



Submission

by Amnesty International Hungary, the Eötvös Károly Institute,
and the Hungarian Helsinki Committee

for the third cycle of the

Universal Periodic Review

of

Hungary

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Amnesty International Hungary is a global movement which is campaigning for a world where human rights are enjoyed by all. Amnesty International Hungary has been operating since 1990 and our current strategy focuses on the protection of the rule of law, the independence of the judiciary and the right to fair trials, gender equality, and privacy. *Contact:* Hungary, 1054 Budapest, Báthory utca 4. 1/2 | www.amnesty.hu | office@amnesty.hu | @AmnestyHungary

The **Eötvös Károly Institute** was established in 2003 in Budapest as a novel institutional framework for shaping public affairs in Hungary. The Institute aims to help the learning process of democracy, strengthen constitutionalism and the rule of law, and contribute to the development of a free and open society. *Contact:* Hungary, 1088 Budapest, Szentkirályi utca 11. | www.ekint.org | info@ekint.org

The **Hungarian Helsinki Committee (HHC)** is an independent human rights watchdog organisation founded in 1989 in Budapest, Hungary. As a leading Hungarian human rights organisation with a globally recognised reputation, the HHC works towards a world in which everyone's human rights are protected. The HHC focuses on defending the rule of law and a strong civil society in a shrinking democratic space; the right to seek asylum and access protection; the rights to be free from torture and inhuman treatment and the right to fairness in the criminal justice system. The HHC contributes to monitoring Hungary's compliance with relevant UN, EU, Council of Europe, and OSCE human rights standards and cooperates with international human rights fora and mechanisms. *Contact:* Hungary, 1074 Budapest, Dohány utca 20. II/9. | www.helsinki.hu | helsinki@helsinki.hu | @hhc_helsinki

1. The deterioration of the rule of law in Hungary has a severe impact on the enjoyment and enforcement of human rights in the country. During the second UPR cycle, a number of related concerns were raised and recommendations made, mostly related to independent institutions and the judiciary, none having been implemented thus far. That the framework capable of ensuring that rights enshrined in the treaties are observed and are effectively enforceable was not addressed in a separate submission in the previous UPR cycle could partly explain the lack of robust recommendations then.
2. Laws are drafted and adopted without any meaningful consultation, including those that restrict rights of marginalised groups. Independent human rights institutions, such as the NHRI, are ineffective, and consultative human rights mechanisms are either inactive or filled in a partisan way. A decade of attacks on the independence of the judiciary included the centralisation of the administration of courts, the lowering of the mandatory retirement age of judges, terminating the mandate of the Supreme Court's President prematurely, attempting to set up a heavily government-controlled administrative court system, and exerting pressure on critical judges. The latest step was the appointment of the new Chief Justice¹ despite sweeping rejection by the judicial self-governing body, while excessively expanding his powers to include, among others, a decisive role in the unification of the jurisprudence of lower tier courts and shaping the mandatory interpretation of the law. Hungary's worsening track record of the implementation of judgments of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU),² coupled with the growing use of legislative overriding of judgments are a clear sign of the disrupting of the oversight by the judiciary. The one-party new constitution adopted in 2011 was amended on nine occasions to fit the current political agenda of the governing majority, thereby instrumentalising even the country's most fundamental legal norm. Packing the Constitutional Court (CC) with political appointees, limiting its jurisdiction as well as permitting, bar a few exceptions, only a handful of already occupied institutions to request a constitutional review of adopted laws emptied out the purpose of the CC.³
3. Addressing these issues, discussed below in detail, is necessary to ensure that thematic recommendations are duly implemented.

I. Using the Fundamental Law to undermine the rule of law and human rights

4. The Fundamental Law, Hungary's new Constitution in force since 2012, does not adequately restrict the state's power and does not effectively protect the rule of law and human rights. Instead, it is used by the Government as a tool to undermine the principles of the rule of law, contrary to generally recognised constitutional norms.
5. The Fundamental Law does not reflect national consensus; it was adopted by the governing parties without consulting with the civil society.⁴ Since 2012, the Fundamental Law has been amended nine times, always in line with the Government's political interests. Thus, it is not able to serve as a stable basis of the legal system, since it is not the constitution that regulates the Government's work, but it is the Government that adjusts the constitution to its needs.

¹ I.e. the President of the Kúria.

² See in more detail in Section IV.iv. of this document.

³ Fundamental Law, Article 24 (2). To learn more, see Section II. of this document.

⁴ See in more detail: Eötvös Károly Institute – Hungarian Civil Liberties Union – Hungarian Helsinki Committee, *Comments on the Process of Framing the New Constitution of Hungary*, 10 March 2011, http://helsinki.hu/wp-content/uploads/Comments_on_the_Process_of_Framing_the_New_Constitution_of_Hungary_EKI_HCLU_HHC.pdf.

The Venice Commission warned already in 2013, at the time of the Fourth Amendment that “[f]requent constitutional amendments are a worrying sign of an instrumental attitude towards the constitution”.⁵ The Venice Commission also raised concerns about the governing majority’s “systematic approach” that provisions of ordinary laws which the CC had previously found unconstitutional and annulled were reintroduced into the constitution.⁶ This effectively meant the overruling of the CC, since in this way the impugned rules were removed from the scope of constitutional review. This resulted, among others, in unjustifiable restrictions on various human rights enshrined in the Fundamental Law.⁷

Recommendation:

6. *Consult with the Venice Commission and all relevant domestic stakeholders prior to constitutional amendments.*

II. Weakened constitutional judicial oversight of legislation

7. Since 2010, the governing majority has adopted a series of laws to undermine the independence of the CC and weaken constitutional oversight over legislation.⁸ The governing parties changed the long-established consensual rule for nominating CC justices to ensure that the Fidesz-KDNP having a two-third majority in Parliament can fill the vacancies without the support of the opposition. They curbed the competences of the CC over the central budget and tax-related legislation, and increased the size of the court from 11 to 15 judges to pave the way for court-packing by electing justices loyal to the Government.⁹ As a result, since 2010, 18 new justices have been elected to the CC out of which only 4 judges needed opposition support by a small party in 2016 when the Fidesz-KDNP temporarily lost its legislative supermajority.
8. The 2011 Fundamental Law significantly altered the competences of the CC. The *actio popularis* which allowed any private individual to challenge laws before the CC without any direct legal interest was abolished, hence the access to abstract review of legislation was seriously limited. In turn, “full constitutional complaint” was introduced, so the CC can review the constitutionality of judicial decisions rendered by ordinary courts. In 2019, public authorities were provided the possibility to challenge judicial decisions before the CC on the ground that their rights prescribed by the Fundamental Law are violated. This has opened the way to channelling politically sensitive cases from the ordinary court system to the politically controlled CC. These changes in the powers of the CC raise two major concerns: (1) constitutional oversight over the legislature has significantly decreased, while (2) a captured CC can influence the jurisprudence of the ordinary courts.

