groups of persons under the jurisdiction of the states parties who claim to be the victims of the violations of the provisions of the Convention by the states party concerned, and to investigate into such complaints.¹²

Each states party shall report to the Committee on the measures taken to fulfil the obligations set out in the Convention, as well as on the progress made in such implementation, within two years from the Convention taking effect in the states party in question, then at least every four years, or at a date requested by the Committee. After discussing the report, the Committee formulates the proposals and general recommendations¹³ that they find necessary for the states party.

In addition to the general guidance of the Committee, the conclusions, proposals and recommendations related to the country-specific reports are also governing¹⁴ for the activities of the Commissioner for Fundamental Rights performed in the context of the Independent Mechanism.

¹¹ Article 34 of CRPD

¹² Article 1(1) of the Optional Protocol to CRPD

¹³ Article 35 of CRPD

¹⁴ Closing conclusions with regard to the aggregated periodic report on Hungary:

https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CRPD%2FCO%2FHUN%2FCO%2F1&Lang=en
https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Download.aspx?symbolno=CRPD%2FCO%2FHUN%2FCO%2F1&Lang=en

1. 3. Act on the Commissioner for Fundamental Rights

“The Commissioner for Fundamental Rights performs an activity protecting fundamental rights”¹⁵, which activity extends to the protection of the fundamental rights of the most vulnerable social groups, including persons with disabilities.

Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter referred to as: the "CFR Act") was also amended by Act L of 2022 amending certain laws on law enforcement administration in order to strengthen public security. Accordingly, with effect from 1 January 2023, pursuant to Section 1 (3) of the CFR Act, the Commissioner for Fundamental Rights shall ensure the implementation of the tasks of the Independent Mechanism specified in Article 33(2) of the Convention on the Rights of Persons with Disabilities, promulgated by Act XCII of 2007, by involving the civil society, especially persons with disabilities and the organisations representing them. The responsibilities of the Commissioner for Fundamental Rights of Hungary and the related procedure arising from the operation of the framework of the Independent Mechanism are stipulated in a separate chapter of the CFR Act.

In fulfilling the responsibilities of the Independent Mechanism, the Commissioner for Fundamental Rights regularly investigates into the enforcement of the rights of persons with disabilities in compliance with CRPD, even in lack of a petition and impropriety. In order to terminate an impropriety related to the fundamental right of a natural person, the Commissioner may conduct an inquiry ex officio as well if the person with a disability is not able to enforce their rights, or submitting a petition would impose disproportionate difficulties on them. He is entitled to handle the health care data of the persons with disabilities that are relevant for the inquiry. In the framework of his investigation, he may get access to the documents of the judicial procedure concerning the person with disability in this respect, as well as the expert opinions, and he may request copies of these. During the on-site inspections, the Independent Mechanism may have unlimited access to any of the premises of the authority under review, to all the documents relevant for the inquiry, he may prepare copies or extracts of these and may interview any person staying there, including the staff members of the authority under review.

The Commissioner for Fundamental Rights

- a) comments on the draft laws on disability, formulates proposals for the creation and amendment of laws and public law regulatory instruments concerning disability,
- b) takes part in the preparation of the National Disability Programme (hereinafter referred to as: the “Programme”) aimed at creating equal opportunities for persons with disabilities, as well as the related Action Plans, in the context of which he formulates proposals that help such preparation, furthermore, comments on the draft Programme and Action Plans,
- c) monitors the implementation of the Programme, in the context of which he makes comments on the reports on the implementation of the Programme and the related Action Plans,
- d) comments on the report on the implementation of the CRPD,
- e) makes proposals and recommendations for the members of the Government on decisions and programmes affecting persons with disabilities, and takes part in the preparation thereof,
- f) cooperates with the National Disability Council in the execution of the tasks of the Independent Mechanism.¹⁶

¹⁵ Article 30(1) of the Fundamental Law

¹⁶ Sections 39/O (1)-(5) of the CFR Act

2. Staff members involved in the performance of the tasks of the Independent Mechanism

In the performance of his tasks, the Commissioner for Fundamental Rights may act in person, or by way of the members of his staff authorised by him. Based on the provisions set out in the CFR Act, the staff members authorised by the Commissioner for Fundamental Rights to perform the tasks of the Independent Mechanism should have outstanding theoretical knowledge or professional experience in the field of disability-related matters.¹⁷

The Commissioner for Fundamental Rights may also authorise, either permanently or on an ad hoc basis, other experts to contribute to performing the tasks related to the Independent Mechanism.

Staff members authorised by the Commissioner shall have the investigative powers¹⁸ of the Independent Mechanism and the obligation for cooperation of the authorities concerned, including their management and staff also exists in their respect, pursuant to Section 25 of the CFR Act.¹⁹

For the performance of the tasks of the Independent Mechanism, a separate organisational unit called Directorate-General for Disability (hereinafter referred to as: the “Directorate-General”) was established within the organisation of the Office of the Commissioner for Fundamental Rights.²⁰ The Directorate-General for Disability performs its tasks from a Debrecen site but with national competence in the spirit of decentralisation, which began with the establishment of regional field offices.

3. Cooperation of the Independent Mechanism with civil society organisations

The Commissioner for Fundamental Rights ensures the performance of the tasks of the Independent Mechanism by involving civil society, especially the persons with disabilities and the organisations representing them.²¹ However, in its activities aimed at facilitating the enforcement and protection of human rights, the Commissioner has to cooperate with *“organisations and national institutions aiming at the promotion of the protection of fundamental rights”*.²²

3. 1. Disability Advisory Board

With a view to ensuring a more efficient performance of the responsibilities of his mandate under the CRPD and establishing close cooperation with civil society, the Commissioner for Fundamental Right laid great emphasis on making sure that the Disability Advisory Board represent those parts of civil society that advocate the interests of persons with disabilities as broadly as possible. As a result of the tender invited for setting up this Advisory Board, the body consists of the delegates of the winning national advocacy organisations of persons with disabilities and organisations providing services or pursuing activities for persons with disabilities on the one hand, and of the representatives of historic churches and disability experts directly requested by the Commissioner for Fundamental Rights on the other hand. The Advisory Board started its operation with 28 members.

