

CFR Instruction No. 3/2015 (XI. 30.)
on the professional rules and methods of the inquiries conducted by the Commissioner for
Fundamental Rights¹

Acting upon my powers defined in Section 30 of Act CXI of 2011 on the Commissioner for Fundamental Rights, in consideration of Section 23 (4)f) of Act CXXX of 2010 on Legislation, I hereby issue the following instruction:

Chapter I

General principles

Section 1 – The Commissioner for Fundamental Rights (hereinafter referred to as the “Commissioner”)

- a) shall be independent in his/her proceedings and shall take measures solely on the basis of the Fundamental Law and the laws of Hungary;
- b) during his/her proceedings, shall pay particular attention to the protection of the fundamental right to human dignity, as well as to the rights of people living with disabilities and the rights of the groups specified in Act CXI of 2011 on the Commissioner for Fundamental Rights (hereinafter referred to as the “CFR Act”);
- c) during his/her inquiry, the criteria of professionalism, objectivity, impartiality and unbiasedness shall be fundamental, and his/her proceedings shall be conducted within a reasonable time-frame;
- d) the aim of his/her inquiry shall be to learn and uncover all those facts and circumstances to the fullest possible extent that are necessary for clarifying whether a fundamental-rights-related impropriety has been committed;
- e) during his/her proceedings, shall choose – taking full account of the complainant’s best interests – that particular method of inquiry and measure stipulated by the law which best facilitates the solution of the complainant’s problem and the remedying of the fundamental-rights-related impropriety;
- f) during his/her proceedings, shall apply the methodology of inquiry in a flexible manner and in consideration of the specificities of the given case.

Section 2 – The provisions of this instruction shall also be duly applied during the performance of the tasks of the Deputy Commissioner for Fundamental Rights, Ombudsman for Future Generations and the Deputy Commissioner, Ombudsman for the Rights of National Minorities (hereinafter referred to together as the “Deputy Commissioner”).

Chapter II

Assessment of the admissibility of cases

¹ Published in the Official Notices 2015/59 (annexed to the Hungarian Official Gazette)

Section 3 – (1) Complaints submitted to the Commissioner shall be assessed in order to determine whether a case is suitable for substantive inquiry (hereinafter referred to as “admissibility”). This assessment, also relying on the earlier decisions of the Parliamentary Commissioners, shall cover all the legal requirements of admissibility.

(2) If the case satisfies the requirements defined in the CFR Act, it shall be deemed appropriate for substantive inquiry.

(3) If the petition is admissible, the necessary measures shall be taken immediately.

Section 4 – In the course of the assessment of admissibility, the requirements set forth in the CFR Act shall be examined with particular diligence and equitability.

Section 5 – (1) If, upon beginning the assessment of admissibility, the information available is insufficient to determine the existence or lack of the procedural conditions, the additional information required shall be obtained. The petitioner or the authority concerned may be contacted for this purpose.

(2) If there is a doubt concerning competence or the satisfaction of a procedural requirement, and this doubt cannot be dispelled in the process of the assessment of admissibility, the case shall be submitted to the Commissioner with an indication of this circumstance.

Section 6 – The petitioner shall be informed about the progress of his/her case within 60 days after the petition has been assigned to a case officer. The Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, may set a shorter deadline for the information of the petitioner.

Section 7 – (1) If the petition does not originate from the person concerned by the petition, the person having submitted the petition shall be called upon to submit his/her authorisation in supplement. If the person called upon to supplement the petition does not submit an authorisation, his/her petition shall be rejected unless – pursuant to the provisions of the CFR Act – the Commissioner orders the ex officio inquiry of the case. In substantiated cases, the person having submitted the petition shall be informed in the letter of rejection about the possibility to declare his/her intention to maintain the petition.

(2) A brief note shall be prepared about the rejection of anonymous petitions. In the case of an anonymous petition, an ex officio inquiry may be in order, pursuant to the provisions of the CFR Act.