⁵ European Commission for Democracy through Law (Venice Commission), *Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, CDL-AD(2013)012, 17 June 2013, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)012-e), § 136.

⁶ European Commission for Democracy through Law (Venice Commission), *Opinion on the Fourth Amendment to the Fundamental Law of Hungary*, CDL-AD(2013)012, 17 June 2013, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2013\)012-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2013)012-e), § 144 et al.

⁷ For examples of how the Fourth Amendment to the Fundamental Law overruled decisions of the Constitutional Court, see: <http://helsinki.hu/wp-content/uploads/Constitutional-Court-vs-Fourth-Amendment.pdf>.

⁸ On these developments see also: Kovács, K.–Scheppelle, K. L., 2018. The fragility of an independent judiciary: Lessons from Hungary and Poland—And the European Union. *Communist and Post-Communist Studies*, 51(3), pp. 189–200.

⁹ See also Szente, Z., 2016. The Political Orientation of the Members of the Hungarian Constitutional Court between 2010 and 2014. *Const. Stud.*, 1, p. 123.; and 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, https://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC_Analysing_CC_judges_performances_2015.pdf.

9. In 2013, the Fourth Amendment to the Fundamental Law formally repealed the pre-2012 case-law of the CC. In recent years, the CC has seemed to avoid any direct confrontation with the governing majority in politically sensitive cases (including election cases), and sometimes it has actively contributed to undermining the rule of law and the protection of human rights.
10. In 2016, after a failed referendum and constitutional amendment initiated by the Government to receive authorization from the Hungarian people to reject refugee relocation quotas prescribed by the EU,¹⁰ the CC came to the rescue of the Government. It was the Commissioner for Fundamental Rights (Hungary's Ombudsperson) who turned to the CC for abstract interpretation in relation to the quotas, and the CC, in its decision, declared its own competence to review and even override EU law, among others, on the basis of the vague concept of Hungary's constitutional identity based on its historical constitution.¹¹
11. In 2018, the CC suspended the procedures on the 2017 Lex NGO¹² and the Lex CEU¹³ on the ground that constitutional dialogue is of key importance and these cases were also pending before the CJEU.¹⁴ In 2020, the CJEU found both laws in breach of EU law, however, the CC has not yet continued with these procedures, therefore evading the constitutional control of the respective laws.
12. It was also the CC which found admissible a complaint of the Hungarian National Bank acting as a public authority in an administrative procedure which actually triggered the late 2019 legislative change¹⁵ allowing public authorities to file constitutional complaints against judicial decisions on the ground that their fundamental rights have been violated, turning around the institution of constitutional complaint that was originally designed to serve as a tool protecting individuals vis-a-vis bodies exercising public authority.¹⁶
13. In 2019, the CC ruled on the constitutionality of laws that had symbolic importance for the legislative agenda and the communication of the Government. It found compatible with the Fundamental Law the crime of "facilitating illegal immigration", part of the "Stop Soros" law, which threatens with punishment activities of human rights NGOs aiming to provide assistance for asylum-seekers.¹⁷ An infringement procedure based on this law is currently pending before the CJEU.¹⁸ In 2019, the CC also failed to invalidate the criminalization of "habitual dwelling in public places", i.e. the state of homelessness.¹⁹
14. In 2020, after the Government declared a "state of danger" and introduced emergency laws to fight COVID-19, certain emergency measures were challenged before the CC, but the court failed to decide on the merit of several complaints arguing that the state of danger was

¹⁰ Council Decision 2015/1601

¹¹ For critical analyses of the CC's decision, see: Halmai, G., 2018. Abuse of Constitutional Identity. The Hungarian Constitutional Court on Interpretation of Article E(2) of the Fundamental Law. *Review of Central and East European Law*, 43(1), pp. 23–42.; and Drinóczi, T., 2017. Hungarian Constitutional Court: The Limits of EU Law in the Hungarian Legal System. *Vienna Journal on International Constitutional Law*, 11, pp. 139–151.

¹² For details of the 2017 Lex NGO, 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, pp. 12–13.

¹³ For details of the Lex CEU, see: <https://www.ceu.edu/istandwithceu/timeline-events>.

¹⁴ Decisions no. 3198/2018. (VI. 21.) AB and 3199/2018. (VI. 21.) AB

¹⁵ See the explanatory memorandum of Bill T/8016: <https://www.parlament.hu/irom41/08016/08016.pdf>, pp. 164–165.

¹⁶ Decision no. 23/2018. (XII. 28.) AB

¹⁷ Decision no. 3/2019. (III. 7.) AB. For the English version, see:

[http://public.mkab.hu/dev/dontesek.nsf/0/db659534a12560d4c12583300058b33d/\\$FILE/3_2019_EN_final.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/db659534a12560d4c12583300058b33d/$FILE/3_2019_EN_final.pdf).

