

OMBUDSMAN FOR FUTURE GENERATIONS

The Office of the Hungarian Ombudsman for Future Generations on methods to promote the implementation of human rights obligations relating to the environment

In response to your request for inputs for the HRC report, my office would specifically highlight two categories of practical methods of implementation of human rights obligations relating to the environment.

One would fit the third category in your request, i.e efforts to provide technical assistance at the national level, namely the establishment and operation of the Ombudsman for Future Generations, while the other would fit your last example, a voluntary international forum for information exchange. Please see the details below.

1. The purpose and practical operation of the Hungarian Ombudsman for Future Generations

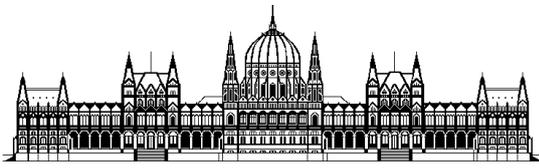
As a reminder, the Hungarian Ombudsman institution was established in 1996, as a body to protect citizens against maladministration, to act as proponent of good administration, and as a defender of fundamental human rights. Within the Hungarian system specific ombudsmen were appointed (Ombudsman for National Minority and Data protection) beside the general ombudsman. In 2007 a bill was adopted that formally established another independent status, the Parliamentary Commissioner (or Ombudsman) for Future Generations. The Parliamentary Commissioner and his staff was working separately from the other Ombudsman staff with strong competences to investigate all issues that may affect citizen's constitutional right to a healthy environment, or which have a likely impact on the long-term sustainability of the environment in the broadest sense.

Due to amendments to the Ombudsman Act in 2011, the independent Ombudsman Offices and the General Ombudsman's Office were merged into one, creating their legal successor, the Office of the Commissioner for Fundamental Rights. At present, this institution pays special attention to the protection of rights enshrined in the Fundamental Law, including the values determined as the interests of future generations. Under this scope, the Commissioner and his Deputy (Ombudsman for Future Generations) are responsible for the protection of the right to a healthy environment, the right to the preservation of physical and mental health, and for the protection of the values enshrined in Article P of the Fundamental Law.

Pursuant to Article P, "Natural resources, in particular arable land, forests and the reserves of water, biodiversity, in particular native plant and animal species, as well as cultural assets shall form the common heritage of the nation; it shall be the obligation of the State and everyone to protect and maintain them, and to preserve them for future generations."

Also, pursuant to Article XX (1) *Everyone shall have the right to physical and mental health. (2) Hungary shall promote the effective application of the right referred to in Paragraph (1) by*

an agriculture free of genetically modified organisms, by ensuring access to healthy food and drinking water, by organising safety at work and healthcare provision, by supporting sports and regular physical exercise, as well as by ensuring the protection of the environment."



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Article XXI

„(1) Hungary shall recognise and give effect to the right of everyone to a healthy environment...”

In this report we aim to introduce one of the most important practices of the Ombudsman Office regarding human rights obligations for the strengthening of environmental policy-making, which is the practice of handling public petitions on environmental matters. This practice has been part of the Office’s mandate since its establishment, however, the weight given to environmental concerns has been changed over the years as a result of having an ombudsman for future generations and its impact is now more acknowledged. The purpose of the practice is to point to systems-level anomalies in the legal and political processes of environmental decision-making based on people’s personal experiences and complaints. This practice is particularly important as it creates a bottom-up feedback mechanism on state practices regarding the use and protection of the environment with a strong focus on human rights violations. Regarding its geographic scope, the Ombudsman handles complaints from all over the country, and its proposal and reports usually affect national legislation and decision-making. However, the Office can also submit opinions regarding local regulations, and malpractices.

Directly the Office’s practice promotes the right to a healthy environment, and the right to the preservation of physical and mental health, while it also takes into account the interests of future generations in any decision or report it makes. Indirectly, however, the Office’ proposals submitted to authorities often have implications to rights concerning other aspects, such as e.g. the right to freedom of thought, conscience and religion, or to the principle of non-discrimination.

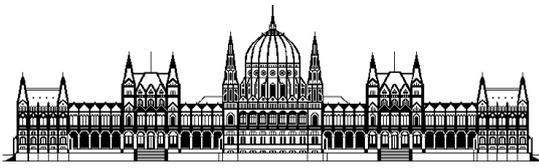
The Ombudsman primarily investigates environmental issues, applying the following means:

- conduct investigation on governmental and municipal levels;
- provide opinion to various authorities regarding matters of environmental protection;
- turn to the Constitutional Court or the Curia in cases where there is a strong belief that a national or local piece of legislation is in violation of the Fundamental Law;
- initiate intervention in public administrative court cases regarding environmental matters
- monitor policy developments and legislative proposals; and
- is involved in the elaboration of non-binding statements and proposals to any public authority, including the government.

