

# Contributions of Hungarian NGOs to the European Commission's Rule of Law Report

March 2021



The contributions included in the present document on the rule of law in Hungary are submitted to the European Commission in the framework of the [targeted stakeholder consultation](#) the European Commission launched in relation to its 2021 Annual Rule of Law Report. The document follows the structure and applies the headings of the European Commission's stakeholder consultation survey.

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## I. JUSTICE SYSTEM

### A. INDEPENDENCE

#### 1. Appointment and selection of judges, prosecutors and court presidents

1. All concerns around judicial appointments raised in our contribution of 2020<sup>1</sup> remain relevant.

2. Act CXXVII of 2019 ("2019 Omnibus Act") **entitled members of the Constitutional Court (CC) to be appointed as ordinary court judges upon their request, circumventing the otherwise obligatory application procedure.** Under these rules, former CC members automatically become justices at the Kúria (Hungary's highest court) and may be appointed as Heads of Panels without a selection procedure. Applying this new legislation, **on 1 July 2020, eight members of the CC were appointed as judges.**<sup>2</sup> Six of them were appointed without any judicial experience, including a former prosecutor, András Zs. Varga.

3. On 5 October 2020, just days after the EC's Rule of Law Report warned of the risks of the modified rules of election of the President of the Kúria,<sup>3</sup> **CC justice András Zs. Varga was nominated as President of the Kúria.** On 9 October 2020, the **National Judicial Council (NJC)** held a hearing and adopted a non-binding preliminary opinion which **by an overwhelming 13-1 majority rejected the nomination of Mr. Varga**, holding that the fact that his appointment was made possible by two recent legislative amendments "is at odds with the constitutional requirement that requires the head of the judicial system be a person who is independent of the other branches of power and who appears impartial to an outside observer."<sup>4</sup> **On 19 October 2020, the Parliament elected Mr Varga in complete disregard of the NJC's objection.** Simultaneously, Mr. Varga activated his judicial appointment by resigning from his CC membership and became a Head of Panel at the Kúria on 20 October

<sup>1</sup> See: *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, May 2020, [https://www.helsinki.hu/wp-content/uploads/HUN\\_NGO\\_contribution\\_EC\\_RoL\\_Report\\_2020.pdf](https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), p. 5.

<sup>2</sup> <https://magyarkozlony.hu/dokumentumok/60fo4856a5daf11dea3c076149c70e640a5f920d/megtekintes>

<sup>3</sup> Cf. European Commission, *2020 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, pp. 5-6.

<sup>4</sup> <https://orszagosbiroitanacs.hu/az-obt-velemenyezte-a-kuriai-elnokenek-javasolt-szemelyt/>

2020 without spending one single day in judicial service before. Mr. Varga took his presidential seat **with effect from 1 January 2021, for a period of nine years.**

4. Parachuting Mr. Varga as a political appointee at the highest judicial position is all the more problematic due to the administrative powers that permit him to **determine judicial careers within the Kúria.**<sup>5</sup> Besides his traditional role in appointing justices at the Kúria, recent legislative amendments vested Mr. Varga with two extraordinary powers:

- a) As of 1 April 2020, the President of the Kúria gained exclusive **right to select members of unification panels** who have a privileged role within the Kúria as they are entitled to adjudicate individual cases at the final instance and to determine the mandatory interpretation of the law.<sup>6</sup>
- b) As of 1 January 2021, the President of the Kúria **was granted the power to raise the number of members of the adjudicating chambers of the Kúria from three to five**, creating a pretext for increasing the number of justices. The number of posts at the Kúria was raised in 2020<sup>7</sup> by 23% opening 21 new vacant positions. As the selection and appointment of judges of the Kúria mostly lies in the hands of the President of the Kúria, this may lead to a court packing process and appointing further politically loyal CC members as justices at the Kúria.

## 2. Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

Act XX of 2013 made it a general rule that if a court leader is unlawfully dismissed and their reinstatement is subsequently ordered by the court deciding on the matter of the dismissal, they can only be reinstated into their leadership position if that has not been filled by someone else in the meantime.<sup>8</sup> This is an important loophole in the system, as it makes it **possible to replace court leaders at the price of the state paying a compensation. In 2020-2021, this loophole was still in existence and may be misused.**

The NJC found in 2018 that Tünde Handó, the previous President of the National Office for the Judiciary (“NOJ President”) unlawfully seconded judges to courts to fulfil leadership tasks.<sup>9</sup> By law, judges may be seconded to another court only for two reasons: for professional advancement and to manage the workload at the courts.<sup>10</sup> The **law allowing the NOJ President and regional court presidents to second judges for other, unlawful purposes (i.e. in order to fulfil leadership tasks) is still in effect, and there is no effective remedy against it** except for the NJC requesting the removal of the NOJ President by the Parliament.

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<sup>5</sup> For more details, see: Hungarian Helsinki Committee, *The New President of the Kúria: a Potential Transmission Belt of the Executive within the Hungarian Judiciary*, 22 October 2020, [https://www.helsinki.hu/wp-content/uploads/The\\_New\\_President\\_of\\_the\\_Kuria\\_20201022.pdf](https://www.helsinki.hu/wp-content/uploads/The_New_President_of_the_Kuria_20201022.pdf).

<sup>6</sup> For more details, see: Hungarian Helsinki Committee, *Hungary: Illiberal Highlights of 2020*, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Illiberal\\_Highlights\\_of\\_2020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Illiberal_Highlights_of_2020.pdf), p. 6.

<sup>7</sup> Resolution no. 41.SZ./2020. (III.24.) of the President of the National Judicial Office, see: [https://birosag.hu/sites/default/files/2020-04/41.sz\\_2020.pdf](https://birosag.hu/sites/default/files/2020-04/41.sz_2020.pdf).

<sup>8</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 145 (4)

<sup>9</sup> Documentation of the NJC’s meeting on 2 May 2018, <https://orszagosbiroitanacs.hu/2018-05-02/>

<sup>10</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 31 (2)

The law prescribes that – “to ensure an even distribution of caseload between courts” –, a judge may be seconded to another court without their consent once every three years for a maximum time of one year.<sup>11</sup> This provision is vague and unclearly defined, concrete instances should be provided for. Although this provision was also criticised by the Venice Commission,<sup>12</sup> the law has not been changed.

The 2019 Omnibus Act **entitled the NOJ President to transfer administrative judges outside the judiciary, to administrative bodies**, such as government offices, the State Audit Office or the Public Prosecutor’s Office. As of 1 January 2021, Act CLXV of 2020 extended this possibility to all judges,<sup>13</sup> including **justices adjudicating civil and criminal cases, and even for an indefinite period of time**.<sup>14</sup> This type of transfer raises serious concerns for several reasons. (i) Transferred judges get a significantly higher remuneration and bonus<sup>15</sup> during the term of the transfer and can be reinstated to judicial service as presidents of chamber without an application procedure.<sup>16</sup> (ii) The transfer also entails handing over employer’s rights<sup>17</sup> (including the right to evaluate the judge<sup>18</sup>) and disciplinary rights<sup>19</sup> to the leader of the administrative body. (iii) Transferring judges outside the judiciary also makes it possible for a transferred judge to deal with a case which they or their fellow judges adjudicate, or to deal with a case which is adjudicated at a court presided by their previous employer. Hence it blurs the boundaries between the courts and public administration and may result in the violation of the right to fair trial.

### 3. Promotion of judges and prosecutors

The previous NOJ President disregarded judges’ plenary meeting opinions before deciding on court leadership without a clear justification, in violation of the law.<sup>20</sup> In this respect, the current NOJ President’s so far has mostly taken the opinion of judges’ plenary meetings and peers into consideration when deciding about appointing a court leader,<sup>21</sup> and the situation with respect to the appointment of court leaders has improved as from 1 January 2020. Most notably, the president of Hungary’s biggest court, the Metropolitan Court was appointed after taking into account the vote of judges at the plenary meeting. There were other cases<sup>22</sup> where the NOJ President took into consideration the support of an applicant’s colleagues.

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<sup>11</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 31 (3)

<sup>12</sup> European Commission for Democracy through Law (Venice Commission), *Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary*, CDL-AD(2012)020-e, 15 October 2012, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)020-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)020-e), § 54 and 93.11.

<sup>13</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 27/A (1)

<sup>14</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 62/A (2)

<sup>15</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 195

<sup>16</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 62/C (3)

<sup>17</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 62/A (4)

<sup>18</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 14 (1) a)

<sup>19</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 130

<sup>20</sup> Act CLXI of 2011 on the Organisation and Administration of Courts, Article 132 (4)

<sup>21</sup> To learn more, see Section 4 of Amnesty International Hungary’s report *Status of the Hungarian judiciary*, 2021, <https://www.amnesty.org/en/documents/eur27/3623/2021/en/>.

<sup>22</sup> NOJ President Resolution No. 132/E/2020, NOJ President Resolution No. 133/E/2020, NOJ President Resolution 338/E/2020, NOJ President Resolution No. 394/E/2020, NOJ President Resolution No. 396E/2020

In several cases, the previous NOJ President regularly filled leadership positions not through regular application procedures, but with temporarily, directly appointed interim leaders, thus abusing this legal possibility (the NOJ President may appoint interim court presidents for up to one year if the regular application procedure is invalid because the NOJ President does not accept any candidate for the presidency position and declares the application process invalid).<sup>23</sup> Also, in these temporary direct appointments the leadership positions were filled in a manner contrary to the law, as was established by the NJC.<sup>24</sup>

Judges who answered Amnesty International's online questionnaire in June–July 2020 stated that the reasons for these temporary appointments of interim presidents had not been problematic in 2020, which confirms the judges' perception that the situation has improved under the new NOJ President. This has been backed by available public information.<sup>25</sup>

However, the legal environment in which the NOJ President operates has not been amended and the **relevant regulations do not provide appropriate systemic guarantees against the NOJ President's potential abuse of authority. Promotion to key court leader positions may still be subject to the discretionary formal or informal approval of the NOJ President,** and factors such as the interests of judges, the professional knowledge of an applicant or support of the local judges may still be disregarded.

#### 4. Allocation of cases in courts

The case allocation system of ordinary courts has **serious deficiencies with respect to guarantees against undue intervention.** The process of case allocation is neither computerised nor automated, but **reliant on direct human intervention,** carried out by judicial leaders under specific case allocation schemes. The right to establish the case allocation scheme lies **exclusively in the hands of court presidents,** without effective control of judicial self-governing bodies.<sup>26</sup> The process of adoption is completely unregulated. Although judicial councils shall be involved, their opinion is not binding, not even public, therefore it is incapable to exert meaningful control over the outcome.<sup>27</sup>

A recent amendment of the law<sup>28</sup> **removed the safeguard clause prescribing a fixed one-year term** as the temporal scope of allocation schemes, therefore **the court presidents' right to modify schemes has become unlimited in time,** and modifications can be carried out without any transparent and objectively justifiable reason. Under the new rules, the case

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<sup>23</sup> Act CLXI of 2011 on the Organisation and Administration of Courts, Article 133 (2)

<sup>24</sup> Act CLXI of 2011 on the Organisation and Administration of Courts, Article 133 (1). See para. 2.1.4 of NJC Resolution No. 34/2019. (V. 08.), available at <https://orszagosbiroitanacs.hu/2018-05-02/>.

<sup>25</sup> To learn more, see Section 4 of Amnesty International Hungary's report *Status of the Hungarian judiciary*, 2021, <https://www.amnesty.org/en/documents/eur27/3623/2021/en/>.

<sup>26</sup> See Article 9 of Act CLXI on the Organisation and Administration of Courts.

<sup>27</sup> See also: Viktor VADÁSZ – András György KOVÁCS, *A game hacked by the dealer*, 10 November 2020, <https://verfassungsblog.de/a-game-hacked-by-the-dealer/>.

<sup>28</sup> Article 9 of Act CLXI on the Organisation and Administration of Courts was modified with effect of 1 April 2020 by Article 57 of Act CXXVII of 2019 (the 2019 Omnibus Act).

allocation scheme of the Kúria was modified on 14 occasions during 2020.<sup>29</sup> The unlimited possibility of modifications in time erased the stability of case allocation, questioning the existence of a fixed system and raising the chances of manipulation in the distribution of cases.

The legislation regulating the establishment of case allocation schemes<sup>30</sup> **allows for simultaneous application of various parallel grounds of case allocation** resulting in a complicated and non-transparent matrix of competitive grounds and thus **granting wide discretion in the final decision**. The legislation also contains **a wide range of exceptional rules** without establishing guarantees against their inappropriate application. The legislation allows for a transfer of cases from one judge or panel to another on several grounds, including equal distribution of workload or backlog of files, without requiring a transparent method of selecting the cases to be transferred.

Although case allocation schemes are publicly available, **parties of a court proceeding cannot verify the proper application of the scheme**. The legislation does not entitle the parties to a court proceeding to trace back the application of the scheme. Consequently, neither the parties, nor the judge dealing with the case will know whether the assignment of the case involved a derogation from the case allocation scheme.

#### 5. Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

The NJC, as the Hungarian judiciary's self-governing body, is the supervising organ of the courts' central administration, the body tasked with safeguarding the independence of the judiciary, and it also manages some administrative tasks.<sup>31</sup> The NJC has 15 members: the President of the Kúria and 14 members elected by elector judges at the NJC electoral meeting by a secret ballot. Elector judges to the NJC electoral meetings are elected by judges at every level.

Contrary to his predecessor, the **new NOJ President accepted the legitimacy of the NJC**. According to NJC meeting minutes, the NOJ President has personally attended most NJC meetings held in 2020. In addition to this, professional communication between the two bodies has also improved.

Additional NJC members were elected in July 2020 to replace members of the NJC who had previously resigned in 2018.

The NJC plays a consultative role, it formulates opinions on the resolutions and recommendations issued by NOJ President.<sup>32</sup> The NOJ President has officially requested the

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<sup>29</sup> See the archived case allocation schemes at: <https://kuria-kozadatok.birosag.hu/kozerdeku-adatok/tevekenysegre-mukodesre-vonatkozo-adatok/a-szerv-alaptevekenysege-feladat-es-hataskore>.

<sup>30</sup> Decree 14/2002. (VIII. 1.) IM of the Minister of Justice, Articles 31–32

<sup>31</sup> Act CLXI of 2011 on the Organisation and Administration of Courts, Article 88

<sup>32</sup> Act CLXI of 2011 on the Organisation and Administration of Courts, Article 103 (1) c)

NJC's opinions on his draft resolutions and recommendations, and the vast majority of the NJC's opinions were taken into consideration.

However, **the relationship remains problematic.** For example, NJC members are still not assigned court clerks to assist their work, the NJC office lacks an office secretary, therefore it is lacking resources to effectively undertake its work. The NJC still has not been given access to the central website of the judiciary.<sup>33</sup> (Amongst others, excerpts of NJC meetings must be published on this website according to the law.<sup>34</sup> Right now, these excerpts and minutes of NJC meetings are only available on the NJC's website set up privately by its members.)

Moreover, **the competences of the NJC have remained the same, thus it cannot perform its legal role to be an effective check on the NOJ President,** and should be strengthened as was recommended by the Venice Commission<sup>35</sup> and the Council of the EU,<sup>36</sup> and also in the EC's 2020 Rule of Law Report. Since 1 January 2020 **no legislative steps have been taken to address structural issues.** Consequently, without any amendment to the laws, the NJC still cannot fulfil its constitutional role.

## 6. Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

1. The **Integrity Policy<sup>37</sup> issued by the NOJ President can be used as a tool to silence judges** who would want to speak up inter alia for judicial independence, by claiming that the topic is political and/or an activity that infringes their integrity. **The new NOJ President has not amended the Integrity Policy since his election.**

It has been concerning that there have been **inconsistencies in initiating investigations against judges and court presidents by the NOJ President in 2020.** First, from December 2019, government-aligned media attacked<sup>38</sup> judges at that Szeged Regional Court, alleging that the judges adjudicating in the so-called Szeviép case (a high-profile white collar criminal case) were partial and corrupt. The NOJ President initiated an external investigation<sup>39</sup> on 13 January 2020 into the court administration of the criminal bench of the court, which was conducted by judges assigned to the NOJ. Second, there was the case of the president of the Metropolitan Court, where he alleged that his signature on a public letter signed by court

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<sup>33</sup> To learn more, see Section 6 of Amnesty International Hungary's report *Status of the Hungarian judiciary*, 2021, <https://www.amnesty.org/en/documents/eur27/3623/2021/en/>.

<sup>34</sup> Act CLXI of 2011 on the Organisation and Administration of Courts, Articles 103 and 108

<sup>35</sup> European Commission for Democracy through Law (Venice Commission), *Opinion on the Cardinal Acts on the Judiciary that were amended following the adoption of Opinion CDL-AD(2012)001 on Hungary*, CDL-AD(2012)020-e, 15 October 2012, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2012\)020-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2012)020-e), § 32.

<sup>36</sup> *Council Recommendation of 9 July 2019 on the 2019 National Reform Programme of Hungary and delivering a Council opinion on the 2019 Convergence Programme of Hungary*, <https://op.europa.eu/hu/publication-detail/-/publication/421552eb-cffd-11e9-b4bf-01aa75ed71a1/language-en>

<sup>37</sup> <https://birosag.hu/obh/szabalyzat/62016-v31-obh-utasitas-az-integritasi-szabalyzatrol-o>

<sup>38</sup> <https://pestisracok.hu/tag/szeviep-ugy/>

<sup>39</sup> Act CLXI of 2011 on the Organisation and Administration of Courts, Article 76 (6) b)

presidents in support of the previous NOJ President had not actually been his.<sup>40</sup> In this case, despite knowing about the potential criminal offence, the NOJ President did not start any investigation. It is concerning<sup>41</sup> that after government-aligned media had attacked one court, the NOJ President reacted promptly, started investigations, whereas he did not take any measures in the Metropolitan Court case. Such **inconsistency raises concerns as to whether the NOJ President might use investigations as a way of exerting pressure on judges and court leaders.**

2. The Group of States against Corruption (GRECO) published its newest report on Hungary in November 2020.<sup>42</sup> In the Second Interim Compliance Report, **GRECO** repeated that its **recommendation that “the immunity of public prosecutors be limited to activities relating to their participation in the administration of justice” remains not implemented.**<sup>43</sup> Whereas GRECO welcomed that the involvement of a disciplinary commissioner is now mandatory to carry out disciplinary investigations against prosecutors, it “remain[ed] concerned that it is still the direct superior prosecutor who decides on the merits of the case, rather than an impartial body”, and that objections filed on the ground of bias “also appear to be handled within the immediate hierarchical structure”. GRECO concluded that **it cannot yet say that disciplinary proceedings are handled in a way that provides for the enhanced accountability and transparency required by its recommendation,** and called the involvement of the immediate superior prosecutor “particularly striking”.<sup>44</sup>

## 7. Remuneration/bonuses for judges and prosecutors

As a result of a salary raise by the 2019 Omnibus Act,<sup>45</sup> from 1 January 2020 in three stages, judges’ and prosecutors’ salaries have been levelled and judges’ salaries are being expected to be raised by 32% percentage point on average,<sup>46</sup> while prosecutors’ salaries are being raised by 21% percentage point on average.

**For 2021, the salary raise continued.** The base salary of both judges and prosecutors has been raised from gross HUF 453,330 (ca. EUR 1,266) – in years 2019-2020 –<sup>47</sup> to HUF 507,730

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<sup>40</sup> See:

[https://birosag.hu/sites/default/files/users/Szakirodalmi%20aj%C3%A1nl%C3%B3%202/k%C3%B6sz%C3%B6net%20EA-nak%20nevekkell\\_level.jpg](https://birosag.hu/sites/default/files/users/Szakirodalmi%20aj%C3%A1nl%C3%B3%202/k%C3%B6sz%C3%B6net%20EA-nak%20nevekkell_level.jpg).

<sup>41</sup> To learn more, see Section 5 of Amnesty International Hungary’s report *Status of the Hungarian judiciary*, 2021, <https://www.amnesty.org/en/documents/eur27/3623/2021/en/>.

<sup>42</sup> Group of States against Corruption, *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Second Interim Compliance Report – Hungary*, GrecoRC4(2020)10, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a062e9>. Adoption: 25 September 2020.

<sup>43</sup> *Ibid.*, §§ 44–48.

<sup>44</sup> *Ibid.*, §§ 49–53.

<sup>45</sup> Act CXXVII of 2019 on Amending Various Legal Provisions Pertaining to the Court System and the Status of Judges

<sup>46</sup> *The outstanding performance of Hungarian courts is rewarded – judicial salaries increase by over 60%*, 22 November 2019, <https://birosag.hu/en/news/category/about-courts/outstanding-performance-hungarian-courts-rewarded-judicial-salaries>

<sup>47</sup> Act L of 2018 on the Central Budget of Hungary for 2019, Article 64 (1)–(2); Act LXXI of 2019 on the Central Budget of Hungary for 2020, Article 62 (1)–(2)

(ca. EUR 1,418) – for the year of 2021.<sup>48</sup> In Hungary, the gross minimum wage is HUF 167,400 (ca. EUR 468) in 2021.