Section 8 – (1) Pursuant to the provisions of the CFR Act, the petition shall not be examined if there is an authority that is entitled to conduct an inquiry or take action, and the person having submitted the petition did not ask to remain anonymous; furthermore, if there is substantial reason to assume that this is in harmony with the petitioner’s will, the Commissioner, the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, or the General Secretary acting within his/her right to issue shall refer the case to the competent authority, and shall inform the petitioner about this circumstance. Simultaneously with the referral of the case, it may be requested that the recipient authority notify the Commissioner about its actions.

(2) If the case cannot be referred on the basis of Subsection (1), the Commissioner shall reject the petition, and inform the petitioner in appropriate detail about further possibilities to seek legal remedy.

Section 9 – If, following the rejection, the petitioner turns to the Commissioner with a repeated petition in which he/she discloses such new facts or data that enable further proceedings, the petition shall be deemed admissible. In lack thereof, the petition shall be rejected in accordance with the provisions of the CFR Act. In further such cases, the petition may be placed in the archives without further action.

Chapter III

General rules for inquiries

Section 10 – (1) The provisions set forth in this chapter shall apply to complaints admitted and ex officio inquiries. In the course of inquiries into public interest disclosures, inquiries into the review process of national security checks and the performance of the tasks of the National Preventive Mechanism under the Optional Protocol to the Convention against Torture and other Inhuman or Degrading Treatment or Punishment, promulgated by Act CXLIII of 2011, (hereinafter referred to as the “OPCAT NPM”), the rules of this chapter shall apply in accordance with the special provisions pertaining to the above.

(2) The Commissioner shall decide about initiating an ex officio inquiry after due consideration of the circumstances of the case. The Deputy Commissioner may recommend that the Commissioner launch an ex officio inquiry.

Section 11 – (1) At the beginning of the inquiry, the complainant shall be informed about the launching of the inquiry, and his/her attention shall be called to the fact that the execution of the proceedings is not subject to a time-limit.

(2) In the course of the inquiry, the complainant may be asked to specify or complete his/her petition, to submit documents related to the petition, and he/she shall be informed that failure to do so hampers the Commissioner’s proceedings.

(3) The Commissioner shall determine the method of inquiry, and the Deputy Commissioner concerned by the subject matter of the case may also make recommendations thereon. Acting on the Commissioner’s power bestowed upon him/her, the Deputy Commissioner shall choose his/her own method of inquiry.

(4) In the course of his/her inquiry, the Commissioner may rely on all those legitimate means – in addition to the general methods of inquiry set forth in the CFR Act – that are necessary for uncovering the factual and legal circumstances of the case.

(5) When choosing the method of inquiry, the Commissioner shall also take into consideration the system of criteria and opinions elaborated by the Deputy Commissioner.

(6) Several methods of inquiry may be applied during an inquiry; and general and other acts of inquiry may be repeatedly used if the case so requires.

Section 12 – During his/her inquiry, the Commissioner, as well as the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, is entitled to process personal data, and data qualifying as secrets protected by an Act or as secrets restricted to the exercise of a profession in accordance with the provisions of the CFR Act.

Section 13 – (1) The Commissioner, the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, and supervisory staff members authorised by a general or specific instruction are entitled to make data requests.

(2) The deadline for response may not be shorter than the time-limit set forth by the CFR Act.

(3) A written communication shall do the following:

- a) notify the recipient about the launching of the inquiry;
- b) indicate the legal grounds of the inquiry and the competence of the Commissioner or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her;
- c) state whether the inquiry has been initiated on the basis of a complaint or ex officio;
- d) reveal the complainant’s identity where appropriate, or indicate that the complainant has asked to remain anonymous;

- e) specify the questions asked and the documents requested;
- f) remind of the obligation to reply and the deadline for replying;
- g) cite the legislation stipulating that the complainant may not suffer any disadvantage for turning to the Commissioner; and
- h) remind of the procedural rules (ordering the shared burden of proof) to be applied during inquiries pertaining to the fundamental right to equal treatment.

(4) The substantive components set forth in Subsections (1)–(3) shall apply in cases of prompt contact.

(5) If the authority contacted does not reply within the deadline set, it must be reminded of its obligation to respond (hereinafter referred to as “urging”). Urging may also be performed in a prompt manner; however, if the authority does not respond within 30 working days, it must also be reminded of its obligation to do so in writing.