¹⁷ Section 39/Q (3) of the CFR Act

¹⁸ See Sections 21, 22 and 26 of the CFR Act, Subsections (1) and (2) of Section 27 of this Act, as well as Sections 39/B and 39/O (3)-(5) of the CFR Act

¹⁹ Section 39/Q (5) of the CFR Act

²⁰ Section 39/Q (1) of the CFR Act, as well as Sections 1(2) a) and 24(1) a) of CFR instruction No. 1/2023 (VI. 16.) on the Organisational and Operational Rules of the Office of the Commissioner for Fundamental Rights

²¹ Section 1(3) of the CFR Act

²² Section 2(5) of the CFR Act

The members of the Disability Advisory Board are the following:

- Hungarian Aphasia Association,
- Hungarian Association of Persons with Autism Spectrum Disorder,
- CÉHálózat Egyesület – Civil Advocacy Network,
- Civil út (the Civilian Way) Foundation,
- Demosthenes National Advocacy Association Organisation for Persons with Speech Disorders and their Helpers
- Institute for Disability and Social Participation of ELTE's Bárczi Gusztáv Faculty of Special Needs Education,
- Hungarian Association for Persons with Intellectual Disability (ÉFOÉSZ),
- ÉTA National Association of Social Organisations and Foundations for Serving the Mentally Handicapped,
- FICSAK -Association for Young Families,
- Foundation for the Cultural Life of Persons with Hearing Impairment,
- Heves County Parents' Association of Persons with Multiple Disabilities,
- National Advocacy Association of Persons with Multiple Disabilities,
- Hand in Hand Foundation,
- Hungarian Baptist Aid,
- Association of Hungarian Special Educators,
- Hungarian Catholic Church,
- Hungarian Charity Service of the Order of Malta,
- Hungarian Paralympic Committee,
- Hungarian Federation of the Blind and Partially Sighted,
- Federation of Hungarian Jewish Communities,
- Evangelical-Lutheran Church in Hungary,
- Reformed Church in Hungary,
- National Federation of Organisations of People with a Physical Disability,
- Mental Disability Advocacy Forum,
- Hungarian Association of the Deaf and Hard of Hearing,
- Hungarian Deafblind Association,
- Hungarian Civil Liberties Union,
- Validity Foundation.

It has a guarantee-level significance that the fundamental rules of setting up and operating the Advisory Board are defined by the CFR Act, also stipulating that the further rules of its operation shall be defined by the Commissioner for Fundamental Rights in a normative instruction.²³

The members of the Disability Advisory Board receive no professional fees for their activity. The members may ask for the reimbursement of their costs incurred by their membership in the Advisory Board, including the costs incurred by the use of a personal helper, a sign interpreter, a communication assistant, or a real-time transcriber.

The Advisory Board supports the Commissioner for Fundamental Rights and the Independent Mechanism in fulfilling their responsibilities, with their expertise and experience, as part of which it

a) supports the execution of the tasks set out in Section 39/O (5) of the CFR Act;

²³ Section 39 /P of the CFR Act and CFR instruction No. 3/ 2023 (X.5.) on the establishment and procedural rules of the Disability Advisory Board supporting the fulfilment of the responsibilities of the CRPD Independent Monitoring Mechanism

- b) with regard to Section 39/Q (4) of the CFR Act, it may propose that permanent or ad hoc experts with special knowledge be requested to work for the Commissioner for Fundamental Rights;
- c) at the request of the Commissioner for Fundamental Rights, the members take part in, or take their share of the conferences and workshops or other professional events organised by the Independent Mechanism.

3. 2. Sessions of the Disability Advisory Board

In 2023, the Advisory Board held two sessions.

At the **inaugural session**, the Advisory Board adopted their rules of procedure, then the members got familiar with the organisation, responsibilities and activities of the Directorate-General for Disability.



The **second session** of the Advisory Board was held at the Debrecen site of the Directorate-General for Disability at the initiative of the Commissioner for Fundamental Rights. At this session, the members of the Board could visit the completely barrier-free, state-of-the-art complaint office, which meets all the requirements, as well as the offices available to the staff, where they could meet the experts of the Directorate-General. Furthermore, the presentation of the report on the professional activity performed by the Department for Disability Affairs (hereinafter referred to as: the “Department”) operating as the organisational unit of the Directorate-General for Disability in the past year and the brief presentation of the planned inquiries took place. The Commissioner for Fundamental Rights confirmed that he counted on the cooperation of the members of the Advisory Board and expected their signals, their proposals for topics to be discussed at the meetings of the Advisory Board, or those that may serve as a basis for the inquiries launched in the framework of the Independent Mechanism.



The memoranda prepared of the sessions of the Disability Advisory Board are displayed on the homepage of the Office.²⁴

4. Reports of the Independent Mechanism

The Independent Mechanism makes reports on the visits that he has conducted; *it shall contain the uncovered facts and the findings and conclusions based on those facts.*²⁵ The cover of the report also states that the report is published by the Commissioner for Fundamental Rights while performing his tasks related to the Independent Mechanism and not as part of his general fundamental rights protection activities.

The Commissioner for Fundamental Rights, *“in the course of his proceedings, may process – to the extent necessary for those proceedings – all those personal data and data qualifying as secrets protected by an Act or as secrets restricted to the exercise of a profession which are related to the inquiry or the processing of which is necessary for the successful conduct of the proceedings”.*²⁶ Neither the partial reports nor the expert opinions contain any data suitable for personal identification.

As *“the documents and material evidence obtained in the course of the proceedings of the Commissioner for Fundamental Rights are not public”*,²⁷ third persons may not have access, either prior to or following the proceedings, to the notes taken and the documents obtained during the conduct of the visit.

4. 1. Parts of the report²⁸

The structure and content of the report shall be developed flexibly, by taking the special features of the inquiry into account. The structural elements of the report are as follows: the fundamental right(s) concerned, the formulation of the facts, the conclusions of the inquiry, the summary, as well as the measures proposed for remedying the impropriety.

²⁴ Section 39/P (7) of the CFR Act

²⁵ Section 28 (1) of the CFR Act

²⁶ Section 27 (1) of the CFR Act

²⁷ Section 27 (3) of the CFR Act

²⁸ Sections 29-34 of CFR Instruction No. 3/2015 (XI. 30.) on the professional rules and methods of the inquiries of the Commissioner for Fundamental Rights

In the section of the report on launching the inquiry, it should be mentioned whether the procedure was launched on the basis of a petition, or ex officio, and due to which measure taken by which authority a procedure needs to be launched by the Commissioner for Fundamental Rights. Furthermore, the procedural criteria substantiating the competence of the Commissioner for Fundamental Rights should also be explained.

In the section of the report on the fundamental rights concerned, it should be explained the violation of which fundamental right, or the imminent danger of the violation of which fundamental right was concerned by the complaint that was identified or otherwise assumed by the petitioner. Related to this, the relevant provisions of the Fundamental Law of Hungary should also be cited.

The facts section contains all those facts and data on which the Commissioner for Fundamental Rights will base his conclusions and measures as a result of the inquiry procedure. The facts section shall include the description of the violation specified by the petitioner, or a violation that is otherwise suggested by the case, or the danger of such violation, or the presentation of the data required for the substantiation of professional and objective conclusions obtained from other organs or affected parties. In the facts section, the elements of the facts may not be assessed but the applied methods of investigation shall be indicated.