The base salary is multiplied by a multiplier that is corresponding with the judges' tenure times in a way that after each 3 years of tenure time, the judges reach a new payment grade.<sup>49</sup> From 1 January 2020, the multipliers for both judges and prosecutors were raised to the same extent, and this has not changed since then. Neither did change in 2020-2021 the amount of the performance bonus (from 5% to 30% of their base salary) and qualification bonus (from 10% to 30% of their base salary) that judges may receive based on the decision of their superiors.<sup>50</sup>

The judges' salary raise is a step towards strengthening judicial independence. Nevertheless, in a 2020 research by Amnesty International,<sup>51</sup> judges criticized that **primarily the salaries of court leaders were raised** by the 2019 Omnibus Act, while the raise for judges not holding such positions was less significant. This is because court leaders receive a supplementary payment for being a leader,<sup>52</sup> which supplementary payment was increased to an extent even greater than the base salary. For example, a regional court president's supplementary payment was increased from 50% to 120% of the base salary, or in case of regional appeal court presidents, from 60% to 150%.<sup>53</sup>

Moreover, there are some financial incentives granted at the discretion of the court leaders and not set out in law. A judge told Amnesty International that there was potential for a court president to withdraw a judge's language or other bonus as a tool of retribution.<sup>54</sup>

## 8. Independence/autonomy of the prosecution service

**Doubts can be raised as to the full functional independence of the prosecution service** due to systemic organisational problems, the lack of accountability of the Prosecutor General (PG), and the factors eroding the public's perception of its professional autonomy. Furthermore, GRECO's Second Interim Compliance Report, adopted in 2020, shows that many GRECO recommendations pertaining to the prosecution were not or only partially implemented. (In general, Hungary has implemented only 5 of the 18 recommendations contained in GRECO's 2015 Fourth Round Evaluation Report, and so its overall low level of compliance remained "globally unsatisfactory".<sup>55</sup>)

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<sup>48</sup> Act XC of 2020 on the Central Budget of Hungary for 2021, Article 65 (1)–(2)

<sup>49</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 169

<sup>50</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Articles 181–182

<sup>51</sup> Hungarian judges were interviewed for Amnesty International's research conducted amongst Hungarian judges between November 2019 and January 2020. Findings of this research were published in Amnesty International's *Fearing the Unknown* report on 6 April 2020, available at <https://www.amnesty.org/en/documents/eur27/2051/2020/en/>.

<sup>52</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Article 176

<sup>53</sup> Act CLXII of 2011 on the Legal Status and Remuneration of Judges, Appendix 3

<sup>54</sup> To learn more, see Section 3.3 of Amnesty International's *Fearing the Unknown* report, 2020, <https://www.amnesty.org/en/documents/eur27/2051/2020/en/>.

<sup>55</sup> Group of States against Corruption, *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Second Interim Compliance Report – Hungary*, GrecoRC4(2020)10, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680ao62e9>, §§ 54 and 59.

In 2015, GRECO recommended that “**the possibility to maintain the [PG] in office after the expiry of his/her mandate by a minority blocking of the election in Parliament of a successor** be reviewed”.<sup>56</sup> (This possibility was criticized by the Venice Commission<sup>57</sup> as early as 2012.) However, as noted by GRECO’s 2020 report, Hungary has failed to comply with this recommendation to date.<sup>58</sup>

GRECO also recommended in 2015 that “**the removal of cases from subordinate prosecutors** be guided by strict criteria and that such decisions are to be justified in writing”. In its 2020 report, GRECO reiterated that it was satisfied with the subsequent legal amendment prescribing that a brief reason for the removal of a case from a prosecutor must be indicated in the case file. However, it concluded that its **recommendation has remained only partly implemented, because no strict criteria have been adopted** for the removal of cases.<sup>59</sup>

It remains highly problematic from the aspect of checks and balances that in practice there are **no legally defined avenues to unseat the PG**, unless found guilty of a felony or otherwise becoming unworthy. However, vague or lacking definitions as regards the initiation of a process to waive the PG’s immunity leave it to questions if the PG should initiate this process, or, if the PG should waive his/her own immunity. Both scenarios run counter to the fundamental legal principle of the prohibition of self-incrimination (*onus probandi*). Besides, the law does not define what constitutes the unworthiness of the PG and who and in what kind of a process is supposed to establish that the PG became unworthy. As a result, the PG is legally unaccountable.

The **perception of the prosecution’s independence is eroded** by the fact that the prosecution service failed to bring a number of high-level corruption scandals associated with political decision makers before justice. The most prominent omission occurred in the so-called Elios case where the questionable absorption of EUR 43 million by companies that belong to the interest group of the Prime Minister’s son-in-law did not result in prosecution, although OLAF found that a mafia-type of a cartel lurked behind these dealings.

The Government maintains that Hungary **will not join the European Public Prosecutor’s Office**.

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<sup>56</sup> Group of States against Corruption, *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report – Hungary*, Greco Eval IV Rep (2014) 10E, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6bge>, § 117.

<sup>57</sup> European Commission for Democracy through Law (Venice Commission), *Opinion on Act CLXIII of 2011 on the Prosecution Service and Act CLXIV of 2011 on the Status of the Prosecutor General, Prosecutors and Other Prosecution Employees and the Prosecution Career of Hungary*, CDL-AD(2012)008, 19 June 2012, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)008-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)008-e), §§ 57–59.

<sup>58</sup> Group of States against Corruption, *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Second Interim Compliance Report – Hungary*, GrecoRC4(2020)10, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a062e9>, §§ 34–38.

<sup>59</sup> *Ibid.*, §§ 39–43.

## 9. Independence of the Bar (chamber/association of lawyers) and of lawyers

Bars are able to operate independently from direct government influence, however, in the past years, attorneys and the bars have been subjected to attacks by governing party politicians and government-aligned media, similarly to judges.

In January 2020, the Government announced its plans to review the scheme of compensations paid to inmates for inadequate detention conditions, introduced after a pilot judgment by the European Court of Human Rights (ECtHR).<sup>60</sup> This was accompanied by **attacking the attorneys representing inmates in domestic compensation cases**, basically for applying Hungarian law that provides for compensations.

On 15 January 2020, a high-level representative of the Cabinet Office of the Prime Minister stated in relation to this that a “business” has been built on compensation payments by NGOs and their attorneys.<sup>61</sup> On 17 January, the **Prime Minister** also talked about “**prison business**” in an interview, and said that “**the attorneys** [involved] **should be dealt with** as well, because, after all, they took several billion forints from the state’s pocket”.<sup>62</sup>

On 30 January 2020, a **government-aligned news site published the list of attorneys who represented inmates in compensation cases, publishing also the sums these attorneys allegedly “won”** from the state.<sup>63</sup> As a reaction, the Hungarian Bar Association issued a statement, condemning the attacks against attorneys and the listing, and warning that such steps undermine the authority of the justice system.<sup>64</sup> An affected attorney asked the Ministry of Justice whether they were the ones disclosing the names and sums to the news site, or whether they have launched any investigation into how the site got the data, but all what the Ministry replied was that they processed the data in compliance with the law. The news site that published the list also attacked the President of the Budapest Bar Association for calling on colleagues in a closed Facebook group to show solidarity with the attacked attorneys, and stated that the influence of George Soros had increased in the Budapest Bar Association.<sup>65</sup>

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<sup>60</sup> For background information on compensation payments, see: Hungarian Helsinki Committee, *Compensations for inadequate detention conditions threatened by the Hungarian government*, January 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_info\\_note\\_prison\\_overcrowding\\_compensations\\_2020Jan.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_info_note_prison_overcrowding_compensations_2020Jan.pdf).

<sup>61</sup> The interview is available here in Hungarian: <https://hirtv.hu/magyarorszageloben/tuzson-az-nem-lehetseges-hogy-bunozoknek-fizet-a-magyar-allam-2493378>.

<sup>62</sup> For the full interview in English, see: *Prime Minister Viktor Orbán on the Kossuth Radio programme “Good morning, Hungary”*, 17 January 2020, <http://www.miniszterelnok.hu/prime-minister-viktor-orban-on-the-kossuth-radio-programme-good-morning-hungary-6/>.

<sup>63</sup> See: <https://www.origo.hu/itthon/20200129-magyar-gyorgy-irodajanak-felmilliardot-fizettek-ki.html>.

<sup>64</sup> See e.g.: <https://jogaszvilag.hu/a-magyar-ugyvedi-kamara-visszautasitja-az-ugyvedeket-ert-tamadasokat/>.

<sup>65</sup> See: <https://www.origo.hu/itthon/20200120-budapesti-ugyvedi-kamara-szervezkes-a-bortonkartritesek-leallitasa-miatt.html>.

## 10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

1. Public trust and confidence in judicial independence is undermined by open attacks of high-ranking officials of the governing party and the government-affiliated media **against individual judges, the judiciary in general and the idea of judicial independence too.**

- a) Government-friendly propaganda media repeatedly **attacked individual judges who criticise the state of judicial independence.** With the escalation of the “constitutional crisis”<sup>66</sup> within the judiciary in 2018-2019, government-affiliated media published a series of articles with false accusations, derogatory and defamatory statements aimed at discrediting these judges.<sup>67</sup> Some judges launched domestic civil law procedures against various newspapers, and it was established in final domestic court judgments that the impugned newspaper articles published had violated the judges’ dignity and good reputation.<sup>68</sup>
- b) High-ranking government officials, including the Prime Minister, regularly **disregard the requirement of non-interference with pending court procedures** by publicly formulating expectations regarding the judgment to be delivered. Judges face this kind of political pressure especially when dealing with cases concerning the protection of individuals or vulnerable minorities against state actors. Examples for this include political pressure against an acquittal, pressure for more rigorous penalties, or, in 2020, a public political campaign against compensations for prison overcrowding<sup>69</sup> and a judgment granting Roma pupils damages for segregated education, which the Prime Minister called – while the judgment was still pending review – a “provocation” and “unjust” because the Roma plaintiffs “receive a significant amount of money without performing any work”.<sup>70</sup> The NOJ President only voiced criticism<sup>71</sup> after in another case in 2020 an MEP openly questioned the independence of the first instance court and declared the judgment (the acquittal of a person charged with spying) “net high treason”.

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<sup>66</sup> European Association of Judges, *Report on the fact-finding mission of the EAJ to Hungary*, May 2019, <https://www.iaj-uim.org/iuw/wp-content/uploads/2019/05/Report-on-the-fact-finding-mission-of-a-delegation-of-the-EAJ-to-Hungary.pdf>, p. 5.

<sup>67</sup> For a non-comprehensive list of articles and a list of retaliatory measures, see the communication submitted by the Hungarian Helsinki Committee in August 2019 to the Committee of Ministers regarding the execution of the judgment of the ECtHR in the *Baka v. Hungary* case: [https://www.helsinki.hu/wp-content/uploads/HHC\\_Rule\\_9\\_Baka\\_v\\_Hungary\\_201908.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Rule_9_Baka_v_Hungary_201908.pdf), pp. 5–8.

<sup>68</sup> See e.g.: <https://www.mabie.hu/index.php/1472-a-magyar-idok-napilap-dr-matusik-tamas-dr-vadasz-viktor-es-dr-vasvari-csaba-birok-serelmere-szemelyisegi-jogsertest-kovetett-el>, <https://444.hu/2019/09/26/egy-harmadik-bironak-is-800-ezer-forintot-kell-fizessen-a-magyar-idok-kiadoja>.

<sup>69</sup> For summaries in English, see: Hungarian Helsinki Committee, *NGO communication with regard to the execution of the judgments of the European Court of Human Rights in the cases Varga and Others v. Hungary and István Gábor Kovács v. Hungary (Application no. 14097/12 and 15707/10)*, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Rule\\_9\\_Varga\\_and\\_Others\\_v\\_Hungary\\_20200120.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Rule_9_Varga_and_Others_v_Hungary_20200120.pdf), pp. 3–4; Csaba GYÓRY, *Fighting Prison Overcrowding with Penal Populism – First Victim: the Rule of Law*. *New Hungarian Law* “Suspends” the Execution of Final Court Rulings, 12 March 2020, <https://verfassungsblog.de/fighting-prison-overcrowding-with-penal-populism-first-victim-the-rule-of-law/>.

<sup>70</sup> See e.g.: Lilla Farkas, *The EU, Segregation and Rule of Law Resilience in Hungary*, 8 March, 2020, <https://verfassungsblog.de/the-eu-segregation-and-rule-of-law-resilience-in-hungary/>.

<sup>71</sup> See: [https://birosag.hu/sites/default/files/2020-09/OBH\\_eln%C3%B6ke\\_lev%C3%A9l%202020.09.25..pdf](https://birosag.hu/sites/default/files/2020-09/OBH_eln%C3%B6ke_lev%C3%A9l%202020.09.25..pdf).

- c) In recent years, several **public statements questioned the requirement itself that the judiciary has to be independent**. Within the context of building an “illiberal democracy”, judicial independence was labelled as a “liberal requirement”.<sup>72</sup> Amidst the Government’s attempt to establish a politically controlled administrative court system, the Speaker of the Parliament claimed in 2019 that judges “must decide whether they side with the defenders and builders or the attackers and destroyers of the State”<sup>73</sup> and that “[t]he system of checks and balances is dumb” and “has nothing to do with the rule of law or with democracy”.<sup>74</sup>

2. The election of Justice András Zs. Varga as President of the Kúria elected by the Parliament against the manifest opposition of the NJC.<sup>75</sup>

3. The nomination of the mother-in-law of the Minister of Justice to be NOJ vice-president by the NOJ President in April 2020<sup>76</sup>, which according to judges interviewed by Amnesty International “was bad optics” and questioned the impartiality of the NOJ President.

## B. QUALITY OF JUSTICE

### 11. Accessibility of courts (e.g. court fees, legal aid, language)

1. Several of the concerns reported earlier<sup>77</sup> with regard to Act CXXX of 2016 on the Code of Civil Procedure continue to prevail, causing **restrictions on access to justice in civil law cases**. These include obligatory representation by an attorney in first instance cases before regional courts, which is not only unjustifiable, but also makes it more expensive for individuals to bring their cases to court. Act CXXX of 2016 made submitting civil law claims more difficult in general, resulting in a high level of claim rejections. The ensuing decrease in the number of civil lawsuits prompted legal changes<sup>78</sup> that ease some of the rigid formal requirements as of January 2021.

2. In criminal procedures, Act XC of 2017 on the Code of Criminal Procedure (CCP) ensures **the right of defendants to use their mother tongue**, or any other language spoken or understood by them, as well as sign language interpretation. Interpretation can be ensured through telecommunication technologies. Defendants are exempted from the costs arising

<sup>72</sup> By Szilárd Németh, MP of the Fidesz, on 31 January 2016. See e.g.: <https://444.hu/2016/01/31/nemeth-szilard-elszamoltatna-a-birosagokat>.

<sup>73</sup> The speech was held on the occasion of the 150<sup>th</sup> anniversary of the act guaranteeing the independence of the judiciary. See: <https://hungarianspectrum.org/2019/04/24/soon-enough-hungarian-judicial-independence-will-exist-only-in-history-books>.

<sup>74</sup> See e.g.: [https://index.hu/english/2019/10/25/laszlo\\_kover\\_checks\\_balances\\_dumb\\_forget\\_it\\_rule\\_of\\_law\\_hungary\\_fidesz](https://index.hu/english/2019/10/25/laszlo_kover_checks_balances_dumb_forget_it_rule_of_law_hungary_fidesz).

<sup>75</sup> See above in Section 1. of the present submission.

<sup>76</sup> <https://birosag.hu/en/news/category/about-courts/president-republic-has-appointed-new-vice-presidents-national-office>

<sup>77</sup> See: *Contributions of Hungarian NGOs to the European Commission’s Rule of Law Report*, May 2020, [https://www.helsinki.hu/wp-content/uploads/HUN\\_NGO\\_contribution\\_EC\\_RoL\\_Report\\_2020.pdf](https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), pp. 18–19.

<sup>78</sup> Act CXIX of 2020 on Amending Act CXXX of 2016 on the Code of Civil Procedure

in relation to their language use, irrespective of the outcome of the proceedings. The CCP's provision according to which if it is not possible to find an interpreter who meets the statutory criteria, any other person having "sufficient knowledge of a certain language" could be appointed as an ad hoc interpreter, may cause problems in practice with regard to the quality of interpretation and translation, as there are no measurable guarantees for what is sufficient, and persons not having sufficient command of a given language may be appointed. The lack of a formalised quality assurance system is also a concern in this regard. The law only requires the translation of those documents that are to be served, and defendants have no right to request the translation of further documents they regard to be essential, contrary to EU law.<sup>79</sup>

If it is foreseen that due to their financial situation the defendant will be unable to pay the costs of the procedure or parts of it, authorities may grant them **cost reduction**, entailing that the fee and the costs of the defence counsel are advanced and borne by the state ("means test"). With regard to this, it has been raised that conditions for cost reduction are too rigid, and the question arises whether cost reduction is indeed available for all indigent defendants. In addition, research shows that defence counsels are appointed on the basis of the means test very rarely. As a positive development, since July 2018, **ex officio/legal aid defence counsels** in criminal cases are, as a main rule, appointed by the bar association. (Earlier, cases were assigned to attorneys on the sole discretion of the police, resulting in a disproportionate appointment practice and endangering the right to effective defence.) However, the system has some loopholes, and it also gives rise to concerns that there is still no quality assurance system in place for legal aid lawyers.<sup>80</sup>

## 12. Resources of the judiciary (human/financial/material)

As regards material resources, judges interviewed by Amnesty International<sup>81</sup> told that material resources (e.g. buildings, technical equipment, IT supplies) are sufficiently provided by the court administration, and they are more concerned about the independence of the judiciary.

As regards financial resources provided for courts by the state, for 2020, the proposed central budget expenditure was HUF 124,914.4 million (ca. EUR 349 million).<sup>82</sup> For 2021, the proposed central budget expenditure of the courts was increased to HUF 141,964.5 million (ca. EUR 396 million).<sup>83</sup>

However, it is concerning that judges told Amnesty International that administrative and financial tools may be used against judges who speak up or are active. The potential consequences of speaking up included using the case allocation system as a tool of

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<sup>79</sup> For more details, see: András Kristóf KÁDAR – Nóra NOVOSZÁDEK – Dóra SZEGŐ, *Inside Police Custody 2 – An empirical study of suspects' rights at the investigative stage of the criminal process in nine EU countries. Country Report for Hungary*, December 2018, [https://www.helsinki.hu/wp-content/uploads/IPC\\_Country\\_Report\\_Hungary\\_Eng\\_fin.pdf](https://www.helsinki.hu/wp-content/uploads/IPC_Country_Report_Hungary_Eng_fin.pdf), pp. 33–45.

<sup>80</sup> For more details, see: *ibid.*, pp. 75–93.

<sup>81</sup> For more details, see Amnesty International's *Fearing the Unknown* report, 2020, <https://www.amnesty.org/en/documents/eur27/2051/2020/en/>

<sup>82</sup> Act LXXI of 2019 on the Central Budget of Hungary for 2020, Appendix 1

<sup>83</sup> Act XC of 2020 on the Central Budget of Hungary for 2021, Appendix 1

suppression against judges. A few judges were told that whomever the court leadership wants to pick on will be “flooded” with cases and then they “will not have the time to be renitent”.

### 13. Training of justice professionals (including judges, prosecutors, lawyers, court staff)

Some judges mentioned to Amnesty International<sup>84</sup> that they can be removed from the trainee judges’ education group, or they can be put into a hat from where people are not selected to go to courses or conferences. One judge told Amnesty International that after they strongly supported a “renitent” judge’s application at a judges’ plenary meeting in 2019, their applications for training started to fail at the NOJ. As nothing else changed in their circumstances, and before that (even three weeks earlier) these types of applications had been successful, he/she could only surmise that speaking up changed the situation. Also, Metropolitan Court judges were allegedly prevented from attending a legal professional exam as examiners.

### 16. Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialization<sup>85</sup>

**The district court** is the lowest level of ordinary courts and there are 113 of them. **Regional courts** are ordinary courts one level higher than district courts, and there are 20 regional courts, for each county and Budapest. **Regional appeal courts** are ordinary courts one level higher than the regional courts, and there are five regional appeal courts for the five regions of Hungary. The supreme court of Hungary is called the **Kúria**, which is the highest-level ordinary court. The Hungarian **Constitutional Court** is not an ordinary court and only deals with constitutional matters.

For military cases, there are five designated regional courts where judges adjudicate at first instance in **military chambers**.

From 1 April 2020, the specialized Administrative and Labour Courts (20 of them, one for each county) were dissolved, the first instance administrative cases were channelled to eight designated regional courts (see below) and the first instance labour cases were channelled to the regional courts.

In cases started after 1 March 2020, **it is no longer possible to submit an appeal against first instance decisions of administrative authorities**: instead, they have to be challenged before the court instantly. First instance judicial reviews are conducted only by eight designated regional courts out of the 20, and so some of them have to cover three counties. This way, **in many instances courts where the cases are tried will be far away from where the parties live**.

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<sup>84</sup> For more details, see Amnesty International’s *Fearing the Unknown* report, 2020, Section 3.3.5, <https://www.amnesty.org/en/documents/eur27/2051/2020/en/>.

<sup>85</sup> Please note that no response has been provided to the following questions of the stakeholder consultation survey: “14. Digitalisation”; “15. Use of assessment tools and standards”.

**Service courts** are courts to adjudicate in disciplinary proceedings or labour cases of judges; service court judges are elected by the NJC.

## C. EFFICIENCY OF THE JUSTICE SYSTEM

### 17. Length of proceedings

According to the 2020 EU Justice Scoreboard, Hungary ranked high among EU Member States in terms of the estimated length of proceedings in administrative, civil and commercial cases.<sup>86</sup> At the same time, the CoE Committee of Ministers (CM) has been supervising the execution of ECtHR judgments concerning excessive length of judicial proceedings in Hungary since 2003.<sup>87</sup> In 2015, the ECtHR delivered a **pilot judgment** in *Gazsó v. Hungary*,<sup>88</sup> and requested Hungary to **introduce**, by October 2016, “**an effective domestic remedy or combination of such remedies capable of addressing [...] the issue of excessively long court proceedings**”.