Section 14 – The authority may be asked to conduct an inquiry by the Commissioner, as well as the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her.

Section 15 – Data requests and requests to hold an inquiry may be executed in writing, or exceptionally, in a prompt manner (by phone, orally or via e-mail). Information obtained promptly about the progress of the inquiry shall be recorded in writing.

Section 16 – (1) The Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, shall decide about holding on-the-spot inspections and attending public hearings (hereinafter referred to together as “on-the-spot methods of inquiry”). Based on the duly justified recommendation of the case officer, the head of department may also authorise participation in a public hearing while simultaneously informing the Commissioner or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her thereof.

(2) Based on the decision of the Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, on-the-spot inspections may also be performed without prior notice.

(3) In order to ensure the objectivity of the proceedings and the ability to prove the facts uncovered, on-the-spot inspections shall be executed by at least two staff members of the Office. In exceptional and duly justified cases, with the approval – even promptly acquired – of the Commissioner or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, a staff member of the Office may also be authorised to perform these procedural acts. A note must be prepared about the on-the-spot inspection for the supervisory staff member having ordered its execution.

(4) In the case of certain authorities – i.e. especially owing to considerations of national security and national defence –, on-the-spot inspections shall be carried out by a staff member having the appropriate-level personal security certificate.

Section 17 – (1) When using the methods of on-the-spot inspection, a commission letter must be issued, signed by the Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her. The issuing of a commission letter may be dispensed with only exceptionally, in duly justified cases, if the uncovering of an impropriety or taking action against it demands an immediate inquiry. In such cases, the commission letter shall be substituted by the photo ID issued by the Office of the Commissioner for Fundamental Rights (hereinafter referred to as the “Office”) for persons authorised to conduct inquiries.

(2) The commission letter shall contain the following:

- a) the case number;
- b) the name of the staff member conducting the on-the-spot inspection;

- c) the ID number issued by the Office;
- d) a brief designation of the case; and
- e) the date of the inquiry or that of the attendance.

(3) The commission letter may contain the name of the Commissioner in general (where appropriate), as well as the powers to inquire of the staff member conducting the inspection on behalf of the Commissioner based on his/her authorisation.

(4) The commission letter shall be handed over, if possible, to the representative of the authority affected by the inquiry. The time of the handover shall be chosen in a way so as not to disturb the inquiry itself. The staff member participating in the inquiry shall not exercise his/her statutory entitlements regarding the on-the-spot inspection until revealing his/her entitlement. During the inquiry, those facts may also be used that were known to the staff member conducting the inspection or attending the public hearing already before presenting his/her commission letter.

Section 18 – During the on-the-spot inspection, the staff member participating in the inquiry may exercise the entitlements set forth in the CFR Act, and he/she may take pictures and make video recordings on site, in full compliance with data protection regulations.

Section 19 – (1) Before their hearing, the employees of the authority inspected shall be duly informed about the cases of refusal to answer as specified in the CFR Act.

(2) The note written about the on-the-spot inspection shall duly document the process of the inspection, the persons heard shall be listed in an identifiable manner, their refusal to answer in the above case shall be recorded, and the findings shall be summarised.

Section 20 – (1) In the course of on-the-spot inspections, the authority inspected shall be asked to cooperate in accordance with the CFR Act.

(2) In the course of the proceedings, organisations not classified as authorities by the CFR Act shall be informed that due to their obligation to cooperate, they are obliged to provide written explanations, statements, communication or opinions (hereinafter referred to together as “statements”).

(3) If the above authorities, bodies, or persons do not meet their obligation to cooperate and/or respond, or do so with delay without a substantiated reason, the Commissioner and the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her shall record this fact in his/her report, and shall inform the National Assembly and the publicity about it in his/her annual report.

Section 21 – The Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, may participate as intervener in a trial during the judicial review of an administrative decision concerning the state of the environment.

Section 22 – (1) No petition or copies thereof shall be transferred to an authority without the petitioner’s consent, except for the case of referral.

(2) The exercise of the right to access files is set forth in separate regulations.

Section 23 – The inquiry shall be terminated at the petitioner’s request. The petitioner shall be informed about the termination of the proceedings in a letter communicating the fact of the termination.