¹⁸ *Commission v Hungary* (Criminalisation of assistance for asylum seekers), Case C-821/19. For the press release of the opinion of the Advocate General delivered on 25 February 2021, see:

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

¹⁹ Decision no. 19/2019. (VI. 18.) AB

already terminated and therefore the challenged decrees were no longer in force. The new form of scaremongering that threatens with up to five-year imprisonment the spreading of false or distorted facts during a special legal order was also challenged before the CC, but the relevant law has remained on the statute book.²⁰ The CC decided in 2020 on the constitutionality of the decree which declared the merging of 476 government-friendly news outlets under the Central European Press and Media Foundation (KESMA) as national strategic importance, but the CC held that the merger served public interest and did not raise concerns about media freedom and media pluralism.²¹

Recommendations:

15. *Repeal rules allowing state authorities to submit a constitutional complaint.*
16. *Require consensus between parliamentary parties for the nomination of CC judges.*

III. Systematic weakening of institutions protecting human rights

17. The Government and the governing majority have systematically weakened basically all independent institutions' ability to effectively and efficiently discharge their human rights mandates. The governing majority gained control over state institutions by restructuring and re-staffing them. This institutional decapitation was done via legislative steps and removing these institutions' leaders before their fixed term of office expired, and/or by appointing or electing new, loyal leaders. As a result, state institutions have been deprived, by law or in practice, of their capacity to effectively exercise oversight over the executive.
18. In 2012, the President and the Vice-President of the Supreme Court were removed by the Parliament from their office before the end of their term, in violation of the European Convention on Human Rights (ECHR),²² while prematurely bringing to an end the Data Protection Commissioner's term violated EU law.²³ Members of the National Election Commission and the National Radio and Television Body were also removed before the end of their fixed term via legislative steps. Two CC judges elected after 2010 were former Fidesz MPs, some others are former administration leaders. The State Audit Office's perceived independence is undermined by its head being a former Fidesz MP, and opposition parties accused it with questionably imposing excessive fines.²⁴ As a result of their election rules, the Media Council (the media authority) is exclusively made up of members who had been

²⁰ Decision no. 15/2020. (VII. 8.) AB. For details, see: 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., and Györy, Cs., 2020. Fighting Fake News or Fighting Inconvenient Truths?: On the Amended Hungarian Crime of Scaremongering, *VerfBlog*, 2020/4/11, <https://verfassungsblog.de/fighting-fake-news-or-fighting-inconvenient-truths>.

²¹ Decision no. 16/2020. (VII. 8.) AB. For the English press release about the CC's decision, see: <http://hunconcourt.hu/kozlemeny/the-government-decree-classifying-as-of-national-strategic-importancethe-intention-to-extend-the-central-european-press-and-media-foundation-is-not-in-conflict-with-the-fundamental-law>. For more details on the 2020 developments, see: *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, March 2021, https://helsinki.hu/wp-content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf.

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

²³ *European Commission v Hungary*, Case C-288/12, Judgment of the Court (Grand Chamber), 8 April 2014, ECLI identifier: ECLI:EU:C:2014:237.

²⁴ See e.g.: <https://www.reuters.com/article/us-hungary-opposition-fine/hungarys-jobbik-party-says-might-disband-after-second-audit-fine-idUSKCN1PO58Z>.

nominated by the governing parties; the authority's political bias is shown by its media market regulation activities.²⁵ Election commissions lack independence.²⁶

19. Doubts can be raised as to the full functional independence of the prosecution service.²⁷ Many recommendations by GRECO²⁸ pertaining to the prosecution were not or only partially implemented;²⁹ and Hungary has not joined the European Public Prosecutor's Office.
20. Since 2012, Hungary has had a single Ombudsperson, the Commissioner for Fundamental Rights, who is Hungary's national human rights institution (NHRI). In 2019, the GANHRI Sub-Committee on Accreditation (SCA) deferred the review of the Commissioner's NHRI status³⁰ because the Commissioner's selection process "is not sufficiently broad and transparent", and he did "not demonstrate adequate efforts in addressing all human rights issues, nor has it spoken out in a manner that promotes and protects all human rights". The SCA also raised that the Commissioner has made limited use of international human rights mechanisms "in relation to sensitive issues".³¹
21. In September 2019, a new Commissioner took office, but he has also repeatedly failed to act or act adequately in politically sensitive cases, specifically in the areas of concern highlighted by the SCA. The new Commissioner has failed to address rights violations affecting the Roma, asylum-seekers and migrants, LGBTQI people, or human rights defenders. The Commissioner's selection process remained non-transparent and the number of his petitions to the Constitutional Court low, both issues of concern for the SCA.³²
22. Instead of complying with the UPR recommendation to provide adequate resources and functional independence to Hungary's equality body, the Equal Treatment Authority (ETA),³³ as of 2021, the ETA was abolished, and its tasks were transferred to the Commissioner. Abolishing the ETA was not only unnecessary and unjustified, but may also weaken the level of human rights protection,³⁴ also because the ETA, in contrast to the Commissioner, issued

²⁵ In more detail, see: *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, March 2021, https://helsinki.hu/wp-content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf, pp. 36–37.

²⁶ In more detail, 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, p. 51.

²⁷ In more detail, see: *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, March 2021, https://helsinki.hu/wp-content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf, pp. 10–11.

²⁸ Group of States against Corruption

²⁹ See: 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>

³⁰ 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.

³¹ See also the following report in this regard: Hungarian Helsinki Committee, *Assessment of the Activities and Independence of the Commissioner for Fundamental Rights of Hungary in Light of the Requirements Set for National Human Rights Institutions*, September 2019, https://www.helsinki.hu/wp-content/uploads/Assessment_NHRI_Hungary_2014-2019_HHC.pdf.

³² See in more detail: 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.

³³ See 2nd UPR cycle Recommendation 128.32 (India).