In the section on the findings of the inquiry, the correlations between the facts, the statutory background and the fundamental right(s) concerned should be explored. Based on the explored correlation, it should be specified whether or not the measure or omission of the authority or organ under review has caused an impropriety related to fundamental rights. In establishing an impropriety related to a fundamental right, or the danger thereof, the report of the Independent Mechanism refers especially to the legal interpretations of the Committee on the Rights of Persons with Disabilities²⁹ and the Constitutional Court.

In the section on measures, the proposals compliant with the provisions of the CFR Act should be formulated with a view to remedying the improprieties related to fundamental rights or terminating the circumstances endangering the enforcement of fundamental rights. The individual measures should be defined in such a way that it should be clear which impropriety with regard to which fundamental right they refer to. All measures or groups of measures should include a reference to the provision of the CFR Act that allows such measures.

4. 2. Disclosure of the report

*The reports of the Commissioner for Fundamental Rights shall be public. Published reports may not contain personal data, classified data, secrets protected by an Act or secrets restricted to the exercise of a profession.*³⁰

The reports of the Independent Mechanism are sent to the head of the organ affected by the investigation, the addressees of the recommendations, and in the case of a procedure launched on the basis of a petition, to the petitioner, in each case.

The reports of the Independent Mechanism should be published on the Office's homepage in a digital format, accessible without restriction, free of charge to anyone.³¹

²⁹ See Article 34 of the United Nations Convention on the Rights of Persons with Disabilities, promulgated into law by Act XCII of 2007

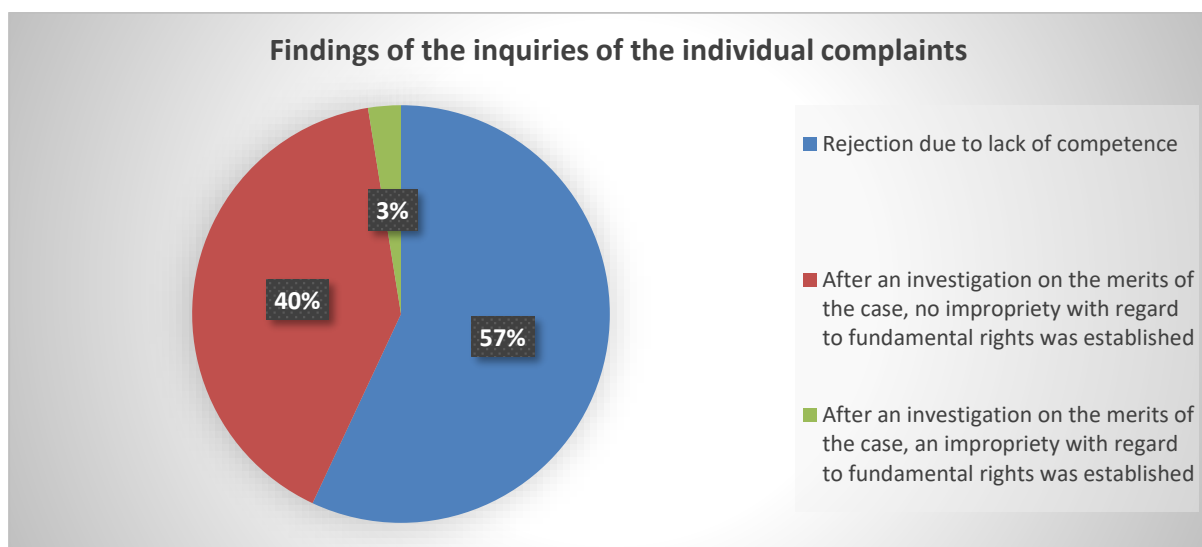
³⁰ Section 28 (2) of the CFR Act

³¹ <https://www.ajbh.hu/en/jelentesek-inditvanyok-allasfoglalasok>

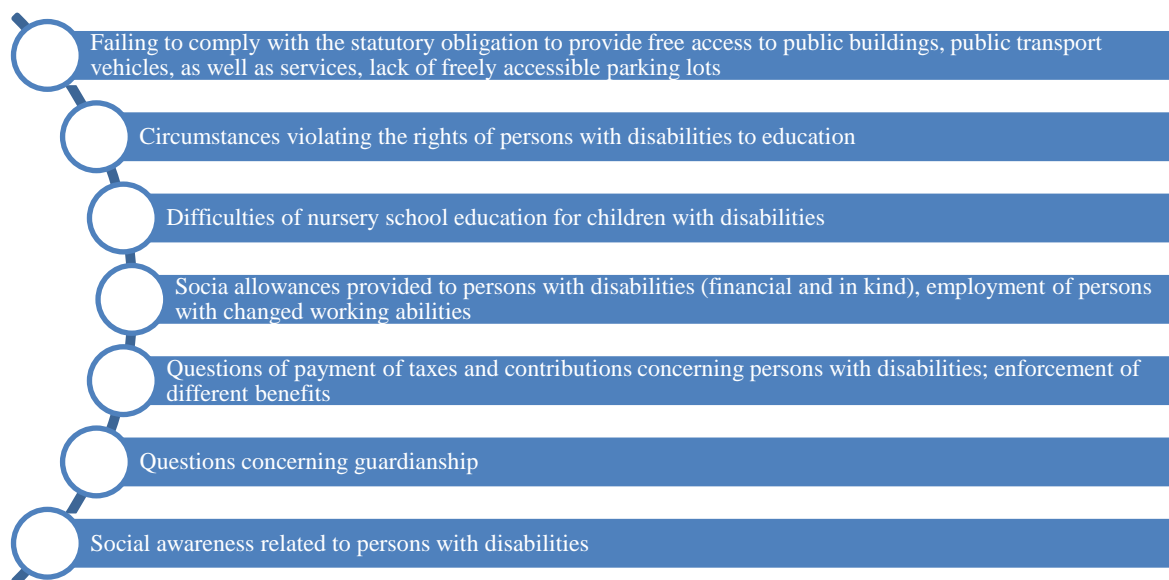
5. The activity of the Independent Mechanism in 2023

