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UKRAINIAN CRISIS, OMBUDSMAN, HUNGARIAN OMBUDSMAN, MIGRATION

HUMAN RIGHTS



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ABSTRACT

This article focuses on the role of the Hungarian Ombudsman in the Ukrainian migration crisis. We provide an in-depth analyses of the findings of the Hungarian Ombudsman and his role of in humanitarian crisis management.

KEYWORDS: *Ukrainian crisis, ombudsman, Hungarian ombudsman, migration*

INTRODUCTION

The role of Ombudspersons in a changing world with crisis is one of the most contested topics in contemporary constitutional discourse. The increasing literature is concerned with a *permanent stage* of crisis and its consequences^[1]. Some countries are for example introducing a permanent extraordinary legal system to handle crisis, others are curtailing their democratic institutions^[2].

We have been witnessing an on-going human rights crisis, starting with Coronavirus crisis and to be followed by the Ukrainian refugee crisis.

^[1] Gárdos-Orosz, Fruzsina, The normative standards of human rights protection in normalcy and in emergency in Hungary, In: Monika, Florczak-Wątor; Fruzsina, Gárdos-Orosz; Jan, Malír; Max, Steuer (szerk.) States of Emergency and Human Rights Protection : The Theory and Practice of the Visegrad Countries Abingdon, Egyesült Királyság / Anglia : Routledge of Taylor and Francis Group (2024) 292 p. pp. 124-144. , 21 p.; Gárdos-Orosz, Fruzsina, Poszt-COVID: ami velünk maradt, a különleges jogrend, In: Bán-Forgács, Nóra; Lőrincz, Viktor Olivér; Mezei, Kitti; Szentgáli-Tóth, Boldizsár (szerk.) Poszt-COVID : A Covid-19 hatásai a jogrendszerre. Fruzsina, Gárdos-Orosz ; Nóra, Bán-Forgács, Introduction – The (non)resilience of the Hungarian Legal System: From Populist Constitutionalism to a Permanent State of Danger, In: Fruzsina, Gárdos-Orosz (szerk.) The Resilience of the Hungarian Legal System since 2010. A Failed Resilience? Wien, Ausztria : Springer Nature (2024) 190 p. Budapest, Magyarország : Akadémiai Kiadó (2024); Kecsó, Gábor ; Szentgáli-Tóth, Boldizsár ; Bettina, Bor, Emergency Regulations Entailing a Special Case of Norm Collision. Revisiting the Constitutional Review of Special Legal Order in the Wake of the COVID-19 Pandemic; Juridical Tribune 14. : 1 pp. 5-26. , 22 p. (2024.)

^[2] Bán-Forgács, Nora ; Szentgáli-Tóth, Boldizsár ; Szilágyi, Emese, When the government takes the initiative: governments and parliaments under pressure during coronavirus crisis In: Bratislava Legal Forum 2023 : State as a protector and violator of individual rights Pozsony, Szlovákia : Univerzita Komenského v Bratislave, Právnická fakulta (2023) 276 p. pp. 230-240. , 11 p. Szentgáli-Tóth, Boldizsár ; Dr. Szilágyi, Emese ; Bor, Bettina, Crises and democracy: The impact of COVID-19 on V4 countries' electoral systems.: The Case of Hungary, ARSBONI 11 : 2 pp. 39-54. , 16 p. (2023).

Under crisis certain group of people include, for example, ethnic minorities, people belonging to disadvantaged socio-economic class, women, children, immigrants, and refugees are vulnerable. The measures taken to combat the situation, may lead to impediments regarding access to healthcare and education or a fair distribution of economic resources^[3].

The Hungarian ombudsman noted in 2022: *I can say that I have been carrying out my constitutional duty at extraordinary times, even halfway through my mandate. Since the spring of 2020, the Covid pandemic, the related measures and consequences associated with it, and then – for more than a year now – the war raging near our borders, the related humanitarian emergency associated with it, and the extraordinary economic situation have posed and continue to pose unending challenges and tasks for the Hungarian Ombudsman institution*^[4].