In 2018, the CM adopted its **first interim resolution** regarding the *Gazsó* group of cases, which covers judgments condemning Hungary for the **excessive length of judicial proceedings in civil, criminal and administrative matters**, and the **lack of an effective remedy** in this respect.<sup>89</sup> Subsequently, the Government submitted a Bill<sup>90</sup> to the Parliament, providing for a compensatory remedy for the excessive length of judicial proceedings. However, after the CM raised concerns over the Bill, its adoption was postponed. Also in 2018, new procedural codes entered into force, which were expected to reduce the length of judicial proceedings, but to date, Hungary has failed to provide information on their impacts to the CM. In **2019**, the CM adopted a **second interim resolution**.<sup>91</sup>

In its March 2020 decision<sup>92</sup> the CM expressed its deepest concern that **the deadline set in the pilot judgment expired more than three years ago “without any tangible progress having been presented”**, and recalled that “Hungary is one of the very few remaining member States faced with the issue of excessively lengthy judicial proceedings which has not yet introduced an effective remedy in this respect”. In **June 2020**, the CM adopted its **third interim resolution** in the case, “**noting with profound disappointment that, despite their own undertakings and the [CM’s] urgings [...] the authorities have not submitted any kind of information that would allow the [CM] to consider that progress has been made**”.<sup>93</sup>

<sup>86</sup> Figures 5, 6, 7, 8 and 9 in the 2020 EU Justice Scoreboard, available here:

[https://ec.europa.eu/info/sites/info/files/justice\\_scoreboard\\_2020\\_en.pdf](https://ec.europa.eu/info/sites/info/files/justice_scoreboard_2020_en.pdf). Cf. European Commission, 2020 *Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, pp. 8-9.

<sup>87</sup> *Tímár v. Hungary* (Application no. 36186/97, Judgment of 25 February 2003)

<sup>88</sup> Application no. 48322/12, Judgment of 16 July 2015

<sup>89</sup> CM/ResDH(2018)106, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=090000168079312c](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168079312c)

<sup>90</sup> Bill T/2923 on Financial Compensation for Court Proceedings of Excessive Length, <https://www.parlament.hu/irom41/02923/02923.pdf>

<sup>91</sup> CM/ResDH(2019)152, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=090000168094d32a](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168094d32a). This section is based on the Notes on the Agenda for the 1369<sup>th</sup> DH meeting of the Committee of Ministers (CM/Notes/1369/H46-12, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016809c78b6](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809c78b6)).

<sup>92</sup> CM/Del/Dec(2020)1369/H46-12, [http://hudoc.exec.coe.int/eng/?i=CM/Del/Dec\(2020\)1369/H46-12E](http://hudoc.exec.coe.int/eng/?i=CM/Del/Dec(2020)1369/H46-12E)

<sup>93</sup> CM/ResDH(2020)180, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016809f6bbd](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809f6bbd)

The *Gazsó* case will be on the CM's agenda in March 2021 again. In December 2020, the Government submitted to the CM the **draft concept of a law that would introduce pecuniary satisfaction** for excessively long proceedings, but **only in civil law cases**.<sup>94</sup> The law would set general and specific "objective durations" for various types of cases. Payment obligation would commence after the expiry of these durations, would be based on daily compensation amounts, and would last until the end of the proceedings. According to its communication to the CM, the Government aims to hold "domestic consultations" about the draft law in February 2021 and submit it to the Parliament in April. However, to date, no public consultation has been launched, and **the law is not foreseen in the legislative plan** submitted by the Government for the **Parliament's 2021 spring session**.<sup>95</sup>

## 18. Other

The governing majority has systematically undermined the independence of the judiciary since 2011, and the legislative and organisational steps taken to that end have heavily contributed to a **palpable chilling effect amongst judges**. This materializes e.g. in a fear that prevents judges from speaking up or protesting administrative decisions and laws affecting the judiciary. Due to the prevailing legal and institutional structures, this chilling effect is **encoded in the current court system**, and is enhanced by vaguely formulated internal policies. There are **no guarantees in place to avoid retaliation against judges publicly voicing criticism in relation to the independence of the judiciary**.<sup>96</sup> The situation has also been aggravated by judge members of the NJC facing retaliatory measures and media attacks for voicing professional criticism in 2018–2019 as part of the "constitutional crisis" that emerged due to the previous NOJ President questioning the legitimacy of the NJC.<sup>97</sup>

Despite a few positive developments, **the atmosphere at courts continued to be problematic and the chilling effect continued to be present also in 2020**. The NOJ President has not supported judges in expressing their opinion on any issue publicly. Political and media attacks on the judiciary continued, but the NOJ President and court leaders have overwhelmingly remained silent during these attacks, and thus have contributed to the chilling effect of such attacks on the judiciary: ordinary judges have been afraid of freely

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<sup>94</sup> The Government's communication is available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680a12762>.

<sup>95</sup> The legislative plan is available here:

[https://www.parlament.hu/documents/10181/721095/Tvalk\\_program\\_2021\\_tavaszi.pdf/7ec4047e-2a6d-2d18-ea35-ea79fbebfc9e?t=1608102446818](https://www.parlament.hu/documents/10181/721095/Tvalk_program_2021_tavaszi.pdf/7ec4047e-2a6d-2d18-ea35-ea79fbebfc9e?t=1608102446818).

<sup>96</sup> For more details, see: *Communication by Amnesty International Hungary and the Hungarian Helsinki Committee under Rule 9(2) of the Rules of the Committee of Ministers for the supervision of the execution of judgments, in the case of Baka v. Hungary (Application no. 20261/12)*, 29 July 2020, [https://www.helsinki.hu/wp-content/uploads/AIHU\\_HHC\\_Rule\\_9\\_Baka\\_v\\_Hungary\\_29072020.pdf](https://www.helsinki.hu/wp-content/uploads/AIHU_HHC_Rule_9_Baka_v_Hungary_29072020.pdf); Amnesty International Hungary, *Fearing the Unknown*, 2020, <https://www.amnesty.org/en/documents/eur27/2051/2020/en/>.

<sup>97</sup> For more details, see the Hungarian Helsinki Committee's communication from August 2019 with regard to the execution of the judgment of the ECtHR in the *Baka v. Hungary* case here: [https://www.helsinki.hu/wp-content/uploads/HHC\\_Rule\\_9\\_Baka\\_v\\_Hungary\\_201908.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Rule_9_Baka_v_Hungary_201908.pdf).

expressing their opinion and stating their positions in matters related to the judiciary because of fear of retaliation at their workplace or in public.<sup>98</sup>

As also referred to by the EC's 2020 Rule of Law Report, in September 2019 the CM, in the framework of monitoring the execution of the judgment in the related *Baka v. Hungary* case,<sup>99</sup> noted "with grave concern" the reports suggesting that the "chilling effect" on the freedom of expression of judges and court presidents "has not only not been addressed but rather aggravated", and urged the authorities to provide information on the measures envisaged to counter this.<sup>100</sup> In **October 2020**, the **CM decided** once again **not to close the supervision of the *Baka* case**, showing that it does not deem the judgment executed, and that **the Government has not been able to dispel the concerns in relation to the freedom of expression of judges**. (In addition, the CM noted with concern the continuing absence of safeguards in connection with constitutional-level measures terminating a judicial mandate, as happened in the case of Mr. Baka.)<sup>101</sup>

However, judges are continued to be attacked for their opinion: for example, at the meeting of the NJC on 3 February 2021, the new President of the Kúria (who was parachuted to his position against manifest opposition by the NJC) attacked an NJC-member judge over publishing an article<sup>102</sup> on his professional opinion about the deficiencies of the case allocation system at the Kúria.<sup>103</sup>

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<sup>98</sup> For more details, see: Amnesty International Hungary, *Status of the Hungarian judiciary*, 2021, <https://www.amnesty.org/en/documents/eur27/3623/2021/en/>.

<sup>99</sup> In 2012, the mandate of the President of the Supreme Court, András Baka was terminated three and a half years before the end of his regular term, allegedly because of the "reform" of the court system. However, in 2016 the ECtHR found in the *Baka v. Hungary* case (Application no. 20261/12, Judgment of 23 June 2016) that his early dismissal was instead "prompted by the views and criticisms that he had publicly expressed in his professional capacity" about legislative steps. This violated not only Mr. Baka's freedom of expression, but exerted a "chilling effect" also on other judges.

<sup>100</sup> CM/Del/Dec(2019)1355/H46-11, [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=090000168097cfbe](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=090000168097cfbe)

<sup>101</sup> CM/Del/Dec(2020)1383/H46-8, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016809fa8be>

<sup>102</sup> Viktor VADÁSZ – András György KOVÁCS, *A game hacked by the dealer*, 10 November 2020, <https://verfassungsblog.de/a-game-hacked-by-the-dealer/>

<sup>103</sup> See the minutes of the NJC's meeting here: <https://orszagosbiroitanacs.hu/2021-02-03/> (2021.OBT.XI.1/28., pp. 3–5.).

## II. ANTI-CORRUPTION FRAMEWORK

### A. THE INSTITUTIONAL FRAMEWORK CAPACITY TO FIGHT AGAINST CORRUPTION (PREVENTION AND INVESTIGATION / PROSECUTION)

#### 19. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Resources allocated to these (the human, financial, legal, and practical resources as relevant)

As already highlighted in our 2020 submission, Hungary has **no stand-alone anti-corruption agency**. Instead, the implementation of policies to prevent and sanction abuses is an obligation of state institutions in general, while certain bodies have special competences to counter corruption, with the “anti-corruption police” called National Protective Service playing an increasingly important role in terms of anti-corruption coordination and corruption prevention, and the implementation of the Government’s anti-corruption strategy. However, it remains a concern that **most state institutions are under the leadership of political partisans or loyalists**.<sup>104</sup> Although most of them have the necessary capacities, state organs **tend to underuse their resources** by mainly focusing on small scale corruption.

- a) The National Protective Service (NPS) is a separate branch of the police, which reports directly to the Minister of Interior.<sup>105</sup> It is responsible for the prevention of crime within the police, law enforcement, and other government agencies. Besides, it is in charge of the Government’s anti-corruption strategy. Among the few areas where significant progress has been achieved in the recent years is the pushback on small scale bribery especially among officers of the police, which is explained, among other things, by the regular and systematic integrity tests among sworn-in officers conducted by the NPS.
- b) The State Audit Office (SAO) is charged to oversee the accountability of the use of public funds. Besides public institutions, the SAO also audits political parties. The

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<sup>104</sup> For references, see the following reports by Transparency International Hungary: *Korrupció Magyarországon a koronavírus-járvány árnyékában – A Korrupció Érzékelési Index eredményei 2020-ban* [Corruption in Hungary in the Shade of the Coronavirus Pandemic – The Results of the 2020 Corruption Perceptions Index], 2021, [https://transparency.hu/wp-content/uploads/2021/01/TI-Magyarorszag\\_CPI-2020\\_jelentes.pdf](https://transparency.hu/wp-content/uploads/2021/01/TI-Magyarorszag_CPI-2020_jelentes.pdf); *Javaslatok a korrupció visszaszorítására Magyarországon* (<https://transparency.hu/wp-content/uploads/2018/01/Javaslatok-a-korrupci%C3%B3-visszaszor%C3%ADt%C3%A1s%C3%A1ra-Magyarorsz%C3%A1gon.pdf>) – *Proposals to reduce corruption in Hungary* ([https://transparency.hu/wp-content/uploads/2018/01/transparency\\_int\\_jogallam\\_korrupcio\\_tanulmany\\_kivonat\\_angol\\_nyelven\\_2.pdf](https://transparency.hu/wp-content/uploads/2018/01/transparency_int_jogallam_korrupcio_tanulmany_kivonat_angol_nyelven_2.pdf)).

<sup>105</sup> Government Decree 293/2010. (XII. 22.), Article 1

SAO is designed to be entirely independent from the executive branch and is by law only subordinated to the Parliament.<sup>106</sup> However, the SAO has since decades been underusing its powers and has proven incapable to uncover and sanction questionable spending by political parties, who tend to underreport expenditure. The SAO also denies measuring political parties' declarations on campaign expenses against the reality, and this leaves the systemic overspending unsanctioned.<sup>107</sup> The SAO continues the practice of imposing excessive fines on opposition parties while there is no direct opportunity for legal remedy, which is seen by many as the misuse of powers.<sup>108</sup>

The above-mentioned authorities, together with the Kúria, the prosecution service, the National Office for the Judiciary, the Central Bank of Hungary, the Public Procurement Authority, and the Competition Authority have jointly endeavoured to promote integrity and combat corruption,<sup>109</sup> however, their cooperation does not manifest in any meaningful achievements in the field of anti-corruption. Actions within the framework of this cooperation is limited to the joint declaration issued by these agencies on 9 December every year, which is the International Anti-corruption Day. In other words, most of these agencies' commitment against corruption seems to be only rhetorical.

## B. PREVENTION

### 20. Integrity framework: including incompatibility rules (e.g.: revolving doors)

As included in our submission of 2020, **with regard to the prevention of the “revolving door”** phenomenon, defined by the European Parliamentary Research Service<sup>110</sup> as “the movement of experts or expertise from one position to another, between the public and private sectors”, **Hungary lacks any specific regulation**. Although both the Labour Code as well as regulations pertaining to public officials contain confidentiality clauses, they do not specify any time restriction for public officials to pursue business careers in the same sector, despite the existence of legislative best practices in this realm (not only in the European Parliament and the European Commission, but also in Norway, the Netherlands and France).

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<sup>106</sup> Articles 43 and 44 of the Fundamental Law of Hungary, and Act LXVI of 2011

<sup>107</sup> For details, see: Transparency International Hungary, *Total Eclipse – Campaign Spending in Hungary*, 2015, <https://transparency.hu/wp-content/uploads/2016/02/Total-Eclipse-Campaign-Spending-in-Hungary-Study.pdf>, p. 36; related correspondence with the SAO in possession of Transparency International Hungary.

<sup>108</sup> See the opinion of the Hungarian Civil Liberties Union here: <https://tasz.hu/cikkek/allasfoglalasunk-az-allami-szamvevoszek-ellenzeki-partokat-ert-szankcioirol>, and a comprehensive press report entitled *4 év alatt 816 millió forintot szedettek be az ellenzéki pártoktól az ÁSZ* [The SAO has collected HUF 816 million from opposition parties over four years] here:

[https://hvg.hu/itthon/20190131\\_4\\_ev\\_alatt\\_816\\_millio\\_forintot\\_szedettek\\_be\\_az\\_ellenzeki\\_partoktol\\_az\\_ASZ](https://hvg.hu/itthon/20190131_4_ev_alatt_816_millio_forintot_szedettek_be_az_ellenzeki_partoktol_az_ASZ).

<sup>109</sup> See e.g.: <https://korrupciomegelozes.kormany.hu/sikeresnek-tartjak-a-korrupcioellenes-fellepest-az-allami-szervek-vezetoi>.

<sup>110</sup> European Parliamentary Research Service, *Revolving doors in the EU and US*, July 2018, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625105/EPRS\\_BRI\(2018\)625105\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625105/EPRS_BRI(2018)625105_EN.pdf)

Therefore, both K-Monitor<sup>111</sup> and Transparency International Hungary<sup>112</sup> have repeatedly called for the introduction of legal requirements that would prevent high-ranking public officials from entering business sector jobs where the information they acquired in their previous role might provide unfair advantage.

An outstanding example of how the revolving door phenomenon manifests in practice is the corruption scandal associated with Microsoft Hungary, which entailed bid rigging and bribery aiming to create inflated margins that were used to fund improper payments in connection with the sale of Microsoft software to Hungarian government agencies. This procurement was covered from European Union funds.<sup>113</sup> Some of the employees who worked with Microsoft's wholly owned Hungarian subsidiary during the occurrence of these conducts, upon leaving Microsoft, were hired by the Government. For example, Microsoft's former key account manager in Hungary, who served in the period concerned, became a vice-president at Hungary's investment promotion agency, a state-owned enterprise. Another Microsoft employee in Hungary, who also worked with the company in the period concerned, was hired as a government commissioner charged with the oversight of EU funded projects aiming at the development of state administration.<sup>114</sup> Transparency International Hungary and K-Monitor suppose that in this case, the lack of a reliable investigation on the Hungarian authorities' behalf is not entirely unrelated to the revolving door phenomenon.

The case of Mr. János Süli exemplifies that these problems exist within public administration, too. Mr. Süli was the director of the state owned Paks Nuclear Power Plant, later elected mayor of Paks city, and subsequently appointed to minister responsible for the extension of the Paks power plant. Besides, Mr. Süli is an MP, who sits in the Parliament for Paks. It is likely that the power plant, the city and the Government have conflicting interests.

## 21. General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

As indicated in our 2020 submission, **the reliability of asset and interest declarations by public functionaries is still a cause for concern.** Key decision-makers, e.g. Members of Parliament, cabinet ministers, judges, prosecutors and public officials involved in decisions relating to the use of EU funds are expected to regularly declare their assets and interests. However, deficiencies identified in our 2020 submission prevail. Among other things, declarations are not accessible publicly, save for the case of Members of Parliament and the most senior public officials, but even they are not required to publish spousal declarations. Scrutiny of the declarations' content and validity entirely lacks, and no effective sanction to

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<sup>111</sup> K-Monitor, *Forgóajtó-jelenség: az állami és magánszféra közti átjárás korrupciós kockázatai [The Revolving Door Phenomenon]*, 18 April 2014, [https://k.blog.hu/2014/04/18/forgoajto-jelenseg\\_az\\_allami\\_es\\_maganszfera\\_kozti\\_atjaras\\_korrupcios\\_kockazatai](https://k.blog.hu/2014/04/18/forgoajto-jelenseg_az_allami_es_maganszfera_kozti_atjaras_korrupcios_kockazatai)

<sup>112</sup> Transparency International Hungary, *The Revolving Door Phenomenon in Hungary*, 2012, <https://transparency.hu/wp-content/uploads/2016/02/Revolving-Door-Phenomenon-In-Hungary.pdf>

<sup>113</sup> For details, see the letter by Transparency International Hungary to US DoJ: [https://transparency.hu/wp-content/uploads/2019/08/Transparency\\_Int\\_HUN\\_letter\\_to\\_DoJ\\_Microsoft\\_HUN\\_o8022019.pdf](https://transparency.hu/wp-content/uploads/2019/08/Transparency_Int_HUN_letter_to_DoJ_Microsoft_HUN_o8022019.pdf).

<sup>114</sup> For more details, see:

[https://korrupcio.blog.hu/2019/10/04/a\\_microsoft\\_magyarorszagi\\_korrupcios\\_botranya](https://korrupcio.blog.hu/2019/10/04/a_microsoft_magyarorszagi_korrupcios_botranya).

prevent and punish false or deficient declarations is in place.<sup>115</sup> As a result, the system of asset and interest disclosure in Hungary is still unable to allow the monitoring of the enrichment of declarants, as well as to clarify the source of funds declared. Over the past years K-Monitor and Transparency International Hungary have repeatedly advocated in vain for the resolution of this problem.<sup>116</sup>

### **Regulation of lobbying in Hungary remains incomplete and it lacks proper enforcement.**

As highlighted in our previous submission, though the Government's decree on integrity of public administration<sup>117</sup> regulates some aspects of encounters between government officials and lobbyists, it fails to provide for the mandatory registration of lobbyists and for the disclosure of contact reports. With respect to these deficiencies, Transparency International Hungary concluded in its 2015 study<sup>118</sup> that the country's current lobbying regulation has no impact on anti-corruption whatsoever. The EU's first and only Anticorruption Report published in 2014 also stressed that there was "no mechanism in place targeting the monitoring of the implementation of these obligations".<sup>119</sup>

## **22. Rules on preventing conflict of interests in the public sector**

There is **no improvement in the area of conflict of interest regulation in the public sector**, which means that findings and conclusions in our 2020 submission are still valid. Though the laws prohibit certain activities and specify incompatibilities as well as define rules on conflict of interests in the public sector, these **provisions have proven unable in the past decade to prevent the interlacement between the oligarchs and the Government in certain sectors of the economy.**

The Public Procurement Act<sup>120</sup> defines those public officials whose relatives may not participate in a public procurement process, however, only relatives who live in the same household are excluded. Otherwise, the provisions on conflict of interest in the Public Procurement Act give enough flexibility to cover all kind of conflict of interest situations. Nevertheless, the **lack of proper enforcement** of these provisions is still a ground for concern. For example, the Public Procurement Authority should have uncovered and sanctioned at least 35 incidents of conflict of interests alone in the Elios case. In this case the

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<sup>115</sup> For details, see the following reports by Transparency International Hungary: *Vagyonynyilatkozati Minimum [Minimum Standards for Asset and Interest Declarations]*, 2016, [https://transparency.hu/wp-content/uploads/2016/07/policy\\_paper3\\_FIN.pdf](https://transparency.hu/wp-content/uploads/2016/07/policy_paper3_FIN.pdf); *A vagyonynyilatkozati rendszer működésével kapcsolatos problémák és a rendszer reformjára vonatkozó ajánlások [Recommendations to Address Problems relating to and to Reform the System of Asset and Interest Declarations]*, 2016, [https://transparency.hu/wp-content/uploads/2016/07/policy\\_paper2\\_FIN.pdf](https://transparency.hu/wp-content/uploads/2016/07/policy_paper2_FIN.pdf).

<sup>116</sup> Átlátszó.hu – K-Monitor – Transparency International Hungary, *Civilek vagyonynyilatkozati 12 pontja [CSOs' 12 points on Asset Declarations]*, December 2014, <https://transparency.hu/hirek/civilek-vagyonynyilatkozati-12-pontja/>

<sup>117</sup> Government Decree 50/2013. (II. 25.)

<sup>118</sup> Transparency International Hungary, *Lifting the Lid on Lobbying: National Report of Hungary. Lobbying in an Uncertain Business and Regulatory Environment*, 2015, <https://transparency.hu/wp-content/uploads/2016/03/Lifting-The-Lid-On-Lobbying-National-Report-of-Hungary.pdf>

<sup>119</sup> European Commission, *Anti-Corruption Report – Hungary*, 2014, [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014\\_acr\\_hungary\\_chapter\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_hungary_chapter_en.pdf)

<sup>120</sup> Act CXLIII of 2015 on Public Procurements

consultancy firm, which prepared the public procurement documents on behalf of the contracting authorities was co-owned by the business partner of the Prime Minister's son-in-law who also had shares in the Elios company, which is a clear indication of conflicting interests.