Chapter IV

Rules for exceptional inquiries

Section 24 – (1) If the conditions specified in the CFR Act are satisfied, the Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her may exceptionally inquire into the activity or omission of organisations not classified as authorities (hereinafter referred to as “exceptional inquiry”).

(2) In the event of conducting an exceptional inquiry, the rules concerning preliminary and general inquiries shall apply subject to the derogations laid down in this Chapter.

Section 25 – If the petition is anonymous, or the petitioner is a person who is not affected by the impropriety, it shall be examined whether in light of all the circumstances, the case justifies the launching of an exceptional ex officio inquiry. The launching of proceedings is especially justified if an impropriety committed by an organisation not classified as an authority affects a large group of natural persons who are unable to seek legal protection on their own. Moreover, proceedings are also justified if there is substantial reason to believe that the impropriety would be repeatedly committed, or that the activity or omission would be pursued, or if the impropriety is of such nature that it cannot be remedied through a legal remedy procedure.

Section 26 – The Commissioner and the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her may not apply the general methods of inquiry.

Section 27 – (1) If the activity of an organisation not classified as an authority damages the environment, the Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, may inquire into all the environmental information related to the activity damaging the environment in the course of an on-the-spot inspection, regardless of the manner of the recording and handling of the information, and whether the information is of an independent or collective nature.

(2) In the course of an exceptional inquiry, the data controller shall be informed that regarding emission into the environment, the accessibility of the information shall not be restricted by the fact that a piece of information is considered to be personal data, a trade secret, a tax secret, or data related to the habitat of a specially protected plant or animal species, the deposits of depleting natural resources, or the location of specially protected geological natural resources.

Chapter V

The preparation and substantive components of the report

Section 28 – (1) Pursuant to the CFR Act, inquiries shall be completed by a report.

(2) The cover of the report shall indicate the case number, the date and the title of the report.

Section 29 – (1) The structure and content of the report shall be formulated in a flexible manner, in consideration of the specificities of the inquiry.

(2) The structural elements of the report shall be the following:

- a) the launching of the proceedings;
- b) the fundamental right(s) affected;
- c) the statement of the facts of the case;
- d) the findings of the inquiry; and
- e) the measures recommended with a view to remedying the impropriety exposed.

(3) The report may be completed with additional elements if necessary, especially with a table of contents and an abstract.

Section 30 – That part of the report which states the launching of the proceedings shall specify whether the proceedings have been launched based on a petition or ex officio, and which measure of

which authority has prompted the Commissioner to initiate proceedings. Furthermore, the procedural conditions establishing the Commissioner's competence shall also be stated.

Section 31 – The part of the report stating the fundamental rights affected shall specify that the impropriety indicated by the petitioner or otherwise inferred is related to the infringement or immediate threat of infringement of which fundamental right. In connection with that, the relevant provision of the Fundamental Law shall also be cited.

Section 32 – (1) The statement of the facts of the case shall contain all those facts and data onto which the Commissioner, or the Deputy Commissioner acting on the Commissioner's power bestowed upon him/her, bases his/her conclusions drawn and measures taken as a result of the inquiry.

(2) The statement of the facts shall also describe the infringement or the threat of infringement indicated by the petitioner or otherwise inferred from the case, and present those facts obtained from other organs and contributors which are necessary for drawing professional and objective conclusions.

(3) In the section on the statement of the facts, the facts of the case shall not be assessed, but the methods of inquiry used shall be specified therein.

Section 33 – (1) In the section on the findings of the inquiry, the connection shall be exposed between the facts of the case, as well as the legal background and the fundamental right(s) affected.

(2) Based on the connection exposed, it shall be recorded whether the fundamental-rights-related action or omission of the authority or organ inspected constitutes a fundamental-rights-related impropriety or not.

Section 34 – (1) That part of the report which concerns the measures shall include the recommendations formulated in accordance with the provisions of the CFR Act with a view to remedying the fundamental-rights-related impropriety exposed during the inquiry.

(2) The individual measures shall be formulated so as to make it clear which fundamental right's violation they make reference to.

(3) Each measure or group of measures shall contain a reference to the provision of the CFR Act enabling that particular measure.