UKRAINIAN REFUGEE CRISIS AND THE OMBUDSMAN

The Hungarian Ombudsman does not publish its case law in its website, not even in an anonymised format. Its jurisdiction can be evidenced by its annual reports. The Report of 2022 reflects on a number of 'classical' humanitarian assistance the Hungarian Ombudsman has provided for Ukrainian refugees. Traditionally humanitarian assistance is designated to special agencies not to the Ombudsperson per se, but the Hungarian Ombudsman *personally handed over donations collected by the staff of her Office, in particular durable*

^[3] Farzamfar, Mehrnoosh and Janne Salminen, The supervision of legality by the Finnish Parliamentary Ombudsman during the COVID-19 pandemic, Nordisk Administrativt Tidsskrift, Vol 99 Nr. 2 (2022): Covid-19 og krisehåndtering i de nordiske forvaltningene. Some countries have similar challenges. See: Halasz, Iván, the role of the czech, slovak, and polish ombudsman during the first wave of the covid-19 epidemic; in: željko, mirjanić (szerk.) међународни научни скуп изазови и перспективе развоја правних система у xxi вијеку: зборник радова, година iii, банја лука, број 3 (2023), том i / international scientific conference challenges and perspectives of the development of legal systems in the xxi century conference proceedings, year iii, banja luka, no. 3 (2023), Banja Luka, Bosnia-Herzegovina : University of Banja Luka Faculty of Law (2023) 389 p. p. 79 , 87 p.

^[4] Report of the Hungarian Ombudsman.2022. p. 7.

food, toiletries and clothing, essential for everyday life, to those in need^[5]. The Ombudsman engaged in the dissemination of information, designated so called *information points* both at the boarder (Beregsurány) and in local offices^[6]. In 2023, again the Ombudsman emphasizes his humanitarian commitment and his active role in the dissemination of information for refugees^[7]. The Ombudsman emphasized in 2023 that its website is developed in Ukrainian language, so that they provide up-to-date information for the Ukrainian refugees^[8].

Two concrete cases have been mentioned in the annual report of 2022, both related to OPCAT mechanism as well, which aims to prevent torture and inhuman treatment in closed door institutions^[9]. In case AJB-1748/2022. A 2022, under OPCAT mechanism, in visit for a home for children in specialised needs in Mátészalka, the Ombudsman team has also examined the conditions of families fleeing the Russian-Ukrainian war. Members of the visiting team found that the refugees had received the help they needed, while the children in specialised care had not been harmed by their admission^[10].

In AJB-1748/2022 case, The NMM conducted a special focus visit to the institutions near the Hungarian-Ukrainian border, primarily – as in the previous case – to examine how the institutions are assisting to care for and accommodate refugees arriving in Hungary because of the Russian-Ukrainian war.

Deputy Ombudsman for national minorities stated in 2022: *the indirect negative effects of the war were continuously experienced by all our ethnic communities, but the direct mental and physical burden was undoubtedly borne by members of the Ukrainian community. I have paid particular attention to the cases of people of Ukrainian and Roma origin fleeing from the attacked country, especially the situation of minors*^[11].

^[5] See: Report of the Hungarian Ombudsman.2023. p. 29,

^[6] See: Report of the Hungarian Ombudsman.2022. p. 7. and 17.

^[7] See: Report of the Hungarian Ombudsman.2023. p. 29,

^[8] See: Report of the Hungarian Ombudsman.2023. p. 29,

^[9] See: Report of the Hungarian Ombudsman.2022. p. 118.

^[10] See: Report of the Hungarian Ombudsman.2022. p. 122.