The Government's granting practices in the tourism industry are a key example of how corruption arises from conflict of interest schemes. The Hungarian Tourism Agency has distributed non-refundable grants in the magnitude of HUF 83.5 billion since the outbreak of the coronavirus pandemic to tourism service providers without the application of transparency measures. Though the amount of grants and the names of the grantees are disclosed, no information is made available on the eligibility criteria, on grant applications or on the composition of selection panels. Top government-backed oligarchs were among the biggest beneficiaries of the scheme. Beyond that, several luxurious resorts and yacht clubs with government-related owners in the region of Lake Balaton were granted non-refundable financial support, while providers in Budapest – that suffered most from the breakdown of international tourism and that is governed by a Lord Mayor who belongs to the opposition – were excluded from the program. Moreover, beneficiaries of a HUF 1.5 billion special fund geared towards the Balaton region were arbitrarily selected by an ad hoc advisory board whose chair also presided the lobby group "Balaton Circle", many of whose members, including the president, were among the main beneficiaries.<sup>121</sup>

### 23. Measures in place to ensure whistleblower protection and encourage reporting of corruption

The **lack of effective protection** to persons who report on or publicly expose wrongdoing continues to be a serious problem. Willingness to report wrongdoing in Hungary is low (only 21 percent of Hungarians would be willing to notify the authorities when encountering corruption), and the country ranks last among EU Member States in the tolerance index to corruption.

The Whistleblower Protection Act (WPA)<sup>122</sup> provides anonymity for whistleblowers and enables the submission of complaints electronically, using a designated reporting channel which is operated by the country's Ombudsperson, the Commissioner for Fundamental Rights (CFR). However, the CFR has only limited competence in relation to reports submitted to his office. In lack of the right to impose sanctions and set requirements, examinations by the CFR remain formal.

From a practical perspective, the WPA does little more than simply declaring that any punishment of whistleblowers is unlawful. It fails to provide effective protection to reporting persons, and it entirely neglects their relatives. The WPA does not absolve whistleblowers from their obligation of keeping confidential information, nor does it reverse the burden of proof. Though detrimental measures against whistleblowers are prohibited, this does not

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<sup>121</sup> See: Transparency International Hungary, *Korrupció Magyarországon a koronavírus-járvány árnyékában – A Korrupció Érzékelési Index eredményei 2020-ban [Corruption in Hungary in the Shade of the Coronavirus Pandemic – The Results of the 2020 Corruption Perceptions Index]*, 2021, [https://transparency.hu/wp-content/uploads/2021/01/TI-Magyarorszag\\_CPI-2020\\_jelentes.pdf](https://transparency.hu/wp-content/uploads/2021/01/TI-Magyarorszag_CPI-2020_jelentes.pdf), pp. 17–18.

<sup>122</sup> Act CLXIX of 2016

prevent proceedings against the whistleblower. The law also lacks clear provisions on providing legal aid and the practical conditions of compensation.<sup>123</sup>

The implementation of the WPA is not obligatory for private business organisations resulting in even humbler protection of corporate whistleblowers. In case of publicly owned corporations, the introduction of a complaint-reporting system and the adoption of corporate rules on whistleblower protection are mandatory. (That said, the related regulation<sup>124</sup> only defines a very vague framework, while it says nothing about the content of the complaint-reporting system.)

Government institutions' leadership is required by a separate regulation<sup>125</sup> to hire an integrity adviser charged with the management of whistleblower reports. Integrity advisers are not independent from the hierarchy and are often tasked with the oversight of privacy practices, equal treatment policies and disciplinary procedures, a reason why their impact remains very limited.

The lack of a robust legislation is probably the reason why prosecution and judiciary avoid referring to the WPA and process cases that involve whistleblowers based on other legal provisions (Labour Code, protection of business secrets, etc.).

As of March 2021, there is **no sign of the comprehensive transposition of Directive 2019/1937/EU**, despite the fact that several provisions of the Directive are not covered by the current Hungarian regulations. Among these are the protection of whistleblowers in case of public disclosure, the reversed burden of proof in case of detrimental measures, the necessity for private sector companies to establish reporting channels and access to compensation.

#### **24. List of the sectors with high-risks of corruption in a Member State and relevant measures taken/envisaged for preventing corruption and conflict of interest in these sectors. (e.g. public procurement, healthcare, other)**

Two, mutually interrelated sectors with high corruption risks are public procurement processes and the allocation of European Union funding. To indicate the significance of EU funds, we remind that for the 2014–2020 programming period, Hungary receives financial support amounting to EUR 25 billion, which corresponds to 4 percent of the country's GDP

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<sup>123</sup> The opinion of Transparency International Hungary is contained in the open letter addressed to the President of Hungary in seek of reconsidering the promulgation of the law concerned, available [here](#).

<sup>124</sup> Government Decree 339/2019. (XII. 23.)

<sup>125</sup> Government Decree 50/2013. (II. 25.)

on average annually. In the 2021–2027 period some EUR 40.6 billion worth of EU funding is expected.<sup>126</sup>

**The use in Hungary of EU funds entails a number of systemic corruption risks state institutions are unable to control.** Projects implemented with EU funding are often overbudgeted and overpriced. The institutional guarantees of genuine independence are questionable in state organs charged with the oversight of the use of EU funding, as these organs operate under the control of the same managing authority. For instance, the Directorate General for Audit of European Funds operates within the Finance Ministry and its employees are government officials.<sup>127</sup>

According to its 2019 report, OLAF concluded processes with a recommendation concerning 43 EU funded projects implemented in Hungary between 2015 and 2019. Hungary was the first in this ranking, i.e., **OLAF found the most irregular EU-funded projects in Hungary.** Besides, OLAF recommended to the European Commission to recover almost 4 percent of the resources allocated for European Union projects implemented in Hungary. This exceeds almost ten times the EU average.<sup>128</sup>

Hungarian public authorities spent HUF 3,430 billion through public procurement processes in 2019, which corresponds to 7.8 percent of the country's GDP in that year. In 2018, the amount spent through public procurement processes represented 7.3 percent of the GDP, and in 2017 this amount equated to almost 10 percent of the country's GDP. On average, approximately half of all public procurement processes are funded in part or in full of EU funds.<sup>129</sup>

Though public procurement processes are adequately regulated, practice does not reflect the principles enshrined in the law, and such principles are often questionably enforced. The proportion of single-bidder processes among public procurement processes above the EU threshold was 40 percent in 2019, which is one of the highest ratios in the European Union.<sup>130</sup> Parallel to this, the concentration of the public procurement market continued: in 2019, in 51

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<sup>126</sup> See: Transparency International Hungary, *Korrupció Magyarországon a koronavírus-járvány árnyékában – A Korrupció Érzékelési Index eredményei 2020-ban [Corruption in Hungary in the Shade of the Coronavirus Pandemic – The Results of the 2020 Corruption Perceptions Index]*, 2021, [https://transparency.hu/wp-content/uploads/2021/01/TI-Magyarorszag\\_CPI-2020\\_jelentes.pdf](https://transparency.hu/wp-content/uploads/2021/01/TI-Magyarorszag_CPI-2020_jelentes.pdf), p. 27. Calculations are based, among other sources, on an article by Attila Weinhardt entitled *Kiszivárgott, hogy milyen közlekedési és vidékfejlesztési célokra akar 2050 milliárdnyi új EU-pénzt költeni a kormány [It was leaked on which traffic and rural development goals the Hungarian Government intends to spend HUF 2050 billion worth of European Union funding]*, available at: <https://www.portfolio.hu/unios-forrasok/20210105/kiszivargott-hogy-milyenkozlekedesi-es-videkfejlesztési-celokra-akar-2050-milliardnyi-uj-eu-penzet-kolteni-a-kormany-464070>.

<sup>127</sup> See: Transparency International Hungary, *The European Public Prosecutor's Office and Hungary – Challenge or Missed Opportunity?*, 2021, [https://transparency.hu/wp-content/uploads/2021/02/europai\\_ugyeszseg\\_eng\\_VEGSO.pdf](https://transparency.hu/wp-content/uploads/2021/02/europai_ugyeszseg_eng_VEGSO.pdf), p. 37.

<sup>128</sup> *The OLAF Report 2019*, [https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf\\_report\\_2019\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2019_en.pdf)

<sup>129</sup> The 2019 report of Hungary's Public Procurement Authority, available at:

[https://kozbeszerzes.hu/data/filer\\_public/89/0a/890a30f6-732b-4200-ac5bacbd70567e14/kozbeszerzesi\\_hatosag\\_2019\\_evi\\_beszamoloja.pdf](https://kozbeszerzes.hu/data/filer_public/89/0a/890a30f6-732b-4200-ac5bacbd70567e14/kozbeszerzesi_hatosag_2019_evi_beszamoloja.pdf).

<sup>130</sup> *Single Market Scoreboard*, Public Procurement – Indicator 1, [https://ec.europa.eu/internal\\_market/scoreboard/performance\\_per\\_policy\\_area/public\\_procurement/index\\_en.htm](https://ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/public_procurement/index_en.htm)

percent of tenders allocated to government-near businesses there was only one bidder in the public procurement process, and this proportion grew to 68 percent in 2020's first trimester.<sup>131</sup>

Something more concretely alarming is that **procurements and emergency purchases related to the COVID-19 pandemic were exempted from public procurement rules.** Information on these transactions was only released after repeated data requests by civil society and media.

## 25. Measures taken to address corruption risks in the context of the COVID-19 pandemic

Despite the fact that there are official documents<sup>132</sup> that acknowledge **increased corruption risks caused by the pandemic, we could not identify a single measure that was specifically dedicated to mitigating these risks.**

Fifteen renowned economists stated in April 2020 that the crisis management measures "have not only been insufficient in numerical terms, but also lacked transparency and feasibility checks and could potentially lead to a social disaster".<sup>133</sup> The Government established a HUF 3,628 billion Economic Protection Fund to cover investments and programmes aimed at mitigating the negative impact of the pandemic. However, according to an overview by hvg.hu, one of the largest news portals, only a quarter of expenditures were directly related to managing the crisis, while many of the financed projects have been irrelevant from the perspective of the pandemic.<sup>134</sup>

**Public resources reallocated for crisis management purposes have been often used to benefit oligarchs and the Government's clientele.** This is exemplified by the distribution of grants worth HUF 83.5 billion by Hungary's Tourism Agency, of which approximately 20 percent went to the hotel chain Hunguest Hotels. The company is an interest of Lőrinc Mészáros, the country's wealthiest individual and a close ally of Prime Minister Orbán. These funds were also used to finance the development of yacht harbours and luxury resorts around Lake Balaton. The investigative media revealed that out of HUF 300 billion distributed by the Tourism Agency between 2018 and 2020, 0.5 percent of the applicants has got the two-third of total spending.<sup>135</sup>

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<sup>131</sup> Corruption Research Centre Budapest, *New Trends in Corruption Risk and Intensity of Competition in the Hungarian Public Procurement from January 2005 to April 2020 – Flash Report 2020:1*, May 2020, [http://www.crcb.eu/wp-content/uploads/2020/05/2020\\_hpp\\_0520\\_flash\\_report\\_1\\_200526.pdf](http://www.crcb.eu/wp-content/uploads/2020/05/2020_hpp_0520_flash_report_1_200526.pdf). See also: Transparency International Hungary, *Korrupció Magyarországon a koronavírus-járvány árnyékában – A Korrupció Érzékelési Index eredményei 2020-ban [Corruption in Hungary in the Shade of the Coronavirus Pandemic – The Results of the 2020 Corruption Perceptions Index]*, 2021, [https://transparency.hu/wp-content/uploads/2021/01/TI-Magyarország\\_CPI-2020\\_jelentes.pdf](https://transparency.hu/wp-content/uploads/2021/01/TI-Magyarország_CPI-2020_jelentes.pdf), p. 24.

<sup>132</sup> See the press release by the SAO entitled *Integritással a korrupció ellen [With Integrity against Corruption]* from 26 November 2020 at <https://www.asz.hu/hu/sajtokozlemenyek/integritassal-a-korrupcio-ellen>.

<sup>133</sup> See: *Vélemény és javaslat [Opinion and Recommendation]*, 10 April 2020, [https://valsagkezeles.blog.hu/2020/04/10/velemeney\\_es\\_javaslat](https://valsagkezeles.blog.hu/2020/04/10/velemeney_es_javaslat)

<sup>134</sup> See: [https://hvg.hu/gazdasag/20210119\\_gazdasagvedelmi\\_alap\\_szamok](https://hvg.hu/gazdasag/20210119_gazdasagvedelmi_alap_szamok).

<sup>135</sup> See: <https://www.valaszonline.hu/2021/02/26/turisztika-tamogatások-ügynökség-mtu-guller-zoltan/>.

Cronyism is also present in the healthcare sector. The procurement of ventilators was overpriced,<sup>136</sup> as the Government purchased at least 16,000 life-saving machines from China (instead of the 8,000 that would have been enough to cover even a worst-case scenario), benefiting some intermediary companies with links to the Government including, as shown<sup>137</sup> by the media, one of the Prime Minister's foreign affairs advisors. The price of these purchases, carried out without an open tendering procedure, was ten times more than similar purchases made by the German and Italian governments from China. Today, the majority of these machines are lying in storage and the Government is unable to sell them, as the Ministry of Foreign Affairs and Trade admitted in response to a FOI request by Transparency International Hungary in February 2021.<sup>138</sup>

Another example<sup>139</sup> of cronyism is the Mathias Corvinus Collegium, formerly a modest post-graduate institution that got at least HUF 500 billion (EUR 1.4 billion), a sum equivalent to the aggregate annual budget of the entire higher education sector in Hungary, in various assets including stocks and cash. Moreover, the Government has started a radical transformation<sup>140</sup> of the country's universities, placing half of them under the control of asset management foundations led by Fidesz loyalists.<sup>141</sup>

## 26. Any other relevant measures to prevent corruption in public and private sector

**Poor system of political finance, including the lack of transparency and accountability is one of the main origins of corruption in Hungary.** The most important official tranche of political parties' revenues come from the central budget, whereas laws in place formally prohibit all forms of corporate contributions and donations from non-Hungarian individuals. However, political parties are not expected to give detailed accounts on their incomes and expenses, and the SAO fails to control if legal requirements are respected (*see Section 19.*).

The Campaign Finance Act (CFA)<sup>142</sup> in place since 2014 covers only national parliamentary elections, thus opening the door to corruption in municipal and European Parliamentary election campaigns. The CFA provides for state subsidies to parties in support of their national parliamentary election campaigns between the range of EUR 500,000 and EUR 2 million, depending on the number of parties' candidates. These direct funds paired with vaguely defined and underenforced rules on reimbursement and on nomination of candidates resulted in the **emergence of fake parties**. This is exemplified by the fact that the 13 fake parties which ran at the 2018 elections failed to present a credible financial report on

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<sup>136</sup> See: <https://www.direkt36.hu/a-kormany-dicsekedett-a-legeztetogepek-vasarlasaval-megis-ok-kotottek-a-legrosszabb-uzletet-kinaval-az-egesz-eu-bol/>.

<sup>137</sup> See: <https://www.valaszonline.hu/2020/09/04/vereb-balazs-rahoi-zsuzsanna-fourcardinal-legeztetogepl/>.

<sup>138</sup> Details in possession of Transparency International Hungary. See also:

[https://hvg.hu/gazdasag/20210203\\_A\\_KKM\\_eddig\\_nem\\_adott\\_el\\_egy\\_legeztetogepeket\\_sem](https://hvg.hu/gazdasag/20210203_A_KKM_eddig_nem_adott_el_egy_legeztetogepeket_sem).

<sup>139</sup> See: <https://telex.hu/belfold/2021/01/15/nagyon-szinvonalas-megis-kezd-kinos-lenni-hogy-oda-tartoztam-a-kormanykozeli-elitkepzobelulrol>.

<sup>140</sup> See e.g.: <https://balkaninsight.com/2021/02/23/fidesz-makes-hungarys-universities-an-offer-they-cant-refuse/>.

<sup>141</sup> For an overview on the intensification of cronyism see József Péter Martin's op-ed on Balkan Insight: <https://balkaninsight.com/2021/02/24/amid-the-pandemic-its-now-corruption-that-performs-better-in-hungary/>, and Bálint Mikola's piece on TI Secretariat's blog: <https://www.transparency.org/en/blog/hungarys-rule-of-law-backsliding-continues-amidst-the-covid-19-crisis>.

<sup>142</sup> Act LXXXVII of 2013

their campaign spending and have been reluctant to reimburse the public funds they received. These parties received approximately HUF 3 billion in total from public funds, a share of which was deferred to them by their single member district candidates. Information regarding the use of the latter disclosed by the SAO in September 2020 after a lengthy FOI court case revealed that at least HUF 400 million were spent by parties on dubious purposes, including the procurement of unnecessary services from entities with conflicts of interest or irrelevant backgrounds.<sup>143</sup>

Discrepancies of party financing and lack of available data on the itemized expenditure in election campaigns remains a source of abuse by political parties. Detailed data on expenditure are generally only available through FOI requests. The SAO audits only those parties whose list receive at least 1 percent of the votes, however, most of the abuse occurs below this threshold, especially in case of fake parties. Moreover, expenditure of GONGOs, who provide third party campaigning, as well as that of state organs who promote government propaganda is neither regulated, nor monitored. On top of that **municipal and European Parliament election campaigns are entirely unregulated**, which opens the door wide to corruption and misuse.

Although the tools to prevent such misuse of public funds would be relatively straightforward, **the Government used the pretext of sanctioning fake parties as an excuse to change the electoral law amid the COVID-19 pandemic instead of taking appropriate action to install more rigorous monitoring mechanisms on how campaign funds are spent.** The electoral rules were changed unilaterally in December 2020, in a way that substantially elevates barriers to contest the elections, raising the minimum number of candidates required to have a national party list from 27 to 71.<sup>144</sup> The amendment is anticipated to force opposition parties to form a joint national party list, as there does not seem to be any other arithmetically viable solution to distribute the 106 single member districts among them. Therefore, the amendment is expected to restrict the room for manoeuvre of all opposition parties. Moreover, regular state funding for incumbent parliamentary parties was halved, which incommensurately impacts opposition parties, being financially much more exposed than the ruling party.

## C. REPRESSIVE MEASURES

### 27. Criminalisation of corruption and related offences

K-Monitor and Transparency International Hungary have long been advocating for the criminalisation of abuses related to asset and interest declarations on behalf of public officials and users of public funds. For years now, the Government has ignored recommendations and has been tolerating the emergence of grievous malpractice in the interest disclosure scene, which remains a pervasive risk of corruption.

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<sup>143</sup> For details, see this report by Transparency International Hungary: [https://transparency.hu/wp-content/uploads/2020/12/kamupartok\\_elszamolasa\\_tanulmany\\_2020.pdf](https://transparency.hu/wp-content/uploads/2020/12/kamupartok_elszamolasa_tanulmany_2020.pdf).

<sup>144</sup> For the opinion of Transparency International Hungary, see: <https://korrucio.hvgblog.hu/2020/11/11/ismet-mellelo-az-allam-a-kamupartok-megfogasaban/>.

The most widespread form of petty corruption in Hungary is the phenomenon of **informal payments in the healthcare system** (so-called “gratitude payment”), a clear-cut manifestation of corruption with a corrosive impact on the integrity and the performance of the healthcare system. The Government, which has for long turned a blind eye on this issue, recently endeavoured to take action. Consequently, **an amendment to the Criminal Code foresees custodial sanctions to those involved in facilitation payments**. Compliance with the new regulations will be monitored by a specialized section of the National Protective Service, with 50 employees and with subsections in cities where the largest healthcare service providers operate.

Inspections by the new department started on 1 March 2021 and focus on medical professionals working in public healthcare institutions, while patients will not be subject to such tests. Beyond introducing deterrent criminal sanctions, the Government, following negotiations with the Hungarian Medical Chamber, devised a system to significantly raise the salaries of medical professionals. Although this reform is welcomed by K-Monitor and Transparency International Hungary, it is highly plausible that the transition from widespread informal payments to a categorical ban will not be smooth. One reason for this is that the opportunity to choose a preferred doctor and the informal payments paid in return have been nearly universal in obstetric interventions and maternity care. According to expert opinions, they may persist through an expected loophole in the regulation which would provide the opportunity to offer additional pecuniary compensation to obstetricians within a contractual framework, which condones facilitation payments in maternity care. A related survey by K-Monitor revealed that informal payments were offered in 68 percent of all childbirths, and the average amount paid was HUF 111,000 (slightly above EUR 300).<sup>145</sup> Therefore, it might take longer than expected to change popular attitudes towards informal payments, especially as a representative survey conducted by Transparency International Hungary in 2020 indicates that only 40 percent considered such payments as a form of corruption, while 56 percent found to some extent justifiable that doctors and medical staff accept such benefits.<sup>146</sup>

## **28. Data on investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards the implementation of EU funds**

**1. Accessibility of information relating to the implementation of EU funds is limited** as contracts are not disclosed, neither data on project evaluations, subcontracts. Furthermore, the official database of the Government on EU funds ([palyazat.gov.hu](http://palyazat.gov.hu)) does not allow bulk access to the database or access through an API that would enable easy analysis by media, experts or civil society.

**2. The managing and the auditing authorities involved in monitoring and overseeing the use of EU funds under shared management fail to publish information in relation to**

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<sup>145</sup> See: [https://k.blog.hu/2021/01/02/maternity\\_english](https://k.blog.hu/2021/01/02/maternity_english).

<sup>146</sup> See: Transparency International Hungary, *Public Perceptions of Corruption in Hungary – Opinions and their Main Social Drivers*, 2020, [https://transparency.hu/wp-content/uploads/2020/06/CEU-TI-survey-report\\_final\\_with-cover.pdf](https://transparency.hu/wp-content/uploads/2020/06/CEU-TI-survey-report_final_with-cover.pdf).

**irregularity processes and to sanctions.** It is open to questions if and how efficiently Hungarian authorities map out irregularities occurring in EU-funded projects. Transparency International Hungary has filed numerous lawsuits against managing authorities to obtain information related to irregularity of EU-funded projects, because the authorities denied disclosing irregularity reports. OLAF also refuses to disclose its reports on the projects in question.