(4) The measures shall be formulated in a way so that the measures addressed to different addressees and the different measures addressed to a single addressee could be distinguished.

Section 35 – (1) If the inquiry does not expose any fundamental-rights-related impropriety, a simplified report may be prepared.

(2) A simplified report shall put forth clearly why no impropriety has been found.

(3) A simplified report shall follow the structure of a report, but due to the specificities of the inquiry, certain parts of the report may be consolidated or omitted.

Section 36 – (1) If necessary, a partial report may be prepared before the termination of the inquiry, which may contain the conclusions pertaining to the parts of the case already examined. A partial report may also be drawn up in order to remedy the fundamental-rights-related improprieties.

(2) The substantive components of a partial report shall be identical to those of a report, with the proviso that reference shall be made to the final report to be expected regarding the additional parts of the case.

(3) If a partial report is drawn up in connection with a case, mention shall be made thereof in the report prepared upon the conclusion of the inquiry.

Section 37 – If, after the issuing of the report, it is necessary to continue or supplement the inquiry, a supplementary report may be prepared about the outcome thereof. The supplementary report may

be prepared in the form of a simplified report, but in that case, too, mention shall be made of the antecedents and the circumstances making it necessary to issue a supplementary report.

Section 38 – In the course of post-analysis, the Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, may examine the performance and results of the measure taken to remedy the constitutional impropriety exposed during the inquiry, as well as the necessity of further proceedings. A post-analysis may be carried out if the addressee of the measure does not respond within the set deadline.

Section 39 – (1) Reports are public. Reports shall be made electronically available on the Office’s website for all, providing unrestrained access without identification and free of charge. For the sake of easier searchability, the title of the digital document shall contain the case number and the short title of the report.

(2) The Office shall make the report accessible for the public on the fourth day from the sending thereof to the addressees at the earliest. In duly justified cases, the Commissioner may set a shorter deadline for the publication of the report.

(3) The report shall be published in the electronic collection within thirty days of its issuing.

(4) If a report that has already been published requires correction, or if its content changes due to a supplement, the correction or supplementation thereof shall be incorporated into the text within five working days (including an indication of the changes).

Chapter VI

Handling public interest disclosures

Section 40 – (1) When conducting proceedings under Act CLXV of 2013 on Complaints and Public Interest Disclosures (hereinafter referred to as the “Complaint Act”), the provisions of this instruction shall apply subject to the derogations laid down in this Chapter.

(2) When inquiring into public interest disclosures under the Complaint Act, the provisions of Chapter II, Section 16(4) and Section 20(2) of Chapter III, and Chapter IV of this instruction shall not apply.

1. Operation of an electronic system for making and registering public interest disclosures

Section 41 – (1) Petitions received by the Commissioner through the electronic system shall be examined preliminarily in order to establish whether they can be considered public interest disclosures under the Complaint Act.

(2) If the information available is insufficient to establish the existence of the procedural conditions under the Complaint Act, the information required shall be obtained during the proceedings. The petitioner may be contacted for this purpose.

Section 42 – (1) If the petition qualifies as a public interest disclosure, a brief extract thereof – without indicating any personal or specific institutional data – and its administrative status shall be prepared and published on the Office’s website, and the petitioner shall be identified.

(2) Petitioners shall be identified by their receipt of the case number sent to them in a paper-based letter by post, while petitioners who appear personally shall be identified on the basis of their personal identification documents. Petitioners using the digital gateway shall be considered automatically identified – considering the method of filing the petition – without any further administration.

Section 43 The petition shall be dismissed if it does not qualify as a public interest disclosure, or the petitioner cannot be identified, or the body having competence to inquire into the petition cannot be

determined. The petitioner shall be informed about the available legal remedies in the letter dismissing his/her petition.

Section 44 – (1) If the petition qualifies as a public interest disclosure under the Complaint Act and the petitioner is successfully identified, the body competent to inquire into the petition shall be determined. Subsequently, the proceeding body shall be registered in the electronic system, and the petition shall be made accessible for it within 8 days.

(2) If the petitioner requests that his/her personal data be made accessible only to the Commissioner and the Office, the petition shall be extracted and only the extract shall be made accessible to the body competent to inquire into the case.