^[11] See: Report of the Hungarian Ombudsman.2022. p. 139

Compared to previous years, 2022 saw a particularly high number of complaints from parents that their children had suffered humiliation, mistreatment, verbal or even physical aggression or exclusion in public educational institutions. All of these cases concerned members of the Roma nationality, with the exception that following the outbreak of the war, after the war, the Hungarian Deputy Ombudsman also received reports of abuse and harassment of Ukrainian children^[12]. In mid-2022 the Deputy Ombudsman started to work on new aspect of the Ukrainian refugee crisis, focusing on families who remain permanently in Hungary, who need suitable, permanent housing and employment, and educational opportunities for children. It is absolutely not elaborated however in her annual report as to what extent the Deputy Ombudsman was successful in her attempt. We do not even know, if there were concrete cases initiated by the refugees or there has been any ex officio effort to sort out this problem. The Deputy Ombudsman only states that she started to work with expert staff from the International Organization for Migration (IOM), the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF) and the NGO Coalition for the Rights of the Child to identify and *address the educational situation of Roma children who have fled Ukraine*^[13]. The only data disseminated in the 2022 Report reflects on the increasing number of complains from the Ukrainian community^[14]. This is coupled with the fact that according to the 2023 Report the Ukrainian community has tripled in size since the last census a decade ago^[15].

integration and support for the persons concerned, their temporary or long-term stay in Hungary, remained a main concern for 2023^[16].

2020-2021, the focus (in the Ombudsman's view) was on the health emergency caused by the Covid19 pandemic, and for 2022 on the humanitarian emergency caused by the mass influx of families and children fleeing to

^[12] See: Report of the Hungarian Ombudsman.2022. p. 147. See also: Report of the Hungarian Ombudsman.2023. p 194.

^[13] See: Report of the Hungarian Ombudsman.2022. p. 143.

^[14] See: Report of the Hungarian Ombudsman.2022. p. 141.

^[15] See: Report of the Hungarian Ombudsman.2023. p. 190.

^[16] See: Report of the Hungarian Ombudsman.2023. p. 29.

Hungary due to the Russian attack on Ukraine, and the related exceptional economic situation, the drastic increase in utility costs and inflation. The Ombudsman describes the refugee crisis in Ukraine as a major focus for 2023 as well^[17].

The Ombudsman does not raise any objection on the basis of the rule of law claiming the number of refugees arriving in Hungary has significantly decreased by 2023, however, the emergency legal regime is still in force in Hungary as a justification for extraordinary legal system. Emergency was declared in May 2023 due to continued refugee crisis, and then in November 2023, and most recently until 24 May 2024. This was extended again by the Parliament in May 2024. Although the Hungarian Ombudsman failed to address the legality of the continued state of emergency and its justification, Deputy Ombudsman for the Protection of Future Generations noted that with the escalation and prolongation of the war between Russia and Ukraine, the focus has shifted to the energy crisis and the economic recession, and emergency legislation has become the *norm* which is universally applied in Hungary^[18]. The Deputy Ombudsman tried to address this problem, he issued a number of awareness-raising

^[17] See: Report of the Hungarian Ombudsman.2023. p. 11.

^[18] See for emergency literature: Gárdos-Orosz, Fruzsina, The normative standards of human rights protection in normalcy and in emergency in Hungary, In: Monika, Florczak-Wątor; Fruzsina, Gárdos-Orosz; Jan, Malíř; Max, Steuer (szerk.) States of Emergency and Human Rights Protection : The Theory and Practice of the Visegrad Countries, Abingdon, Egyesült Királyság / Anglia : Routledge of Taylor and Francis Group (2024) 292 p. pp. 124-144. , 21 p.; Gárdos-Orosz, Fruzsina, Poszt-COVID: ami velünk maradt, a különleges jogrend, In: Bán-Forgács, Nóra; Lőrincz, Viktor Olivér; Mezei, Kitti; Szentgáli-Tóth, Boldizsár (szerk.) Poszt-COVID : A Covid-19 hatásai a jogrendszerre, Budapest, Magyarország : Akadémiai Kiadó (2024) Florczak-Wątor, Monika ; Fruzsina, Gárdos-Orosz ; Malíř, Jan ; Steuer, Max, States of emergency and fundamental rights in books and in action, In: Monika, Florczak-Wątor; Fruzsina, Gárdos-Orosz; Jan, Malíř; Max, Steuer (szerk.) States of Emergency and Human Rights Protection : The Theory and Practice of the Visegrad Countries Abingdon, Egyesült Királyság / Anglia : Routledge of Taylor and Francis Group (2024) 292 p. pp. 1-14. , 14 p. See also: Kecső, Gábor ; Szentgáli-Tóth, Boldizsár ; Bettina, Bor, Emergency Regulations Entailing a Special Case of Norm Collision. Revisiting the Constitutional Review of Special Legal Order in the Wake of the COVID-19 Pandemic, JURIDICAL TRIBUNE 14. : 1 pp. 5-26. , 22 p. (2024); Kecső, Gábor; Szentgáli-Tóth, Boldizsár; Bettina, Bor, Emergency Regulations Entailing a Special Case of Norm Collision. Revisiting the Constitutional Review of Special Legal Order in the Wake of the COVID-19 Pandemic, JURIDICAL TRIBUNE 14. 1 pp. 5-26. , 22 p. (2024).