3. In case public procurement processes include EU funding, basic information on the EU project is disclosed, as expected by the Public Procurement Act, however databases are not interlinked.

4. The **database on agricultural subsidies under the CAP** is comprehensive and more detailed than in many other Member States. However, it is lacking information on the plots the subsidies are applied for.

5. As regards availability of data on **sanctions imposed for corruption offences**, the Ministry of Interior, charged with the management of statistics on offending, records the number of offences reported and registered, investigations commenced, investigations terminated and indictments for all offences, including corruption and related offences. While this information is not publicly available, it is available on request.

6. Meanwhile, basic data on the **volume of corruption offences** is available in the annual reports of the Prosecutor General, presented in the Parliament. According to the latest report, which relates to 2019, the number of investigations into corruption offences steadily increased since 2017, while the number of cases closed decreased in the same period. The **prosecution service refuses to collect data on high-level crime** on the ground that “high-level crime” is not a distinct criminal category.

7. Court decisions are published in anonymised form, and statistics on criminal convictions are managed by the National Judicial Office, while these are published by the Central Statistical Office. However, publicly available information on criminal convictions is not broken down by the types of offences.

8. The Anti-Money Laundering Act<sup>147</sup> provides for the central register of ultimate beneficial ownership information, however, information contained in this registry is not accessible either publicly or on request, as opposed to the business registry, where data on individual companies is accessible for free (although not as a comprehensive database).

## **29. Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)**

The **impunity of perpetrators of high-level corruption**, which results from partiality in the work of law-enforcement agencies and of the prosecution service, **remains a significant problem.**

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<sup>147</sup> Act LIII of 2017

Beyond the authorities' intentional failure to enforce laws and impose sanctions, immunity regulations of public functionaries also contribute to impunity, as highlighted in our previous report. Immunity not only prevents the interrogation or the apprehension of the persons concerned, but also the application of coercive measures aiming to collect evidence and to prevent continuation of offending (the seizure of property, search of premises, freezing of assets and bank accounts, etc.).

In its Fourth Round Evaluation Report GRECO stressed the importance to ensure that the immunity of parliamentarians does not hamper criminal investigations in respect of Members of Parliament suspected of having committed corruption related offences, as well as the necessity to limit the immunity of judges and of prosecutors to functional immunity.<sup>148</sup> In the subsequently published compliance reports GRECO took note of the lack of progress and reminded that broad immunity enjoyed by judges, prosecutors and parliamentarians can hamper criminal investigations of corruption offences.<sup>149</sup>

The case of Mr. György Simonka is particularly telling. Mr Simonka, an incumbent ruling party MP was brought before justice for subsidy fraud, and related corruption offences. However, the Prosecutor General inexplicably delayed the submission of a motion to waive the immunity of Mr Simonka. Even more disturbingly, Mr Simonka is at large, although he is charged for colluding with and bribing witnesses to abstain from giving a testimony, which is a ground for detention.<sup>150</sup>

Political considerations perceivably outcompete judicial interests in other high profile corruption cases, too, as exemplified not only by the Elios case, where the son-in-law of Prime Minister Viktor Orbán and other stakeholders, have evaded prosecution even though according to OLAF, they embezzled approximately HUF 13 billion (EUR 43 million) public funds with mafia methods, but also by the case related to the "Bridge to the World of Work" project. This latter project, managed by the National Roma Self-Government, which was previously headed by ruling party MP Flórián Farkas, resulted in billions in refunds due to irregularities uncovered by the managing authority. However, the law enforcement agency, which investigates this particular subsidy fraud scheme since 2015 has so far failed to identify any suspect.<sup>151</sup>

### 30. Other

The **Government adopted a new anti-corruption strategy** in July 2020 **without consulting any non-governmental stakeholders**. **Positive elements** of the strategy are the broader

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<sup>148</sup> Group of States against Corruption, *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Evaluation Report – Hungary*, Greco Eval IV Rep (2014) 10E, <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6b9e>

<sup>149</sup> Group of States against Corruption, *Fourth Evaluation Round – Corruption prevention in respect of members of parliament, judges and prosecutors. Second Interim Compliance Report – Hungary*, GrecoRC4(2020)10, <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a062e9>

<sup>150</sup> See: Transparency International Hungary, *The European Public Prosecutor's Office and Hungary – Challenge or Missed Opportunity?*, 2021, [https://transparency.hu/wp-content/uploads/2021/02/europai\\_ugyeszseg\\_eng\\_VEGSO.pdf](https://transparency.hu/wp-content/uploads/2021/02/europai_ugyeszseg_eng_VEGSO.pdf), p. 4.

<sup>151</sup> *Ibid.*, p. 5.

definition of corruption and the recognition of the importance of digitization in public administration and public service integrity development and training. The strategy **does not suggest significant legislative changes**, claiming that legislation in the past decade has established the necessary anti-corruption legal framework. The strategy follows a threefold approach, based on technology (strengthening e-administration, automated decision making), rules (increasing the efficiency of investigations, assessment of corruption risks and legal framework) and values (establishing internal controls in public administration, strengthening integrity measures, improving security and integrity related consciousness within public administration). At the same time key issues also mentioned in this submission are not addressed. Transparency International Hungary criticised the strategy for ignoring risks and deficiencies that surround the public procurement landscape (*see Section 24.*) and political finance (*see Section 26.*), it fails to identify corruption, and it also lacks quantitative indicators to measure progress and impact.<sup>152</sup>

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<sup>152</sup> See e.g.: [https://korrupcio.hvgblog.hu/2020/07/20/szelesebb\\_es\\_szilardabb\\_elkeszult\\_a\\_kormany\\_uj\\_korrupcio\\_ellen\\_i\\_strategiaja/](https://korrupcio.hvgblog.hu/2020/07/20/szelesebb_es_szilardabb_elkeszult_a_kormany_uj_korrupcio_ellen_i_strategiaja/).



## III. MEDIA PLURALISM

### A. MEDIA AUTHORITIES AND BODIES

#### 31. Independence, enforcement powers and adequacy of resources of media regulatory authorities and bodies

The issues raised in our 2020 report still prevail.<sup>153</sup>

The **National Media and Infocommunications Authority** (“NMHH”) is a convergent authority, which handles as regulator of the telecommunications and media markets within a single body. The Media Council is part of the NMHH, it has a distinct competence on the media field. The president of the NMHH is the president of the Media Council at once.

The most significant turn in the history of Hungarian media regulation was when the new media laws extended the supervisory and sanctioning scope of the media authority relating to the printed and online press. All these, including **the uncertainty of the media law situation, the prospects of severe sanctions and a broad legal scope of the authority and last but not least the newly organised media authority can pose a serious threat against the freedom of information through the media.**<sup>154</sup>

The most serious sanction against dailies and online press products is a fine of HUF 25 million. Audiovisual service providers can be punished by the withdrawal of their licence; the highest amount of the fine against these providers is HUF 200 million.

However, the clearest proof of the political bias of the Media Council is its activity on the field of media market regulation, namely the **practice of the radio frequency tenders** and the approval of the media market mergers. The result of the frequency tender practice is a monopolistic national commercial radio owned by the government-affiliated media foundation, the strong domination of a Fidesz-near radio network at the local radio market

<sup>153</sup> *Contributions of Hungarian NGOs to the European Commission’s Rule of Law Report*, May 2020, [https://mertek.eu/wp-content/uploads/2020/05/HUN\\_NGO\\_contribution\\_EC\\_RoL\\_Report\\_2020.pdf](https://mertek.eu/wp-content/uploads/2020/05/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), pp. 33–34.

<sup>154</sup> Mertek Media Monitor, *Hungarian Media Law*, 2015, <https://mertek.eu/wp-content/uploads/2017/04/MertekFuzetek1.pdf>

level, and the liquidation of critical talk radios. The **merger control decisions of the Media Council were essential tools of building up a highly concentrated media market**, where almost 500 media outlets belong to the Fidesz-affiliated media foundation. The Media Council approved all mergers in interest of Fidesz-affiliated businessmen, mostly without any reasoning. Without these decisions, the stopping of the biggest political daily and indirectly the establishing of the Fidesz-affiliated media foundation would have not been possible.<sup>155</sup>

The strong political motivations in the decision-making of the Media Council were obvious in the **Klubrádió case**. Klubrádió was the last government-critical radio station in Hungary and it was forced to shut down broadcasting on its terrestrial frequency. The Media Council rejected the license renewal request of the radio on the grounds it had violated the media law by twice failing to provide information on its programming content. Frequencies of other, more government-friendly stations that had committed similar infractions of the code had been renewed.<sup>156</sup> The tender was suspended because of lawsuits of the rival applicants. Currently the frequency is silent and the Klubrádió is available online.

In 2021, the NMHH's budget is HUF 40.7 billion (ca. EUR 113 million). Parliament approves the Media Council's budget as part of the NMHH's integrated budget. The Media Council's operating budget in 2021 is HUF 641 million (ca. EUR 1.8 million).<sup>157</sup> These amounts are theoretically suitable to guarantee high-level professional work, however, in the case of the NMHH and the Media Council these serve as the price of the loyalty.

### 32. Existence and functions of media councils or other self-regulatory bodies

The Hungarian media law created a **co-regulation system** as an alternative to the Media Council's (media authority) control. The law **authorised media market players to set up self-regulatory bodies** which have the authority – with exclusive jurisdiction – to implement rules relating to media content. The Media Act<sup>158</sup> provides that the Media Council may conclude administrative agreements with the co-regulation bodies. Based on these agreements, the self-regulation body handles a specified range of cases within the official authority's jurisdiction and performs other functions relating to media administration and media policy. In this framework the responsibility of self-regulatory bodies is to decide upon complaints concerning the activities of service providers, to arbitrate disputes between media enterprises and to monitor the activities of providers. The law emphasises that the self-regulation bodies do not exercise official public authority.

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<sup>155</sup> Mertek Media Monitor, *Centralised Media System – Soft Censorship 2018, 2019*, <https://mertek.eu/wp-content/uploads/2020/01/MertekFuzetek18.pdf>

<sup>156</sup> See also: International Press Institute, *Hungary moves to silence last major critical radio broadcaster*, 2 February 2021, <https://ipi.media/hungary-moves-to-silence-last-major-critical-radio-broadcaster/>; *Fresh blow to press freedom in Hungary as Klubrádió forced off the airwaves*, 9 February 2021, <https://www.euronews.com/2021/02/09/hungary-s-first-independent-radio-station-klubradio-to-go-off-air-on-sunday>.

<sup>157</sup> Act CXXXII of 2020 on the Consolidated Budget of the National Media and Infocommunications Authority for 2020

<sup>158</sup> Act CLXXXV of 2010 on Media Services and on the Mass Media

Four organisations have sprung up as part of the co-regulation framework since 2011: the Hungarian Publishers' Association, the Association of Hungarian Content Providers, the Association of Hungarian Electronic Broadcasters and the Advertising Self-Regulation Board.

The **co-regulation system never really took off**, however, and it was obvious that no one felt confident that it would be worthwhile to resort to this forum for settling disputed issues. The **co-regulation procedure is not independent of the authorities**, since based on the underlying legal agreement the Media Council provides the co-regulatory bodies with financial support. **Nor is it independent of the market**, since the market players delegate members to serve on these bodies. Furthermore, the market players can also keep track of who lodged complaints against them. Hence, it was in no one's interest to launch such proceedings. The market players feel that it is better to keep the peace and avoid a scenario where they would have to delve into each other's disputes, and also that it would not be a good idea to alert the authority to problems. Civic organisations and citizens also do not report issues, either because they do not know the system or because they do not want to legitimise a regulatory practice in which the Media Council plays a role.

In assessing the effectiveness of the co-regulatory system, it is very telling that the relevant pages on the websites of the four industry organisations in question are completely blank; at most, the organisations in questions uploaded the underlying agreement with the authority. There is no indication whatsoever that any kind of proceedings have been conducted in recent years.

### 33. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media regulatory authorities and bodies

The situation is unchanged compared to the 2020 report.<sup>159</sup>

**Hungary's Media Act fails to instate adequate safeguards for a pluralistic and autonomous oversight of either commercial or public service media.** The rules governing the election of the president and members to the Media Council, an authority vested with broad regulatory powers, are incapable of barring one-sided political influence from decisions concerning media market management and control over media content. In fact, these rules locked in the majority of ruling-party delegates to the media authority.

The president of the NMHH is appointed upon the proposal the President of the Republic. The president of the NMHH is candidate for the presidency of the Media Council at once. Into this position, he/she must be elected by two thirds of the Parliament. This complicated procedure is, however, purely formal in a case when all participants belong to the same party.

The four members of the Media Council are nominated by an ad hoc parliamentary committee. The Parliament votes on the delegates who were nominated by this ad hoc committee. In the first round of voting, the ad hoc committee needs to nominate the

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<sup>159</sup> *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, May 2020, [https://mertek.eu/wp-content/uploads/2020/05/HUN\\_NGO\\_contribution\\_EC\\_RoL\\_Report\\_2020.pdf](https://mertek.eu/wp-content/uploads/2020/05/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), pp. 34–35.

candidates for Media Council membership unanimously. In the event that the Government and opposition members of the committee fail to unanimously agree on the nominees, the law provides that nominations in the second round only require a two-thirds majority. Since the partisan make-up of the ad hoc committee is proportionally the same as the share of the respective parties in the Parliament, with their two-thirds majority **the governing parties can effectively nominate a slate of candidates that is exclusively made up of their own nominees without including any opposition-delegated candidates.**<sup>160</sup>

That was precisely the goal of the Media Council vote back in 2010, and this is how a **Media Council exclusively made up of members who had been nominated by the governing parties** came into being. The same procedure went on in 2019; the current Media Council members are in their positions until 2028.

From the point of view of media freedom, the nine-year term for which president and members of the Media Council are appointed is problematic. The constitutional mission of these media supervisory agencies is to represent social diversity in their decisions pertaining to the media. Social diversity, however, is not a static fact but a dynamic attribute in constant flux. The **excessively long term of appointment** increases the risk of perpetuating in media-related decisions a momentary stratification of society that will not reflect actual conditions of diversity in the more distant future.

## B. TRANSPARENCY OF MEDIA OWNERSHIP AND GOVERNMENT INTERFERENCE

### 34. The transparent allocation of state advertising (including any rules regulating the matter); other safeguards against state / political interference

The issues raised in our 2020 report<sup>161</sup> still prevail, but the situation is even worse today.

It is well documented that **state advertisers favour individual companies and they thereby distort competition.** While before 2010, when the Socialist government was in power, state advertising spending was relatively balanced, and there wasn't any media outlet that operated solely based on state advertising, after 2010 this has changed: it is apparent that under the Fidesz-government state advertising was immediately diverted to companies acquired by investors with close ties to the Government. What is even more striking is that **independent competitors are clearly being avoided by state advertisers, thereby rendering fair competition impossible.**

There have been two distinct advertising strategy periods since Fidesz entered into office in 2010. Between 2010 and 2014, the overall volume of state advertising spending was not much higher than in the foregoing period, but it was much more centralised than previously. This was the time when almost all state advertising was funnelled to the well-known media

<sup>160</sup> Act CLXXXV of 2010 on Media Services and Mass Media

<sup>161</sup> *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, May 2020, [https://mertek.eu/wp-content/uploads/2020/05/HUN\\_NGO\\_contribution\\_EC\\_RoL\\_Report\\_2020.pdf](https://mertek.eu/wp-content/uploads/2020/05/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), pp. 35–36.

oligarch's, Lajos Simicska's media companies. During the 2014–2018 term there was a massive surge in the total amount of spending. Throughout this period, Simicska was completely squeezed out of the Hungarian media market. What has not changed, however, is that state advertising continues to be published in government-friendly media.<sup>162</sup> The surge in the advertising volume owes primarily to the Government's successive and continuously ongoing campaigns. The billions spent on various state communication campaigns mostly end up with media whose owners have close ties to the Government and which uncritically relay government propaganda.

State sources finance politically favoured media outlets and it helped several pro-government media enterprises to flourish, or at least survive the economically difficult years.<sup>163</sup> These media companies are unquestionably loyal to the government: the editorial practice has to serve the interest of the ruling parties if they want to preserve their most important revenue source. All this happens in a period when the entire media market is struggling with problems concerning its business model: the distortion that has emerged in the Hungarian market has the result that pro-government players in the media market are relatively sheltered against the challenges of market competition, while the independent players in turn become extremely vulnerable with respect to their competitive position in the market.<sup>164</sup>

**The market distortion is even stronger than before, based on the 2020 state advertising data.** Analysis based on the list prices proved that in 2020, 86% of state advertising spending went to media companies that are clearly owned by pro-government entities or businessmen.<sup>165</sup>

### 35. Rules governing transparency of media ownership and public availability of media ownership

The situation is basically the same as reported in 2020,<sup>166</sup> but there are some further developments.

There were several changes in the media ownership structure in the last decade. Until 2015 an old friend of the Prime Minister, one of the wealthiest entrepreneurs in Hungary, Lajos Simicska, was the owner of the largest media empire in Hungary, and the oligarchic system appeared to function reliably. After a serious conflict between Orbán and Simicska in February 2015, Orbán diversified the pro-government media empire. The new owners were well-known businessmen or political figures with close ties to the ruling parties.

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<sup>162</sup> For data visualization about state advertising from 2006, see: <https://mertek.atlatszo.hu/allamihirdetesek/>.

<sup>163</sup> Mertek Media Monitor and its partners turned to the European Commission with a state aid complaint (see: <https://mertek.eu/en/2019/01/29/state-advertising-spending-in-hungary-an-unlawful-form-of-state-aid/>).

<sup>164</sup> Attila BÁTORFY – Ágnes URBÁN, *State advertising as an instrument of transformation of the media market in Hungary*, *East European Politics*, 2020, 36:1, pp. 44–65, DOI: [10.1080/21599165.2019.1662398](https://doi.org/10.1080/21599165.2019.1662398)

<sup>165</sup> See the 2021 update of the state advertising complaint sent to the European Commission here:

<https://mertek.eu/en/2020/09/07/ec-complaints/>.

<sup>166</sup> *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, May 2020, [https://mertek.eu/wp-content/uploads/2020/05/HUN\\_NGO\\_contribution\\_EC\\_RoL\\_Report\\_2020.pdf](https://mertek.eu/wp-content/uploads/2020/05/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), pp. 37–38.

The media system radically changed at the end of November 2018. **The private owners of 476 government-friendly media outlets “donated” their entire asset to a foundation, called Central European Press and Media Foundation (KESMA).** Its board members have strong ties to ruling Fidesz party. After the years of pseudo diversification, the media system became concentrated again.<sup>167</sup> On 5 December 2018 Prime Minister Viktor Orbán signed a **decree declaring the merger to be an event of strategic national importance** that serves “the public interest of saving print media” **and exempting it therefore from all possible national scrutiny** of the Hungarian Competition Authority, and by extension of the Media Council.

The most significant event in the Hungarian media market in 2020 was the **change in the ownership of Hungary’s leading online news site, Index.** The backstory is very complex, but at the same time it is also a highly illustrative process, as pro-government forces gradually suffocated the prominent independent news site and took full control once the existing team had resigned in protest.<sup>168</sup>

Just right after the Index scandal, the biggest independent Hungarian media owner, Zoltan Varga had to face with character assassination in the pro-government media.<sup>169</sup>

As also pointed out by the EC Rule of Law Report in 2020, there are **serious transparency problems around the public service media.**<sup>170</sup> The Hungarian public media operate in the framework of a very complex and confusing institutional structure. The Media Service Support and Asset Management Fund (MTVA in Hungarian) performs practically all of the public media’s content acquisition and show production and it is also the legal employer of the public service media employees. At the same time, however, the editorial responsibility for the content lies with another organisation, the Duna Médiaszolgáltató Nonprofit Zrt. So there is the Duna, which is more or less appropriately subject to external control mechanisms. And there is the MTVA, which disposes of all these taxpayer funds without being subject to any meaningful outside control and no one has a clue of where and how it spends the money.

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<sup>167</sup> Mertek Media Monitor, *Centralised Media System – Soft Censorship 2018, 2019*, <https://mertek.eu/wp-content/uploads/2020/01/MertekFuzetek18.pdf>

<sup>168</sup> See also: IPI Blog, *Index board resigns: Another blow to Hungary’s media*, 24 July 2020, <https://ipi.media/index-board-resigns-another-blow-to-hungarys-media/>

<sup>169</sup> See also: Politico, *Viktor Orbán bent on muzzling independent press, Hungarian media mogul warns*, 25 July 2020, <https://www.politico.eu/article/viktor-orban-bent-on-muzzling-independent-press-hungarian-media-mogul-warns-index-24-hu-news-sites/>

<sup>170</sup> Mertek Media Monitor and its partners turned to the European Commission with a state aid complaint (see: <https://mertek.eu/en/2019/01/09/funding-for-public-service-media-in-hungary-a-form-of-unlawful-state-aid/>).

### 36. Rules and practices guaranteeing journalist's independence and safety

All concerns around the topic raised in our contribution of 2020 remain relevant.<sup>171</sup>

1. Editorial and journalistic independence is declared by the Act CIV of 2010 on the Freedom of the Press and the Fundamental Rules of Media Content<sup>172</sup> but **the safeguards provided by the legal framework are insufficient**. The insufficient nature of these guarantees becomes clearly visible when it comes to the public service media. **Limitation of editorial freedom is present in the public service media** where new forms of political pressure were revealed: censorship is an existing phenomenon, as well as direct intervention to journalistic work in form of instructions (or the need of prior authorisation) given by editors regarding the content of politically sensitive topics.<sup>173</sup> Existential threats imposed by a lead editor was also reported from the public service media<sup>174</sup> – the latter case was not examined by the NMHH on the merits; the authority claimed that it has no competence in the case.<sup>175</sup>

2. Independent media outlets are still hindered by various tools utilized by the Government from carrying out their duty. This particularly affects them amid the coronavirus crisis. The Hungarian Civil Liberties Union (HCLU) conducted researches among journalists of independent media outlets in 2019,<sup>176</sup> 2020<sup>177</sup> and in 2021 (the results of the most recent research will be published by the end of April 2021). The researches revealed **systemic obstruction of the work of the independent media by the Government in the form of ignoring press inquiries, open rejection, physical restrictions applied to journalists, discreditation, stigmatization, and intimidation of their sources**.