Investigations are based on *ex officio* interventions, as well as on public complaints and petitions. This latter contributes highly to the involvement of the views and concerns of the public into the proposals and statements submitted to authorities.

Every year, the Ombudsman reports on the cases in which he/she was involved, and prepares a statistical analysis on the types of petitions he/she handled. These reports serve as important indicators of environmental policymaking, and are highly relevant for the future work of the Office. The complaints are grouped into categories reflecting the lack, misuse, or violation of laws in certain environmental matters. This helps not only point to systems-level anomalies of the jurisdictional environmental regime, but can also ensure the better reflection of the public’s view in environmental governance.

The investigation of the Office directly aims to help the complainant and the work of the enforcement bodies, by promoting the lawful conduct of authorities, explaining and setting



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standards for ensuring human rights on the ground of the Hungarian Constitution. The Office can draw the local and central legislators' attention to the discrepancies of legal provisions.

From a broader perspective the practice benefits everyone through the promotion and protection of basic human rights and fundamental principles.

Authorities are required to follow-up on the Office's request and respond to that in due course. Authorities are to indicate whether they accept or reject the Office's proposal or what amendments are necessary for the application of the Office's statement, and whether the authority aims to comply with the human rights obligations through the amendment of the law, the remedy of deficiencies, or change of conduct.

Through the handling of petitions, the Ombudsman institution is capable of drawing broader conclusions from individual complaints regarding the state of the environment and human rights violations pointing to the discrepancies in environmental policymaking. This is a good model for identifying the most urgent environmental problems in relation to human rights, and is also capable of ensuring a more general and proactive action of the institution that is important for the society as a whole.

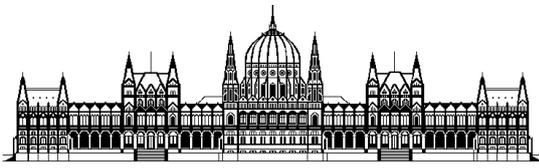
Besides, through the proposals and reports of the Ombudsman, the focus of legislation can be shifted more towards environmental sustainability and intergenerational justice. The practice has a role in raising the awareness of society that human and environmental rights are closely interlinked, and their protection is everyone's responsibility.

For the protection of the interest of future generations it is absolutely essential to acknowledge that without enforcing the right to a healthy environment many other human rights might be violated, such as the right to physical and spiritual health, right to private property, to water and proper sanitation, the prohibition of discrimination. Therefore, it is of outstanding primary importance for the protection of the environment to have adequate safeguards, as it is so connected to other fundamental rights.

In the course of our work we often rely on obligations deriving from international treaties (e.g. CEHAPE), on judgements of the international European Court of Human Rights (e.g. noise complaints), on the reports and recommendations of various international organizations, especially those scientific statements that show an indirect link between right to a healthy environment and other human rights (e.g. WHO Reports on Noise) and those that deal with the endangerment of natural resources (e.g. World Water reports).

The Hungarian Ombudsman for Future Generations and his colleagues take part in numerous national conferences delivering speeches that have a significant awareness raising result (e.g. pointing out the negative consequences of postponing the rehabilitation of contaminated sites) and the Office also organizes conferences highlighting the need to comply with international obligations (e.g. right to water and sanitation).

We also often perform quasi mediational roles, where we aim to reach some kind of compromise between two parties of opposing opinions (e.g. settlement development) or urge and inspire the formation of good practice (e.g. protection of trees). The Ombudsman for Future Generations has



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regular reviews with the Hungarian High Court building upon case law of the European Court to help further clarify and unify law enforcement in Hungary (e.g. waste related cases).

The Ombudsman for Future Generations prepares guidance notes for policy makers in order to ensure adequate representation of future generations (e.g. in the fields of handling nature conservation sites or protection of ground and groundwater).

All these above fields are examples enhancing the representation of human rights. On the other hand, let us highlight some area for potential improvement: we have found that in many cases it would be very useful to have access to and be able to rely upon certain international environmental databases that thematically store relevant environmental information, facts, international treaties, guidance, and so forth.

Provision of forums where information could be exchanged and disseminated – a recent initiative: Roundtable of Institutions for a Sustainable Future established in 2014

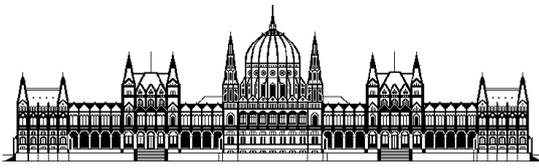
Conferences leading to the establishment of the Roundtable

1. Budapest 2014

According to the "Future We Want" outcome document of the Rio+20 Summit, the promotion of sharing of experiences and best practices to the implementation of sustainable development was one of the tasks of the High Level Political Forum. The "Intergenerational solidarity and the needs of future generations" Report of the UN Secretary General named eight national institutions and bodies that play a pioneering role in the national implementation of sustainable development and intergenerational solidarity. Recognizing the significance of these institutions and in an effort to promote cooperation, the Hungarian Ombudsman for Future Generations decided to organize a conference in 2014 to bring together national institutions mentioned in the Report.