briefings, including a summary on the compatibility of emergency regulation and the protection of the interests of future generations^[19].

Both in 2022 and 2023 the Ombudsman spent much of his capacity to present the humanitarian situation to international stakeholders in the form of field visits^[20]. However, we are not sure, how much these field visits need to be carried out by the Ombudsman and not the Hungarian Government or any other agency of the government.

Also in 2023, an Ombudsman's report addressed the shortcomings in the handling and substantive investigation of parental complaints in schools and public education, the failure to respect legal guarantees, from individual shortcomings to systemic regulatory problems. Since the outbreak of the Russian-Ukrainian war, the issue of the education of Ukrainian refugee children arriving in Hungary, and in particular the monitoring of the situation of Roma children and their families in Transcarpathia, has been a priority for the Ombudsman^[21].

The Ombudsman also notes a significant increase in the number of cases of hate speech and hate crime, but unfortunately also the Ukrainian community has been increasingly confronted with this phenomenon^[22].

In August, 2024, Communique of the Deputy Ombudsman for National Minorities on the amendment of the rules on state aid for refugees from Ukraine (Gov. Regulation 134/2024. VI. 28.) stressed that under the amendments, asylum seekers are only eligible for subsidised accommodation if they come from a part of Ukraine that is declared by the Government as a *war-affected area*. If the previously arrived persons concerned are already living in supported accommodation but come from a place not included in this list, they could only remain eligible for supported accommodation until 20 August 2024. Deputy Ombudsman states that she is particularly concerned about the fate of people without shelter and benefits, who in most cases are in a vulnerable situation. Deputy Ombudsman underlined the importance

^[19] See: Report of the Hungarian Ombudsman.2023. p. 18.

^[20] See: Report of the Hungarian Ombudsman.2023. p. 11.

^[21] See: Report of the Hungarian Ombudsman.2023. p. 17.

^[22] See: Report of the Hungarian Ombudsman.2023. p. 18.

of the principle of legal certainty and non-discrimination as a fundamental duty of all public authorities. The respect of fundamental rights is a critical aspect in the implementation of the envisaged measures, in particular the need to provide sufficient time for the persons concerned to adapt to the changed rules. Another priority should be to ensure that the education of minors who previously had subsidised accommodation and were in pre-school education or enrolled in school, and thus their social integration process, is not interrupted as a result of the amendment. In summary, the Deputy Ombudsman failed to recognize the unconstitutionality of the new regulations, even if she had concerns against each aspect of the new legislations.

The 2023's Annual Report of the Ombudsman refers only one case concerning Ukrain. In case B-1262-26/2023, the complainant wanted to travel to Ukraine with his family in his car. At the border crossing he was detained on the grounds that registration certificate for the vehicle had expired. In accordance with Hungarian emergency legislation in force at the time of the measure, the expired validity of the registration documents were not sanctioned during emergency times. Meanwhile, the border police refused to grant entry to Ukraine with the expired documentation. The applicant complained that the police officer *does not have to investigate or consider how a document valid in Hungary is treated by the authorities of a foreign country*. Additionally, the applicant noted that the police officer could not provide any legislation, other regulations or instructions to refute this position. The Ombudsman did not agree with the applicant. According to him, in accordance with the exceptional – emergency – legislation in force at the time of the measure, the complainant was in a better position than in normal circumstances. In principle, he would not have been able to drive his vehicle so he would have committed an offence. Thus, it may be doubtful whether there can be a suspicion of a breach of fundamental rights, since even if the fundamental rights of the complainant concerned were more widely asserted than in normal social conditions, the fact that his vehicle could not cross the Hungarian-Ukrainian state border was not sufficient. In the Ombudsman's view, the reversal of the vehicle was not likely to give rise to an abuse. It is important to stress, according to the Ombudsman, that it is not the task of the police officer to argue in favour of his interpretation of the applicable legislation, nor to convince