³⁴ 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.

important decisions regarding rights violations affecting the Roma³⁵ or LGBTQI people.³⁶ The Independent Police Complaints Board was also abolished as of 2020, and its tasks transferred to the Commissioner, which is problematic since – as demonstrated above – its protection of human rights is not effective.³⁷

Recommendations:

23. *Respect the rule of law and the independence of judicial institutions entrusted with protecting human rights, including minority rights.*³⁸
24. *Implement all GRECO recommendations.*
25. *Join the European Public Prosecutor's Office.*
26. *Address the SCA's concerns regarding the functioning of the Commissioner for Fundamental Rights.*

IV. Independence of the judiciary

27. Judicial independence has been under constant attack and systematically undermined by the governing majority since 2011.³⁹

i. Judicial self-governance

28. An overall re-regulation in 2012 centralised the administration of courts in the hands of one person, the President of the National Judicial Office (NJO President). Elected by the Parliament, the NJO President “cannot be regarded as an organ of judicial self-government”.⁴⁰ Despite criticism by many stakeholders, the NJO President continues to have excessive powers: amongst others, it appoints and supervises court leaders; may issue compulsory internal policies; prepares the draft budgets of the court system; publishes the calls for and decides on applications for judges' positions; may second a judge to the Kúria, to the NJO, or to an administrative authority; in certain cases, may transfer judges between courts; and manages the judiciary's training system.⁴¹ The NJO President also has the power to annul any call for appointments for court presidents and judges and render the procedure unsuccessful without the consent of any judicial body.
29. Although the self-governing body of the judiciary, the National Judicial Council (NJC) is tasked with supervising the administration of courts and safeguarding the independence of the judiciary,⁴² it cannot fulfil its constitutional role as the underlying legislation⁴³ provides no effective tools for a meaningful oversight over the NJO President.

³⁵ 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>.

³⁶ See e.g.: <https://www.equalitylaw.eu/downloads/5086-hungary-budapest-mayor-s-office-unblocks-access-to-lgbtqi-websites-79-kb>.

³⁷ Pursuant to Article 145 of Act CIX of 2019.

³⁸ Cf.: UN Human Rights Committee, *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 5 April 2018, § 6.

³⁹ See a detailed timeline of steps taken here: Amnesty International Hungary – Hungarian Helsinki Committee, *Timeline of undermining the independence of the judiciary in Hungary. 2012–2019*, https://www.helsinki.hu/wp-content/uploads/Hungary_judiciary_timeline_AI-HHC_2012-2019.pdf.

⁴⁰ European Commission for Democracy Through Law (Venice Commission), *Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary*, CDL-AD(2012)001, 19 March 2012, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2012\)001-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2012)001-e), § 51.

⁴¹ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 76

⁴² Act CLXI of 2011 on the Organisation and Administration of Courts, Article 88

⁴³ Act CLXI of 2011 on the Organisation and Administration of Courts, Articles 88–102

30. The unbalanced division of powers between the NJO and the NJC resulted in a “constitutional crisis”⁴⁴ in 2018–2019, when the NJC, designated to supervise the operation of the NJO, was prevented from doing so by the NJO President.⁴⁵ The conflict started when the NJC issued a report on the NJO President’s decisions in previous years, revealing unlawful practices in relation to judicial leadership appointments.⁴⁶ The NJO President claimed the NJC to be illegitimate and refused to cooperate with the NJC and to participate at NJC meetings. The NJC rejected these claims⁴⁷ and presented a motion to the Parliament, requesting the removal of the NJO President on the grounds that she had breached her duties and had become unworthy of the office.⁴⁸ Although the Parliament voted down the motion for the removal of the NJO President, the constitutional crisis was resolved by the election of a new NJO President in December 2019 who accepted the legitimacy of the NJC. Professional communication between the two bodies has improved and the NJC can fulfil its consultative role by formulating opinions on the resolutions and recommendations issued by NJO President.⁴⁹
31. Despite recommendations of the Venice Commission,⁵⁰ the Council of the EU,⁵¹ and also the European Commission’s 2020 Rule of Law Report, no legislative steps have been taken to address the structural issues that lead to the constitutional crisis. Except for the election of a new NJO President, all legislative deficiencies that previously created the conflict between the NJC and the NJO President remain in place (including the NJO President’s power to annul any call for appointments for court presidents and render the procedure unsuccessful without the consent of any judicial body). Consequently, the NJC is still incapable to fulfil its constitutional role in supervising judicial administration.⁵²
32. The weakness of the NJC and the political will of the governing majority to disrespect judicial independence was demonstrated most recently in the election process of the new Chief Justice. Applying the new legislation that enables the appointment of CC members to the top tier of the judiciary (see below), in 2020 the President of the Republic first appointed as judge, and later as Chief Justice a former prosecutor and one-party CC member. The Parliament elected the new Chief Justice completely disregarding the NJC’s manifest objection and its warning 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

⁴⁴ A term used by the European Association of Judges (<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>).

⁴⁵ See in detail: Amnesty International – Hungarian Helsinki Committee, *A Constitutional Crisis in the Hungarian Judiciary*, 9 July 2019, <https://www.amnesty.hu/a-constitutional-crisis-in-the-hungarian-judiciary/>.

⁴⁶ The reports amongst others concluded that the NJO President followed some unlawful practices in 2017–2018 according to the NJC: i) the NJO President seconded judges to courts to fulfil leadership tasks that is not allowed by the law; ii) did not give any reasoning or did not give well-grounded reasoning prescribed by the law in personnel matters (e.g. reasoning for the invalidation of leadership applications). See: <https://orszagosbiroitanacs.hu/2018-05-02/>.

⁴⁷ <https://www.dropbox.com/s/w3gv9qjonr3b76r/OBT%20Report%2006.02.2019.pdf?dl=0>

⁴⁸ <https://orszagosbiroitanacs.hu/2019-05-08/>

⁴⁹ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 103 (1) c)

⁵⁰ 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.

⁵¹ *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>

⁵² 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/>.

judicial system be a person who is independent of the other branches of power and who appears impartial to an outside observer".⁵³

33. The right to a fair trial as guaranteed by Article 6 of the ECHR requires that cases are heard by an independent and impartial tribunal established by law. The guarantees of an "independent" and "impartial" tribunal are closely interrelated and the ECtHR commonly considers the two requirements together,⁵⁴ and upholding judicial independence and the impartiality is crucial for guaranteeing the right to a fair trial. In Hungary, this right to be heard by an independent and impartial tribunal established by law is impacted adversely through the unchecked powers of the NJO President and the NJC's weak competences to oversee its operation.