Section 45 – (1) The Commissioner and the Office shall provide liaison between the petitioner and the proceeding body through the electronic system. Upon request, the Office shall forward the interim measures and measures on the merits of the proceeding body to the petitioner also by post.

(2) After the closing of the case, the name of the body affected by the public interest disclosure and – if the two are not the same – the name of the body entitled to proceed, as well as information about the measures on the merits taken by the proceeding body shall be made accessible to the public on the Office's website.

Section 46 – (1) If a public interest disclosure is not made through the electronic system, the petitioner's attention shall be drawn to the fact that the handling of public interest disclosures is possible only by way of using the electronic system.

(2) If the petitioner wishes to avoid the use of the electronic system, but specifically requests the examination of his/her case, the Commissioner, or the Secretary General of the Office acting within his/her right to issue, shall refer the petition to the body with competence and inform the petitioner about the referral of the case. Simultaneously with the referral, it may be requested that the recipient body inform the petitioner about its measure. If there is no request to refer the case, the petition shall be rejected.

Section 47 – If the petitioner submits another petition to the Commissioner after the rejection of his/her first petition, and provides new facts or data therein which enable further proceedings, the handling of the petition shall be commenced immediately. In lack thereof, the petition shall be rejected. In additional cases, the petition may be placed in the archives without further action.

2. Inquiry into public interest disclosures

Section 48 – (1) Upon the petitioner's request, the Commissioner shall launch an inquiry if the petitioner believes that the proceeding body failed to fully investigate a public interest disclosure, or the petitioner does not agree with the result of the inquiry, or the petition was found unsubstantiated by the proceeding body.

(2) The Commissioner may conduct ex officio inquiries into the procedural practices under the Complaint Act of the authorities specified in Section 38/A of the CFR Act.

Section 49 – Staff members of the Office performing tasks directly related to public interest disclosures shall carry out their duties in positions falling within the scope of national security checks and requiring a personal security certificate.

Chapter VII

The general requirements of consultation on legislation

Section 50 – Pursuant to the provisions of the CFR Act, the Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, may give an opinion on draft legislation (hereinafter referred to as the “draft”) upon the request of a petitioner or at his/her own initiative.

Section 51 – (1) The Commissioner, as well as the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, is entitled to decide on their own whether they intend to give an opinion on a draft.

(2) If he/she does not intend to give an opinion on a draft sent to him/her he/she shall inform the requesting party – as far as possible – about his/her position.

(3) It shall be recorded in the opinion that the Commissioner, as well as the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, reserves the right to indicate fundamental-rights-related concerns as well as the lack or potential deficiency of the piece of legislation even after the adoption of the latter.

(4) The Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, shall not be bound by the time-limits specified by the requesting party for giving his/her opinion. If it is not possible to give an opinion by a specific deadline due to the tight time-frame or the importance or length of the legislative text, the Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, may dispense with giving an opinion on the merits, or may inform the requesting party about the subsequent date by which he/she will prepare the opinion.

(5) The lack of an opinion on the merits does not mean that the Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, agrees with the substance of the draft, and it does not preclude that the Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, later give an opinion on the draft or legislation adopted on the basis of the draft.

Section 52 – (1) Regarding the drafts forwarded for consultation, it shall be examined primarily whether the legislation in question is connected to one of the fundamental rights or constitutional principles, or it affects substantially the interests of protected social groups specified in Section 1(2) of the CFR Act.

(2) Drafts shall be reviewed in terms of their substance, but it is also possible to include in the opinion codification-related or stylistic deficiencies, as well as to draw attention to specialised issues falling beyond the competence of the Commissioner.

Section 53 – (1) In the course of consultation, particular attention shall be drawn to whether the legislative text

- a) is linked to legislative proposals made in connection with previous inquiries;
- b) remedies the previously uncovered improprieties appropriately; and
- c) is appropriate for addressing the uncovered legal deficiencies in the future.

(2) In the course of consultation, globally relevant aspects such as the enforcement of equal treatment and equal opportunities, the principle of sustainable development, the principle of “non-derogation” in environmental and nature protection cases, legal coherence, as well as the effect of the legislation on certain protected social groups shall be taken into consideration.