The event entitled "Model Institutions for a Sustainable Future" was held on 24-26 April 2014 under the patronage of János Áder, President of Hungary. The event aimed to contribute to a closer cooperation between the national institutions playing a pioneering role in the implementation of sustainable development and intergenerational solidarity at the national level. Participants included: relevant national bodies, civil organizations and prominent scholars from the academic field. The conference focused on understanding the unique characteristics of the national bodies as well as the legal principles and processes underlying their work. Following the presentation of the selected model institutions, panel discussions were centering on the different constitutional, human rights and environmental law principles underlying the work of such bodies both from a practitioner and an academic perspective. Panels encouraged discussions among participants of different expertise providing opportunities to link theory to practical implementation.

At the event, many participants expressed their wish to formalize the cooperation of the present institutions by establishing a network of national institutions for future generations, hence the Roundtable of Institutions for a Sustainable Future was created. The participants adopted the Budapest Memorandum, for the spread of institutional solutions for safeguarding the needs of future generations.



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2. Cardiff 2015

One year after the successful conference in Budapest, the institutions held another meeting in Cardiff at the "Essential Ingredients for a Sustainable Future" Conference in April 2015, hosted by the Office of the Commissioner for Sustainable Futures and co-organised by the Welsh Government and the World Future Council. The conference built on the inaugural network conference held in Budapest in April 2014 and was similarly attended by leading thinkers, academics, lawyers, human rights specialists, civil society organisation representatives, senior UN officials, and youth representatives. It was emphasized that the relevant national bodies share certain features in common, namely that irrespective of the nature of the specific model, there are a number of common threads that contribute to the effectiveness of these institutions:

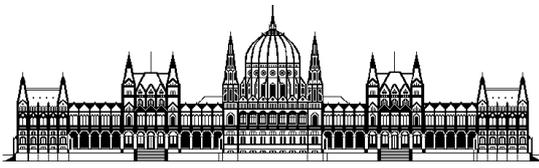
- Effective involvement and public engagement, including promoting participatory processes
- Access to and promotion of information on future trends
- Identify knowledge and institutional gaps on behalf of future generations
- Links to the democratic process to create a more informed electorate
- Established through legitimate means and processes
- Ability to receive citizen "complaints"
- Holding to account public bodies through independent review or audit
- Use of science based evidence
- Promotion of tools and political levers to overcome the complexities of short termism
- Linked to national constitutional human rights and decisions in the courts
- Advocating for and reporting progress on behalf of future generations
- Involving young people as best representatives of future generations
- Focus on global impacts of national decisions
- A clear set of long term goals and measures of progress

The second conference further confirmed the need and ability for a continued cooperation within the framework of the Roundtable of Institutions for a Sustainable Future.

The Roundtable

The Roundtable of Institutions for a Sustainable Future is thus an independent, non-formal network of institutions worldwide for the protection of the interests of future generations. The Roundtable's primary goal is the sharing of knowledge and dissemination of best practices of its member institutions engaged in the promotion of responsible, long-term governance, taking into consideration the wellbeing of our descendants and their natural environment. The Roundtable consists of a diversity of institutions or bodies such as the Committee for the Future in Finland, the Parliamentary Advisory Council on Sustainable Development in Germany, the Sustainable Development Strategies, Audits and Studies, Office of the Auditor General in Canada, the Welsh Commissioner for Sustainable Futures, the Parliamentary Commissioner for the Environment in New Zealand, the Former Commissioner for Future Generations in Israel, the Ombudsman for Children in Norway and Ombudsman for Future Generations in Hungary.

This Roundtable brings together the institutions highlighted in the Report, as well as other establishments from around the world, who undertake similar roles or are interested in creating institutional means for the protection of future generations in their own countries. The role of these



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institutions is wide-ranging: they enhance long-term thinking in governance, as well as create a medium which is capable of incorporating the basic principles of intergenerational equity into the political and social life of the state.

Our cooperation has a three-fold aim:

- to share institutional best practices among its members for the development of effective means and practices,
- to provide innovative ideas for other establishments working on various levels worldwide,
- and to channel outside perspectives, successes and lessons learned into the work of already existing bodies.

Together with other supporters from the European Parliament and acknowledged scholars we have also initiated the establishment of a European Ombudsman for Future Generations.

I hope that with the above descriptions we have been able to give you some ideas about what we see as methods to promote the implementation of human rights obligations relating to the environment. In case you need further details, please do not hesitate to contact me.

Yours sincerely,

Marcel Szabó

Ombudsman for Future Generations

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