Recommendations:

34. Reinforce structurally the NJC in line with the recommendations of the Venice Commission⁵⁵ and the Council of the EU;⁵⁶ the NJC shall have a legal personality, greater budgetary autonomy, independent apparatus, and more resources.
35. Repeal provisions allowing the President of the NJO and the Chief Justice to annul calls and render appointment procedures for judicial leadership positions and judicial positions unsuccessful without the consent of any judicial body.
36. Request the NJC's opinion regarding bills affecting the judiciary.⁵⁷
37. Court leaders over whom the NJO President exercises the employer's rights and their relatives shall be ineligible to become NJC members.⁵⁸

ii. Further attempts at undermining judicial independence

38. Throughout 2018–2019, the governing majority planned to set up a heavily government-controlled administrative court system with jurisdiction over taxation, public procurement and other economic matters, as well as elections, freedom of assembly, asylum, and other human rights issues. After wide international criticism⁵⁹ the Parliament first postponed, then dropped the new law in November 2019.
39. In 2019 and in 2020 the governing majority adopted new laws⁶⁰ to gain control over the judiciary. The new legislation curbed judicial independence in various ways:

⁵³ Statement of the NJC, 9 October 2020, <https://orszagosbiroitanacs.hu/english/>

⁵⁴ See the cases *Cooper v. the United Kingdom* (Application no. 48843/99, Judgment of 16 December 2003) and *Oleksandr Volkov v. Ukraine* (Application no. 21722/11, Judgment of 9 January 2013).

⁵⁵ 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.

⁵⁶ 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>

⁵⁷ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 103

⁵⁸ Act CLXI of 2011 on the Organisation and Administration of Courts, Article 90

⁵⁹ By the Venice Commission ([https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)004-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)004-e), § 113), the First Vice-President of the European Commission (<https://www.liberties.eu/en/news/rule-of-law-ep-debate-hungary-jan-2019/16931>), the Council of Europe Commissioner for Human Rights (<https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-hungary-s-president-to-return-to-the-parliament-the-legislative-package-on-administrative-courts>), and the UN Special Rapporteur on the independence of judges and lawyers (see: *Hungary: more needs to be done to bring legislation on administrative courts in line with international standards*, UN Expert says, <https://www.ohchr.org/Documents/Issues/Judiciary/InfoNoteHungary8Apr2019.docx>).

⁶⁰ Act CXXVII of 2019 on the Changes Made to Certain Laws with regard to Introducing a One-Level Procedure by Local Government Offices and Act CLXV of 2020 on the Amendment of Certain Acts regarding the Judiciary.

40. (i) It allowed CC justices to become judges⁶¹ upon their request and become heads of panel at the Kúria. This is problematic because the CC has previously been packed with loyalists to the governing majority and has failed to resist direct or indirect political pressure in significant human rights related cases.⁶² Furthermore, CC justices are political appointees elected by the Parliament,⁶³ which practically means an interference into judicial independence by other branches of power. In July 2020 eight CC justices were appointed as ordinary judges, one of them became Chief Justice of the Kúria.⁶⁴ This is problematic also because according to international standards,⁶⁵ the lawful composition of the courts and lawful appointment of judges – especially to the position of Chief Justice and heads of panels at the Kúria – is a crucial prerequisite for judicial independence and consequently for upholding the right to fair trial.
41. (ii) It allowed state authorities to file constitutional complaints against final and binding judicial decisions on the ground that their fundamental rights have been violated, which is also seen as a further step to alter judgments to the taste of the Government.⁶⁶
42. (iii) It removed the safeguard clause prescribing a fixed one-year term as the temporal scope of case allocation schemes within the courts,⁶⁷ 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. 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.
43. (iv) Judicial discretion was further limited by imposing an obligation on individual judges to provide reasons for departing from published decisions of the Kúria, thereby increasing the weight of the Kúria in determining the content of adjudication.
44. (v) As of April 2020, a new legal remedy was introduced, called "uniformity complaint"⁶⁸ which can be submitted against any final and binding decision of the Kúria in case it deviates from other published decisions of the Kúria. Although the aim to guarantee the consistency of jurisprudence is reasonable, the underlying legislation raises serious concerns. The Chief Justice, who practically is a political appointee, gained exclusive right to lead and select members of uniformity complaint panels. Members of the uniformity complaint panel have

⁶¹ Act CLI of 2011 on the Constitutional Court, Article 10/A

⁶² See e.g.: 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*, https://helsinki.hu/wp-content/uploads/EKINT-HCLU-HHC_Analysing_CC_judges_performances_2015.pdf.

⁶³ Fundamental Law, Article 24 (8)

⁶⁴ 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; and Section 9 of Amnesty International Hungary's

report *Status of the Hungarian judiciary*, 2021, <https://www.amnesty.org/en/documents/eur27/3623/2021/en/>.

⁶⁵ According to the UN Basic Principles on the Independence of the Judiciary, Section 13, "promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience". (See: <http://www.icj.org/wp-content/uploads/2014/03/UN-Basic-principles-independence-judiciary-1985-eng.pdf>.)

⁶⁶ To learn more, see Section 2.2.1 of Amnesty International Hungary's *Fearing the Unknown* report, 2020, <https://www.amnesty.org/en/documents/eur27/2051/2020/en/>.

⁶⁷ 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.

⁶⁸ Act CLXI of 2011 on the Organisation and Administration of Courts, Articles 41/A–41D

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.⁶⁹

45. (vi) The Chief Justice was also granted the power to raise the number of members of the Kúria's adjudicating chambers, creating a pretext for increasing the number of justices and opening vacant positions. As the selection and appointment of judges of the Kúria mostly lies in the hands of the Chief Justice, this may lead to a court packing process and appointing further politically loyal CC members as justices at the Kúria.
46. The rules above seriously limit the autonomy and independence of judges in interpreting the law and concentrate the power to determine the mandatory interpretation and therefore the outcome of cases in the hands of justices appointed and selected by the recently elected political appointee: the Chief Justice.