Section 54 – If the Commissioner, or the Deputy Commissioner acting on the Commissioner’s power bestowed upon him/her, intends to raise an objection or make a proposal in connection with the draft, he/she shall:

- a) make general observations where necessary;

- b) analyse the contested provisions, comparing them with any previous experience, legislative proposals, fundamental-rights-related problems or social issues;
- c) propose the amendment or revision of the draft, indicating – where necessary – the aspects on which they are based;
- d) seek feedback from the requesting party where necessary; and
- e) reserve the right to indicate improprieties noticed in the future.

Chapter VIII

Preparation and filing of motions to the Constitutional Court

Section 55 – (1) The Commissioner may turn to the Constitutional Court and initiate the ex post review of conformity of a law or legal provision with the Fundamental Law (posterior norm control), the examination of conflicts with international treaties, and the interpretation of the provisions of the Fundamental Law

- a) as a measure, on the basis of an inquiry conducted in a specific case based on a complaint or ex officio;
- b) on the basis of the petition of a complainant turning to him/her, without any inquiry conducted in a specific case;
- c) ex officio, without any inquiry conducted in a specific case; or
- d) on the proposal of the Deputy Commissioner, without any inquiry conducted in a specific case.

(2) In Subsection (1), a law shall include public law regulatory instruments as well as uniformity decisions.

(3) If the Commissioner disagrees with the Deputy Commissioner's motion proposed, he/she shall provide information about the reasons of rejection to the Deputy Commissioner as well as – in his/her annual report – to the Parliament.

(4) In case of a petition alleging that a certain law or legal provision is contrary to the Fundamental Law or conflicts with international treaties, or in that of one seeking the interpretation of the provisions of the Fundamental Law, the Commissioner shall decide about initiating the proceedings of the Constitutional Court after due and joint consideration of the substance of the petition and the aspects specified in Section 46.

(5) The Commissioner shall inform the complainant about the filing of motion to the Constitutional Court.

Section 56 – (1) The Commissioner may initiate the proceedings of the Constitutional Court if he/she takes the view that there is a constitutional concern regarding a law or a legal provision.

(2) Filing a motion for posterior norm control is particularly justified if

- a) there is a constitutional concern regarding the enforcement of fundamental rights, constitutional principles and requirements specified in the Fundamental Law;
- b) a fundamental right of the most vulnerable social groups specified by the CFR Act or the right to a healthy environment is infringed;
- c) the infringement of a fundamental right is of flagrant gravity; or
- d) a large number of people are affected by the infringement.

(3) The Commissioner may initiate the interpretation of the Fundamental Law regarding a certain constitutional issue if the interpretation can be directly deduced from the Fundamental Law.

(4) The motion filed by the Commissioner to the Constitutional Court shall not be aimed at the (further) restriction of a fundamental right specified in the Fundamental Law.

(5) If the complainant requests that the Commissioner initiate a posterior norm control regarding a law or a legal provision that has already been reviewed on the merits by the Constitutional Court and the complainant refers to the same provision or principle of the Fundamental Law and the same constitutional context as before, the Commissioner shall also consider whether the circumstances have fundamentally changed since the decision of the Constitutional Court.

(6) If the complainant requests that the Commissioner initiate a posterior norm control regarding a local government decree, the Commissioner shall also consider whether the local government decree is directly in conflict with a provision specified in the Fundamental Law.

Chapter IX

The preparation and submission of petitions aimed at reviewing a local government decree

Section 57 – (1) On the basis of an inquiry conducted in a specific case based on a complaint or ex officio, the Commissioner may request that the Curia – as a measure – review a local government decree if it is contrary to another law.

(2) The Commissioner shall request the review specified in Subsection (1) if the uniformity of the legal system or the rectification of the unlawful situation cannot be ensured in any other way.

(3) Initiating the review of a local government decree is particularly justified if it infringes or threatens the rights of the groups of people specified in the CFR Act or the right to a healthy environment.

(4) The Deputy Commissioner may propose that the Commissioner take the measure referred to in Subsection (1), under the conditions specified therein.

(5) By a specific instruction, the Commissioner may appoint a staff member of the Office with a bar exam to represent the Office at the Curia.