5. 1. Activity related to handling individual complaints

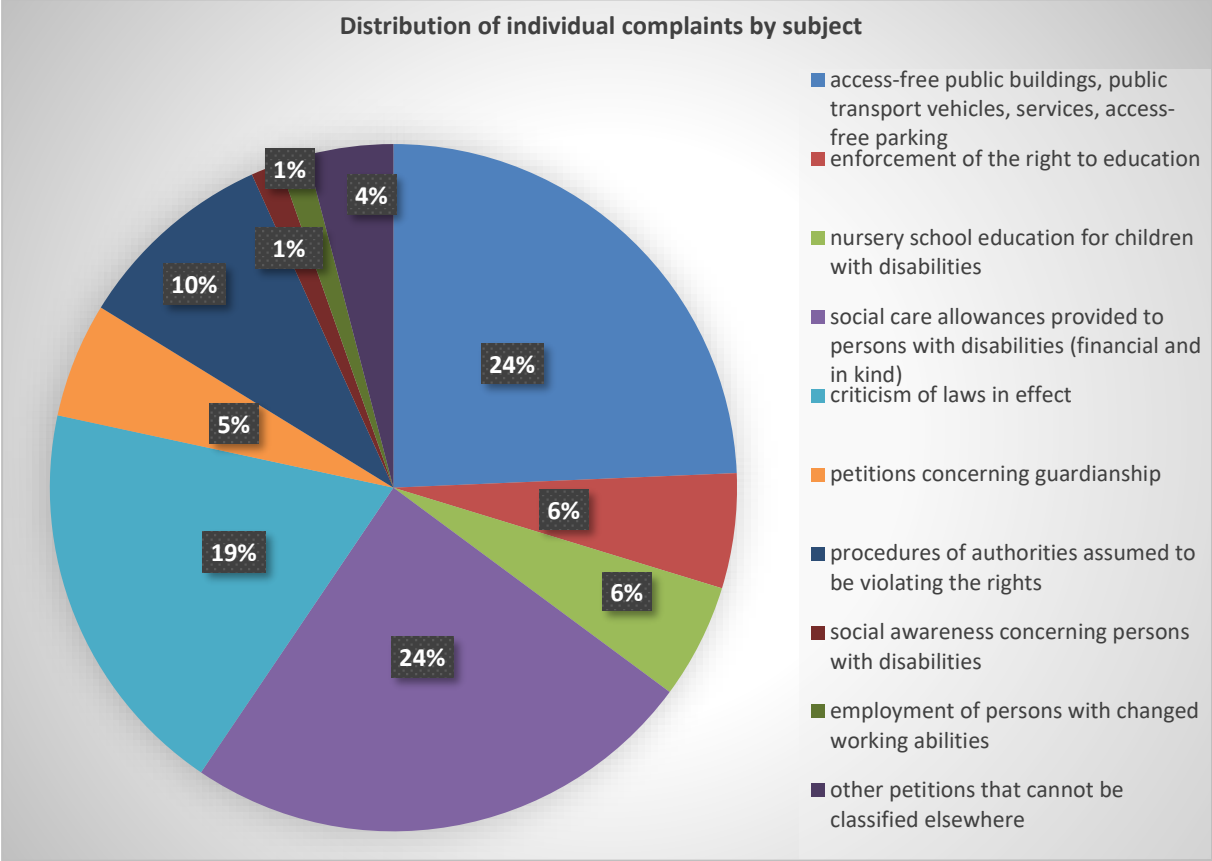
In the framework of the CRPD Independent Monitoring Mechanism, the Ombudsman handled **81 individual complaints** in 2023, of which a rejection establishing the lack of competence was adopted in 45 cases, while **investigations on the merits of the case were conducted in 36 cases**. In those cases in which the Commissioner for Fundamental Rights could not proceed in lack of competence, he provided the complainant with all information relevant for the case every time.



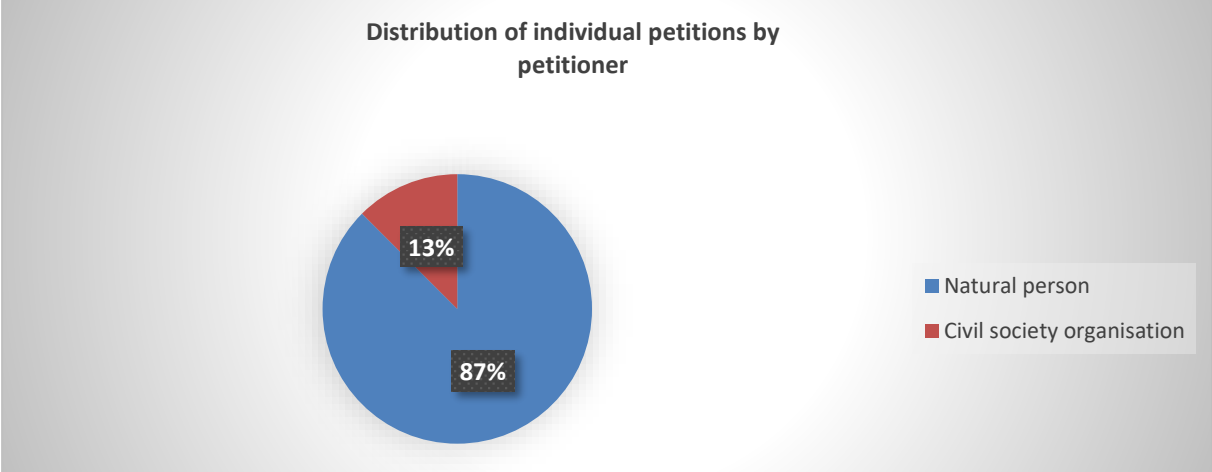
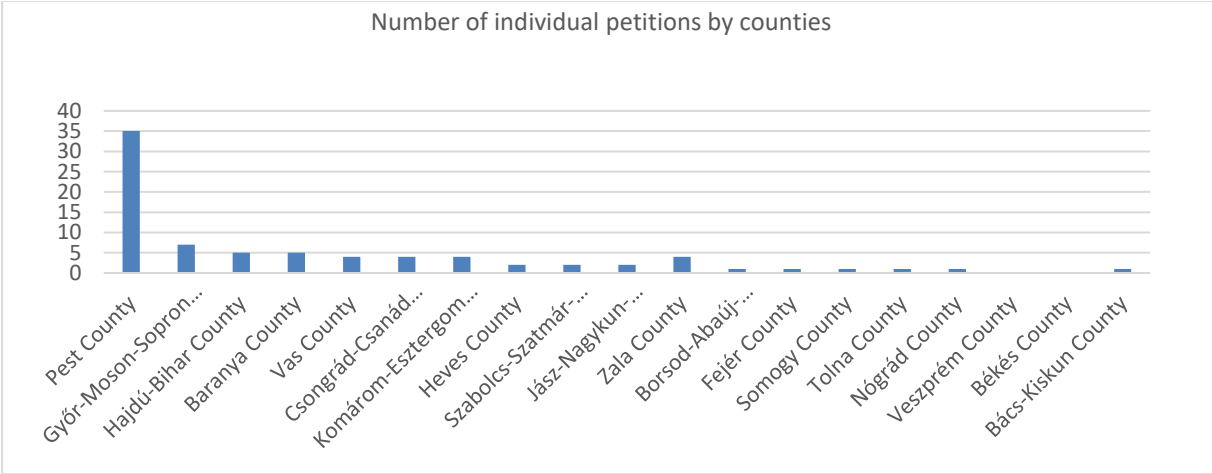
The individual petitions were mostly related to the following groups of cases and areas:



From among the petitions filed by persons with disabilities, those were **outstanding by their number** which concerned the deficiencies in free access to public buildings, public transport vehicles, as well as services, the social allowances provided to persons with disabilities, the investigations into procedures of authorities deemed to be violating rights, or the criticism of effective laws.