Recommendations:

47. *Abolish the possibility of CC justices becoming ordinary judges without an application procedure.*
48. *Amend the rules governing the uniformity complaint procedure, in order to eliminate the privileged position of the Chief Justice. Members of the uniformity complaint panel should be elected by judicial peers and the president of the uniformity complaint panel should be elected by the panel.*

iii. Chilling effect on freedom of expression of judges

49. Over recent years, there has been an increase in the number and severity of attacks from political figures and the media against individual judges and judgments. Due to the chilling effect of the institutional changes in the judiciary, judges are scared away from speaking up in defence of their opinion, which results in only weak signs of solidarity within the judiciary and between judges and other legal professions. Amnesty International recently conducted a research⁷⁰ in which judges reported⁷¹ a very bad atmosphere at various courts, where most judges do not dare to speak openly and freely; cliques have formed and there is mistrust among judges. The interviewees stated that the chilling effect materializes in a fear amongst judges that prevents them from speaking up or protesting administrative decisions and pieces of legislation affecting the judiciary. Judges said that they are afraid of potential threats of disciplinary proceedings, disadvantageous case allocation, bad evaluation results, financial consequences, consequences related to family members, and repercussions on professional training and development. A good illustration of the chilling effect is that sometimes judges do not even know what they are afraid of: they are fearing an abstract potential future consequence, or they are fearing the unknown. Yet, this indirect and subtle consequence of the chilling effect may influence their thinking and decision-making. Another example of exerting a chilling effect was that during the 2018–2019 “constitutional crisis”, the former NJO President and court leaders initiated disciplinary proceedings against NJC members,⁷² and although disciplinary proceedings are not public, the NJO President informed the judges and court leaders about these proceedings.

⁶⁹ 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, p. 6.

⁷⁰ Amnesty International Hungary, *Fearing the Unknown*, 2020, <https://www.amnesty.org/en/documents/eur27/2051/2020/en/>

⁷¹ To learn more, see Section 3 of Amnesty International Hungary's *Fearing the Unknown* report, 2020, <https://www.amnesty.org/en/documents/eur27/2051/2020/en/>.

⁷² Comments in relation to the GRECO report, published by the NJC on 2 August 2019, <https://orszagosbiroitanacs.hu/eszrevetelek-a-greco-jelentesek-kapcsan/>

50. Although Amnesty International has observed different opinions relating to the chilling effect under the new NJO President, there is a clear pattern that judges' freedom of expression continues to be restricted and that the new NJO President thinks that judges should only express their opinion through their judgments.⁷³ As another example of the chilling effect resulting from remarks coming from the top of the judiciary, at a February 2021 NJC meeting, the Chief Justice attacked an NJC member over an article about case allocation concerns,⁷⁴ claiming that publishing the article may result in "political" consequences by potentially appearing in the European Commission's 2021 Rule of Law Report.
51. In the case of *Baka v. Hungary*⁷⁵ the Committee of Ministers of the Council of Europe (CoE) established that the ECtHR judgment in question is still not executed and noted "with grave concern the reports suggesting that the 'chilling effect' of the violation found by the Court under Article 10 and affecting the freedom of expression of judges and court presidents in general has not only not been addressed but rather aggravated".⁷⁶ NGOs warned that the Government had failed to ensure that judges can freely express their professional opinion on the independence of the judiciary, without having to fear detrimental consequences.

Recommendations:

52. *Ensure that judges are allowed to freely express their views on rule of law, judicial independence, protection of human rights, and that representing the interests of the judiciary does not constitute a disciplinary offence or a breach of the judges' code of ethics.*
53. *Disciplinary proceedings, extraordinary evaluation procedures, examination procedures relating to incompetence shall only be initiated against an NJC member upon the NJC's prior consent.*

iv. Respect for and execution of judgments

54. There have been instances in the past years where state bodies resisted the execution of ordinary court decisions.⁷⁷
55. An example of the governing majority's disrespect for courts is their reaction to a judgment in an education segregation case, whereby a municipality and a state institution were obliged to pay compensation to segregated Roma pupils: as a response, the Parliament adopted a law that prevents courts from granting pecuniary compensation in similar cases.⁷⁸ This amendment amounts to indirect discrimination based on ethnicity, and violates EU law.⁷⁹
56. Hungary's record on the implementation of ECtHR judgments continues to be very poor. 54 leading cases (81% of the leading cases from the last 10 years) are still pending execution.⁸⁰ Non-executed judgments indicate systemic or structural problems concerning e.g. freedom

⁷³ NJC minutes of 5 February 2020, <https://orszagosbiroitanacs.hu/2020-02-05/>, pp. 13–14.

⁷⁴ <https://verfassungsblog.de/a-game-hacked-by-the-dealer/>

⁷⁵ Application no. 20261/12, Judgment of 27 May 2014

⁷⁶ CM/Del/Dec(2019)1355/H46-11, 25 September 2019, <http://hudoc.exec.coe.int/eng?i=004-10859>

⁷⁷ 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, pp. 20–21.

⁷⁸ Act CXC of 2011 on Public Education, Article 59 (4)

⁷⁹ 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>.

⁸⁰ Source: European Implementation Network, <https://www.einnetwork.org/hungary-echr>.

of expression of judges,⁸¹ excessive length of procedures,⁸² ill-treatment by official persons,⁸³ discrimination and segregation of Roma children,⁸⁴ unchecked state surveillance,⁸⁵ and freedom of religion.⁸⁶

57. In 2020, severe problems emerged with the execution of the judgments of the CJEU:
58. (i) The Parliament has not abolished to date the law⁸⁷ stigmatizing NGOs receiving funding from abroad, even though the CJEU found⁸⁸ in June 2020 that it violates EU law.⁸⁹ Thus, 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.⁹⁰ 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 2021.⁹¹ On 18 February 2021, the EC announced that it was sending a letter of formal notice to Hungary for failing to comply with the CJEU's ruling.⁹²
59. (ii) As a reaction to a CJEU judgment in May 2020 that condemned Hungary for the unlawful detention of asylum-seekers in transit zones, Hungary introduced a system in lieu of the transit zones, a system that is out of the scope and therefore lacks the protection of 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 of asylum-seekers was a violation of EU law.⁹³
60. (iii) On 17 December 2020, the CJEU ruled that the Hungarian law and practice of push-backs violated EU law.⁹⁴ However, these collective expulsions continue to take place: up until 1

⁸¹ *Baka v. Hungary* (Application no. 20261/12, Judgment of 23 June 2016), <http://hudoc.exec.coe.int/eng?i=004-10859>