(6) The Commissioner shall inform the petitioner about the measure specified in Subsection (1) if the proceedings were initiated on the basis of a complaint.

Chapter X

The tasks relating to the OPCAT National Preventive Mechanism

Section 58 – While performing the Commissioner’s tasks relating to the OPCAT National Preventive Mechanism (hereinafter referred to as the “NPM”), the provisions of this instruction shall apply subject to the derogations laid down in this Chapter.

Section 59 – (1) The annual schedule of visits of the OPCAT National Preventive Mechanism Department (hereinafter referred to as the “NPM Department”) shall be drafted by 15 December of the calendar year preceding the year of the visits.

(2) Access to the schedule of visits as well as to the commission letter shall be limited within the Office: only the persons cooperating in the performance of the tasks of the OPCAT NPM shall be entitled to have access to them.

Section 60 – (1) External experts may be heard in a confidential manner prior to the commencement of the inspection or during the preparation thereof. Such hearings shall be initiated by the NPM Department.

(2) The Commissioner shall conduct on-site inspections without prior notification.

(3) Photos shall be taken during the on-site inspections.

(4) The participants of the on-site inspection shall hear the staff of the institution visited, the persons deprived of their liberty and held at the place of detention, and – where necessary – other persons staying in the place of detention during the inspection. The persons heard during the on-site inspection shall not appear in the report in an identifiable manner.

(5) External experts – including experts by experience – may be involved in the inspection.

(6) The experts involved in the inspection shall be provided access only to those documents, data and information which are necessary for preparing the expert opinion.

Section 61 – (1) In the report about the inspection carried out by the OPCAT NPM, those facts and circumstances based on which the institution is considered to be a place of detention shall be justified as part of the procedural conditions establishing the competence of the Commissioner.

(2) The partial reports summarising the experience of the inspection are primarily of sociographic nature; their preparation shall not be recorded in the report.

(3) The improprieties exposed in the report may also be based on a statement (allegation).

(4) In accordance with the international practices, there shall be recommendations at the end of the report. Recommendations can also be included after each finding.

(5) The OPCAT NPM shall operate a separate website through which it is possible to turn to the OPCAT NPM from a specific e-mail address.

Chapter XI

Inquiry into the review process of national security checks

Section 62 – (1) When carrying out proceedings under Act CXXV of 1995 on National Security Services (hereinafter referred to as the “National Security Act”), the provisions of this instruction shall apply subject to the derogations laid down in this Chapter.

(2) In case of inquiries into review processes under the National Security Act, the provisions of Chapter II, Section 16(4) and Section 20(2) of Chapter III, and Chapter IV shall not apply.

Section 63 – (1) The person subject to a review process of the national security check may request that the Commissioner – within six months of the person having become aware of it – inquire into the ordering and conducting of the review process in order to establish a fundamental-rights-related impropriety.

(2) The Commissioner may inquire into the practices of the national security services concerning review processes ex officio in order to establish a fundamental-rights-related impropriety regarding the ordering and conducting of review processes.

Section 64 – (1) The Commissioner may inspect the documents of a review process in accordance with the provisions of the CFR Act.

(2) The Commissioner’s competence to inquire does not extend to the professional aspects of identifying national security risks.

(3) If the Commissioner finds a fundamental-rights-related impropriety regarding the ordering and conducting of a review process, he/she shall inform the minister in charge of the national security services, and simultaneously make a recommendation on the necessary measures to be taken. If the infringement has occurred within the initiator’s responsibilities, the Commissioner shall call upon the initiator to take the necessary measures.

(4) If the Commissioner considers the measure of the minister in charge inappropriate, he/she shall inform the Committee on National Security of the Hungarian National Assembly thereof.

Section 65 – Staff members of the Office performing tasks directly related to the review process of national security checks shall carry out their duties in positions falling within the scope of national security checks and requiring a personal security certificate.

Chapter XII

Closing provisions

Section 66 – (1) This instruction shall enter into force on 1 January 2016, and its provisions shall apply in pending cases as well.

(2)²

² This Subsection is repealed by Section 12 of Act No. CXXX of 2010 as of 2 January 2016.