The overwhelming **majority** of the petitions handled by the Independent Mechanism came from **Pest County**, while **Veszprém and Békés Counties** were not affected at all.



5. 2. Ex officio inquiries of the Independent Mechanism

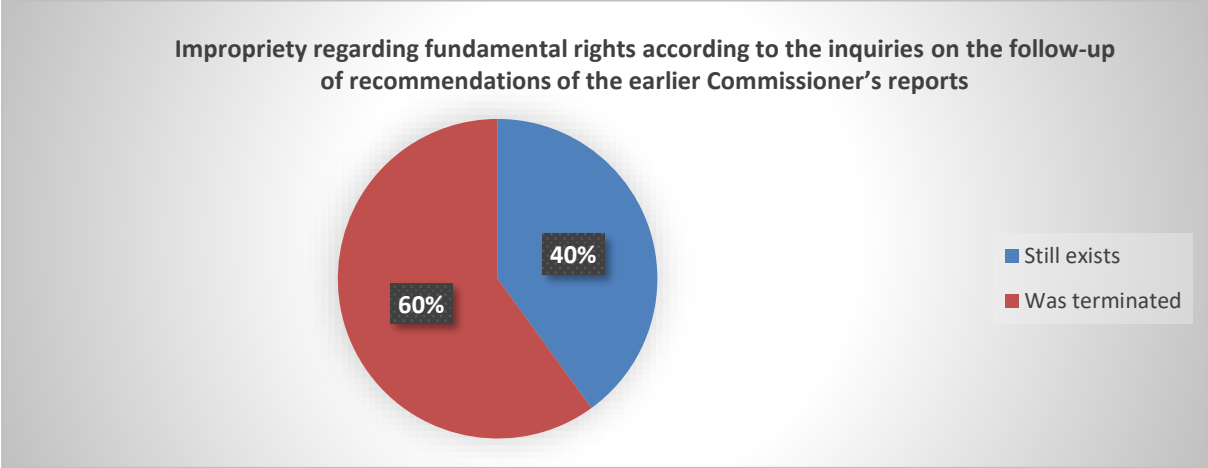
The Commissioner for Fundamental Rights **decided to launch 41 ex officio inquiries** in the context of performing the tasks of the Independent Mechanism in 2023, of which **he issued 14 reports**. The ex officio inquiries of the year under review were primarily aimed at the follow-up of the recommendations of the ombudsman’s reports that were issued on the topics of disability, as well as the comprehensive investigation of issues concerning larger groups of persons with disabilities and institutions.

5.2.1. Ex officio investigations as part of the follow-up of earlier ombudsman’s reports

The Commissioner for Fundamental Rights defined it as a key objective to monitor what measures were taken by the affected organisations addressed by the measures recommended for the improprieties regarding fundamental rights established in the earlier investigation reports, to what extent the requirements set out in CRPD were taken into account by the measures, and whether the disclosed deficiencies and fundamental rights-related improprieties had been remedied.

The general experience gained from the follow-up inquiries was that the addressees of the ombudsman’s recommendations endeavoured to take all possible measures in order to terminate the improprieties regarding fundamental rights established in the reports of the Commissioner for Fundamental Rights. In several cases, the execution of these measures was in progress at the time of the inquiries.

From among the five reports issued on the follow-up investigations of the earlier reports, there were two cases in which the ombudsman established that the impropriety regarding the fundamental right still existed and with regard to this, he proposed further measures.



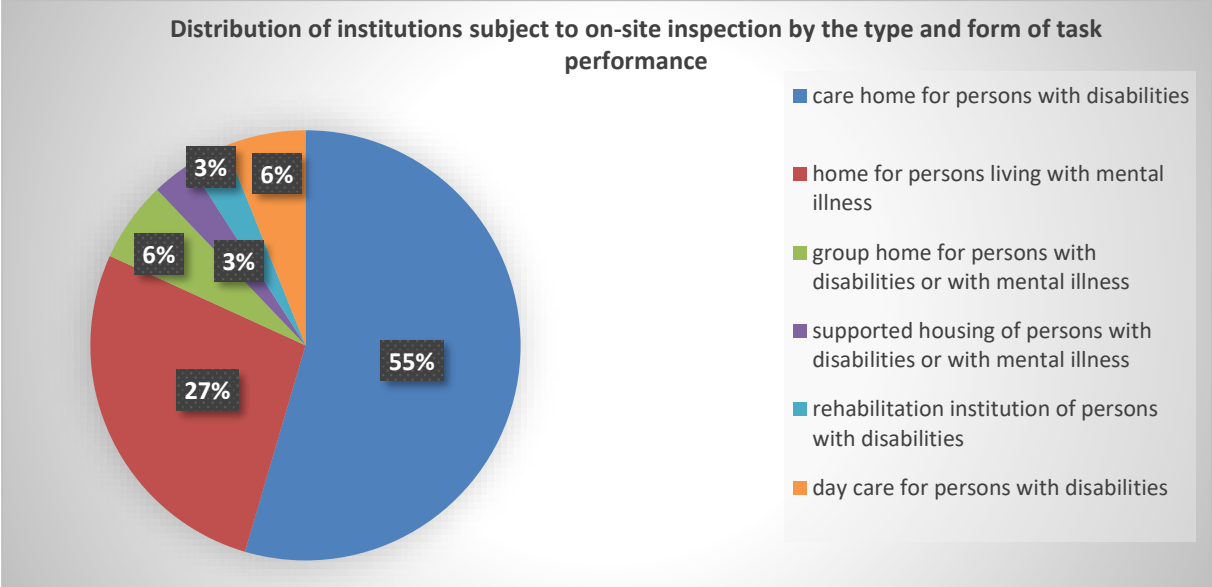
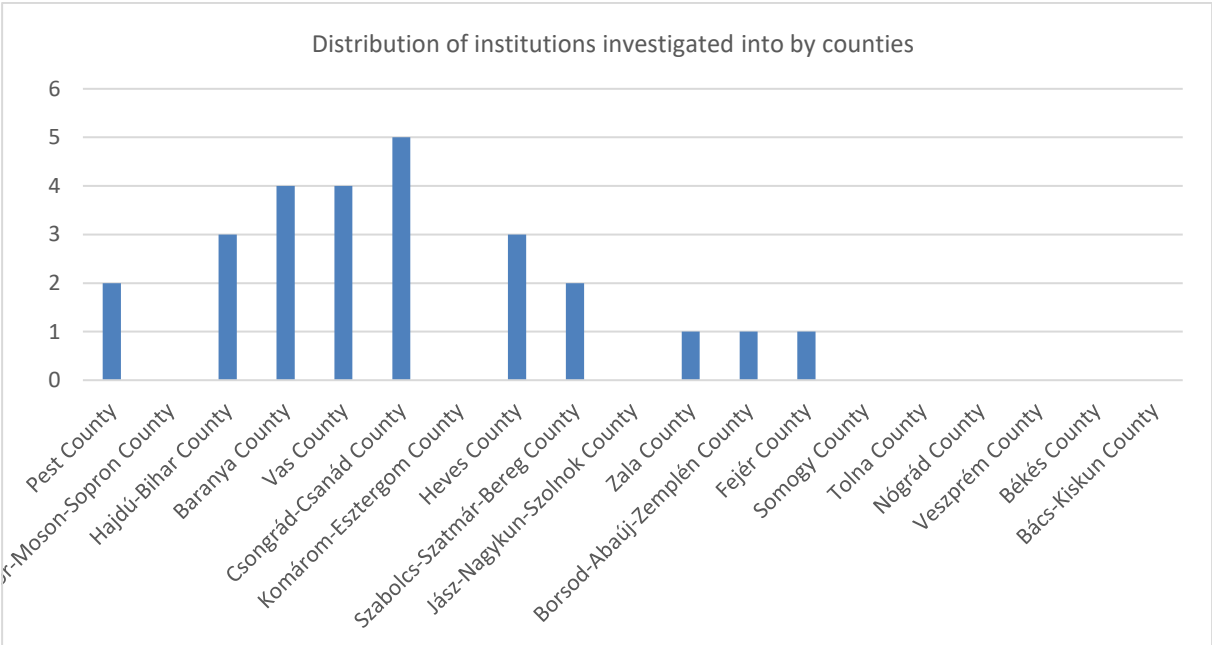
5.2.2 Ombudsman inquiries on the operation of residential care homes and day-care institutions for persons with disabilities and mental illness