the person subject to the measure of the correctness of his interpretation, but only to explain the legal provisions applied.

In our view in this article, the Ombudsman in case B-1262-26/2023 failed to justify under what ground the vehicle was restricted at the border. If the Hungarian regulations did not prevent the driver to cross the border and no one provided evidence that the Ukrainian authorities would refuse the car to enter, then the right of free movement of the complainant was infringed contrary to the argument of the Ombudsman.

CONCLUSION

This paper examines the relationship between the Ukrainian refugee crisis and the Hungarian Ombudsman. The point of departure is that since the emergence of the coronavirus epidemic in 2020, the handling of crisis has been one of the Hungarian ombudsman's primary tasks. This study is based on all information from the public website of the Hungarian Ombudsman. However, we clarify at the outset that the Ombudsman fails to present its case law (in an anonymised form) on its website, so all information we rely on is from the Ombudsman's official annual reports. The study undertakes a systematic analysis of these reports, covering the entire period of the Ukrainian crisis up to the present day. It can be concluded that, at the outbreak of the war, the Ombudsman was primarily active in providing humanitarian assistance, his staff collected aid packages, the Ombudsman monitored the care of refugees at the Hungarian-Ukrainian border, the Ombudsman set up information points in his regional offices to inform refugees and the Ombudsman was very active in briefing EU and other international organisations carrying out refugee inspections in Hungary.

However, the annual report does not refer to concrete complaints and recommendations to improve the situation of Ukrainian refugees. We do not know which concerns have been addressed, which have been successfully resolved by the Ombudsman and what are the remaining issues. We do not know how the incumbent Commissioner/Ombudsman has fulfilled

his human rights duties. what results (if any) the Hungarian Ombudsman has achieved in the field of legislation.

We claim that it is beyond the Ombudsman's classic role to focus on the donations of his own staff as one of the main focuses of his report, rather than focusing on a comprehensive picture of the legal standards and the scrutiny of actions of the government in relation to Ukrainian refugee crisis.

In the second year of the report, in 2023, we were able to trace more specifics, mostly details about the difficulties of integrating Roma refugees in Ukraine, but even here we do not learn about the achievements of the Ombudsman's recommendations and the solutions he has proposed. (Generally, the Ombudsman is a primary source for criticism for government actions in the field of human rights).

However, in 2023, the Ombudsman's Deputy Commissioner for Future Generations expresses his concerns about the introduction of a permanent special legal order in Hungary.

With the escalation and prolongation of the Russian-Ukrainian war, emergency legislation has become commonplace as a way of dealing with the energy crisis and economic recession. In the context of these developments, the Deputy Ombudsman has issued a summary on the coordination of emergency regulation and the protection of the interests of future generations. The 'summary' however does not go beyond specifying *concerns*.

The 2023 Ombudsman report reveals that one of the key issues for refugee integration is the success of labour market integration and the schooling of refugee children. In this respect, the Ombudsman's deputy for national and ethnic minority rights makes several references to discrimination and even direct references to hate crimes in schools. Here, again we do not know what concrete counter measurements have been taken by the Hungarian Ombudsman to ease the situation of refugees. Meanwhile, in the case of those who wish to settle permanently in Hungary, the Deputy Ombudsman expresses concern in a specific communication claiming that the housing assistance for Ukrainian refugees is no longer available to refugees from Ukraine, but only for those from war-affected areas, thus leaving many people without access to real assistance.

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