Centralisation of state institutions, the lack of offline press conferences, ignoring the press inquiries<sup>178</sup> and intimidation of sources leads to withholding information from the press related to key sectors like healthcare or education, which results in the lack of information about the pandemic. It is notable that online press conferences held by the Government do not offer any kind of interactivity. Typically, journalists have to send their questions in advance, and officials – as a result of arbitrary selection – decide which question will be

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<sup>171</sup> *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, May 2020, [https://tasz.hu/a/files/HUN\\_NGO\\_contribution\\_EC\\_RoL\\_Report\\_2020.pdf](https://tasz.hu/a/files/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), pp. 38–39.

<sup>172</sup> Article 4 (2)

<sup>173</sup> See e.g.: <https://www.szabadeuropa.hu/a/origotol-kell-atvenni-igy-mukodik-a-cenzura-az-mti-nel-mtva-bende-balazs/30978656.html>.

<sup>174</sup> See e.g.: <https://www.szabadeuropa.hu/a/szerkesztoi-utasitas-a-koztevenel-ebben-az-intezmenyben-nem-az-ellenzeki-osszefogast-tamogatjak-mtva-fidesz/30940923.html>.

<sup>175</sup> See e.g.: <https://www.szabadeuropa.hu/a/mediatanacs-nmhh-vizsgalat-karas-monika-mtva-hangfelvetel/30989934.html>.

<sup>176</sup> Hungarian Civil Liberties Union, "The minister and the barkeep are all that's left in the public sphere" – *Research on barriers to Hungarian journalism*, 2020, [https://tasz.hu/a/files/press\\_research.pdf](https://tasz.hu/a/files/press_research.pdf)

<sup>177</sup> Hungarian Civil Liberties Union, *Research on the obstruction of the work of journalists during the coronavirus pandemic in Hungary*, 15 April 2020, [https://tasz.hu/a/files/coronavirus\\_press\\_research.pdf](https://tasz.hu/a/files/coronavirus_press_research.pdf)

<sup>178</sup> See e.g.: <https://telex.hu/belfold/2021/01/15/hiaba-kerdezzuk-oket-alig-valaszolnak-a-miniszteriumok>.

answered. Questions of (government-)critical press organs systemically remain unanswered.<sup>179</sup>

Journalists in Hungary often face physical restrictions when it comes to reporting. It is especially problematic in the Parliament building, which has a crucial importance from the perspective of democratic accountability. In May 2020 the ECtHR decided in the favour of the applicants in the case *Mándli and Others v. Hungary*, where journalists who were expelled from the Parliament building initiated a procedure against the measure.<sup>180</sup> Despite this decision, the regulations restricting the presence of the press in the building have not changed.<sup>181</sup> The lack of live press conferences during the pandemic can be also considered as a form of physical restriction.

### 37. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists

1. There is still **no dedicated law enforcement capacity to prevent or investigate attacks on journalists**, and neither criminal law nor law enforcement practice treats journalists as a group that requires enhanced protection.<sup>182</sup>

2. **The actions of the authorities are still unsatisfactory with regards to attacks on journalists.** An example for this is the case of Júlia Halász, a photojournalist of 444.hu (a news portal) who attended a campaign event of the governing party in 2018. As she was taking photographs of the event, she was asked to leave on grounds that only registered journalists were allowed to record the event. Upon her request for information, she was introduced to the organizer, László Szabó, a politician and a member of the ruling party, who told her she may stay but may not record the event. She left her camera stand in its place and did not make any video footage, but as she saw others taking photos with their mobile phones, she took some pictures. Ms. Halász left the room where the forum took place as she had to make a call. On her way back to the venue, the politician approached her and alleged that she had been videorecording the event. He closed the door of the conference room, and told her she was not allowed to return. Ms. Halász told him she still has her camera in the room. At this point Ms. Halász' phone landed in the politician's hands, who held on to it despite her repeated calls to return it to her. She was told that she could only get her phone back if she deleted the photos of the event. She was escorted (by grabbing her hand and pushed from the back) outside the building. Finally, she was able to call the police from the reception desk. The politician finally left Ms. Halász' phone at the reception desk, with several photos deleted on it. Surveillance cameras clearly show that the politician was using the phone.

Ms. Halász reported on the events in an article on 444.hu, and filed a criminal complaint. The politician also filed a criminal complaint, alleging that Ms. Halász' article contains libellous

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<sup>179</sup> See e.g.: <https://hang.hu/belfold/2020/11/21/relevans-kerdesekre-nem-valaszol-de-a-kezkremekrol-tanacsokat-oszt-muller-cecilia-videoval/>, <https://telex.hu/koronavirus/2020/12/18/operativ-torz-sajtotajekoztato-vicc>.

<sup>180</sup> *Mándli and Others v. Hungary* (Application no. 63164/16, Judgment of 26 May 2020)

<sup>181</sup> See: [http://www.os.mti.hu/hirek/153465/az\\_orszaggyules\\_sajtoirodajanak\\_kozlemenye-3\\_resz](http://www.os.mti.hu/hirek/153465/az_orszaggyules_sajtoirodajanak_kozlemenye-3_resz).

<sup>182</sup> *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, May 2020, [https://tasz.hu/a/files/HUN\\_NGO\\_contribution\\_EC\\_RoL\\_Report\\_2020.pdf](https://tasz.hu/a/files/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), p. 39.

factual statements. The police closed the case based on Ms. Halász' complaint, finding no criminal act had taken place. The prosecution services refused to order the re-opening of the case file upon complaint. However, the criminal case in the wake of the politician's complaint proceeded. Ms. Halász was prosecuted for defamation, and in November 2020, she was convicted. The court ruled that although a defence of truth is available against charges of criminal defamation, she could not be acquitted as she could not prove beyond reasonable doubt that the politician forcefully took her phone against her will, and physically assaulted her as she was escorted down the stairs. The court acknowledged that the politician's account of how the phone landed in his hands was "unrealistic", but it found that insufficient to prove the truth of Ms. Halász' claims. She has appealed against the conviction; the case is pending before the appellate court. Government-friendly media sites widely reported on the conviction, calling her a proven liar.<sup>183</sup>

### 38. Access to information and public documents

1. Most concerns regarding access to information and public documents raised in the 2020 report (like **withholding politically sensitive public interest data even after the final binding judgment of the court**; in some cases, the necessity of step-up by bailiff; **misuse of labour-related costs associated with the servicing of FOI requests**) are still prevalent in Hungary.<sup>184</sup>

**Access to information regarding the pandemic is still strongly restricted for journalists, citizens and politicians as well**, which is further hampered by the controversial and less proactive communication of the government. This latter includes a strongly controversial communication regarding specific anti-epidemic measures, decisions and legislation.<sup>185</sup>

The government issued a **decree** during the state of danger in May 2020 that **authorises data managers to fulfil FOI requests in 45 days** (which deadline can be extended with further 45 days) if satisfying the FOI request within the deadline usually applicable would jeopardize the fulfilment of the public body's public services related to the state of danger. Within normal circumstances, FOI requests must be fulfilled in 15 days (which deadline can be extended with further 15 days). Extension of this deadline to 45 days causes a serious infringement of freedom of information and indirectly infringes freedom of expression as the data provided after 45 (or 90 days) loses its relevance. This particularly hinders journalistic work and endangers the control functions carried out by opposition politicians. MP Bernadett Szél challenged the constitutionality of this measure, but the Constitutional Court did not examine the complaint on the merits arguing that it would be unnecessary as the decree was not in effect at the moment the decision was made.<sup>186</sup> In November 2020 the state of danger

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<sup>183</sup> See e.g.: <https://magyarnemzet.hu/belfold/elvarhato-a-bocsanakeres-a-444-hu-tol-8976806/>, <https://magyarnemzet.hu/belfold/elvarhato-a-bocsanakeres-a-444-hu-tol-8976806/>.

<sup>184</sup> *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, May 2020, [https://tasz.hu/a/files/HUN\\_NGO\\_contribution\\_EC\\_RoL\\_Report\\_2020.pdf](https://tasz.hu/a/files/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), pp. 40–41.

<sup>185</sup> Hungarian Civil Liberties Union – K-Monitor, *Corruption Monitor Report*, October 2020, <https://tasz.hu/a/files/korrupciofigyelo-elso-jelentes.pdf>, pp. 4–6; Hungarian Civil Liberties Union – K-Monitor: *Corruption Monitor Report*, December 2020, [https://tasz.hu/a/img/Korrupciofigyelo\\_masodik\\_jelentes.pdf](https://tasz.hu/a/img/Korrupciofigyelo_masodik_jelentes.pdf), pp. 24–26 and 29–31.; [https://hvg.hu/itthon/20201211\\_vedooltas\\_regisztracio\\_kormanyzati\\_kommunikacio](https://hvg.hu/itthon/20201211_vedooltas_regisztracio_kormanyzati_kommunikacio); [https://hvg.hu/itthon/20210211\\_Gulyas\\_Ellentmondas\\_eseten\\_Orbannak\\_van\\_igaza](https://hvg.hu/itthon/20210211_Gulyas_Ellentmondas_eseten_Orbannak_van_igaza)

<sup>186</sup> Decision no. 3413/2020. (XI. 26.) AB

was introduced again and the government issued a decree with the same content, which was also challenged by MP Szél in January 2021. The case is pending before the Constitutional Court.

2. The **9<sup>th</sup> Amendment of the Fundamental Law**, adopted in December 2020, **restricted the notion of public funds** which causes an infringement of freedom of information and freedom of expression. Since that, a court rejected the suit of a journalist in a FOI case based on this amendment.

3. The **guarantees of impartiality of the leader of the Hungarian National Authority for Data Protection and Freedom of Information (NAIH) are still weak** as the president of the NAIH is appointed upon the proposal of the Prime Minister.<sup>187</sup> There are concerns about the impartiality of the current president of the NAIH based on some of his public statements and his reluctance to establish violations committed by the state.<sup>188</sup> Furthermore, the Court of Justice of the European Union (CJEU) found that the premature dismissal of the Data Protection Supervisor in 2012, Hungary has infringed EU law.<sup>189</sup> After establishing NAIH, the current president was appointed to the leader position. In October 2020 the president of the NAIH was appointed for another 9 years.<sup>190</sup>

### 39. Lawsuits and convictions against journalists (incl. defamation cases) and safeguards against abuse

Some actors (both state and private) have the intention to silence criticism and investigative journalism via trials and other legal procedures as the psychological and pecuniary cost of these procedures can create a chilling effect in the media.

It is notable that in the previous year **the number of lawsuits and procedures based on alleged violation of the GDPR rules are increasing** – see the case of András Dezső in our contribution of 2020.<sup>191</sup>

The most notable procedure-series is related to the Hungarian edition of the Forbes magazine and the weekly named Magyar Narancs, which papers were sued several times by high-end entrepreneurs' families who also received state subsidies. Articles reported or attempted to report on the families' current wealth and the history of how they accumulated their wealth, respectively. In one occasion, the plaintiffs reached the recall of the magazine in question with a preliminary injunction.<sup>192</sup> Further procedures – launched by the same plaintiffs – are pending before courts and authorities.<sup>193</sup> This novel interpretation of GDPR

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<sup>187</sup> Act CXII of 2011 on Informational Self-Determination and Freedom of Information, Article 40 (2)

<sup>188</sup> See e.g.: [https://azonnali.hu/cikk/20200401\\_kemkedhet-e-utanunk-az-allam-a-koronavirus-jarvanyra-hivatkozva](https://azonnali.hu/cikk/20200401_kemkedhet-e-utanunk-az-allam-a-koronavirus-jarvanyra-hivatkozva).

<sup>189</sup> *European Commission v Hungary*, Case C-288/12, Judgment of the Court (Grand Chamber), 8 April 2014, ECLI identifier: ECLI:EU:C:2014:237. See also: [https://ec.europa.eu/commission/presscorner/detail/en/CJE\\_14\\_53](https://ec.europa.eu/commission/presscorner/detail/en/CJE_14_53).

<sup>190</sup> See: <https://naih.hu/hirek/267-ujabb-9-evre-peterfalvi-attilat-neveztek-ki-a-hatosag-elnoekenek>.

<sup>191</sup> *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, May 2020, [https://tasz.hu/a/files/HUN\\_NGO\\_contribution\\_EC\\_RoL\\_Report\\_2020.pdf](https://tasz.hu/a/files/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), p. 39.

<sup>192</sup> See: <https://ipi.media/court-orders-recall-of-forbes-hungary-following-gdpr-complaint/>

<sup>193</sup> See: <https://magyarnarancs.hu/belpol/avalon-sotet-lovagjai-133995>.

rules seriously endangers the freedom of expression, especially because high amounts of fines can be imposed in case of breaching the rules which has a serious chilling effect.

**Press rectification cases** are often initiated by some government-linked tycoons,<sup>194</sup> politicians<sup>195</sup> and authorities against independent media outlets. **Civil law and criminal defamation procedures** regarding journalists are also prevalent. A series of SLAPP-type procedures, which was initiated against the news portal named Magyar Hang should be also highlighted.<sup>196</sup> In a series of articles, the portal reported on corruption issues that have emerged in a social care home operating in the countryside. The care home and its director and the heads of the regional and national institutions that maintain care homes initiated seven press rectification procedures against Magyar Hang. Criminal defamation procedures and a civil law lawsuit have also been initiated. All the seven press rectification procedures have ended by this time with the final binding decisions of the courts and Magyar Hang won all the cases. The criminal procedures also ended because of the withdrawal of accusations. However, a civil law lawsuit that aims pecuniary compensation based on alleged defamation is still in ongoing status.

Átlátszó.hu, a major investigative portal acquired data via FOI request from the courts about the number and outcome of press rectification trials which took place in 2020 per media outlets. Data shows that in the overwhelming majority of the cases independent media outlets won the rectification trials. Out of 65 lost trials, only four were related to independent media outlets, which means that more than 93% of lost trials were related to government-friendly media outlets.<sup>197</sup> This data clearly shows that the majority of rectification cases against independent media is unjustified and is a tool to reach the above-mentioned goals.

#### 40. Other

1. An **amendment of the Criminal Code** in spring 2020 affected the freedom of expression and journalistic work. According to the amendment, **not only false statements which may disturb public order are considered criminal offences but also those capable of hindering or thwarting the effectiveness of the protection** (e.g. against the virus). It also strengthens penal sanctions as the offence is now punishable by imprisonment for up to five years instead of three. The amendment can be used only in a special legal order. According to HCLU's researches which were conducted in 2020<sup>198</sup> and in 2021, the amendment affects the majority of journalists. Effects vary from strong fear to the necessity of extra fact checking and "letting certain stories go".

2. An **amendment of the Criminal Code** in summer 2020 basically **prohibited using drones** for the purpose of investigative journalism with imposing criminal sanctions.<sup>199</sup> This very

<sup>194</sup> See e.g.: <https://media1.hu/2020/05/11/jogerosen-pert-vesztett-meszaros-lorinc-a-valasz-online-ellen/>.

<sup>195</sup> See e.g.: <https://media1.hu/2020/11/18/jogerosen-is-pert-nyert-a-24-hu-simonka-gyorggyel-szemben/>.

<sup>196</sup> See: <https://hang.hu/belfold/2020/03/24/sorra-bukta-a-pereket-az-szgyf-es-a-vesztegetesi-ugybe-keveredett-igazgato/>. Note that not all the trials are mentioned in the article.

<sup>197</sup> See: <https://adatujsgiras.atlatszo.hu/2020/02/10/61-helyreigazitasi-pert-vesztett-a-kormanyparti-4-et-a-fuggetlen-media-tavaly/>.

<sup>198</sup> Hungarian Civil Liberties Union, *Research on the obstruction of the work of journalists during the coronavirus pandemic in Hungary*, 15 April 2020, [https://tasz.hu/a/files/coronavirus\\_press\\_research.pdf](https://tasz.hu/a/files/coronavirus_press_research.pdf)

<sup>199</sup> See: <https://english.atlatszo.hu/2020/12/22/journalists-might-go-to-prison-from-next-year-for-camera-drone-recordings-of-private-property/>.

amendment was a direct result of Átlátszó's article which presented military-origin vehicles in an estate linked to a government-linked tycoon's company as the journalists used a drone to fly over the objects and videorecord them. Previously, before the amendment entered into force, the journalist was interrogated by the police regarding the article.<sup>200</sup>

3. The Orbán regime was **unwilling to take effective steps against** (primarily Russian and Chinese) **anti-EU authoritarian propaganda built on disinformation** in the period under review. In fact, it aggravated its effects in **certain cases** when **government-controlled media disseminated geopolitical messages in line with Russian and Chinese propaganda** to the Hungarian public. This phenomenon was most prevalent in the case of the coronavirus, which dominated the period under review.

Political Capital and its regional partners evaluated COVID-related disinformation in the Visegrád Group.<sup>201</sup> The most frequent messages were the ones attacking the European Union in line with Russian and Chinese interests. These narratives claimed that Brussels did nothing, did not defend the EU against the virus effectively, or even hindered national protection efforts, while nation-states succeeded in managing the pandemic. Hungarian government-controlled media joined this chorus: it was talking about absent EU help during the first wave and did not disclose information about the EU's decisions to aid Member States, while it visibly praised masks, ventilators and other protective equipment arriving from China. In late 2020 and 2021, the same patterns were applied to vaccines, as the Government's communication efforts promoted eastern jabs over western vaccines, even though the population clearly believes that the former is the least trustworthy. These messages might have increased distrust towards vaccines, albeit unwillingly.

Additionally, **narratives deepening party political divides were also being disseminated by disinformation and propaganda sites**. The Hungarian Government and its opposition were accusing each other of hindering protection efforts. The Government's communication has been doing so ever since the majority of the opposition did not approve granting special powers to the cabinet in spring 2020.<sup>202</sup> Since late 2020, the ruling party has been accusing the opposition of being against vaccination. Parallely, opposition parties are putting the blame on the government for all healthcare-related failures even though the pandemic hit the sector similarly hard in all countries.

Besides mainstream political actors, anti-vax groups have also become extremely active in social media,<sup>203</sup> not only on their own communication surfaces, but in the comment sections of mainstream sites, too. Facebook has removed the pages of virus-sceptic actors. However, this did not put an end to the rise of anti-vax content.<sup>204</sup> At the same time, no meaningful political party or relevant media outlets adopted anti-vaccination views.

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<sup>200</sup> See: <https://english.atlatszo.hu/2021/02/05/prosecutors-office-terminates-investigation-into-camera-drone-recordings-taken-at-oligarchs-estate/>.

<sup>201</sup> *The V4's Coronavirus Infodemic. A window of opportunity to spread distrust in the West*, 19 August 2020, [https://www.politicalcapital.hu/pc-admin/source/documents/OSF\\_PC\\_V4Infodemic\\_COVID\\_20200819.pdf](https://www.politicalcapital.hu/pc-admin/source/documents/OSF_PC_V4Infodemic_COVID_20200819.pdf)

<sup>202</sup> Political Capital, *Abusing the state of emergency*, 25 March 2021, [https://www.politicalcapital.hu/library.php?article\\_read=1&article\\_id=2511](https://www.politicalcapital.hu/library.php?article_read=1&article_id=2511)

<sup>203</sup> Political Capital, *Burjánzanak az álhírek a koronavírus nyomában [Fake news sprawl in the wake of the coronavirus]*, 1 March 2020, [https://www.politicalcapital.hu/hirek.php?article\\_read=1&article\\_id=2502](https://www.politicalcapital.hu/hirek.php?article_read=1&article_id=2502)

<sup>204</sup> Dominik ISTRATE – Péter KREKÓ, *Az oltásellenesség lehet a koronavírus-járvány győztese? [May anti-vax be the winner of the coronavirus epidemic?]*, 25 August 2020, <https://pcblog.atlatszo.hu/2020/08/25/az-oltasellenesség-lehet-a-koronavirus-jarvany-gyoztese/>



## IV. OTHER INSTITUTIONAL ISSUES RELATED TO CHECKS AND BALANCES

### A. THE PROCESS FOR PREPARING AND ENACTING LAWS

#### 41. Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms) and transparency and quality of the legislative process

In 2020, the use of public consultations was not only “diminished”, as raised by the EC’s previous Rule of Law Report,<sup>205</sup> but practically ceased. **Public consultation is obligatory for laws prepared by Ministers**, and shall involve publishing the draft laws online for the public to comment on them.<sup>206</sup> However, the **Government has been systematically failing to comply** with this obligation: according to its website, only 5 draft laws were published for commenting in 2020,<sup>207</sup> while the Parliament adopted 159 Bills last year that were submitted by the Government.<sup>208</sup>

This resulted in **bills undermining the rule of law and violating fundamental rights being submitted to the Parliament without prior public consultation, even though such consultation would have been mandatory.** Examples include the **9<sup>th</sup> Amendment to the Fundamental Law**, adopted in December 2020, which restricted the notion of public funds, undermining the state’s transparency and freedom of information; ensured that public funds channelled into public trust funds are untouchable for future governments; and humiliated and curtailed the rights of LGBTQI people.<sup>209</sup> Act XXX of 2020, which **prohibited legal gender recognition** in violation of the rights of transgender people was also submitted

<sup>205</sup> European Commission, *2020 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, p. 17.

<sup>206</sup> Act CXXXI of 2010 on Public Participation in Preparing Laws, Articles 1 and 8 (1)–(2)

<sup>207</sup> See: <https://2015-2019.kormany.hu/hu/dok?type=302#!DocumentBrowse>, and [here](#).

<sup>208</sup> See the list of adopted Bills [here](#).