The fundamental rights and human rights anomalies of residential institutional care have been in the focus of inquiries conducted in the general competence of the ombudsman for a long time. The Commissioner for Fundamental Rights launched a comprehensive ex officio inquiry, as part of the performance of the tasks under the aegis of the Independent Mechanism, into the operational conditions of the care homes, residential care homes, rehabilitation institutions, day-care homes of persons with disabilities and mental illness, as well as the enforcement of the fundamental rights of the residents.

The ombudsman inquiry is in the first place justified by the high number of residents of the institutions that are planned to be investigated into, as CRPD specifically protects the fundamental principles of independent living and autonomy, with which the operation of care homes with a high number of residents is incompatible.

Residential care institutions with a high number of residents should ensure the enforcement of the equal right of each person to human dignity, the principle of equal treatment, as well as the requirements set out in CRPD with regard to persons with disabilities until de-institutionalisation is fully implemented.

In 2023, **the on-site inspection of 26 institutions was conducted** as part of the comprehensive inquiry, during which the Commissioner for Fundamental Rights **gained first-hand experience with the living conditions of nearly 3,000 residents**. The inquiries were conducted in the form of on-site inspections. In selecting the sites, the Ombudsman paid special attention to putting institutions of different geographical locations, those that provide different care and services, those that take care of persons with disabilities and mental illness, as well as those operated by different sponsors (state-municipality, church, civil society organisation) into the scope of the investigation.



During the visits, the staff members of the Directorate-General interviewed the head of the institution, as well as the representative of the sponsor of the institution about the conditions of care and the operation of the institution. Among others, the questions concerned the scope of the residents of the homes, how the physical and personal conditions of the institution are ensured in compliance with the statutory requirements, the provision of mental health support, the provision of health care services, the practices of constraint measures, the special education of school-age residents, the possibility of the residents to enforce their interests, the availability of institutional documents, as well as the process of de-institutionalisation.

During the on-site inspection, the staff members of the Directorate-General inspected the care units of the institutions, and they also talked to residents and expert staff members selected at random, which conversations focused on the conditions of care and work, their observations concerning the operation of the institutions, as well as any other questions deemed important by the residents.



It was a **general experience** of the institutional inquiries conducted to date, in respect of all the inspected institutions, that due to the high staff turnover rate and the lack of suitable, committed and qualified staff members, **it is a general challenge to ensure the professional headcount norm at the institutions.**

Based on the experience gained from the visits, it can be concluded that, although continuous improvement can be seen as a result of the programme of de-institutionalisation, there continue to be deficiencies regarding **the physical requirements** in a high number of institutions. The majority of the senior institutional staff that was interviewed reported that the process of de-institutionalisation had recently slowed down. Although the individual institutions have de-institutionalisation plans in place, the necessary resources are not always available.

However, it can be mentioned **on a positive note** that the majority of the institution subject to inquiry strive to ensure wide-ranging social, mental health and special education services to the residents, as well as to provide development classes.

Out of the 9 reports issued as a result of the on-site institutional inquiries conducted by the Commissioner for Fundamental Rights, **there were 4 cases in which an impropriety regarding fundamental rights was established.** In these cases, measures were recommended by the Ombudsman primarily to the sponsors and senior staff of the institution, and in one case, to the Ministry of the Interior. The recommended measures were typically about making up for the deficiencies in the personal and physical conditions of institutional operations, the speeding up of the process of de-institutionalisation, or making up for the documentation deficiencies.

Impropriety related to fundamental rights established on the basis of the outcome of the inquiries into residential and day-care homes for persons with disabilities and mental illness



5.3 Legislative activity of the Independent Mechanism

5.3.1 Proposals formulated in the reports of the Independent Mechanism

The Commissioner for Fundamental Rights, as part of his responsibilities as the Independent Mechanism, conducts a practice-oriented review of the laws governing the operation of institutions providing care to persons with disabilities on the one hand, as it is by presenting his observations and experience from his visits, as well as his legislative proposals supported by critical evaluation that he encourages the Hungarian legislation to promote the ever more complete enforcement of the provisions of CRPD. If the circumstances uncovered during the visits can be attributed to a superfluous, ambiguous or inappropriate provision of a piece of legislation, or to the lack or deficiency of the legal regulation of the given matter, or their conflict with the provisions of CRPD, the Independent Mechanism may propose that the piece of legislation in question be modified, repealed or prepared.³²

Besides his experience gained from the inquiries, it is through individual complaints, signals from civil society organisations, or press monitoring that the Commissioner for Fundamental Rights may conclude that a statutory provision, the lack thereof, or the problems of its application carry the risk of the occurrence of an impropriety related to the fundamental rights of persons with disabilities, or they run counter to one of the provisions of the CRPD.

In the investigation reports issued by the Independent Mechanism in 2023, the Commissioner for Fundamental Rights initiated the setting up of a working group whose activity may result in the review of the effective regulation on one occasion:

In a case related to the care conditions of a person with psychosocial disabilities³³, the Commissioner for Fundamental Rights requested the Minister of the Interior, with the participation of the special areas of the ministry concerned and the organisations representing persons with disabilities, to ensure and support the setting up of a working group and its operation according to the schedule that will assess the needs and prepares the measures guaranteeing the meaningful enforcement of the proposals made in Points 28 and 29 of the Closing Remarks No. CRPD/C/HUN/CO/2-3³⁴ issued by the CRPD Committee on 20 May 2022.