⁸² *Gazsó v. Hungary* (Application no. 48322/12, Judgment of 16 July 2015), <http://hudoc.exec.coe.int/eng?i=004-10875>

⁸³ *Gubacsi v. Hungary* (Application no. 44686/07, Judgment of 28 June 2011), <http://hudoc.exec.coe.int/eng?i=004-10515>

⁸⁴ *Horváth and Kiss v. Hungary* (Application no. 11146/11, Judgment of 29 January 2013),

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

⁸⁵ *Szabó and Vissy v. Hungary* (Application no. 37138/14, Judgment of 12 January 2016),

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

⁸⁶ *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>

⁸⁷ Act LXXVI of 2017 on the Transparency of Organisations Supported from Abroad (Lex NGO)

⁸⁸ *European Commission v Hungary*, Case C-78/18, Judgment of the Court (Grand Chamber), 18 June 2020, ECLI identifier: ECLI:EU:C:2020:476

⁸⁹ 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, pp. 12–13.

⁹⁰ 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/>.

⁹¹ 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/>.

⁹² See: https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441.

⁹³ 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>.

⁹⁴ *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/>.

March 2021, close to 9,500 such measures have been carried out since the CJEU's ruling.⁹⁵ Due to the non-compliance with the judgment, EU's Frontex moved to suspend its operations in Hungary.⁹⁶

61. (iv) 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 University out of Hungary⁹⁷), violated EU law.⁹⁸ However, no legislative steps have been taken to date to comply with the decision.

Recommendation:

62. *Take the necessary legal measures to fully comply with the decisions of the ECtHR, the CJEU and ordinary courts.*

V. Law-making

i. Lack of a transparent and inclusive legislative process⁹⁹

63. The UPR recommendations requiring consultation with civil society¹⁰⁰ have not been implemented. As also criticized by the EC Rule of Law Report, the use of public consultations and impact assessments has "diminished".¹⁰¹
64. Public consultation is obligatory for laws prepared by Ministers, and shall involve publishing the draft laws online for the public to comment.¹⁰² However, the Government has been systematically failing to comply with this obligation. This practice resulted throughout the years in bills undermining the rule of law and violating fundamental rights being submitted to the Parliament without prior public consultation. Recent examples from 2019–2020 include a law that introduced significant changes to the judicial system,¹⁰³ the Ninth Amendment to the Fundamental Law,¹⁰⁴ a law that effectively blocks adoptions by LGBTQI

⁹⁵ 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.

⁹⁶ 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>.

⁹⁷ For a timeline of the events, see: <https://www.ceu.edu/istandwithceu/timeline-events>.

⁹⁸ 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>.

⁹⁹ Amnesty International does not currently work on legislative process matters. As such, Amnesty International has no position on this V.i. subsection and is therefore not in a position to bear responsibility for the contents of these chapters.

¹⁰⁰ See 2nd UPR cycle Recommendations 128.36 (Switzerland), 128.37 (United Kingdom of Great Britain and Northern Ireland) and 128.40 (Czech Republic).

¹⁰¹ European Commission, *2020 Rule of Law Report – Country Chapter on the rule of law situation in Hungary*, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020SC0316&from=EN>, p. 17.

¹⁰² Act CXXXI of 2010 on Public Participation in Preparing Laws, Articles 1 and 8 (1)–(2)

¹⁰³ Act CXXXVII of 2019

¹⁰⁴ 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.

people,¹⁰⁵ and an amendment to the national election rules.¹⁰⁶ In 2020, public consultation practically ceased.¹⁰⁷

65. The governing majority has regularly circumvented the rule for mandatory public consultation by getting bills submitted by MPs or parliamentary committees. E.g. in 2020, the law that abolished the ETA was submitted by a parliamentary committee; and an amendment that excludes pecuniary compensation for segregation in education (in violation of the Fundamental Law and EU law) was submitted by a governing party MP.¹⁰⁸ The lack of public consultation is usually coupled with none of the laws in question being foreseen in the Government's legislative schedule submitted to the Parliament. When public consultation still happened, deadlines for commenting have often been so tight that it has made meaningful consultation impossible. By law, comments should be published, with the reasons for rejecting them,¹⁰⁹ but this never happens.
66. The Government often refers to its "national consultations" as a form of interaction with the public. However, these use manipulative, highly politicized questions, and 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.¹¹⁰
67. The Human Rights Roundtable, often referred to by the Government as the forum for dialogue with NGOs, was left by many NGOs in protest to stigmatisation,¹¹¹ and does not ensure that human rights concerns are taken into account. E.g. in 2020, the Government initiated a consultation within the Roundtable about a bill banning legal gender recognition¹¹² (in violation of international standards). NGO members and the ETA criticized the bill, but their concerns were disregarded.
68. The omission of public consultations cannot be remedied in the Parliament either. Bills are often adopted within a very short timeframe; and the governing majority has adopted the practice of substantially amending bills in the last phase of the legislative process, after a detailed parliamentary debate has already taken place. Changes adopted during the COVID-

¹⁰⁵ Act CLXV of 2020. 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, p. 22.

¹⁰⁶ Act CLXVII of 2020. 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, pp. 6–7.

¹⁰⁷ In 2020, only five draft laws were published for commenting (see here: <https://2015-2019.kormany.hu/hu/dok?type=302#!DocumentBrowse> and [here](#)), while the Parliament adopted 159 Bills last year that were submitted by the Government (see the list of adopted Bills [here](#)).

¹⁰⁸ 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>.

¹⁰⁹ Act CXXXI of 2010 on Public Participation in Preparing Laws, Article 11 (1)

¹¹⁰ See also: Batory, A. – Svensson, S., 2019. The use and abuse of participatory governance by populist governments, *Policy & Politics*, 47(2), pp. 227–244.

¹¹¹ 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>.

¹¹² 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>.