<sup>209</sup> See in more detail: Hungarian Helsinki Committee, *Flash report: What happened in the last 48 hours in Hungary and how it affects the rule of law and human rights*, 12 November 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_RoL\\_flash\\_report\\_Hungary\\_12112020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_RoL_flash_report_Hungary_12112020.pdf).

without public consultation;<sup>210</sup> just as Act CLXV of 2020, which effectively **blocks adoptions by LGBTQI people** by establishing that as a main rule, only married couples are allowed to adopt children as of March 2021;<sup>211</sup> and as Act CLXVII of 2020, adopted in December 2020, which **amended election rules** in a way that will affect the 2022 national elections as well.<sup>212</sup> **None of these laws were foreseen by the Government's legislative schedule** submitted to the Parliament.

The governing majority also continued in 2020 the practice of circumventing the rule for mandatory public consultation by getting bills submitted by MPs or parliamentary committees. E.g., the law that abolished the Equal Treatment Authority as of January 2021<sup>213</sup> was submitted by a parliamentary committee. The provision that excludes pecuniary compensation for segregation in violation of both the Fundamental Law and EU law was submitted as an amendment to a tabled bill by a governing party MP.<sup>214</sup>

In November 2020, the judicial self-governing body, the NJC requested the Ministry of Justice to ensure that the NJC can give its opinion on draft laws concerning the judiciary, as the relevant laws currently do not provide this opportunity for the NJC.<sup>215</sup>

The Human Rights Roundtable, often referred to by the Government as the forum for dialogue with NGOs,<sup>216</sup> was left in 2014 by many NGOs in protest to stigmatisation,<sup>217</sup> and does not ensure that human rights concerns are taken into account. E.g. in May 2020, the Government initiated a consultation in writing about the bill aiming to ban legal gender recognition among members of the Roundtable's Working Group on the Rights of LGBT People. NGO members and the Equal Treatment Authority criticized the bill, but their concerns were disregarded.

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<sup>210</sup> For more details, see: <https://en.hatter.hu/news/president-signs>; <https://en.hatter.hu/news/bill-ban-lgr>; *Flash report – Amendment of the provisions on legal recognition of gender*, 30 June 2020, <https://www.equalitylaw.eu/downloads/5168-hungary-amendment-of-the-provisions-on-legal-recognition-of-gender-137-kb>.

<sup>211</sup> See e.g.: Hungarian Helsinki Committee, *Shadow report to the GANHRI Sub-Committee on Accreditation on the activities and independence of the Commissioner for Fundamental Rights of Hungary in light of the requirements set for national human rights institutions*, 18 February 2019, [https://www.helsinki.hu/wp-content/uploads/Assessment\\_NHRI\\_Hungary\\_18022021\\_HHC.pdf](https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_18022021_HHC.pdf), p. 22.

<sup>212</sup> See in more detail: Hungarian Helsinki Committee, *Flash report: What happened in the last 48 hours in Hungary and how it affects the rule of law and human rights*, 12 November 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_RoL\\_flash\\_report\\_Hungary\\_12112020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_RoL_flash_report_Hungary_12112020.pdf), pp. 6–7.

<sup>213</sup> See in more detail the statement of the Hungarian NGO coalition Civilizáció of 26 November 2020 here: [https://www.helsinki.hu/wp-content/uploads/Equal-Treatment-Authority\\_Civilizacio-statement\\_26112020.pdf](https://www.helsinki.hu/wp-content/uploads/Equal-Treatment-Authority_Civilizacio-statement_26112020.pdf).

<sup>214</sup> For more details, see: *Flash report – Draft Bill on mandatory in-kind compensation for segregation in education submitted*, 5 August 2020, <https://www.equalitylaw.eu/downloads/5197-hungary-draft-bill-on-mandatory-in-kind-compensation-for-segregation-in-education-submitted-97-kb>.

<sup>215</sup> See the minutes of the 4 November 2020 meeting of the NJC here: <https://orszagosbiroitanacs.hu/2020-11-04/>.

<sup>216</sup> Cf. for example: *European Rule of Law Mechanism: input from Hungary*, p. 30.

<sup>217</sup> See: <http://www.helsinki.hu/a-helsinki-bizottsag-kilepett-az-emberi-jogi-kerekasztalbol/>, <http://dev.neki.hu/kileptunk-az-emberi-jogi-kerekasztalbol/>, <http://vs.hu/kozelet/osszes/a-neki-az-errc-es-a-tasz-is-lelep-az-emberi-jogi-kerekasztaltol-0918>.

### 43. Regime for constitutional review of laws<sup>218</sup>

1. Since 2010, the governing majority has taken several steps to **extend its political influence over the Constitutional Court (CC) and undermine the role of the CC as a check on political branches**. They changed the previously existing consensual provisions for nominating CC judges, seriously constrained the competence of the court to review the central budget and taxes, and extended the size of the court to pack it and make it into a loyal body supportive of the governing majority's agenda.<sup>219</sup> Since 2010, Fidesz-KDNP with a 2/3 majority in Parliament (for most of the period) has been able to elect all but 4 justices of the CC without any opposition support. The 2011 Fundamental Law abolished "actio popularis"<sup>220</sup> and introduced "full constitutional complaint", so the focus of constitutional scrutiny has shifted from the legislation to the practice of ordinary courts.

2. When the state of danger was announced and emergency laws were first introduced in March 2020, **Hungarian NGOs urged the Government to strengthen constitutional judicial oversight over the executive** by extending the locus standi before the CC and introducing short deadlines for deciding on constitutional complaints filed against emergency measures.<sup>221</sup> The Government, however, failed to react, even though the possibility of parliamentary oversight over the executive also seriously decreased.

During the pandemic, several emergency measures have been brought before the CC, but the **CC has found several complaints inadmissible or terminated the procedure on the ground that the state of danger and therefore the challenged laws were no longer in force**. This happened, for instance, in relation to the new labour law legislation,<sup>222</sup> the rules on designating special economic zones,<sup>223</sup> and to the extended 45-day deadline for fulfilling freedom of information requests.<sup>224</sup> While the CC has examined on the merit the newly introduced form of scaremongering in a special legal order,<sup>225</sup> it also failed to declare it unconstitutional.<sup>226</sup>

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<sup>218</sup> Please note that no response has been provided to the following question of the stakeholder consultation survey: "42. Rules and use of fast-track procedures and emergency procedures".

<sup>219</sup> See for example the following research from 2015: Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Analysis of the performance of Hungary's "One-Party Elected" Constitutional Court Judges between 2011 and 2014, 2015*, [http://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC\\_Analysing\\_CC\\_judges\\_performances\\_2015.pdf](http://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC_Analysing_CC_judges_performances_2015.pdf).

<sup>220</sup> I.e. private individuals cannot challenge the constitutionality of a law in an abstract way anymore, just in individual cases.

<sup>221</sup> Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Unlimited Power is not the Panacea. Assessment of the proposed law to extend the state of emergency and its constitutional preconditions*, 23 March 2020, <https://www.helsinki.hu/en/unlimited-power-is-not-the-panacea/>

<sup>222</sup> Decision no. 3326/2020. (VIII. 5.) AB

<sup>223</sup> Decision no. 3388/2020. (X. 22.) AB

<sup>224</sup> Decision no. 3413/2020. (XI. 26.) AB

<sup>225</sup> See in more detail: Eötvös Károly Institute, *Concentration of Power Salvaged: Coronavirus Stocktaking – Assessing the Crisis Management of the Hungarian Government from the Perspective of Constitutional Law*, 2020, [http://ekint.org/lib/documents/1595421967-EKINT\\_Concentration\\_of\\_Power\\_Salvaged\\_-\\_Coronavirus\\_Stocktaking\\_\(analysis\).pdf](http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_(analysis).pdf), pp. 6-7.

<sup>226</sup> Decision no. 15/2020. (VII. 8.) AB

Beyond the scope of the state of danger, in 2020 the CC **continued to rule in favour of the Government in politically sensitive cases**. The CC held that merging more than 470 Fidesz-friendly media sites and declaring KESMA (Central European Press and Media Foundation) as being of national strategic importance served the public interest and did not raise any constitutional concern in relation to media freedom and pluralism.<sup>227</sup> The CC did not find unconstitutional the 2019 law that abolished the long-established right of MPs to enter public institutions without any prior notification.<sup>228</sup>

In 2018, the CC suspended two cases, one on NGOs' registration as "foreign-funded organisation"<sup>229</sup> and the other on the so-called Lex CEU,<sup>230</sup> by referring to the concept of constitutional dialogue and awaiting for the judgments of the CJEU. While the CJEU decided on these cases respectively in June and October 2020 and found these laws in breach of EU law, the CC has so far failed to continue with these procedures.

#### 44. COVID-19: provide update on significant developments with regard to emergency regimes in the context of the COVID-19 pandemic

- **judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic**
- **oversight by Parliament of emergency regimes and measures in the context of COVID-19 pandemic**
- **measures taken to ensure the continued activity of Parliament (including possible best practices)**

Emergency regimes introduced in Hungary due to the pandemic **granted excessive regulatory powers to the Government without meaningful parliamentary oversight**.<sup>231</sup> The Government declared a state of danger for the first time on 11 March 2020, which was criticized by some experts as lacking proper justification.<sup>232</sup> On 30 March, the Parliament adopted the 1<sup>st</sup> Authorization Act,<sup>233</sup> which **provided the Government with a *carte blanche***

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<sup>227</sup> Decision no. 16/2020. (VII. 8.) AB. For the CC's English statement about the decision, see: <http://hunconcourt.hu/kozlemeny/the-government-decree-classifying-as-of-national-strategic-importance-the-intention-to-extend-the-central-european-press-and-media-foundation-is-not-in-conflict-with-the-fundamental-law>.

<sup>228</sup> Decision no. 3468/2020. (XII. 22.) AB

<sup>229</sup> Decision no. 3198/2018. (VI. 21.) AB

<sup>230</sup> Decision no. 3199/2018. (VI. 21.) AB

<sup>231</sup> For an overview of the emergency regimes introduced in Hungary, see: Hungarian Helsinki Committee, *Overview of Hungary's emergency regimes introduced due to the COVID-19 pandemic*, Update of 24 February 2021, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Hungary\\_emergency\\_measures\\_overview\\_24022021.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Hungary_emergency_measures_overview_24022021.pdf).

<sup>232</sup> See e.g. the statement of the Eötvös Károly Institute: <https://www.facebook.com/eotvoskarolyintezet/posts/2733509436684897>.

<sup>233</sup> Act XII of 2020 on the Containment of the Coronavirus. Available in English at: [http://njt.hu/translated/doc/J2020T0012P\\_20200401\\_FIN.pdf](http://njt.hu/translated/doc/J2020T0012P_20200401_FIN.pdf).

**mandate without any sunset clause** to override any Act of Parliament via decrees.<sup>234</sup> This was at odds with international standards<sup>235</sup> and national law.<sup>236</sup>

The first state of danger was terminated by the Government in June 2020. Parallel to that, **the legal framework for the state of danger and the state of medical crisis were fundamentally altered, and the Government was provided with excessive powers that can be applied with a reference to an epidemic with significantly weakened constitutional safeguards.**<sup>237</sup> The 1<sup>st</sup> Authorization Act's rule that provided a *carte blanche* mandate to the Government by excessively widening the scope of decrees the Government may issue during a state of danger was copied practically verbatim into the Disaster Management Act<sup>238</sup> which details what the Government can do in a state of danger.<sup>239</sup>

The Government ordered a state of medical crisis in June, while the Disaster Management Act's new *carte blanche* provision became automatically applicable when the Government declared a state of danger for the second time on 3 November. This was followed by the coming into force of the 2<sup>nd</sup> **Authorization Act**<sup>240</sup> on 11 November, which differed from the first one in that it **limited its own effect** in 90 days. However, just like the 1<sup>st</sup> Authorization Act, it **did away with a substantive restriction of the Fundamental Law by authorising the Government to extend the force of future, not-yet-adopted decrees** until the end of the state of danger. On 22 February 2021, the Parliament adopted the 3<sup>rd</sup> Authorization Act,<sup>241</sup> which follows the same pattern as the previous one.

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<sup>234</sup> In more detail, see: Hungarian Helsinki Committee, *Background note on Act XII of 2020 on the Containment of the Coronavirus*, 31 March 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_background\\_note\\_Authorization\\_Act\\_31032020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_background_note_Authorization_Act_31032020.pdf).

<sup>235</sup> The Authorization Act was criticized e.g. by the Secretary General of the Council of Europe (<https://www.coe.int/en/web/portal/-/secretary-general-writes-to-victor-orban-regarding-covid-19-state-of-emergency-in-hungary>), the CoE Commissioner for Human Rights (23 March 2020, <https://twitter.com/CommissionerHR/status/1242036471508414464>), the UN High Commissioner for Human Rights (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=25750>), and OSCE/ODIHR (<https://www.osce.org/odihr/449311>).

<sup>236</sup> In more detail, see: Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Unlimited Power is Not the Panacea. Assessment of the proposed law to extend the state of emergency and its constitutional preconditions*, 22 March 2020, <https://www.helsinki.hu/en/unlimited-power-is-not-the-panacea/>.

<sup>237</sup> Act LVIII of 2020 on the Transitional Provisions related to the Termination of the State of Danger and on Epidemiological Preparedness

<sup>238</sup> Act CXXVIII of 2011 on Disaster Management and Amending Certain Related Acts of Parliament

<sup>239</sup> See in more detail: Hungarian Helsinki Committee, *Explanatory note for Bills T/10747 and T/10748 as adopted by the Hungarian Parliament*, 17 June 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_explanatory\\_note\\_Bills\\_T10747\\_and\\_T10748\\_after\\_adoption.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_explanatory_note_Bills_T10747_and_T10748_after_adoption.pdf); Amnesty International Hungary – Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Detailed analysis of the Transitional Act's provisions on special legal order and the state of medical crisis, and on other provisions concerning fundamental rights and the rule of law*, 30 July 2020, [https://www.helsinki.hu/wp-content/uploads/Transitional\\_Act\\_AIHU-EKINT-HCLU-HHC\\_30072020.pdf](https://www.helsinki.hu/wp-content/uploads/Transitional_Act_AIHU-EKINT-HCLU-HHC_30072020.pdf).

<sup>240</sup> Act CIX of 2020 on the Containment of the Second Wave of the Coronavirus Pandemic. Available in English at: [http://njt.hu/translated/doc/J2020T0109P\\_20201111\\_FIN.pdf](http://njt.hu/translated/doc/J2020T0109P_20201111_FIN.pdf).

<sup>241</sup> Act I of 2021 on the Containment of the Coronavirus Pandemic

Certain emergency decrees<sup>242</sup> raised rule of law and/or human rights concerns, such as the one introducing a blanket ban on assemblies, or were in breach of EU law.<sup>243</sup> However, the **swift and effective constitutional review of decrees adopted in a state of danger or in a state of medical crisis is not guaranteed**. In addition, at the time of writing there is both a state of danger and a state of medical crisis in effect, which may lead to uncertainty as to the applicable constitutional standards for reviewing the decrees issued under these regimes.<sup>244</sup>

Even though the justification for the 1<sup>st</sup> Authorization Act was that Parliament may not be able to convene due to the pandemic, the Parliament has remained operational during all states of danger. However, several of the laws it adopted had no relationship whatsoever with the containment of COVID-19, but in turn had a negative effect on human rights and the rule of law,<sup>245</sup> such as the 9<sup>th</sup> Amendment to the Fundamental Law.<sup>246</sup>

## B. INDEPENDENT AUTHORITIES

### 45. Independence, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

1. As also included in the EC's 2020 Rule of Law Report, in 2019, the GANHRI Sub-Committee on Accreditation (SCA) **deferred the review of the Commissioner for Fundamental Rights' (CFR) NHRI status**, because he had "not demonstrate[d] adequate efforts in addressing all human rights issues".<sup>247</sup> In September 2019, a **new CFR** took office, but he has also

<sup>242</sup> For a full list of these decrees, with an English summary of their contents, see the Hungarian Helsinki Committee's COVID-19 Emergency Decrees Tracker [here](#).

<sup>243</sup> Blackstone Chambers, *Hungary and the Rule of Law: The law of the European Union and Hungary's Act XII of 2020 on the containment of coronavirus and Decrees issued thereunder – Opinion*, <https://www.blackstonechambers.com/news/legal-opinion-hungarian-covid-19-legislation/>

<sup>244</sup> Imre VÖRÖS, *Különleges jogrend katonákkal – mindörökké? [Special Legal Order with Soldiers – Forever?]*, [http://ekint.org/lib/documents/1610007006-Publ\\_Voros\\_Imre\\_Kulonleges\\_jogrend\\_katonakkal.pdf](http://ekint.org/lib/documents/1610007006-Publ_Voros_Imre_Kulonleges_jogrend_katonakkal.pdf), pp. 27–30.

<sup>245</sup> For accounts of developments in the first state of danger in Hungary, see: Hungarian Helsinki Committee, *Information Note on Certain Rule of Law Developments in Hungary between May-July 2020*, 13 August 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Rule\\_of\\_Law\\_update\\_May-July2020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Rule_of_Law_update_May-July2020.pdf), pp. 5–11; Eötvös Károly Institute, *Concentration of Power Salvaged: Coronavirus Stocktaking – Assessing the Crisis Management of the Hungarian Government from the Perspective of Constitutional Law*, 2020, [http://ekint.org/lib/documents/1595421967-EKINT\\_Concentration\\_of\\_Power\\_Salvaged\\_-\\_Coronavirus\\_Stocktaking\\_\(analysis\).pdf](http://ekint.org/lib/documents/1595421967-EKINT_Concentration_of_Power_Salvaged_-_Coronavirus_Stocktaking_(analysis).pdf); Political Capital, *Nothing is more permanent than a temporary solution – the state of danger will come to an end in Hungary, but its impact remains*, 28 May 2020, [https://www.politicalcapital.hu/pc-admin/source/documents/pc\\_flash\\_report\\_nothing\\_is\\_more\\_permanent\\_than\\_a\\_temporary\\_solution\\_2020\\_528.pdf](https://www.politicalcapital.hu/pc-admin/source/documents/pc_flash_report_nothing_is_more_permanent_than_a_temporary_solution_2020_528.pdf).

<sup>246</sup> See in more detail: Hungarian Helsinki Committee, *Flash report: What happened in the last 48 hours in Hungary and how it affects the rule of law and human rights*, 12 November 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_RoL\\_flash\\_report\\_Hungary\\_12112020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_RoL_flash_report_Hungary_12112020.pdf).

<sup>247</sup> Global Alliance of National Human Rights Institutions (GANHRI), *Report and Recommendations of the Session of the Sub-Committee on Accreditation (SCA)*, 14–18 October 2019, <https://nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Documents/SCA%20Report%20October%202019%20English.pdf>, pp. 23–26.

**repeatedly failed to act or act adequately in politically sensitive or high-profile cases, and specifically in the areas of concern highlighted by the SCA.** Thus, the CFR failed to address almost any of the systemic issues that result in the extensive rights violations of the **Roma**. He failed to take adequate steps when governing party politicians launched a concerted campaign against a judgment that awarded compensation for school segregation to Roma pupils, and has not stepped up in any way against an unconstitutional new law that excludes pecuniary compensation for segregation, even when 21 NGOs asked him to do so. Despite NGO requests, he has failed to take any steps with regard to most of the rights violations affecting **asylum-seekers and migrants**. He has failed to protect the rights of **LGBTQI people** (e.g. against laws banning legal gender recognition and blocking adoptions, an anti-LGBTQI constitutional amendment, and homophobic statements by politicians), despite calls by NGOs. This coincided with the issue of the rights of LGBTQI people entering the sphere of politically sensitive topics in Hungary. The CFR has not used any of its powers to tackle the old and new violations of the rights of **human rights defenders** either. The CFR's **selection process remained non-transparent** and the **number of his petitions to the Constitutional Court low**, both issues of concern for the SCA.<sup>248</sup>

2. As of 1 January 2021, **Hungary's equality body, the Equal Treatment Authority (ETA) was abolished, and its tasks were transferred to the CFR**, as a result of a bill submitted in November 2020 without any prior public consultation. NGOs warned that abolishing the ETA is not only **unnecessary and unjustified**, but **may also weaken the level of human rights protection**. The ETA was a well-functioning body, and, in contrast to the CFR, it issued important decisions regarding rights violations that can be regarded as politically sensitive, such as rights violations affecting the Roma<sup>249</sup> or LGBTQI people.<sup>250</sup> The NGOs warned that integrating the ETA's tasks into the CFR's office, which has a much wider mandate, will inevitably mean the "downgrading" of the requirement of equal treatment, and that the ETA's quasi-judicial functions and the CFR's methods (e.g. issuing non-binding recommendations) differ significantly and are difficult to reconcile.<sup>251</sup>

3. The **State Audit Office** has been incapable to uncover and sanction questionable spending by political parties, who tend to underreport expenditure. It also denies to measure political parties' declarations on campaign expenses against the reality, leaving systemic overspending unsanctioned.

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<sup>248</sup> Hungarian Helsinki Committee, *Shadow report to the GANHRI Sub-Committee on Accreditation on the activities and independence of the Commissioner for Fundamental Rights of Hungary in light of the requirements set for national human rights institutions*, 18 February 2019, [https://www.helsinki.hu/wp-content/uploads/Assessment\\_NHRI\\_Hungary\\_18022021\\_HHC.pdf](https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_18022021_HHC.pdf)

<sup>249</sup> See e.g.: <https://www.equalitylaw.eu/downloads/3786-hungary-court-upholds-equal-treatment-authority-s-decision-on-failure-to-adequately-plan-and-prepare-the-winding-up-of-segregated-roma-neighbourhood-pdf-66-kb>.

<sup>250</sup> See e.g.: <https://www.equalitylaw.eu/downloads/5086-hungary-budapest-mayor-s-office-unblocks-access-to-lgbtqi-websites-79-kb>.