³² Section 37 of the CFR Act

³³ Report No. AJB-901/2023 of the independent Mechanism

³⁴ According to the *Closing Remarks of the Combined Second and Third Periodic Reports of the CRPD Committee on Hungary*, CRPD deems those provisions of the Healthcare Act (Eütv) discriminative that allow the voluntary deprivation of persons with psychosocial disabilities of their personal freedom and their institutionalisation, based on disability and assumed dangerousness. The Committee criticised *the lack of the legal guarantees* for personal freedom and security at the mental institutions, including forensic mental institutions, where the detention and medical care of persons with disabilities may last for an indefinite period, even if the periodic judicial review does not deem the treatment and the detention necessary.

5.3.2 Powers related to draft legislation

Pursuant to Section 2(2) 2 of the CFR Act, the Commissioner for Fundamental Rights may comment on the draft legal rules affecting his tasks and competences, and may make proposals for the amendment or making of legal rules affecting fundamental rights and/or an expression of consent to be bound by an international treaty.

As part of performing his responsibilities as Independent Mechanism, the Commissioner for Fundamental Rights comments on the draft laws on disability, formulates proposals for the creation and amendment of laws and public law regulatory instruments concerning disability.³⁵

According to the Act on Law-making, the party drafting the legislation shall ensure that any and all organisations empowered by the law to review draft legislation concerning their legal status or competence may exercise their rights.³⁶

In making comments on the draft laws, the Commissioner for Fundamental Rights, as part of performing his responsibilities as Independent Mechanism, pays special attention to ensuring that the proposed text of the norm be in compliance with the provisions of CRPD and that it serve the promotion of equal opportunities for persons with disabilities.³⁷

In making comments on the draft laws, the Commissioner for Fundamental Rights always reserves the right to subsequently propose the amendment of a law, pursuant to Section 37 of the CFR Act, in case that he identifies an unforeseeable impropriety that violates or imminently threatens the enforcement of fundamental rights after the adoption of the draft law that can be put down to the deficiencies of the regulation.

The remarks of the Commissioner for Fundamental Rights on the draft bills are not compelling; however, their fundamental rights protection approach may facilitate efficient codification and the elimination of potential deficiencies or contradictions.

As part of meeting the requests of the organs responsible for the preparation of the laws to make comments on the draft laws, the Commissioner for Fundamental Rights, as part of fulfilling his responsibilities as Independent Mechanism, formulated meaningful observations regarding the following two drafts, out of the five drafts put up for comments in 2023:

Amendment of the provisions of Act XXVI of 1998 on the Rights and Equal Opportunities of Persons with Disabilities (hereinafter referred to as: “Fot”) regulating the scope of persons eligible to disability benefits

First of all, the Commissioner for Fundamental Rights welcomed the long-awaited regulation, which defines “*language impairment*” as a basis for eligibility for disability benefits and the criteria thereof, stipulating it in Section 23 (1) g) of the Fot (the Disability Act), as a new rule. The recent years have seen the preparation of several ombudsman reports on the promotion of support to be provided to persons with language impairment.

The Commissioner for Fundamental Rights, as part of performing his responsibilities as Independent Mechanism under the UN Convention, made a meaningful remark on the draft regarding “*severe disability*” as one of the conceptual criteria for providing the benefits, as the draft law to be commented on left the mutual relationship of the concepts of “*severe disability*” and “*medium-severe disability*” undefined. It is especially the definition of medium-severe disability that caused interpretation difficulties in legal practice, as the text of the law suggests

³⁵ Section 39/O (5) a) of the CFR Act

³⁶ See Section 19 (1) of Act CXXX of 2010 on Lawmaking

legal interpretation of an independent legal category at several points. The clear definition of the conditions and concepts that establish eligibility for disability benefits is contained by Government Decree No. 141/2000 (VIII.9.) on the rules of the qualification and review of severe disability, as well as the disbursement of disability allowances, which was issued on the basis of the authorisation given by Section 30 (1) a) of Fot, so the simultaneous amendment of this is vital. The Commissioner for Fundamental Rights called the attention of the legislator to the necessity of amending the implementing regulation in harmony with the draft law, in order to ensure legal certainty.

Amendment of government decree No. 327/2012 (XI. 16.) (hereinafter referred to as: “Kr”) on the accreditation of employers employing persons with changed working abilities, as well as the budgetary support that can be provided for the employment of employees with changed working abilities

The draft intended to amend the provisions set out in Section 48 (5) of the Kr. According to the general rules set out in Kr, in the case of tenders invited for rehabilitative employment, the government office concerned enters into a framework agreement with the employer for three fiscal years. However, as consequence of the amendment, temporarily but also, in the tender invited in 2024 after 2023, the government will only enter into an agreement with the winning employer for one fiscal year. The reason for such temporary regulation was not obvious from the proposal.

The Commissioner for Fundamental Rights, acting in his capacity as the UN Independent Mechanism, noted about the draft law that he finds it important for the entity filing the motion to monitor the impacts of the regulation, with the involvement of the government offices concerned, and to consider, bases on this experience, the recoverability of the general order of the conclusion of contracts regulated in the government decree.

6. Domestic and international relations of the Independent Mechanism

The staff members of the Directorate-General participated in the conferences organised by the international organisations and joined the consultation sessions and work meetings on CRPD in an online form.

On 28 July 2023, a roundtable discussion was held at the initiative, and with the participation of the Commissioner for Fundamental Rights at the headquarters of the Office, with the participation of the representatives of the national advocacy organisations of persons with disabilities. The topics of the roundtable discussion included the extended authorisations of the Commissioner for Fundamental Rights in the field of disability, his new instruments and the limits of his competence, his activities performed as part of the tasks of the Independent Mechanism, as well as the ideas regarding the Disability Advisory Board to be set up.



A staff member of the Disability Department took part in the CRPD online Working Group session of the UN's European Network of National Human Rights Institutions, i.e. ENNHRI on 6 September 2023. At the meeting, it was mentioned that the inquiry into equal access to banking services conducted by the Latvian ombudsman office has brought up quite a number of questions which are also topical in Hungary. In its decision, the CRPD Committee addressed some recommendations to Hungary on how the most complete possible access to banking services can be ensured. The CRPD Independent Monitoring Mechanism launched an inquiry into the state measures that have been taken place since the related, 2014 ombudsman report. In view of the findings of the follow-up investigation, with regard to the examination of the full accessibility of banking services, even a more detailed examination into a topic that brings up the suspicion of the violation of a right should be considered, in the form of a cooperation between the advocacy organisations of the persons with disabilities concerned, the professional organisations of financial service providers and the ministries in charge.