19 pandemic significantly hinder MPs to even request putting bills on the agenda.¹¹³ The governing majority regularly obstructs discussions in parliamentary committees.¹¹⁴ The Speaker of the Parliament has extensive disciplinary powers (MPs may be banned from entire sessions and fined for large amounts¹¹⁵), which the current Speaker tends to overuse in a partisan manner.¹¹⁶

69. Media access to MPs in the Parliament underwent gradual restrictions,¹¹⁷ and currently journalists are confined to a small cordoned-off area.¹¹⁸ Those who breached the restrictions were often banned from entering the premises, even indefinitely. In 2020, the ECtHR condemned Hungary for suspending six journalists' right of entry.¹¹⁹

Recommendations:

70. *Strengthen legislative processes, "especially for laws affecting the enjoyment of human rights, by ensuring that mechanisms are in place to guarantee a transparent, inclusive and participatory process, including with opposition politicians, civil society, other relevant stakeholders and the general public, with adequate opportunity and time for meaningful review and proper debate of legislative proposals and amendments", as recommended by the UN Human Rights Committee.*¹²⁰
71. *Introduce restrictions on and provide remedies against the Speaker of the Parliament's decision to deny the right of entry to members of the media.*
72. *Repeal the provisions enabling the Speaker of the Parliament to impose excessive sanctions.*

ii. The Government's excessive emergency powers

73. Emergency regimes introduced due to the pandemic granted excessive regulatory powers to the Government without meaningful parliamentary oversight, or a guarantee for a swift constitutional review.¹²¹ Without a declaration pursuant to Article 15 of the ECHR, in March

¹¹³ Parliamentary Resolution no. H/9842 adopted on 30 March 2020, <https://www.parlament.hu/irom41/09842/09842.pdf>; Parliamentary Resolution no. H/12956 adopted on 21 September 2020, <https://www.parlament.hu/irom41/12956/12956.pdf>

¹¹⁴ One telling case was the debate in the Committee of Justice Affairs on the government-sponsored bill, submitted to the Parliament without any prior consultation or notice, that also included the removal of the legal recognition of transgender people. An opposition MP submitted an amendment with the aim to remove that particular provision from the bill that had to receive approval by the Committee of Justice Affairs so that it can be voted on in the plenary. The MP attempted to argue for the amendment by sharing the opinion of LGBTIQ organisations and transgender persons, but the president of the committee interrupted her and attempted to take the floor by saying that "what the affected people think is irrelevant". (A video of the relevant part of the committee's session is available here: <https://444.hu/2020/04/14/az-hogy-az-erintettek-hogy-latjak-teljesen-kozombos-mondta-a-kdnp-s-bizottsagi-elnok-amikor-szel-bernadett-a-nemvaltast-tilto-torveny-miatt-tiltakozok-velemenyet-olvasta-fel.>)

¹¹⁵ Act CVIII of 2019. See e.g.: <https://hungarytoday.hu/stricter-fines-against-mps-violating-house-rules/>.

¹¹⁶ See e.g.: <https://hungarytoday.hu/house-speaker-fines-opposition-mp-8-million-forints/>. In 2016, the ECtHR ruled in *Karácsony and Others v. Hungary* (Applications nos. 42461/13 and 44357/13, Judgment of 17 May 2016) that fines imposed by the Speaker of the Parliament on opposition MPs for using billboards and a megaphone violated their freedom of expression for the lack of adequate procedural safeguards. The Parliament's Rules of Procedure were changed since then to partly reflect the judgment. However, impossible sanctions became more drastic.

¹¹⁷ See e.g. this image of the blueprint of the Parliament from 2016 – areas highlighted in green were the only places journalists were allowed then: <https://4cdn.hu/kraken/image/upload/s--2zFNR7dg--/6r16M2LAbjc7CG7hs.jpeg>.

¹¹⁸ The latest restrictions are in place since the 2019 autumn session of the Parliament: https://index.hu/belfold/2019/10/16/parlament_tudositas_sajto_szabalyok/.

¹¹⁹ *Mándli and Others v. Hungary* (Application no. 63164/16, Judgment of 26 May 2020)

¹²⁰ UN Human Rights Committee, *Concluding observations on the sixth periodic report of Hungary*, CCPR/C/HUN/CO/6, 5 April 2018, § 8.

¹²¹ For more detailed information about the issues covered by this section, see: *Contributions of Hungarian NGOs to the European Commission's Rule of Law Report*, March 2021, <https://helsinki.hu/wp->

2020, the Government declared a “state of danger”, and was provided with a *carte blanche* mandate without any sunset clause to override laws via decrees. This was criticized e.g. by the CoE Secretary General,¹²² the CoE Commissioner for Human Rights,¹²³ the UN High Commissioner for Human Rights,¹²⁴ and OSCE/ODIHR.¹²⁵ Although the first state of danger was terminated in June 2020, amendments introduced parallel to that provided the Government with excessive powers that can be applied in a pandemic situation, with significantly weakened constitutional safeguards. These powers were put to use partly already in June, and partly in November 2020, when a new state of danger was ordered, and continue to apply. Certain emergency decrees¹²⁶ issued using these powers 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.¹²⁷

Recommendations:

74. *The Government’s current emergency powers shall be restricted.*
75. *The CC should be obliged to decide on emergency legislation in a fast-track procedure.*

[content/uploads/2021/03/HUN_NGO_contribution_EC_RoL_Report_2021.pdf](#), pp. 49–51. 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.

¹²² *Secretary General writes to Viktor Orbán regarding COVID-19 state of emergency in Hungary*, 24 March 2020, <https://www.coe.int/en/web/portal/-/secretary-general-writes-to-viktor-orban-regarding-covid-19-state-of-emergency-in-hungary>

¹²³ <https://twitter.com/CommissionerHR/status/1242036471508414464>

¹²⁴ Spokesperson for the UN High Commissioner for Human Rights, *Press briefing note on Hungary*, 27 March 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=25750>

¹²⁵ OSCE Office for Democratic Institutions and Human Rights, *Newly declared states of emergency must include a time limit and parliamentary oversight, OSCE human rights head says*, 30 March 2020, <https://www.osce.org/odihr/449311>

¹²⁶ For a full list of the decrees adopted during the first state of danger, with an English summary of their contents, see the HHC’s COVID-19 Emergency Decrees Tracker [here](#).

¹²⁷ 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/>