<sup>251</sup> See the statement of the Hungarian NGO coalition Civilizáció of 26 November 2020 here: [https://www.helsinki.hu/wp-content/uploads/Equal-Treatment-Authority\\_Civilizacio-statement\\_26112020.pdf](https://www.helsinki.hu/wp-content/uploads/Equal-Treatment-Authority_Civilizacio-statement_26112020.pdf).

### 46. Transparency of administrative decisions and sanctions (incl. their publication and rules on collection of related data) and judicial review (incl. scope, suspensive effect)

Making use of its emergency powers and the *carte blanche* authorization it received under the aegis of the pandemic to override any Act of Parliament,<sup>252</sup> the Government issued, on 5 April 2020, Government Decree 85/2020. (IV. 5.), which **removed the right to request an interim measure to suspend the expulsion** of foreigners from Hungary until a court judgment is issued on the appeal against expulsion decisions based on the violation of epidemiological rules or based on the threat to national security. This **rendered appeals against an expulsion decision ineffective as the expulsion could be carried out even while an appeal was pending at court**, which violated EU law.<sup>253</sup>

The above decree followed the cases of several Iranian students who were expelled from Hungary on the grounds that there were ongoing investigations against them for violating the quarantine rules in a hospital, and thus they posed a security risk, including in cases where the students concerned were not even present in the hospital at the time when the alleged violation of the quarantine rules happened. The Iranian students received identical expulsion decisions. Appeals against the expulsion orders were not effective, because the court held that regardless of whether or not the students were innocent and although their guilt was not established in a final and binding court judgment, the court could not overrule the police statement claiming that they posed a security risk, and so upheld the expulsion order of the immigration authority. Altogether 27 Iranian students were expelled and sent back to Iran based on the same reasoning.<sup>254</sup> Based on these cases, it can be concluded that Government Decree 85/2020. (IV. 5.) **disproportionately punished foreigners** whose guilt of the criminal offence of “violating epidemiological rules” has not been established. (It is important to point out that later the criminal proceedings against almost all Iranian students were dropped and they were allowed to return to Hungary.)

The decree was challenged by the Hungarian Helsinki Committee before the EC, which responded in September that it had “strong doubts” regarding the conformity of the decree with EU law, but that it intended to close the case due to the decree not being in force anymore at the time. However, **in December 2020**, Government Decree 570/2020. (XII. 9.) was issued, which **removed the right to suspend the expulsion during an appeal once again** as of 1 January 2021. (Experience shows that the new decree is not only applied in

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<sup>252</sup> See in more detail here: Hungarian Helsinki Committee, *Overview of Hungary’s emergency regimes introduced due to the COVID-19 pandemic*, Update of 24 February 2021, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Hungary\\_emergency\\_measures\\_overview\\_24022021.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Hungary_emergency_measures_overview_24022021.pdf).

<sup>253</sup> An assessment of this government decree being in breach of EU law, prepared by the Blackstone Chambers (London), is available here: <https://www.blackstonechambers.com/news/legal-opinion-hungarian-covid-19-legislation/>, pp. 9–14.

<sup>254</sup> For more information on the case, see: *Submission of the Hungarian Helsinki Committee to the UN Special Rapporteur on contemporary forms of racism, xenophobia and related intolerance*, 12 June 2020, <https://www.helsinki.hu/wp-content/uploads/HHC-submission-to-SR-on-xenophobic-incidents-during-the-COVID-19-epidemic.pdf>, pp. 3–6.

criminal cases involving the violation of epidemiological rules, but in the case of anyone who is expelled on national security grounds, which affects many people under the current system, including asylum-seekers whose appeal is still pending.<sup>255</sup>) Thus, the new decree is also in violation of EU law, and the automatic exclusion of the right to request an interim measure for the suspension of an expulsion decision **violates the European Convention on Human Rights** as well.<sup>256</sup>

#### 47. Implementation by the public administration and State institutions of final court decisions

1. As already reported in 2020,<sup>257</sup> there have been instances of **state bodies resisting the execution of ordinary court decisions**. Furthermore, there are 11 judgments in which the **Constitutional Court** declared that a legislative omission resulted in the violation of the Fundamental Law,<sup>258</sup> but the Parliament has failed to remedy the situation to date, even though the deadline set by the Constitutional Court has already expired. The oldest such deadline expired in 2013; areas range from election ads to access to data.<sup>259</sup>

An example of the governing majority's disrespect for courts is provided by their reaction to a judgment in an education segregation case, whereby a municipality and a state institution were obliged to pay damages to the segregated Roma pupils: as a response, the Parliament adopted a law that prevents courts from granting pecuniary compensation in similar cases. This amendment amounts to indirect discrimination based on ethnicity, and is in violation of EU law.<sup>260</sup>

2. **Hungary's record on the implementation of ECtHR judgments continues to be very poor.** 54 leading cases, that is, 81% of the leading cases from the last 10 years are still pending execution.<sup>261</sup> Non-executed judgments indicate systemic or structural problems concerning

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<sup>255</sup> Cf.: *Flagrant Breach of the Right to Defence in National Security Cases, and the Systematic Denial of the Right to Family Life within the Hungarian Legal System. Updated Information Note by the Hungarian Helsinki Committee (HHC)*, 20 November 2020, <https://www.helsinki.hu/wp-content/uploads/National-Security-Risk.pdf>.

<sup>256</sup> Cf. e.g.: "[G]iven the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised and the importance which it attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and the possibility of suspending the implementation of the measure impugned." (*Jabari v. Turkey*, Application no. 40035/98, Judgment of 11 July 2000, § 50)

<sup>257</sup> See: *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, May 2020, [https://www.helsinki.hu/wp-content/uploads/HUN\\_NGO\\_contribution\\_EC\\_RoL\\_Report\\_2020.pdf](https://www.helsinki.hu/wp-content/uploads/HUN_NGO_contribution_EC_RoL_Report_2020.pdf), pp. 20–21.

<sup>258</sup> Legal basis: Article 46 (1)-(2) of Act CLI of 2011 on the Constitutional Court (available in English at: <http://hunconcourt.hu/act-on-the-cc>).

<sup>259</sup> The full list of the respective Constitutional Court decisions is available here: <https://www.parlament.hu/az-orszagguyeles-donteseire-vonatkozok-alkotmanybirosagi-hatarozatok>.

<sup>260</sup> See e.g.: *Flash report – Draft Bill on mandatory in-kind compensation for segregation in education submitted*, 5 August 2020, <https://www.equalitylaw.eu/downloads/5197-hungary-draft-bill-on-mandatory-in-kind-compensation-for-segregation-in-education-submitted-97-kb>.

<sup>261</sup> Source: European Implementation Network, <https://www.einnetwork.org/hungary-echr>.

e.g. freedom of expression of judges,<sup>262</sup> excessive length of procedures,<sup>263</sup> ill-treatment by official persons,<sup>264</sup> discrimination and segregation of Roma children,<sup>265</sup> unchecked state surveillance,<sup>266</sup> and freedom of religion.<sup>267</sup>

### 3. In 2020, severe problems emerged with the execution of the judgments of the CJEU:

- a) The Parliament has not abolished to date the law stigmatizing NGOs receiving funding from abroad, even though the CJEU found in June 2020 that it violates EU law (see Section 4.8.).<sup>268</sup>
- b) As a reaction to a CJEU judgment in May 2020 that condemned Hungary for the unlawful detention of asylum-seekers in transit zones on the border, Hungary introduced a system in lieu of the transit zones whereby it practically removed itself from the Common European Asylum System. The new rules foresee an arbitrary detention system similar to the transit zone scheme albeit with a 4-week time limit, although the CJEU expressly concluded that automatic detention was a violation of the *acquis*.<sup>269</sup>
- c) On 17 December 2020, the CJEU ruled that the Hungarian law and practice of push-backs violated EU law.<sup>270</sup> However, these collective expulsions continue to take place: at the time of writing, close to 8,000 such measures have been carried out since the CJEU's ruling.<sup>271</sup> Due to the non-compliance with the judgment, Frontex moved to suspend its operations in Hungary.<sup>272</sup>
- d) In October 2020, the CJEU ruled that the so-called Lex CEU, which imposed restrictions on foreign universities (and forced the US branch of the Central European

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<sup>262</sup> *Baka v. Hungary* (Application no. 20261/12, Judgment of 23 June 2016),

<http://hudoc.exec.coe.int/eng?i=004-10859>

<sup>263</sup> *Gazsó v. Hungary* (Application no. 48322/12, Judgment of 16 July 2015),

<http://hudoc.exec.coe.int/eng?i=004-10875>

<sup>264</sup> *Gubacsi v. Hungary* (Application no. 44686/07, Judgment of 28 June 2011),

<http://hudoc.exec.coe.int/eng?i=004-10515>

<sup>265</sup> *Horváth and Kiss v. Hungary* (Application no. 11146/11, Judgment of 29 January 2013),

<http://hudoc.exec.coe.int/eng?i=004-10905>

<sup>266</sup> *Szabó and Vissy v. Hungary* (Application no. 37138/14, Judgment of 12 January 2016),

<http://hudoc.exec.coe.int/eng?i=004-10745>

<sup>267</sup> *Magyar Keresztény Mennonita Egyház and Others v. Hungary* (Applications nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12; Judgment of 8 April 2014),

<http://hudoc.exec.coe.int/eng?i=004-10965>

<sup>268</sup> For more details, see: Hungarian Helsinki Committee, *Hungary: Illiberal Highlights of 2020*, 1 December 2020, [https://www.helsinki.hu/wp-content/uploads/HHC\\_Illiberal\\_Highlights\\_of\\_2020.pdf](https://www.helsinki.hu/wp-content/uploads/HHC_Illiberal_Highlights_of_2020.pdf), pp. 12–13.

<sup>269</sup> See in detail: *Hungary de facto removes itself from the Common European Asylum System (CEAS)*.

*Information update by the Hungarian Helsinki Committee (HHC)*, 12 August 2020, <https://www.helsinki.hu/wp-content/uploads/new-Hungarian-asylum-system-HHC-Aug-2020.pdf>.

<sup>270</sup> *European Commission v Hungary*, Case C-808/18, Judgment of the Court (Grand Chamber), 17 December 2020, ECLI identifier: ECLI:EU:C:2020:1029. See the Hungarian Helsinki Committee's summary of the judgment here: <https://www.helsinki.hu/en/hungarys-legalisation-of-push-backs-in-breach-of-eu-law-according-to-the-court-of-justice-of-the-european-union/>.

<sup>271</sup> See the daily breakdown of the statistical data provided by the police here:

[https://docs.google.com/spreadsheets/d/11jlrJW-Sbla-tCkbfvOJ4x2e2bteCRozHLsofB9g\\_nw/edit#gid=0](https://docs.google.com/spreadsheets/d/11jlrJW-Sbla-tCkbfvOJ4x2e2bteCRozHLsofB9g_nw/edit#gid=0).

<sup>272</sup> For more details, see: *Protecting fundamental rights or shielding fundamental rights violations? Evaluating Frontex's human rights mechanisms related to Hungary. Information Note by the Hungarian Helsinki Committee (HHC)*, 8 January 2021, <https://www.helsinki.hu/wp-content/uploads/Frontex-human-rights-mechanisms.pdf>.

University out of Hungary<sup>273</sup>), violated EU law.<sup>274</sup> However, no legislative steps have been taken to date to comply with the decision.

## D. THE ENABLING FRAMEWORK FOR CIVIL SOCIETY

### 48. Measures regarding the framework for civil society organisations (e.g. access to funding, registration rules, measures capable of affecting the public perception of civil society organisations, etc.)

1. In June 2020, the **CJEU ruled that Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (Lex NGO) violates EU law.**<sup>275</sup> After the judgment, the Minister of Justice stated<sup>276</sup> that the Lex NGO's objective was to ensure the transparency of NGOs, and the CJEU "has confirmed the legitimacy of that objective". She also stated that the Lex NGO "has not made the funding or operation of organisations any more cumbersome", and that the CJEU "does not cite a single specific item of data or evidence that would prove the contrary". The Prime Minister linked international courts to "Soros's international network" in relation to the judgment.<sup>277</sup>

The **Lex NGO remains in effect** to date. In fact, a government-established public foundation **rejected an NGO's EU grant application over non-compliance with the Lex NGO** in August 2020, after the judgment was handed down.<sup>278</sup> In September, signing a statement that the applicant complies with the Lex NGO became an expressly stipulated precondition of applying to the foundation, and they removed this requirement only in February 2021.<sup>279</sup> When asked about this, the Government stated that it approved of the application of the Lex NGO, even if it was found to be in breach of EU law, since as long as it was not amended it remained in force and to be applicable in Hungary.<sup>280</sup> On 18 January 2021, the EC announced that it was sending a **letter of formal notice to Hungary for failing to comply with the**

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<sup>273</sup> For a timeline of the events, see: <https://www.ceu.edu/istandwithceu/timeline-events>.

<sup>274</sup> For the CJEU's press release about the judgment in Case C-66/18, see:

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2020-10/cp200125en.pdf>.

<sup>275</sup> *European Commission v. Hungary*, Case C-78/18, JUDGMENT OF THE COURT (Grand Chamber), 18 June 2020, ECLI identifier: ECLI:EU:C:2020:476

<sup>276</sup> See: <https://www.kormany.hu/en/ministry-of-justice/news/we-are-committed-to-transparency-of-non-governmental-organisations>.

<sup>277</sup> For a full text of the interview in English, see: <http://www.miniszterelnok.hu/prime-minister-viktor-orban-on-the-kossuth-radio-programme-good-morning-hungary-19/>.

<sup>278</sup> See e.g.: <https://autocracyanalyst.net/hungarian-ngo-foreign-agent-law/>, and all related correspondence between the affected organisation, the public foundation, and the European Commission at: <https://www.emberseg.hu/en/advocacy-issues/>.

<sup>279</sup> See the dedicated [website](#) of the public foundation with the list of required documents, and the information on removing this requirement as shared by an affected NGO: <https://www.emberseg.hu/2021/02/24/mar-nem-feltetele-az-erasmus-palyazatoknak-a-jogserto-nyilatkozat/>.

<sup>280</sup> See the statement of the Ministry in charge of supervising the public foundation: [https://nepszava.hu/3097050\\_lex-soros-a-kormany-tesz-a-tiltasra](https://nepszava.hu/3097050_lex-soros-a-kormany-tesz-a-tiltasra).

**CJEU's ruling.**<sup>281</sup> In February 2021, the Minister of Justice stated that a new law on NGOs had already been drafted.<sup>282</sup> However, the draft is not available to the public.

The **"Stop Soros" law** that criminalises assistance to asylum-seekers in submitting an asylum claim if that proves to be unfounded later **remains in effect, along with the law prescribing a special 25% immigration tax on donors** if they provide funds for "activities facilitating immigration".<sup>283</sup> In February 2021, the Advocate General of the CJEU issued an opinion in the infringement procedure launched by the EC saying that the provisions of the "Stop Soros" law criminalising assistance for asylum-seekers violate EU law.<sup>284</sup>

2. **The Government continues to attack human rights NGOs.** The judgment in an education segregation case granting Roma pupils compensation was used by governing party politicians (including the Prime Minister) not only for fuelling anti-Roma sentiments, but also to attack the NGO assisting the plaintiffs. Detainees' rights advocates were accused by government representatives of being involved in a "prison business" built on compensations paid to inmates for inadequate detention conditions.<sup>285</sup>

3. In violation of the European code of conduct on partnership in the framework of the European Structural and Investment Funds, Hungary has been failing to meaningfully include CSOs in the consultation about planning of the allocation of EU resources.<sup>286</sup>

## E. INITIATIVES TO FOSTER A RULE OF LAW CULTURE

### 49. Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, etc.)

Instead of "fostering" it, the Government took various non-legislative steps also in 2020 that either eroded rule of law culture in Hungary, or, at the minimum, were not aimed at increasing respect for the rule of law. Examples include the following.

1. The Government or the governing majority **have not organized any meaningful national level discussion about the EC's 2020 Rule of Law Report.** Instead, in October 2020, the Ministry of Justice issued a "non-paper", which heavily criticized the report. The non-paper claimed that the Rule of Law Report's scope is "arbitrary", that it lacks "clear reference

<sup>281</sup> See: [https://ec.europa.eu/commission/presscorner/detail/en/inf\\_21\\_441](https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441).

<sup>282</sup> For the statement of the Minister of Justice, see:

<https://www.facebook.com/VargaJuditMinisterofJustice/posts/4136935899658668>.

<sup>283</sup> Cf.: European Commission, *2020 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, p. 19.

<sup>284</sup> The press release on the Advocate General's Opinion in Case C-821/19 is available here:

<https://curia.europa.eu/jcms/upload/docs/application/pdf/2021-02/cp210027en.pdf>.

<sup>285</sup> For more details and quotes, see: Hungarian Helsinki Committee, *Shadow report to the GANHRI Sub-Committee on Accreditation on the activities and independence of the Commissioner for Fundamental Rights of Hungary in light of the requirements set for national human rights institutions*, 18 February 2019, [https://www.helsinki.hu/wp-content/uploads/Assessment\\_NHRI\\_Hungary\\_18022021\\_HHC.pdf](https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_18022021_HHC.pdf), pp. 24–26.

<sup>286</sup> See the statement of the Hungarian NGO coalition Civilizáció here: <https://civilizacio.net/en/news-blog/open-letter-consultation>.

points”, that its use of sources is “tendentious” and its methodology is “weak”, that it applies “double standards”, and that the related process did not comply “with the basic rule of law requirements related to fair hearing”.<sup>287</sup>

2. In the early summer of 2020, the Government launched a new national consultation “on the coronavirus and restarting the economy”.<sup>288</sup> (“National consultations” use manipulative questions on issues politically important for the Government; responses are counted in a methodologically neither sound nor controlled manner. Therefore, they are not suitable to replace meaningful public consultation, and rather serve as propaganda tools.<sup>289</sup>) In this latest national consultation questionnaire, the Government **attacked the EU and the CJEU in relation to immigration matters, and specifically the CJEU judgment on transit zones**,<sup>290</sup> by posing the following manipulative questions:

*“12. According to a European Court of Justice ruling, it is illegal to have immigrants wait in the transit zone on the Hungarian border. The decision found that migrants should be allowed entry into our country during the epidemic. This ruling coincides with George Soros’s old plan on migration, which proposed that one million immigrants must be allowed entry annually and at any cost. Do you agree that the government should continue to stand up against immigration and maintain strict protection of Hungary’s borders? Yes/No*

*13. Brussels is preparing an offensive against the immigration-related regulations of the Hungarian constitution. They want to force us to amend the Fundamental Law’s articles that prevent migration. Do you agree that the Hungarian government must insist on its anti-immigration rules even at the price of an open conflict with Brussels? Yes/No”<sup>291</sup>*

## 50. Other

The EC’s 2020 Rule of Law Report states that “concerns have been raised as regards the independence of a number of institutions and their capacity to function as counter-weight to the Government’s powers”.<sup>292</sup> However, the situation is much graver than that.

As detailed above, in the past 10 years, the governing majority has changed the competences and the composition of the **Constitutional Court** in a way that it **no longer serves as a genuine check on political power**. (This was also reflected in major 2020 developments – see Section 43.) Furthermore, **the governing majority has systematically undermined the oversight role of basically all independent institutions over executive power**. The ruling majority gained control over state institutions by restructuring and re-staffing them. This institutional decapitation was done via legislative steps and removing these institutions’

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<sup>287</sup> The non-paper’s full text is available here in English: <http://abouthungary.hu/news-in-brief/Here-are-a-few-observations-on-the-European-Commission-2020-Rule-of-Law/>.

<sup>288</sup> See: <https://koronavirus.gov.hu/cikkek/kozetette-kormany-nemzeti-konzultacio-kerdeseit>.

<sup>289</sup> See also: Agnes BATORY – Sara SVENSSON, *The use and abuse of participatory governance by populist governments*, Policy & Politics, 2019, 47(2), pp. 227–244.

<sup>290</sup> See e.g.: <https://www.helsinki.hu/en/hungary-unlawfully-detains-people-in-the-transit-zone/>.

<sup>291</sup> Source of English translation: <http://abouthungary.hu/news-in-brief/heres-the-latest-national-consultation-questionnaire-in-english/>.

<sup>292</sup> European Commission, *2020 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, p. 19.

leaders before their fixed term of office expired, and/or by appointing or electing new, loyal leaders.

For example, the Presidents of the Republic elected since 2010 have been all former Fidesz MEPs/MPs. The President of the Supreme Court, the Vice-President of the Supreme Court, the Parliamentary Commissioner for Data Protection and Freedom of Information, members of the National Election Commission, the Vice Presidents of the Hungarian Competition Authority, and the members of the National Radio and Television Body were all removed before the end of the fixed term of their office via legislative steps. (In the cases *Erményi v. Hungary* and *Baka v. Hungary*, the ECtHR concluded that the premature dismissal of the Vice-President and President of the Supreme Court violated the European Convention on Human Rights;<sup>293</sup> while the CJEU ruled that by prematurely bringing to an end the term served by the Parliamentary Commissioner for Data Protection and Freedom of Information, Hungary had failed to fulfil its obligations under Directive 95/46.<sup>294</sup>) The State Audit Office's perceived independence is undermined by the fact that its head is a former Fidesz MP, and that it was accused by opposition parties with misusing its powers by the questionable imposition of excessive fines.<sup>295</sup> Two Constitutional Court judges are also former Fidesz MPs, while some others are former administration leaders.

As a result, **state institutions have been deprived, by law or in practice, of their capacity to effectively exercise oversight over the executive.**

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<sup>293</sup> *Erményi v. Hungary* (Application no. 22254/14, Judgment of 22 November 2016), *Baka v. Hungary* (Application no. 20261/12, Judgment of 27 May 2014)

<sup>294</sup> *European Commission v Hungary*, Case C-288/12, Judgment of the Court (Grand Chamber), 8 April 2014, ECLI identifier: ECLI:EU:C:2014:237.

<sup>295</sup> See e.g.: <https://www.reuters.com/article/us-hungary-opposition-fine/hungarys-jobbik-party-says-might-disband-after-second-audit-fine-idUSKCN1PQ58Z>.