A staff member of the Disability Department took part in the CRPD Working Group session of the UN's European Network of National Human Rights Institutions, i.e. ENNHRI on 20 September 2023 in an online form. It was mentioned at the session that the guidelines of the European Union Agency for Fundamental Rights, i.e. FRA are available, which provide guidance for the elaboration of the national frameworks of independent monitoring. These guidelines are aimed at supporting the individual countries in the elaboration and improvement of the indicators supporting the progress of the national level implementation of the CRPD. The FRA Guidelines are built on truthful data and practical experience, they may provide meaningful input for the establishment and operation of the Hungarian CRPD Independent Monitoring Mechanism.

On 25 October 2023, the staff members of the Department for Disability Affairs and the other organisational units of the Office of the Commissioner for Fundamental Rights took part in the presentation of the Hungarian translation of the document entitled "UN Guidelines on De-institutionalisation, including in Emergencies" and the related panel discussion, which were organised by the Validity Foundation.

On 23 November 2023, two staff members of the Department took part in the 9th Disability Conference of the Bárczi Gusztáv Faculty of Special Needs Education at ELTE.

On 4 December 2023, a staff member of the Department attended the presentation of the international expert on persons with disabilities Amita Dhanda, which event was organised by the Validity Foundation.

7. Summary

On 22 November 2022, Act L of 2022 on the Amendment of Certain Laws on the Security of Hungary, which also modified the CFR Act, was adopted by the National Assembly. As a result of the amendment effective as of 1 January 2023, the Commissioner for Fundamental Rights, *by involving civil society, especially the persons with disabilities and the organisations representing them*, ensures the fulfilment of the responsibilities of the **Independent Mechanism** as defined in Article 33(2) of CRPD.

One of the key responsibilities of the Independent Mechanism is the national-level monitoring of the enforcement of the rights set out in CRPD, by which it can help, protect and control the implementation of the obligations of the states parties.

Although the Commissioner for Fundamental Rights of Hungary had paid special attention to monitoring the implementation of CRPD prior to the amendment of the CFR Act that took effect on 1 January 2023 as well, it has now become a key responsibility of the Commissioner for Fundamental Rights already acting as Independent Mechanism to perform the protection of the fundamental rights of persons with disabilities with an even higher level of efficiency, involving the persons with disabilities and the wider civil society advocating for their interests in these efforts.

The new provisions of the CFR Act define the frameworks of the ombudsman procedure and the measures that can be taken as Independent Mechanism. Thus, the Commissioner for Fundamental Rights, in his competence as Independent Mechanism, may conduct ombudsman type inquiries, however, his competences became wider as compared to the general rules of his procedures. It now became possible that the ombudsman, even in lack of a complaint or a fundamental rights-related impropriety, regularly investigate into the enforcement of the rights of persons with disabilities in compliance with the requirements set out in CRPD.

Furthermore, a more efficient protection of fundamental rights is ensured by that, from now on, in order to terminate an impropriety related to the fundamental right of a natural person, the Commissioner for Fundamental Rights may conduct an inquiry *ex officio* as well if the person with a disability is not able to act in order to enforce their rights, or submitting a petition would impose disproportionate difficulties on them.

As part of the responsibilities fulfilled as Independent Mechanism, the Commissioner for Fundamental Rights may comment on the draft laws concerning disability, may formulate proposals and public law regulatory instruments for the creation or modification of the laws on disability, and may take part in the National Disability Programme aimed at the creation of equal opportunities for persons with disabilities, as well as the preparation of the related Action Plans, and in this scope, he may make proposals to help the preparation of these, furthermore, he may make comments on the draft Programme and Action Plans. In this competence, it is his responsibility to monitor the implementation of the Programme, to comment on the reports on the implementation of the Programme and the related Action Plans, furthermore, he is entitled to comment on the report on the implementation of CRPD prepared for the Committee. Finally, his tasks include making proposals and recommendations to the members of the Government regarding the government decisions and programmes concerning persons with disabilities, as well as to take part in the preparation thereof, and to cooperate with the National Disability Council in the performance of the tasks of the Independent Mechanism.

During the implementation of the tasks of the Independent Mechanism, the Commissioner for Fundamental Rights may act either in person, or through his authorised staff members, and he may authorise other experts to participate in performing these tasks on a permanent or ad hoc basis as well. The responsibilities of the Independent Mechanism are fulfilled by the independent organisational unit of the Office with extensive authorisations, i.e. the **Directorate-General for Disability**, in the spirit of decentralisation, with its headquarters in Debrecen but with national competence.

In order to perform the mandate under CRPD more efficiently, the Commissioner for Fundamental Rights, with a view to realising a close cooperation with civil society and performing his tasks related to the responsibilities of the Independent Mechanism, set up a **Disability Advisory Board** representing civil society, consisting of persons with outstanding professional knowledge or practical experience in the rights of persons with disabilities, as well as delegates of disability organisations representing civil society. The Advisory Board supports the Commissioner for Fundamental Rights as a professional consultation forum. The Commissioner for Fundamental Rights invited a tender for participation in the work of the Advisory Board on the homepage of the Office. In assessing the entries, the Commissioner accepted the entries of all the applicant organisations but with regard to the fact that, in accordance with their historical mission, the role taken by the churches is of outstanding importance in the services and institutional care provided for persons with disabilities, the Commissioner for Fundamental Rights also requested the representatives of some churches and charity organisations, as well as that of the Bárczi Gusztáv Faculty of Special Needs Education and Social Participation Institute of ELTE, with a view to ensuring the holistic representation of the international guidelines of disability studies, to take part in the work of the Disability Advisory Board. The body that ensures a broad public participation started its operation with 28 members.

In the scope of the fulfilment of the responsibilities of the Independent Mechanism, the Commissioner for Fundamental Rights initiates comprehensive inquiries with a broader scope, launched ex officio, in addition to investigating into the circumstances objected to in the individual complaints and the official decisions adopted by the authorities, in order to enforce the rights of persons with disabilities as required by CRPD.

What should be highlighted here as *the focus of the inquiries* launched by the Independent Mechanism in 2023 are the monitoring of equal access to services, the operation of the inpatient and residential social care institutions, as well as other institutions providing services to persons with disabilities, the life conditions of the patients and residents, the exposure of the circumstances of groups with multiple disadvantages such as women and children with disabilities, furthermore, the follow-up of the implementation of measures proposed concerning a larger group of persons with disabilities in the earlier reports of the Commissioner.

The Directorate-General, as part of the fulfilment of the responsibilities of the Independent Mechanism, handled as many as 121 cases in 2023, in the course of which almost all the disability groups came to the focus of attention of the Commissioner for Fundamental Rights. As a new organisational unit, the Directorate-General received 69 new individual complaints related to disability, and it took over 12 cases launched on the basis of individual complaints that had not yet been closed in 2022. In addition to all these, a procedure was launched ex officio in 41 cases. In the year under review, the Commissioner for Fundamental Rights issued reports in 2 cases launched on the basis of individual complaints, and in 14 cases launched ex officio, as part of the fulfilment of his responsibilities as the Independent Mechanism.